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AGRICULTURAL EXCEPTIONALISM AND INDUSTRIAL ANIMAL FOOD PRODUCTION: EXPLORING THE HUMAN RIGHTS NEXUS

Charlotte E. Blattner and Odile Ammann
Agricultural Exceptionalism and Industrial Animal Food Production: Exploring the Human Rights Nexus*

Charlotte E. Blattner** & Odile Ammann***

Abstract

The host of negative effects of animal agriculture on the immediate environment, workers, and local communities are well-documented, yet little is known about the global repercussions of animal agriculture, especially on human rights guarantees. This contribution attempts to begin filling this soaring gap. It examines the nexus between industrial animal agriculture (with a focus on concentrated animal feeding operations (CAFOs)) on the one hand, and specific international human rights violations on the other hand. Our emphasis is on the role of government in producing these violations, rather than on the agribusiness itself. Laws originally designed to govern small family farms—so-called “farmers’ rights” laws, including right-to-farm laws and exemptions from environmental and animal law—now protect corporate giants, many of which are multinationals. Governments enacting and upholding farmers’ rights shield agribusiness activities that are damaging to the environment and humans’ livelihoods from regulation. While they are prima facie at liberty to do so under domestic law, their laws are subject to the scrutiny of international law, particularly the human rights regime that promises to put a halt to the ongoing insulation of animal agriculture. The human rights perspective adds valuable dynamics to the ongoing debate, is novel in application to the issue, and opens new pathways for academic inquiries and legal strategies because—unlike nuisance laws, environmental laws, and animal protection laws, which de facto exempt the issue from judicial scrutiny—these laws can be used to hold governments accountable. The human rights discourse also gives rise to community empowerment and innovative forms of advocacy and forges connections between the different social justice issues implicated in

* This article has benefited immensely from the feedback received from participants at the Harvard Animal Law & Policy Program Workshop, which was held at Harvard Law School on April 24, 2019. Our special thanks go to Salma Waheedi for her critical eye and enthusiasm. The authors also thank Paolo Farah and the participants in the meeting of the international environmental law interest group of the European Society of International Law (Naples, Sept. 6, 2017) for their valuable feedback. Last but not least, we are greatly indebted to JFLP’s editorial team for its outstanding editorial assistance.

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animal agriculture. Finally, we show how scholars, researchers, stakeholders, and the public concerned about human rights issues can bring animal agriculture into the conversation and prompt their governments to address the issue proactively.

**Key words:** Animal Agriculture, Human Rights, Right to Food, Right to Water, Right to a Safe Environment, Right to Land, Farming, Food Security, Animal Protection, Food Sovereignty, CAFO

I. North Carolina, the Front Line

Violet Branch, seventy-one, is one of innumerable residents of North Carolina that have an acrid odor of rotting eggs fill their homes at least twice per week, causing them nausea and heavy vomiting. Branch flees to the nearby supermarket, where she “paces the aisles until her breathing returns to normal.” The odor is a toxic slurry that comes from nearby factory farms, known as CAFOs, that confine animals by the thousands, spray manure over nearby fields and houses, and store it in uncovered cesspools. In North Carolina alone, about nine million pigs are raised on 2,300 factories, producing ten billion pounds of wet animal waste per year. Research shows that the fecal bacteria finds its way into open water, ground water, the air, and homes, and causes hepatitis, typhoid, dysentery, and other diseases. Long-term health hazards include higher risks of cancer and spontaneous abortions. Along with Branch, over five hundred plaintiffs brought a total of twenty-six suits against Murphy Brown, a subsidiary of Smithfield Foods, for degrading their quality of life and reducing the value of their property. The smell drove away their customers; cookouts, playing

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2 Id.

3 In the US, the Environmental Protection Agency (EPA) classifies concentrated animal feeding operations into CAFOs and AFOs (under the NPDES Program). AFO is a “medium-sized” CAFO with 200-699 dairy cows, 750-2499 pigs, 9,000-29,000 laying hens, or 37,500 to 124,999 chickens. 40 C.F.R. § 122.23(b)(6) (2019). Anything beyond that is considered a CAFO. 40 C.F.R. § 122.23(b)(4) (2019).


7 Kuo, *supra* note 1.
in the yard, or just sitting on the porch became impossible; they could not have friends over anymore; feces collected on their houses and cars; swarms of flies followed them; and their children were teased at school. In this place where “the smell of excrement seeps into all aspects of routine life,” people are “held prisoners in their own home.”

In spring 2018, juries awarded plaintiffs in five cases a total of $574 million. This is the first success for North Carolina communities in a twenty-five-year series of public concern, outrage, and sheer helplessness. Twenty-one of the twenty-six cases are still outstanding—opening a window for an alternative future. Yet, the horrors people living near factory farms incur do not seem to bother North Carolina lawmakers, who just passed new legal protections for the companies, restricting suits over pollution, odor, and other “nuisance” claims. Following North Carolina, legislators in Utah, Nebraska, Georgia, West Virginia, and Oklahoma have proposed and, in some cases, passed legislation that will make similar lawsuits impossible. Republican Representatives Jimmy Dixon of Duplin County, John Bell of Wayne County, and Tim Moore of Cleveland County, the House speaker, issued a statement saying they “will continue to fight for hardworking North Carolina farm families and their communities by opposing any coordinated legal assault that seeks to profit off their livelihoods and potentially shut down their farms. . . . There is no right more fundamental than the right to feed our families.” The spokesman for the North Carolina Pork Council, Robert Brown, said that the lawsuits are just “another effort by fringe groups” that lacks merit and that “farms and farmers take seriously the obligation to feed people in a responsible way that protects our communities.”

8 Id.
9 Schlanger, supra note 4.
10 Kuo, supra note 1.
11 The nature of these laws varies. Some reduce the damages (e.g., by banning punitive damages), others limit the distance from the farm at which the neighbor must live. Leah Douglas, Big Ag is Pushing Laws to Restrict Neighbors’ Ability to Sue Farms, NPR (Apr. 12, 2019), https://www.npr.org/sections/thesalt/2019/04/12/712227538/big-ag-is-pushing-laws-to-restrict-neighbors-ability-to-sue-farms.
12 Id.
14 Id.
15 Id.
16 Id.
What responsibility means in these circles is as little discussed as the fact that the “hardworking North Carolina farm families” are in fact a single $15 billion corporation. Another fact kept under wraps by the industry is that black residents are 1.54 times as likely to be affected by industrial pork operations than white residents, American Indian residents 2.18 times as likely, and Hispanic residents 1.39 times as likely. Though Smithfield pledged in 2000 to spend $17 million to research waste alternatives, “environmentally superior technologies” were never adopted, for the simple reason that they were “too costly.” In a place where pigs outnumber humans thirty-two to one, the real concern of corporate giants is their benefits of keeping the pork as low as $2.50 per pound, rather than the detriments to the community, animals, or the environment.

With democratic processes and the law now being blocked, communities are turning to extra-legal measures. In May 2019, the documentary Right to Harm was released, shining light on how people live (and die) for their battles for health, quality of life, and a safe environment. However, with climate change proceeding at an astounding rate and extreme weather becoming more frequent, North Carolina’s happy years of ignorance and denial are numbered. Hurricanes Floyd (in 1999), Matthew (in 2016), and Florence (in 2018) hit North Carolina with storms, floods, and feces that haunted the area for the past twenty-five years and washed ashore the many human and animal bodies that fall victim to the industry on a daily basis.

The topic brings to the fore a host of ethical, socio-political, and economic issues that, as we argue, are not germane to North

17 Id.
19 Kuo, supra note 1.
20 Id.
Carolina, but that plague the world as a whole. Research has shown the effects of animal agriculture on the environment, local communities, and workers’ rights, but we have yet to uncover how the growth and intensification of animal production have begun to threaten and violate human rights more broadly, indirectly, and pervasively. So while the most direct and short-term impacts of agriculture are now well-documented, its long-term impacts and effects on environments and communities more distant are still underexplored. Moreover, the North Carolina experience of nuisance lawsuits and efforts to block them is part of a much larger, worldwide topography in which animal agriculture enjoys quasi-immunity from the law.

In this paper, we analyze factory farming in connection with the laws protecting these businesses under international human rights law, a dimension yet unexamined by legal scholarship and largely unaddressed in public and parliamentary deliberations. We show how animal agriculture—and with it, the laws that insulate it—compromise human rights guarantees such as the right to water, land, food, and a safe environment, and how this must affect public discourse about the legitimacy and continued support of the industry. Our focus is on establishing how governments, by passing these laws or failing to regulate, threaten these human rights, rather than on showing whether agricultural enterprises, as non-state actors, can be held accountable. This is not to say that the activities of non-state

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23 See discussion infra Section II.A.
actors are not urgent or do not deserve our attention, but in this article, we choose to first center the discussion on the role of states.

The rights we examine in this article are social, cultural, and economic rights, which are typically more difficult to secure and enforce than civil and political rights.\(^{25}\) Hence, the violation of these rights might (wrongly) be shrugged off by powerful corporate and governmental actors. Despite these practical obstacles, the human rights perspective adds valuable dynamics to the ongoing debate, is novel in application to the issue, and may open new pathways for academic inquiries and legal strategies. While to date, nuisance laws, environmental laws, and animal protection laws have remained \textit{de facto} exempt from judicial scrutiny in numerous states, human rights guarantees can be used to hold governments accountable. The human rights discourse also gives rise to a community of empowerment, new forms of advocacy, and the use of legal instruments in defense of marginalized groups.\(^{26}\) It offers new avenues for providing help to vulnerable persons and forges connections between the different social justice issues implicated in animal agriculture. Finally, our aim is to show how scholars, researchers, stakeholders, and the public concerned about human rights issues can bring animal agriculture into the conversation, and begin to use their power to hold their governments accountable and prompt them to address the issue proactively.

We begin with a brief overview of the environmental and social realities of agriculture, the role of law in producing them, and new research uncovering its global ramifications (Part II). We then identify and discuss the most invasive farmers’ rights—a broad term that we define as encompassing right-to-farm laws and exemptions from environmental and animal laws—and show how they have come to primarily protect large corporations. We examine the existence, scope, and form of these laws in comparative perspective in the United States (US), Canada, and Australia. We also highlight the situation at the level of the European Union (EU), which—due to its limited competences—does not have comparable right-to-farm laws (Part III). In a third step, we analyze whether and how farmers’


rights threaten the enjoyment of international human rights law (Part IV). We emphasize the right to food and the right to water and sanitation, which are entwined with the right to land. We also examine whether farmers’ rights undermine the people’s right to a safe environment and the emerging human right to animal protection. Finally, we connect these developments to show that international human rights law cannot afford to ignore animal agriculture and its impacts on human rights any longer, and sketch the contours of an emerging body of litigation and advocacy (Part V).

Throughout this article, we focus on the biggest contributors to human rights violations in the area of animal agriculture, without regard to corporate form and including sub-contractors. For reasons of scope, we do not grapple with small-scale agriculture and its effect on human rights. We do not deny that such violations take place or deserve our attention, but given the novelty of this topic, we focus on where we think attention is most needed. We also do not examine the human rights implications of plant-based agriculture in this paper. However, as we highlight the drawbacks of animal agriculture, it is important to acknowledge that plant-based agriculture engenders its own difficulties—though on a much lesser scale—including with respect to international human rights law. Given the breadth of issues covered in this paper, scope precludes offering an analysis of existing litigation and advocacy, but we do point to different entry points for operationalizing our arguments.

II. Animal Agriculture, Farmers’ Rights, and Food Sovereignty

A. The Realities of Agriculture

Since 1960, the global population has more than doubled, increasing from three billion to over seven billion people. During this period, meat production has tripled, and egg and dairy production has quadrupled. The high demand for animal products is predominantly satisfied by intensifying production in CAFOs where animals are housed in-doors in extreme confinement.

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29 PEW COMM’N, REPORT ON INDUSTRIAL FARM ANIMAL PRODUCTION, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA 50 (2008).
30 Id.
Due to its intensification and proliferation, the animal industry has become one of the largest factors in environmental degradation. It consumes 70% of the global freshwater, drains on 38% of the global land in use, and causes 14% of the world’s greenhouse gas emissions, generating more methane (CH₄), nitrous oxide (N₂O), and carbon dioxide (CO₂) than the global transport sector. CAFOs release immense amounts of ammonia (NH₃), hydrogen sulfide (H₂S), volatile organic compounds (VOCs), nitrous oxide (N₂O), and particulate matter (PM) that pollute air and water surfaces. CAFOs also produce disproportionate amounts of manure that overwhelm environmental systems and prevent natural cleansing or lead to overflow of manure lagoons. Farmers’ widespread use of antibiotics and antimicrobials to increase production has become a driving force in causing antimicrobial

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31 Thereby, animal production has a much larger ecological footprint (or hoof print!) than plant-based diets. Oxford researchers Poore and Nemecek were the first to conduct a meta analysis of ~38,000 farms producing forty different agricultural goods around the world to assess the impacts of food production and consumption. They found, specifically, that plant-based diets reduce food emissions by up to 73% depending on where a person lives. Moreover, the impacts even of the lowest-impact animal products typically exceed those of vegetable substitutes. J. Poore & T. Nemecek, Reducing Food’s Environmental Impact Through Producers and Consumers, 360 SCI. 987, 988 (2019); see also Camille Lacour et al., Environmental Impacts of Plant-Based Diets: How Does Organic Food Consumption Contribute to Environmental Sustainability?, FRONTIERS IN NUTRITION, Feb. 2018, at 4–5 (2018) (finding that “a higher pro-vegetarian score was associated with lower environmental impacts”); see also 2050: A Third More Mouths to Feed, FAO.ORG (Sept. 23, 2009), http://www.fao.org/news/story/en/item/35571/icode/; UNEP, ASSESSING THE ENVIRONMENTAL IMPACTS OF CONSUMPTION AND PRODUCTION: PRIORITY PRODUCTS AND MATERIALS 51, 79 (2010).

32 Susan M. Brehm, From Red Barn to Facility: Changing Environmental Liability to Fit the Changing Structure of Livestock Production, 93 CAL. L. REV. 797, 813 (2005); Sarah C. Wilson, Hogwash! Why Industrial Animal Agriculture Is Not Beyond the Scope of Clean Air Act Regulation, 24 PACE ENVTL. L. REV. 439, 441, 444 (2007). To put this into perspective, in Oregon, 52,300 dairy cows at Threemile Canyon Farms, LLC produce 5,675,500 pounds of ammonia per year, exceeding the top manufacturing source of ammonia pollution in the US by 75,000 pounds. Id. at 439, 441, 456.

resistance in bacteria. For example, pork industry workers in many countries are more often infected by *Streptococcus aureus* than other individuals who do not work in this sector. The most common bacterium is the ST 398 strain, which is multi-resistant to antibiotics. The resulting reservoirs of resistant bacteria are of great concern from a public health and food security perspective. Overuse of antimicrobials and antibiotics also increases the probability of new treatment-resistant strains (“superbugs”) that sometimes jump between species, and have been declared epidemic. Persons suffering from zoonoses such as A/H7N7, AH5N1, AH1N1, and swine flu are chiefly industrial farm workers, who often lack protection by either their employer or the state.

More and more organizations are documenting these human rights violations in animal agriculture. *Human Rights Watch*, for example, found that:

Employers put workers at predictable risk of serious physical injury even though the means to avoid such injury are known and feasible. They frustrate workers’ efforts to obtain compensation for workplace injuries when they occur. They crush workers’ self-organizing efforts and rights of association. They exploit the perceived vulnerability.

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34 Michael J. Martin et al., *Antibiotics Overuse in Animal Agriculture: A Call to Action for Health Care Providers*, 105 Am. J. Pub. Health 2409 (2015); PEW Comm’n, supra note 29, at 11. In 2017, the World Health Organization (WHO) recommended that farmers and the food industry stop using antibiotics routinely to promote growth and prevent disease in healthy animals. See Stop Using Antibiotics in Healthy Animals to Prevent the Spread of Antibiotic Resistance, World Health Org. (Nov. 7, 2017), https://www.who.int/news-room/detail/07-11-2017-stop-using-antibiotics-in-healthy-animals-to-prevent-the-spread-of-antibiotic-resistance (“WHO strongly recommends an overall reduction in the use of all classes of medically important antibiotics in food-producing animals, including complete restriction of these antibiotics for growth promotion and disease prevention without diagnosis. Healthy animals should only receive antibiotics to prevent disease if it has been diagnosed in other animals in the same flock, herd, or fish population.”).


36 Id.


of a predominantly immigrant labor force in many of their work sites.\(^{40}\)

\section*{B. Farmers’ Rights and Agricultural Exceptionalism}

These inquiries and observations have brought issues to the fore that have been plaguing animal agriculture for many years. A key driver responsible for the ongoing proliferation of CAFO issues are “farmers’ rights,” which denote laws and regulations set up with the purpose of protecting farmers and their businesses by either shielding them from lawsuits or exempting them from the law altogether.

“Farmers’ rights” come in two forms: (i) right-to-farm laws and (ii) exemptions from environmental and animal laws. Right-to-farm laws prevent nuisance lawsuits\(^{41}\) against farmers engaging in “practices that are commonly or reasonably associated with agricultural production.”\(^{42}\) These laws declare such practices indefeasible through statutory limitations for nuisance suits, through exemptions from zoning and disclosure, by declaring void opposing local ordinances, or by granting a fee recovery for the successful defense of a nuisance lawsuit.\(^{43}\) By 1992, all fifty states of the US had enacted such laws, and equivalent legislation was passed in Australia and Canada soon after.\(^{44}\) Right-to-farm laws emerged from an effort to preserve and promote small-scale farmers, to whom most people have an emotional connection and who many think make a valuable contribution to society.\(^{45}\) Today, thanks to the corporatization of animal agriculture, these laws have come to benefit vertically integrated and monopolized corporations by insulating their actions and giving them virtual standard-setting authority.\(^{46}\) Pointing to the host of environmental and social harms that emerged from this blanket authorization, critics label these laws


\(^{41}\) E.g., nuisance lawsuits regarding noise, odors, visual clutter, or cruelty inflicted on animals.


\(^{43}\) See, e.g., id.


\(^{45}\) Id. at 150.

\(^{46}\) Id. at 151; David Pimentel, Ethical Issues of Global Corporatization: Agriculture and Beyond, 83 Poultry Sci. Symp.: Bioethical Considerations in Animal Production 321 (2004).
“right-to-harm bills.” Parallel to the rise of right-to-farm laws, agribusiness successfully lobbied for numerous exemptions from laws seeking to protect water, land, soil, air, and, ultimately, human health and life.

These exemptions and right-to-farm laws are the most noteworthy farmers’ rights we examine herein, but they are only one manifestation of a broader, and more pervasive problem, namely that of agricultural exceptionalism. Agricultural exceptionalism is a belief system that fuels a range of exemptions or laws protecting agriculture from the purview of the public, including in the areas of environmental law, animal law, and property law (as we examine in this article), but also in trade law, employment law, and many other areas. Agricultural exceptionalism became “fully established as part of the post-war welfare consensus” and is today sustained by widely held views among the public, legislators, and the judiciary that farmers do us a service by providing the public with food. Even with readily available evidence showing that large animal agricultural business is often doing the opposite, as we will show in this article, the industry has resisted substantial transformation. Agricultural exceptionalism, by insulating agricultural producers from regulation, remains the dominant paradigm.

49 In the area of employment law, general health and safety regulations, minimum wage, and overtime requirements are all subject to exceptions for agricultural workers under the Fair Labor Standards Act. 29 U.S.C. § 213(a)(6) (2006). Regarding labor law, the most notable exemption is that the National Labor Relations Act, the US’s primary legislation governing the rights of workers to bargaining collectively, excludes “agricultural laborers” from its definition of “employee” and its attendant protections. 29 U.S.C. § 213(b)(12) (2006); see generally Guadalupe T. Luna, An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor 1 U. OF PA. J. OF LAB. AND EMP. L. 487 (1998); Michael Trebilcock & Pue Kristen, The Puzzle of Agricultural Exceptionalism in Trade Policy, 18 J. OF INT’L ECON. L. 233 (2015) (analyzing agricultural exceptionalism in trade law).
C. North Carolina is Everywhere

The short-term impacts of animal agriculture (and, thus, the laws exempting it) are now well-documented, but the long-term impacts and effects of these farming activities on the environments and communities further apart are still underexplored, including their contribution to global food shortages. CAFOs remain the standard method of generating animal products while being grossly unsustainable from an ecological perspective and a driving cause of food scarcity. The ever-increasing consumption of animal products requires a significant portion of the world’s crop production, raises cereal prices, and depletes grain available for direct human consumption. Because meat-based diets use far more of the global food and water resources than they provide, the high demand for water and protein-rich plants to produce meat threatens agriculture and drinking water supplies. The inefficiency of animal agriculture compared to plant agriculture is striking: CAFOs require ten times the land and eleven times the fossil fuel-based energy that plant farming uses.

The continuingly high contribution of animal agriculture to food insecurity has a disparate impact on the poor, locally and internationally. Locally, agricultural business practices stifle low-income communities, racial minorities, and migrant workers. Animal agriculture is also contributing considerably to hunger and death on foreign soil: “[e]ighty-two percent of the world’s starving children live in countries where food is fed to animals, which are then killed and eaten by wealthier individuals in developed countries like

52 See discussion infra Section II.A.
53 See discussion infra Sections IV.A, IV.D.
56 FOOD & AGRIC. ORG., WORLD FOOD SUMMIT PLAN OF ACTION ¶ 1 (1996) (“Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”).
As the Food and Agriculture Organization (FAO) explains, due to the ongoing growth of CAFOs, “Sub-Saharan Africa’s share in the global number of hungry people could rise from 24 percent to between 40 and 50 percent” by 2050. In line with this prediction, in March 2017, the United Nations (UN) announced that the world will soon witness the most severe famine since 1945. Twenty million people face the threat of starvation and famine in Kenya, Somalia, South Sudan, and Yemen.

Civil society’s growing awareness of the threat of food scarcity and dependence on foreign nations has sparked a global movement for food sovereignty, mostly in majority world countries. In 2007, five hundred delegates from eighty countries signed the Declaration of Nyéléni, a soft law instrument which recognizes peoples’ right to define their own agriculture and food production.

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59 FOOD & AGRIC. ORG., HOW TO FEED THE WORLD IN 2050, at 30 (2009).


61 U.N. NEWS, supra note 60. In the year 2017 alone, 1.4 million children were expected to starve to death. UNICEF Warns That 1.4 Million Children Could Die from Famine in Four Countries, DEUTSCHE WELLE (Feb. 21, 2017), https://www.dw.com/en/unicef-warns-that-14-million-children-could-die-from-famine-in-four-countries/a-37643854 (stating “[a]s a result, 1.4 million children suffering from severe malnutrition could die this year from famine in Nigeria, Somalia, South Sudan and Yemen . . .”).

62 In international law, we typically speak of “developing states” or the “Third World” to denote countries in juxtaposition to “developed countries.” These terms imply that development is a standardized and linear process, and that certain countries have finished developing while others are still striving to reach this form of development. Because there are many ways in which states evolve over time, and because nations should be recognized for their different strengths and challenges, these terms seem both incorrect and inappropriate. In recognition thereof, scholarship is increasingly using the terms “majority world” and “minority world.” The former highlights the fact that the majority of the world’s population lives in these parts of the world previously identified as “developing,” and the latter refers to those countries traditionally identified as “developed,” where a minority of the world’s population resides. See, e.g., Shahidul Alam, Majority World: Challenging the West’s Rhetoric of Democracy, 34 AMERASIA J. 87 (2008); Samantha Punch, Exploring Children’s Agency Across Majority and Minority World Contexts, in RECONCEPTUALISING AGENCY AND CHILDHOOD: NEW PERSPECTIVES IN CHILDHOOD STUDIES 183 ff. (Florian Esser et al. eds., 2016).
policies. In the years following the declaration, Bolivia, Ecuador, Egypt, Mali, Nepal, Senegal, Venezuela, and other states have enshrined the right to food sovereignty in their constitutions, making it a core aspiration of their policies to reclaim authority in decision-making and the production of food. This movement strongly resonates with the early motivations for right-to-farm laws, namely to ensure that food can be produced locally and feeds the people. Thanks to the appropriation of right-to-farm laws by corporate giants, however, the two are now diametrically opposed: the Global South struggles to regain security over food, while the Global North claims a right to harm.

This brief overview of the most pressing issues that dominate the intersections of animal agriculture, the environment, and human rights paints a dire picture, yet a loosely connected one. In what follows, we zoom in on the most invasive farmers’ rights in the US, Canada, Australia, and the EU. We focus on existing laws and regulations, but also discuss proposed bills. We show how these laws have withstood judicial and public scrutiny even in the face of the most flagrant pollutions and human rights violations, among others, because they have come to protect primarily large corporations. As we will argue, it is these farmers’ rights—forming part of the web of agricultural exceptionalism—that make human rights violations possible. After all, states are not only uncommitted to regulating the issue, but they aim to declare legal grossly illegal practices. While states are prima facie at liberty to do so under domestic law (when it comes to environmental law, animal law, etc.), their laws are subject to international scrutiny, particularly the international human rights law regime, which can put a halt to the ongoing insulation of animal agriculture.

III. The Rise of Farmers’ Rights

A. United States

Under the long-standing US common law nuisance rule, agricultural operations could not unreasonably interfere with other landowners’ use and enjoyment of land or cause them personal or emotional harm. In 1980, due to the rapid demographic expansion

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65 Jason Jordan, A Pig in the Parlor or Food on the Table: Is Texas’ Right to Farm Act an Unconstitutional Mechanism to Perpetuate Nuisances or Sound Public Policy
and urbanization witnessed in the US, the country was estimated to lose close to three million acres of land previously used for agricultural purposes per year. In reaction to the growing urban sprawl, Iowa, Louisiana, and Wyoming passed the first right-to-farm statutes in 1978. The goals of these laws were to shield farmers from nuisance suits and to prevent further loss of agricultural land. Starting in the 1980s, all fifty states began to enact right-to-farm laws, a development pushed by strong agricultural lobbying and spurred by Congressional plans to exempt farms from federal environmental laws.

While US right-to-farm laws widely differ in terms of scope and applicability, they all protect agricultural practices through one or several of the following means:

- **The “Coming to the Nuisance Doctrine”:** Nuisance lawsuits aimed at halting disproportionate noise, odors, visual clutter, or cruelty inflicted on animals cannot be brought against operations that preexisted surrounding land uses.

- **Statutes of Limitations:** Plaintiffs can introduce a lawsuit during a limited period of time only (usually one year) after the beginning of a harmful activity. US

Ensuring Sustainable Growth?, 42 TEX. TECH L. REV. 943, 951 (2010); see, e.g., Pendoley v. Ferreira, 187 N.E.2d 143, 146–47 (Mass. 1963) (providing an example in which a pig producer had to liquidate his business as he expanded his pig production, due to nuisance suits by the nearby village).

66 NAT’L AGRIC. LANDS STUDY, FINAL REPORT 1981, at 8, 35 (1981) (stating “the United States has been converting agricultural land to nonagricultural uses at the rate of about three million acres per year . . .”). In Oakland County, for example, 50.8% of the land area constituted farmland in 1950, while in 1978, this proportion had shrunk to 13.9%. 1 BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, UNITED STATES CENSUS OF AGRICULTURE: 1950, pt. 6, at 46 (1952); 1 BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, 1978 CENSUS OF AGRICULTURE 1978, pt. 22, at 504 (1981).

67 Jeffry R. Gittins, Bormann Revisited: Using the Penn Central Test To Determine the Constitutionality of Right-To-Farm Statutes, 2006 BYU L. REV. 1381, 1383.

68 Id.


states that have adopted this rule include Minnesota,\textsuperscript{72} Mississippi,\textsuperscript{73} Pennsylvania,\textsuperscript{74} and Texas.\textsuperscript{75}

- **Immunity for Agricultural Startups or Business Expansion:** When agribusiness expands, or when a new agricultural business may pose a new environmental threat or nuisance to its neighbors, some states, such as Georgia, deny a new running period for statutes of limitations. They thereby allow farms to expand to whatever size they prefer, regardless of the nature and scale of their impact on the environment.\textsuperscript{76} In other states, such as Minnesota, new claims can only be made if an operation expands by at least 25%.\textsuperscript{77}

With right-to-farm laws in place, it is possible for agricultural businesses to enjoy \textit{de facto} immunity from law, especially if a state chooses to combine these three means. However, it is worth noting that, while said exemptions cover all types of agricultural businesses, only “practices commonly or reasonably associated with agricultural production”\textsuperscript{78} (known as “generally accepted agricultural management practices,” or “GAAMPs”) remain exempt from review.\textsuperscript{79} Moreover, many states still require that agribusinesses do not negligently\textsuperscript{80} or illegally\textsuperscript{81} impact their neighbors or public goods.

Still, CAFOs remain very well protected. In the best case, what counts as a generally accepted practice is determined by

\begin{itemize}
\item \textsuperscript{72} \textit{Minn. Stat. Ann.} § 561.19(2) (West Supp. 2010).
\item \textsuperscript{73} \textit{Miss. Code Ann.} § 95-3-29(1) (West Supp. 2009).
\item \textsuperscript{75} \textit{Tex. Agric. Code Ann.} §§ 251.001–.006, § 251.004 (West Supp. 2009).
\item \textsuperscript{76} \textit{Ga. Code Ann.} § 41-1-7(d) (West Supp. 2009) (“If the physical facilities of the agricultural operation or the agricultural support facility are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation or agricultural support facility of a previously established date of operation.”).
\item \textsuperscript{77} \textit{Minn. Stat. Ann.} § 561.19(b) (West Supp. 2010).
\item \textsuperscript{78} Bormann \textit{v. Bd. of Supervisors In and For Kossuth Cty.}, 584 N.W.2d 309, 315–21 (Iowa 1998).
\item \textsuperscript{80} \textit{Ky. Rev. Stat. Ann.} § 413.072 (West 2010) (exempting negligent behavior).
\item \textsuperscript{81} \textit{Ohio Rev. Code Ann.} § 3767.13 (West 1982) (failing to exempt any action that becomes injurious to the health, comfort, or property of individuals or of the public).
\end{itemize}
commissions of agriculture. Such bodies suffer from a democratic deficit because they lack an electorate and, therefore, public accountability. In all other cases, the agri-food industry itself sets the standard for GAAMPs, and farmers are allowed to set up and rely on unwritten GAAMPs. Thus, even if a practice is woefully intrusive, it can be deemed “generally accepted.” GAAMPs in most cases do not demand adherence to practices a reasonable person would consider adequate, but, instead, revolve around a standard of “normalcy.” “Normal farm practices” are those practices that prevail in the industry and are shared by a large enough number of agribusinesses. This is a considerable degree of self-regulation given to agricultural corporations that risks threatening public goods, as the practices these corporations set often do not reflect the same balancing of interests between economic growth, sustainability, and food security that would be expected from legislatively-defined standards.

Most states only lift CAFOs’ nuisance immunity if their activities have “a substantial adverse effect on public health and safety.” This caveat is highly questionable from a common good perspective, because the public cannot be assumed to have agreed to sweeping immunities threatening public goods, such as a safe environment, sustainable food policies, and the humane treatment of animals. Moreover, specific provisions state that farms that did not constitute a nuisance prior to land use changes need not comply with GAAMPs to benefit from nuisance protection. Right-to-farm laws also often shift the burden of proof to the affected parties, who must show that the CAFO producer acted unreasonably. This conflicts with the aforementioned long-standing rule under the common law.

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82 See, e.g., MICH. COMP. LAWS ANN. § 286.472(d) (West 1995).
83 Also, the GAAMPs are neither debated and passed by parliament nor published in administrative codes. Patricia Norris, Gary Taylor & Mark Wyckoff, When Urban Agriculture Meets Michigan’s Right to Farm Act: The Pig’s in the Parlor, 2 MICH. ST. L. REV. 365, 388, 397 (2011).
85 Alford & Berger Richardson, supra note 44, at 152.
86 Id. at 131.
87 Id. at 142–43.
88 Id. at 143.
90 Norris, Taylor & Wyckoff, supra note 83, at 383–84 (reading MICH. COMP. LAWS § 286.473(1) and (2) (1995) independently).
91 Gittins, supra note 67, at 1392.
Many states (such as Georgia) do not provide immunity to farmers from only private nuisance; they also shield them from public nuisance claims, i.e., claims pertaining to nuisances threatening public health, safety, or welfare, or community resources, such as water supplies. The right-to-farm laws of several states also preclude nuisance claims against zoning ordinances and other local laws. In Kentucky, legislators have gone so far as to make it a statutory rule that “[n]o agricultural or silvicultural operation or any of its appurtenances shall be . . . subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices.”

Right-to-farm laws emerged from a relatively innocuous desire to support traditional family-run farms as more and more people moved to the countryside. Today, most continue to defend the legitimacy of these laws by invoking this narrative. However, in the past decades, agriculture has been subject to immense restructuring, in particular as regards the concentration of production. As technological changes have increased the number of animals that can be handled at a plant, producers keeping up with economies of scale have driven out or taken over weaker competitors through horizontal integration. Corporations with large assets began to take over the landscape through vertical integration, setting up mergers and acquisitions with feed producers, breeders, food processors, and meatpackers. The structural changes of agribusiness mean that right-to-farm laws are now primarily

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93 GA. CODE ANN. § 41-1-7 (West 2018).
95 Mich. Comp. Laws Ann. § 286.473 (West 2018); Charter Twp. of Shelby v. Papesh, 704 N.W.2d. 92, 96–102 (Mich. Ct. App. 2005) (“[I]f defendants’ farm is commercial in nature and in compliance with the GAAMPs, it is a farm operation protected by the RTFA. The ordinance conflicts with the RTFA to the extent that it allows plaintiff [township] to preclude a protected farm operation by limiting the size of a farm.”).
96 KY. REV. STAT. ANN. § 413.072(2) (Westlaw through 2019 Sess.).
97 See Madeleine Skaller, Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms from Nuisance Liability, 27 SAN JOAQUIN AGRIC. L. REV. 209, 216 (2018) (stating “[r]ight to farm laws were passed to ensure the viability of agricultural operations when people were moving from urban to rural areas”). Some criticize that the fear of urban sprawl impacting agriculture is a myth and that most complainants were in fact rural residents. Alford & Berger Richardson, supra note 44, at 149–50.
98 Brém, supra note 32, at 797.
profiting large-scale and industrialized methods of production, but these laws are ill-equipped to handle the impact of these methods on the environment, animals, and human health. Moreover, in some cases, state legislatures have begun to limit right-to-farm laws to commercial operations and have denied non-commercial farmers and hobbyists the benefits of anti-nuisance protection. In this sense, and as Alford and Berger Richardson argue, “RTFs [right-to-farm laws] are less about ensuring the right to ‘farm’ and more about ensuring the right to cheaply ‘produce’ large quantities of food.”

These various features of right-to-farm laws confirm that unlike food sovereignty legislation, which seeks to empower the public, right-to-farm laws protect the interests of agribusiness at the expense of the collective. In Bormann (1998), the Iowa Supreme Court became the first US judicial institution to invalidate a state’s right-to-farm laws—which granted farmers unlimited immunity, regardless of how long they had been running their business. The Court found that these laws were an unconstitutional taking. The Bormann ruling, however, has been widely criticized for qualifying the issue as a per se taking, instead of a regulatory taking. Six years later, in Gacke, the same court declared Iowa right-to-farm laws to be in violation of the state’s constitutional clause on inalienable rights. This trend, though anxiously awaited by agricultural industries, was followed only by few neighboring states.

Besides benefitting from right-to-farm laws, animal agriculture enjoys exemptions from environmental and animal protection laws across the US at both the federal and state level. On the federal plane, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), which provides that polluters are responsible for the expenses of the cleanup of hazardous substances release, does not expressly cover agricultural

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101 Alford & Berger Richardson, supra note 44, at 149.
102 Bormann, 584 N.W.2d at 309; Iowa Code Ann. § 352.11(1)(a) (Westlaw through 2019 legislation).
103 Bormann, 584 N.W.2d at 309; Iowa Code Ann. § 352.11(1)(a) (Westlaw through 2019 legislation).
104 Centner, supra note 71, at 124–25; Beidel, supra note 94, at 177.
practices. While there is a recent trend to hold agricultural producers liable under the CERCLA, animal agricultural industries continue to escape the Resource Conservation and Recovery Act (RCRA). The RCRA, the nation’s principal hazardous waste management and disposal regulation law, fails to classify waste from CAFOs as hazardous. The situation is markedly better under the federal Clean Water Act (CWA). Since 2002, large CAFOs must obtain a permit under the National Pollutant Discharge Elimination System (NPDES) to discharge animal waste, fertilizers, and pesticides into the waters of the US. Nonetheless, the CWA remains largely toothless, as it expressly excludes agricultural stormwater “discharges . . . [and] return flows from irrigated agriculture,” permitting “most agricultural sources to escape Section 402 regulation . . .” Another major federal law, the Clean

Air Act (CAA), which regulates hazardous air pollutants, exempt all CAFOs from coverage. Indeed, the administrator has the authority to “establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.” Even if the CAA were applicable to CAFOs, it is important to consider that the US Environmental Protection Agency (EPA) has declined to bring cases against CAFOs based on CAA violations. As a result, environmental law has given animal farms a “virtual license” to cause habitat loss, soil erosion and degradation, water depletion, and to pollute water and air across the US.

Similar, if not more sweeping, exemptions have been put in place to inhibit animal welfare claims. The North Dakota Constitution was amended in response to California’s Proposition 2 amendment, which required all confined farmed animals to have sufficient space to stand up, turn around freely, and fully extend limbs and wings, by adding that:

The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices.

Thereby, the adoption of laws that would guarantee animals a bearable life during confinement has been rendered infeasible. Similarly, under the New York Agriculture and Markets Law, local laws, ordinances, rules, or regulations may restrict the operations of agricultural districts only if public health or safety is threatened. Animal welfare, though of public concern, cannot limit any of these agricultural operations, as it is not deemed to fall under these exceptions.

Those benefiting from these immunities and rights are primarily corporations (rather than individual farmers), which aligns with the growing lobbying efforts of business to secure immunity through ag-gag laws and veggie libel laws. Ag-gag laws generally

115 Ruhl, supra note 111, at 263.
116 Id. at 263.
117 N.D. CONST., art. XI, § 29; see Pifer, supra note 69, at 716.
118 N.Y. AGRIC. & MKTS. LAW § 305-a(1).
criminalize activities that expose and denounce animal agricultural activities without the consent of their owner, particularly when these activities are inhumane, unsafe, or even illegal. In the US, seven states have passed ag-gag laws and more than twenty-four such bills have been introduced in other states. Veggie libel laws, which establish (strict) liability for members of the public who publicly criticize food production practices, have passed in more than thirteen US states.

In addition, the federal Animal Welfare Act (AWA), the Twenty-Eight Hour Law, and the Humane Methods of Slaughter Act (HMSA) all turn a blind eye to farmed animals. The AWA does not apply to farmed animals; the Twenty-Eight Hour Law, which seeks to protect animals during transport, fails to cover transport by truck, by air, and on water (and hence most of farm animal transportation); and the HMSA, which requires farmed animals to be rendered insensible to pain prior to being hoisted, shackled, or cut, does not apply to chickens and fish, which represent the highest number of animals killed for the purposes of food production. On a state level, animal anti-cruelty statutes have largely exempted farm practices from their application because they consider them to be “common farm practices.” As Schaffner explains, this creates a paradox by which “criminal laws, designed to protect animals from the intentional infliction of pain and suffering, perpetuate and in fact endorse institutionalized cruelty to animals.”

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121 Those are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, South Dakota, and Texas. Id.
122 7 U.S.C.A. § 2131, § 2132(g) (Westlaw through Pub. L. No. 116-91); see F. Barbara Orlans, The Injustice of Excluding Laboratory Rats, Mice, and Birds from the Animal Welfare Act, 10 KENNEDY INST. OF ETHICS J. 229 (2000) (discussing the limits set by the US AWA on research animals); Gaverick Matheny & Cheryl Leahy, Farm-Animal Welfare, Legislation and Trade, 70 L. & CONTEMP. PROBS. 325, 334 (2007) (discussing the same for farm animals); David J. Wolfson & Mariann Sullivan, Foxes in the Hen House, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 206 (Cass Sunstein & Martha Nussbaum eds., 2004). The AWA is, therefore, inapplicable to 95% of all animals raised in the US. Id.; Matheny & Leahy, supra.
125 See PAMELA D. FRASCH ET AL., ANIMAL LAW IN A NUTSHELL 335 (West Acad. publ’g 2d ed. 2016); Wolfson & Sullivan, supra note 122, at 212–16.
126 JOAN E. SCHAFFNER, AN INTRODUCTION TO ANIMALS AND THE LAW 28 (2011); Paul Waldau, Second Wave Animal Law and the Arrival of Animal Studies, in ANIMAL
only wrongs committed against animals that do not restrict farmers’
common economic interests (such as causing animals to starve or
giving them inappropriate shelter) constitute animal cruelty. 127
Considering that the US is home to over 450,000 CAFOs, 128 these
far-reaching exemptions have the effect of rendering most laws
generally inapplicable to the animal agricultural sector.

B. Canada

Nuisance laws protecting property owners from interference
in their property rights have been part of a long-standing common
law rule in Canada since the 1880s. 129 Under these nuisance laws,
plaintiffs could ask the court to issue an injunction to cease
disturbance (such as excessive noise, manure smell or overflow, or
even excessive screams by animals), and seek monetary damages and
compensation for harms. 130

Over the past forty years, however, all states and provinces
of Canada have passed right-to-farm laws that greatly limit anti-
uisance claims. The first right-to-farm laws were enacted in
Manitoba in 1976. 131 They were followed by Quebec (1978), New
(1989), Saskatchewan (1995), Prince Edward Island (1998), and
Newfoundland and Labrador (2003). 132 The initial purpose of these
laws was to prevent urban encroachment on agricultural land through
nuisance complaints about odor, noise, chemicals, pests, etc.,
because “those moving into the country may be seeking fresh air,
quiet, and scenery. The expectations of new country residents can
come into conflict with agriculture when they experience the realities
of modern agricultural production.” 133

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127 E.g., Westfall v. State, 10 S.W.3d 85 (Tex. Ct. App. 1999); see also FRASCH ET AL., supra note 125, at 79.
128 Wilson, supra note 32, at 440.
129 BETH BILSON, THE CANADIAN LAW OF NUISANCE (Butterworths 1991); Rylands v. Fletcher [1868], UKHL 1, 3 H.L. 330.
131 Id.
132 Id.
133 Keith Wilson, Are You Losing Your Right to Farm?, 20 WCDS ADVANCES IN DAIRY TECH. 245, 246 (2008).
The scope of Canadian right-to-farm laws is typically restricted to “normal farm practices.” British Columbia, for instance, defines such a practice as one that “is conducted by a farm business in a manner consistent with”:

(a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and

(b) any standards prescribed by the Lieutenant Governor in Council, and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices . . .134

The burden of proof usually lies on the complainant, who must show that a disturbance lies outside normal agricultural practices.135 The effect of right-to-farm laws in Canada is analogous to that of their US counterparts: no damages can be awarded for the infringement of private property by “normal agricultural practices,” and no injunction can be obtained to stop the nuisance.136

The more disturbing aspect of right-to-farm laws in Canada and elsewhere, however, is that the concept of “normal agricultural or farm practice” may render legal otherwise illegal practices, such as dumping toxic waste or inflicting cruelty to animals, provided a sufficiently representative number of farmers engages in them.137 This is, for example, the case in Saskatchewan.138 Another illustration is Ontario’s Farming and Food Production Protection Act, which determines that “[n]o municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.”139 Thus, not only are people prevented from accessing courts to ask for economic and injunctive relief: they are further barred from using their political rights in local policy-making.140 Because environmental regulation may fall under the authority of the municipalities, scholars have linked rising environmental pollution

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136 McCormally, supra note 130, at 2.
137 Id.
139 Farming and Food Production Protection Act, S.O. 1998, c. 1, 6(1) (Can. Ont.).
140 Alford & Berger Richardson, supra note 44, at 156.
and degradation to the adoption of right-to-farm laws.\textsuperscript{141} Only a few Canadian provinces (such as British Columbia, Prince Edward Island, and Quebec) have determined that nuisance suits can only be excluded if the practices do not violate other laws, such as environmental protection acts or laws protecting human health.\textsuperscript{142}

Canadian right-to-farm laws provide that claims about nuisances are adjudicated by the Agricultural Operations Review Board, and not by a court.\textsuperscript{143} The board is headed by current or former farmers,\textsuperscript{144} is only rarely used, and does not make its decisions publicly available.\textsuperscript{145} Although judicial bodies can review board decisions using the standard of reasonableness,\textsuperscript{146} they usually show great deference, commending the specialized knowledge of these boards and their ability to gather firsthand evidence.\textsuperscript{147} The immunization from administrative adjudication, paired with broad judicial deference and strict time limits for appeal, all “insulate the farming industry from civil liability.”\textsuperscript{148}

In Canada, agriculture is mainly regulated on a provincial level, and occasionally on a municipal level, with the exception of, \textit{inter alia}, the Canadian Environmental Protection Act, the Pest Control Products Act, the Water Act, and the Fisheries Act.\textsuperscript{149} All of Canada’s provinces lay down environmental standards that prohibit depositing pollutants into water bodies unless the discharge


\textsuperscript{142} E.g., Farm Practices Act, R.S.P.E.I. 1998, c. 87, s. 2 (Can. P.E.I.); Act Respecting the Preservation of Agricultural Land and Agricultural Activities, R.S.Q. 1996, c. 26, s. 79.17–79.19.2, s. 100 (Can. Que.); Farm Practices Protection (Right to Farm) Act, R.S.B.C. 1996 c. 131, s. 2 (Can. B.C.).

\textsuperscript{143} McCormally, \textit{supra} note 130, at 3.

\textsuperscript{144} In Saskatchewan, the Board is composed of six members representing the milk industry, cattle feeder producers, three producers at large, and a representative of the Saskatchewan Association of Rural Municipalities. \textit{Id.}

\textsuperscript{145} There is an exception for the Farm Industry Review Board of British Columbia, which publishes all of its decisions online. \textit{Id.}

\textsuperscript{146} R.J. Farms & Grain Transport Ltd. v. Saskatchewan (Agric. Review Bd.), 2011 SKQB 185, paras. 17–22 (Can. Sask.).


\textsuperscript{148} Alford & Berger Richardson, \textit{supra} note 44, at 156.

\textsuperscript{149} Brubaker \textit{supra} note 141, at 10.
has been expressly permitted. Some have also introduced “minimum distance separation” requirements between livestock facilities and their neighbors. Among the Canadian provinces, only Quebec and Saskatchewan have specific acts designed to cover CAFOs. Many of the laws still lack limitations on livestock densities or total sizes. Another notable weakness of environmental policy regulation in Canada is the fact that these are merely guidelines or best practices issued by private organizations. As a result, CAFO regulation chiefly lies with corporate authorities, and the odor and water effects of CAFOs remain outside the reach of collective agricultural supply management policies.

In May 2000, the city of Walkerton, Ontario, suffered a widespread contamination of *Escherichia coli* and *Campylobacter jejuni* bacteria that came from manure that had been spread on a nearby farm, as a consequence of which seven people died and many more suffered long-lasting injuries. Since then, many provinces have reviewed their laws, though sweeping exemptions are still common. To date, the rules on waste of the Ontario Environmental Protection Act do “not apply to animal wastes disposed of in accordance with both normal farming practices and the regulations

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150 E.g., Environmental Management and Protection Act, R.S.S. 2010, c. E-10.22, s. 8 (Can. Sask.); e.g., Clean Water Act, R.S.N.B. 1989, c. C-6.1, s. 12(1) (Can. N.B.); e.g., Environment Quality Act, C.Q.L.R., c. Q-2, s. 20, 22 (Can. Que.); e.g., Règlement sur les exploitations agricoles, R.R.Q., Q-2 r. 26, s. 4–5 (Can. Que.).

151 Most of these range at minimum at 150 meters. E.g., Standards and Administration Regulation, Alta. Reg. 267/2001, s. 3 (Can. Alta.). The distance is typically calculated based on a specific formula. E.g., A x B x C; A equals 500 meters, B equals manure factor, and C equals livestock factor. JERRY SPEIR ET AL., COMPARATIVE STANDARDS FOR INTENSIVE LIVESTOCK OPERATIONS IN CANADA, MEXICO, AND THE UNITED STATES 54 (Comm’n for Env’tl. Cooperation 2003).

152 Agricultural Operations Regulation, C.Q.L.R., c. Q-2, s. 1–2 (Can. Que.).


157 Until relatively recently, environmental policies have also exempted Canadian agriculture from scrutiny. Predrag Rajsic et al., CANADIAN AGRICULTURAL ENVIRONMENTAL POLICY: FROM THE RIGHT TO FARM TO FARMING RIGHT, in THE ECONOMICS OF REGULATION IN AGRICULTURE: COMPLIANCE WITH PUBLIC AND PRIVATE STANDARDS 55, 56 (Floor Brouwer, Glenn Fox, Roel Jongenee & R. A. Jongeneel eds., 2012).
made under the Nutrient Management Act.” Similarly, under the British Columbia Environmental Management Act, rules on waste disposal do not prohibit “emission into the air of soil particles or grit in the course of agriculture or horticulture.”159 Under the Manitoba Environment Act, “[a] person involved in an agricultural operation” will not be punished for the unauthorized release of pollutants “if the release occurred through the use of normal farm practices.”160

Analogously to their US counterparts, Canadian agricultural industries enjoy substantial discretion as to how they treat the animals they own. Cruelty inflicted on animals used for agricultural purposes is exempt under the laws of Alberta,161 British Columbia,162 Manitoba,163 Nova Scotia,164 Ontario,165 Quebec,166 Saskatchewan,167 and Yukon.168 Thus, in these provinces, “common farm practices,” regardless of whether they inflict suffering or even blatant cruelty on animals, never constitute animal cruelty in a legal sense.170 As a consequence, harm caused to animals in the agricultural sector is deemed legal.171

C. Australia

Australian law (like English law, upon which it heavily draws) in principle provides that claims can be brought against both public and private nuisances to stop a nuisance and to claim

158 Environmental Protection Act, R.S.O. 1990, c. E.19, s. 6(2) (Can. Ont.).
161 Animal Protection Act, R.S.A. 2000, c. A-41, s. 2(2) (Can. Atla.) (“This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.”).
162 Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372, s. 24.02 (Can. B.C.) (“A person must not be convicted of an offence under this Act in relation to an animal in distress if . . . the distress results from an activity that is carried out in accordance with reasonable and generally accepted practices of animal management that apply to the activity in which the person is engaged, unless the person is an operator and those practices are inconsistent with prescribed standards.”).
163 Animal Care Act, C.C.S.M. 2015, c. A84, s. 2(2) (Can. Man.).
164 Animal Protection Act, S.N.S. 2008, c. 33, s. 21(4) (Can. N.S.).
165 Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, s. 2(a) (Can. Ont.).
170 See also Wolfson & Sullivan, supra note 122, at 205.
171 See also id.
Sometimes, however, the activity at stake is authorized under the law of the Australian states (New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia) and territories. Compared to the US and Canada, Australian right-to-farm legislation is recent and scarce.

Like most states, Australia witnessed “a socio-historical transition from small, family-operated farming concerns to large, corporate-owned agricultural enterprises.” As Alex Bruce and Thomas Faunce observe, this development severed the close relationship and emotional bond that farmers had with their animals and the environment. Still, in the early 1990s, Australian authors noted that the US experience with right-to-farm laws did not provide compelling reasons for introducing similar legislation in Australia. The first and, to date, only Australian right-to-farm law—the Primary Industries Activities Protection Act 1995—was passed by Tasmania in 1995. The reasons leading to the adoption of the Act resemble those that motivated the passing of analogous legislation in North America, namely the concerns that growing urbanization might jeopardize or constrain farming and that environmental regulation would restrict farming practices. In light of these concerns, the Tasmanian Act aims, on the one hand, to “protect persons engaged in primary industry by limiting the operation of the common law of nuisance in respect of certain activities that are

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172 The law of nuisance is based on the common law, and it has been codified in some statutes. See, e.g., Primary Industries Activities Protection Act 1995 (Tas.) s. 3(1) (Austl.).

173 One example is the statutory exceptions established by the Civil Liability Acts adopted in various Australian states. See, e.g., Wrongs Act 1958 (Vict.) s 30 (Austl.); Civil Liability Act 2002 (N.S.W.) s 72(1) (Austl.).


175 Id. at 363.

176 E.g., John Paterson, A Right to Farm; A Right to Live?, 28 AUSTRALIAN PLANNER 8, 8 (1990).


178 Primary Industries Activities Protection Act 1995 (Tas.) (Austl.).


incidental to efficient and commercially viable primary production.”\textsuperscript{181} It limits the power of courts to order the complete cessation of the activity at stake.\textsuperscript{182} On the other hand, for farming activities not to constitute a nuisance, a number of conditions must be fulfilled, including the condition that “the activity is not being improperly or negligently carried out.”\textsuperscript{183} Moreover, farming activities must respect state and Commonwealth laws and council by-laws,\textsuperscript{184} and they cannot derogate from “the operation or effect of any other Act.”\textsuperscript{185} In other terms, environmental regulation may still apply. In light of these caveats, it is surprising that the Tasmanian Environmental Management and Pollution Control Act of 1994 provides that an activity that conforms with the state’s right-to-farm law does not constitute an environmental nuisance.\textsuperscript{186} When reviewing the Primary Industries Activities Protection Act in 2014, the Tasmanian government expressed its intent “to strengthen the legal protection of farmers” in the future.\textsuperscript{187}

While Tasmania is, as mentioned, the only Australian state that has adopted a right-to-farm law, other states have recently witnessed similar legislative proposals. In New South Wales, member of the state parliament, Don Page, introduced the Protection of Agricultural Production (Right-to-Farm) Bill in 2005, which is based on similar concerns as those that led to the enactment of right-to-farm legislation in Tasmania and in the US.\textsuperscript{188} However, the Bill did not garner enough support in the state parliament.\textsuperscript{189} Meanwhile, farmers in New South Wales continue to lobby for such a right.\textsuperscript{190} The government has adopted a “right-to-farm policy” to respond to these concerns and to address land use conflicts.\textsuperscript{191}

\textsuperscript{181} Primary Industries Activities Protection Act 1995 (Tas.) (Austl.).
\textsuperscript{182} Id. at s 5(1).
\textsuperscript{183} Id. at s 4(d).
\textsuperscript{184} Id. at s 3(1).
\textsuperscript{185} Id. at s 6.
\textsuperscript{186} Environmental Management and Pollution Control Act 1994 (Tas.) s 53(5)(b)(i) (Austl.); see also Griffith, supra note 177, at 11–12.
\textsuperscript{187} Dep’t of Primary Indus., supra note 179, at 9; see generally Australian Network of Envtl. Def. Offices Inc., Submission to the Productivity Commission on Regulation of Agriculture: Issues Paper (2015).
\textsuperscript{188} Protection of Agricultural Production (Right to Farm) Bill 2005 (N.S.W.) (Austl.); see also Griffith, supra note 177, at 13–15 (showing the similarity of the clauses used in the legislation).
\textsuperscript{189} Griffith, supra note 177, at 13.
\textsuperscript{190} Nicola Bell & Samantha Noon, NSW Farmers Want Their Right to Farm Enshrined in Law, NSW Farmers (Jan. 2019), http://www.nswfarmers.org.au/NW FA/Posts/The_Farmer/Rural_Affairs/NSW_farmers_want_their_right_to_farm_enshrined_in_law.aspx.
\textsuperscript{191} See Right to Farm Policy, N.S.W. Gov’t Dep’t of Primary Indus., https://www.dpi.nsw.gov.au/agriculture/lup/legislation-and-policy/right-to-farm-po
In South Australia, member of the state legislative council Robert Brokenshire repeatedly proposed the adoption of US-inspired right-to-farm legislation. One of the stated goals of the bill is to “ensure that protected farming activities are not subject to civil or criminal liability under environmental legislation.” So far, none of Brokenshire’s proposals have been endorsed by the state parliament, but farmers are pushing for the right-to-farm to be recognized by the law.

Further steps have been taken in order to protect farmers’ rights in Australia. One example is the Intergovernmental Agreement on a National Water Initiative. This agreement—between the Commonwealth of Australia and the governments of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, and Victoria—grants farmers a right to compensation when the amount of water they need to irrigate their fields is restricted by environmental policy. Moreover, farming lobbies have sought to obtain a statutory right to compensation for environmental measures. They have done so by drawing on the Inquiry Report published by the Australian government’s Productivity Commission in 2004. This report states:

[T]he wider public should bear the costs of actions to promote public-good environmental services—such as biodiversity, threatened species preservation and greenhouse gas abatement—that it apparently...
demands, and which are likely to impinge significantly on the capacity of landholders to utilise their land for production.\textsuperscript{198}

It is also important to stress that farmed animals are, in practice, excluded from the scope of Australian animal welfare legislation. Since the 1980s, the Australian states and territories have typically been regulating farmed animal welfare in codes. These codes are often based on Model Codes of Practice elaborated by federal and local industries ministers.\textsuperscript{199} Yet, Steven White notes that such codes are significantly less protective of animals than standard animal welfare legislation because farmers are among the issuers of the codes and they themselves are not legally obliged to comply with the codes.\textsuperscript{200} More generally, scholars highlight that the regulation of factory farming is hampered by lobbying efforts of the farming industry and conflicts of interest on the part of the regulators.\textsuperscript{201} A further issue is the use of indeterminate language, which leaves considerable discretion to decisionmakers and may serve the interests of the factory farming industry.\textsuperscript{202}

A contrary trend to these laws and legislative proposals consists in limiting farmers’ rights—or at least in not taking those rights for granted. Such a tendency is observed in the state of Victoria, where the Sales of Land Amendment Act 2014 provides that prospective purchasers of land must be given a due diligence checklist.\textsuperscript{203} The checklist recommends that potential buyers of land in a rural zone assess whether the “surrounding land use [is] compatible with [their] lifestyle expectations . . .”\textsuperscript{204}


\textsuperscript{199} Arnja Dale, Animal Welfare Codes and Regulations—The Devil in Disguise?, in ANIMAL LAW IN AUSTRALASIA 174 (Peter White et al. eds., 2d ed. 2013).

\textsuperscript{200} Steven White, Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform? 35 FED. L. REV. 347, 355 (2007); see also Bruce & Faunce, supra note 174, at 381.


\textsuperscript{202} Ellis, supra note 201, at 8.

\textsuperscript{203} Sales of Land Amendment Act 2014 (Vic.) s 5 (Austl.).

\textsuperscript{204} Due Diligence Checklist–for Home and Residential Property Buyers, CONSUMER AFFAIRS VICT., https://www.consumer.vic.gov.au/duediligencechecklist (last visited Nov. 26, 2019); see also Sales of Land Amendment Act 2014 (Vic.) s 5 (Austl.); see
Notwithstanding, the Australian legal landscape paints an overall dreadful picture: the various measures and compensatory claims in place to protect farmers neglect to recognize that the environment is a public good. This is all the more worrisome given Australian farmers’ intent to further intensify their production to meet an ever-growing global demand (especially in Asia) for animal products.\footnote{Bruce & Faunce, supra note 174, at 366.} Another obstacle is the multilayered and fragmented character of the Australian regulatory framework pertaining to animals.\footnote{Id. at 389.}

\section*{D. European Union}

In contrast to the other jurisdictions under scrutiny in this paper, right-to-farm legislation is, by and large, foreign to EU law. One important explanation for this is that agriculture and fisheries are a shared competence between the EU and its member states,\footnote{Consolidated Version of the Treaty on the Functioning of the European Union art. 4(2)(d), June 7, 2016, 2016 O.J. (C 202) 47.} and the EU can only act pursuant to the principle of conferral.\footnote{Consolidated Version of the Treaty on European Union, arts. 4–5, June 7, 2016, 2016 O.J. (C 202) 13.} Moreover, when comparing agricultural policies in and outside the EU, and more generally across states, one component to factor in is the demand for environmental regulation tailored to the characteristics of the agriculture of one state or group of states.\footnote{For instance, Rajsic et al. note that “the demand for agricultural environmental regulation in countries like the Netherlands and Belgium might be much more intense than would be the case in relatively low nutrient intensity agricultures like Australia, Argentina and Canada.” Rajsic et al., supra note 157, at 61.} The present subsection examines how EU law regulates the activity of CAFOs. It focuses on the EU’s Common Agricultural Policy (CAP), which represents a substantial share of the EU budget.\footnote{See Reform of the Common Agricultural Policy Post 2013, EUROPEAN COUNCIL, https://www.consilium.europa.eu/en/policies/cap-reform/# (last visited Nov. 25, 2019) (noting that the CAP policy for 2014-2020 takes up 38% of the EU’s overall budget, but that the percentage should drop over the next few years).} It also examines EU laws on animal welfare, which apply to animals in CAFOs.

The CAP, the establishment of which dates back to the Treaty of Rome, has undergone various changes since the late
1950s.\textsuperscript{211} Initially, reforms were primarily aimed at improving the economic efficiency of farming—for instance, by encouraging large-scale agriculture.\textsuperscript{212} More recently, the CAP has shifted to incorporate non-economic concerns, including health, social concerns, animal welfare, and environmental considerations.\textsuperscript{213} One important reform occurred in 2003 with the adoption of the Single Payment Scheme (granting direct payments to farmers) and the decoupling of subsidies from the types (and quantities) of crops produced.\textsuperscript{214} Instead, payments became contingent on farmers complying with specific environmental, animal welfare, and food safety standards (this process is known as “cross-compliance”).\textsuperscript{215}

The last reform of the CAP entered into force in 2014 and covers the period of 2014-2020.\textsuperscript{216} It provides for the so-called “greening” of farm payments, i.e., the financial encouragement of agricultural businesses that are “beneficial for the climate and the environment.”\textsuperscript{217} It also seeks to reduce inequalities between small-scale and large-scale farming, e.g., by introducing a cap on subsidies for farms exceeding a specific size.\textsuperscript{218}


\textsuperscript{214} Id. at 34.

\textsuperscript{215} Id. at 32.

\textsuperscript{216} EUROPEAN COUNCIL, \textit{supra} note 210.


\textsuperscript{218} Regulation 1307/2013, \textit{supra} note 217, at art. 11(1).
The CAP has been criticized on several counts.\textsuperscript{219} With respect to the 2014 amendments, Diane Ryland notes that “[t]he reformed CAP instruments are disappointing in that they do not aim explicitly and directly to improve farm animal welfare.”\textsuperscript{220} Others criticize the fact that the CAP leads to deforestation\textsuperscript{221} and other types of environmental degradation,\textsuperscript{222} or that it does not sufficiently support small-scale farming.\textsuperscript{223} Another point is that the CAP does not prohibit specific practices. Instead, it merely creates incentives for farmers to conform to specific environmental and animal welfare standards.

In 2018, the EU Commission published regulatory proposals to “modernize and simplify” the CAP for 2021-2027.\textsuperscript{224} The budget proposed for this period is expected to represent close to one-third of the total EU budget.\textsuperscript{225} The Commission’s proposal moves away from a “one-size-fits-all” approach to a more flexible scheme, allowing Members States to better account for local specificities.\textsuperscript{226} It puts greater emphasis on environmental goals and on fighting climate change. Through the new CAP, the Commission also seeks to encourage “small and medium sized family farms.”\textsuperscript{227} At the time of writing, the EU institutions were debating the new CAP.\textsuperscript{228} The extent to which the proposal will be accepted and implemented remains to be seen.

Several EU legal instruments deal with animal welfare in CAFOs. One example is the Directive 98/58/EC,\textsuperscript{229} which regulates


\textsuperscript{222} Epstein, supra note 213, at 20.


\textsuperscript{225} Id. at 1.

\textsuperscript{226} Id. at 1.

\textsuperscript{227} Id. at 3.


the protection of animals kept for farming purposes. The Directive in a general manner states that the EU Members States “shall ensure that the conditions under which animals . . . are bred or kept, having regard to their species and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge, comply with the provisions set out in the Annex.”230 The Directive has been subject of extensive literature, which we do not want to replicate here.231 It suffices to note that the Directive “cleaned up around the edges,”232 but by and large failed to change the status quo, namely that animals are industrially produced and killed by the billions.233 Moreover, the Directive does not deal with other externalities caused by CAFOs, such as their effects on the environment or human rights affected by their operation.

EU norms on organic farming address some concerns relating to animal welfare.234 Regulation 834/2007 on Organic Production and Labelling of Organic Products defines organic production as:

[A]n overall system of farm management and food production that combines best environmental practices, a high level of biodiversity, the preservation of natural resources, the application of high animal welfare standards[,] and a production method in line with the preference of certain consumers for products produced using natural substances and processes.235

230 Id. art. 4.
Yet, these norms only aim at regulating organic production and labelling; they do not impose mandatory standards on all farmers.

IV. How Farmers’ Rights Threaten Human Rights Guarantees

In this section, we examine how farmers’ rights (rather than agriculture itself), including right-to-farm laws and other legislation exempting animal agribusiness, threaten and even violate human rights. For reasons of scope, we limit our analysis to five rights: the right to food (Part A), the right to water and sanitation (Part B), the right to a safe environment (Part C), the emerging right to land (Part D), and the right to animal protection (Part E). However, it is important to note that many other human rights, such as the right to privacy, home, and family life, may be affected by these laws as well.

A. Right to Food

The right to food has been described as one of “the least realized human rights”\(^{236}\) and even as “the most violated human right worldwide.”\(^{237}\) It is rejected by major global players such as the US,\(^{238}\) and deemed non-justiciable by states such as Canada.\(^{239}\) While European states tend to support the right to food abroad, they are much more cautious to implement this right within their own jurisdiction.\(^{240}\) Moreover, as highlighted by the Office of the High Commissioner for Human Rights (OHCHR), the right to food is often misunderstood.\(^{241}\) Yet the right to food is protected by the Universal Declaration of Human Rights (UDHR)\(^{242}\) and guaranteed by various


\(^{237}\) See *The Most Violated Human Right Worldwide: The Right to Food*, CIVIL SOC’Y & INDIGENOUS PEOPLES’ MECHANISM FOR RELATIONS WITH UN COMM. ON WORLD FOOD SECURITY (Oct. 12, 2018), http://www.csm4cfs.org/violated-human-right-worldwide-right-food/.


\(^{240}\) Jose Luis Vivero Pol & Claudio Schuftan, *No Right to Food and Nutrition in the SDGs: Mistake or Success?*, 1 BMJ GLOBAL HEALTH 1, 3 (2016).

\(^{241}\) See Fact Sheet No. 34, *supra* note 18, at 3.

international human rights treaties, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons With Disabilities (CRPD). Many of the UN human rights treaty bodies have dealt with this right, and the Human Rights Council has called upon states to protect it. Scholars endorse the right to food as well. Some commentators point to several UN General Assembly resolutions that acknowledge the existence of the right to food to argue that this right has the status of customary international law, and the OHCHR considers that “at least freedom from hunger can be considered as a norm of international customary law.” All in all, human rights lawyers converge in saying that the right to food is one of the most fundamental human rights.

Article 11 ICESCR, upon which we focus in this subsection, “deals more comprehensively with this right in international law. It states that the parties to the Covenant “recognize the right of everyone to . . . adequate food.” Moreover, it provides that states commit to “improve methods of production . . . of food,” inter alia

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244 We do not focus on the right to be free from hunger, which is also guaranteed by the ICESCR. ICESCR, supra note 238, art. 11(2).


248 See Fact Sheet No. 34, supra note 18, at 34–35.


250 Ana Ayala & Benjamin Mason Meier, A Human Rights Approach to the Health Implications of Food & Nutrition Insecurity, 38 PUB. HEALTH REV. 1 (2017); Vivero Pol & Schuftan, supra note 240, at 1; Garrow & Day, supra note 238, at 275; Naomi Hossain & Dolf te Lintelo, A Common Sense Approach to the Right to Food, 10 J. HUM. RTS. PRAC. 367 (2018) (discussing how an understanding of the right to food is shared across different cultures).


252 Mechlem, supra note 18, at 13.

253 See Fact Sheet No. 34, supra note 18, at 9.


256 ICESCR, supra note 238, art. 11(1).
“by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.” Pursuant to article 2(1) ICESCR, states have a duty of progressive realization with respect to this right. They cannot discriminate against specific groups of individuals when giving effect to the right to food (article 2(2) ICESCR), nor can they take so-called retrogressive measures impairing its realization.

It is widely held that agriculture is necessary to realize the right to food. On this basis, one could consider that guaranteeing the right to food requires maintaining and further developing existing agricultural practices, including industrial animal agriculture businesses. However, several arguments show that this assumption is treacherous and actually prevents states from complying with their duty to respect, protect, and fulfill the right to food. As the UN Committee on Economic, Social, and Cultural Rights has stressed, the concepts of adequacy, sustainability, availability, and accessibility are central to the right to food. For our purposes, adequacy and sustainability are particularly important.

In regards to adequacy, the UN Committee on Economic, Social, and Cultural Rights has noted:

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257 Id. at art. 11(2).
258 Id. at art. 2(1).
261 See, e.g., Mechlem, supra note 236, at 19; see also Henry Shue, Basic Rights: Subsistence, Affluence, and US Foreign Policy (Princeton Univ. Press 1980).
263 However, other aspects are relevant as well, considering that the UN Committee on Economic, Social, and Cultural Rights has stated that the “roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food.” Meat production, in particular, deprives individuals from crops and other plant-based food because these products are fed to animals in large quantities rather than being directly used to feed local populations. See General Comment 12, supra note 255, ¶ 5.
The right to adequate food implies: the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.  

It has further stated that the meaning of adequacy is “to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions.” As previously stated in the introductory section, the prevailing animal agricultural production methods (CAFOs) create massive negative externalities from an environmental perspective, which puts into question their adequacy as a means to guarantee the right to food.

Similarly, sustainability, which can be defined as the accessibility of food for both present and future generations, supports abandoning agricultural products that are major drivers of climate change and that jeopardize food security. It has been shown, in this context, that meat production consumes particularly large amounts of resources (e.g., water, energy, and land) compared to plant-based diets. For instance, the production of 1 kg of beef meat consumes over 15,400 liters of water. The water footprint of the same quantity (1 kg) of rice consumes 2,497 liters; 1 kg of cereals uses 1,644 liters; and 1 kg of potatoes requires 287 liters. Because

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264 Id. ¶ 8.
265 Id. ¶ 7.
266 See supra Part I.
267 See General Comment 12, supra note 255, ¶ 7.
270 WATER FOOTPRINT NETWORK, supra note 269; see also THE GUARDIAN, supra note 269. The Water Footprint Network is a non-profit organization which, to date, constitutes the main source of information in terms of the water used to produce various goods. See also Global Water Footprint Standard, WATER FOOTPRINT NETWORK, https://waterfootprint.org/en/water-footprint/global-water-footprint-standard/ (last visited Dec. 15, 2019) (providing the methodology used in this context). While some methodological concerns remain, the water footprint standard is widely
meat-based diets are so nutritionally inefficient and unsustainable, animal agricultural production greatly inhibits states’ ability to ensure food security in the long term. As Alex Bruce and Thomas Faunce put it, animal farming has a highly damaging “environmental domino effect.”

Civil society actors are increasingly highlighting that a rational solution to world hunger would consist of shifting toward a plant-based diet. A report of the UN Environmental Programme published in 2010 reached the same conclusion, stating:

Impacts from agriculture are expected to increase substantially due to population growth increasing consumption of animal products. Unlike fossil fuels, it is difficult to look for alternatives: people have to eat. A substantial reduction of impacts would only be possible with a substantial worldwide diet change, away from animal products.

Despite compelling evidence regarding the environmental and human rights benefits of a plant-based diet, the UN Special Rapporteurs on the right to food have thus far refrained from explicitly describing an adequate diet as primarily plant-based—or even as based on the consumption of little meat. This omission might be owed to political and strategic reasons given that the Rapporteurs readily highlight the health benefits of consuming fruit and vegetables and that they stress the health and other (including food-supply) problems created by increasing meat consumption. The Rapporteurs have also pointed to the negative nutritional effects of industrial food, which is typically the product of factory


271 Bruce & Faunce, supra note 174, at 385.
farming,276 and they have recommended shifting away from this type of industrial agricultural production.277 They have further emphasized states’ obligation to respect farmers’ right to food.278 However, instead of advocating for changing food habits, the UN Special Rapporteurs have primarily recommended relying on agroecology as an alternative to industrial agriculture.279 They have stressed that article 11 ICESCR calls for small-scale farming in light of the benefits that this type of farming generates, e.g., in terms of employment, sustainability, and non-discrimination of vulnerable populations.280

As scholars note, “[a] strong linkage exists between the right to food, sustainable agriculture, and sustainable soil management.”281 Goal 2 of the UN’s 2030 Agenda for Sustainable Development states that the UN members undertake to “end hunger, achieve food security and improved nutrition[,] and promote sustainable agriculture.”282 Similarly, the FAO recommends that “[s]tates should assist farmers and other primary producers to follow good agricultural practices,” so as to ensure the progressive realization of the right to adequate food.283

In view of the aforementioned observations, however, profound reforms of current agricultural practices, and especially of factory farming, appear necessary to guarantee the right to food.

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Indeed, “[i]ndustrial agriculture and fishing practices encourage the waste of natural capital, such as soil, and violate the human right-to-food.”\textsuperscript{284} By contrast, plant-based diets “could play an important role in preserving environmental resources and reducing hunger and malnutrition in poorer nations.”\textsuperscript{285} This issue needs to be addressed urgently, not least because of the steady growth of the global human population and its reliance (and dependence) on finite resources.

B. Right to Water and Sanitation

The CEDAW, adopted in 1979, is the first international human rights treaty to have mentioned the right to water and sanitation.\textsuperscript{286} Since then, other treaties have included this right in their text.\textsuperscript{287} In 2002, the UN Committee on Economic, Social, and Cultural Rights stated that this right is contained in article 11 of the ICESCR, which protects “the right to an adequate standard of living . . . including adequate food, clothing and housing.”\textsuperscript{288} Moreover, the Committee deems the right to water and sanitation “inextricably related”\textsuperscript{289} to article 12(1) of the ICESCR (which guarantees the right to health),\textsuperscript{290} article 11(1) of the ICESCR (which protects the right to housing and the right to food),\textsuperscript{291} and the right to life.\textsuperscript{292} Later, in 2010, the UN Human Rights Council reaffirmed these statements\textsuperscript{293} a few months after the UN General Assembly had recognized the human

\textsuperscript{284} Telesetsky, supra note 279, at 803.
\textsuperscript{286} CEDAW, supra note 246, art. 14(2)(h).
\textsuperscript{287} CRC, supra note 245, arts. 24, 27(3); CRPD, supra note 247, art. 28.
\textsuperscript{289} Human Rights Council Res. 15/9, U.N. Doc. A/HRC/RES/15/9, ¶ 3 (Oct. 6, 2010) [hereinafter HRC Res. 15/9] (“[T]he human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”); see also Amanda Cahill, ‘The Human Right to Water–A Right of Unique Status: ‘The Legal Status and Normative Content of the Right to Water, 9 INT’L J. OF HUM. RTS. 389, 391 (2005) (discussing the right to water as a “derivative right,” in a broader sense than in the Human Rights Council’s terminology).
\textsuperscript{290} General Comment 15, supra note 288, ¶ 3.
\textsuperscript{292} See also Stephen McCaffrey et al., The Emergence of a Human Right to Water and Sanitation: The Many Challenges, 106 PROC. OF THE ASIL ANN. MEETING 43, 46 (2012).
\textsuperscript{293} HRC Res. 15/9, supra note 289, ¶ 3.
right to water and sanitation.\textsuperscript{294} Goal 6 of the UN’s Sustainable Development Goals is to “[e]nsure availability and sustainable management of water and sanitation for all.”\textsuperscript{295} However, among states and international lawyers, this right remains controversial,\textsuperscript{296} and it is not deemed part of customary international law.\textsuperscript{297} Researchers have highlighted “the complex interplay of interests behind the recognition of the right to water.”\textsuperscript{298} This explains why the right to water and sanitation has been pictured as a right requiring further development and institutionalization.\textsuperscript{299}

Given that the right to water is “inextricably related” to the right to food, it comes as no surprise that agricultural practices can threaten this right as well. As a matter of fact, agriculture currently consumes, on average, 70% of the water used worldwide.\textsuperscript{300} Animal agriculture absorbs a large share of this portion, since meat-based diets require particularly high amounts of water compared to plant-based diets.\textsuperscript{301} For instance, in California, agriculture draws more than 90% of the total water, with animal agriculture consuming 47%.\textsuperscript{302} The substantial water depletion caused by animal agriculture jeopardizes water security, which is currently under high


\textsuperscript{295} G.A. Res. 70/1, supra note 282, at 14.


threat across the world. While California was the first US state to recognize the human right to water (in 2012), the implementation of this right has been incomplete.

The FAO and the UN Special Rapporteurs on the Human Rights to Safe Drinking Water and Sanitation have also highlighted the link between agriculture and environmental pollution—more specifically, water pollution. Animal agriculture pollutes water to a disproportionate extent compared to the production of plant-based food, notably through animal excrements, antibiotics, hormones, fertilizers, and pesticides for fodder cultivation. In the US, for instance, animal agriculture is responsible for 37% of all pesticides applied and 50% of all antibiotics consumed, which run off into ground and fresh water reserves. The FAO succinctly summarizes that “the livestock sector has an enormous impact on water use, water quality, hydrology and aquatic ecosystems.”

With animal agriculture resulting in water depletion, large investments in animal agriculture jeopardize the human right to water. This right, according to the UN Committee on Economic, Social, and Cultural Rights, requires that water be “sufficient, safe, acceptable, physically accessible, and affordable . . .” Problems

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304 CAL. WAT. CODE § 106.3(a) (West 2013).
306 E.g., FOOD & AGRIC. ORG., *supra* note 300, 43–46.
307 The initial denomination (for 2008-2014) was that of “Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.” This expert was appointed by the Human Rights Council in 2008. See Human Rights Council Res. 7/22, ¶ 2 (Mar. 28, 2008). The mandate was extended and transformed into that of a Special Rapporteur in 2011. See HRC Res. 16/2 (Apr. 8, 2011).
310 Ernährung, *supra* note 272.
311 FOOD & AGRIC. ORG., *supra* note 33, at 168.
312 *Id.* at 137–39, 142–43, 145.
313 *Id.* at 167.
314 General Comment 15, *supra* note 288, ¶ 2 (although these terms are sometimes replaced by synonyms or by related adjectives).
arise with regard to the criterion of safety, which requires that water be “free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health.”\footnote{Id. ¶ 12(b).} Of course, when water is accessible to factory farmers to the detriment of local populations, the criteria of sufficiency, physical accessibility, and affordability are likely to be undermined as well. The same problems arise when water is driven away from local populations to meet the needs of meat production. The end product is mostly consumed by individuals living in rich, minority world countries. In the US, for instance, the standard food diet requires 4,200 gallons (15,899 liters) of water per day, while a person on a vegan food diet only needs 300 gallons (1,136 liters) of water per day.\footnote{Aisling Maria Cronin, You Can Save Over 200,000 Gallons of Water a Year With One Simple Choice, ONE GREEN PLANET, http://www.onegreenplanet.org/environment/how-to-save-water-with-one-simple-choice/ (last visited Dec. 19, 2019).} What is more, when water is lacking, other human rights can be affected. For instance, inadequate access to water has a disparate impact on women and girls.\footnote{Léo Heller (Special Rapporteur), Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, ¶¶ 1–14, U.N. Doc. A/HRC/33/49 (July 27, 2016).} Instead of investing water resources into an unsustainable system that accounts for adverse and discriminatory effects, these resources could be used for direct consumption and thereby make it more likely for the human right to water of local and foreign populations to be guaranteed.\footnote{See e.g., Mark W. Rosegrant & Claudia Ringler, Impact on Food Security and Rural Development of Transferring Water Out of Agriculture, 6 WATER POL’Y 567 (2000).}

C. Right to a Safe Environment

to a safe environment became stronger, both nationally and internationally.\(^{321}\)

Today, over one hundred constitutions worldwide—adopted since 1992—enshrine the right to a clean and healthy environment.\(^{322}\) For example, Section 20(2) of the Finnish constitution recognizes “... the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.”\(^{323}\) More than one hundred states incorporated an explicit right to a healthy environment in domestic environmental legislation, totaling 155 states that are obligated to respect, protect, and fulfill the right to a healthy environment under domestic law.\(^{324}\)

On the international level, the African Charter for Human and Peoples’ Rights\(^ {325}\) and the Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights\(^ {326}\) both provide for a human right to a healthy environment. General Comment No. 14 to article 12 of the ICCPR (which guarantees the right to the highest attainable standard of health) stipulates that “the right to health embraces a wide range of socio-


\(^{323}\) SUOMEN PERUSTUSLAKI, [CONSTITUTION], June 11, 1999, 731, § 20 (Fin.).


\(^{325}\) African Charter on Human and Peoples Rights, art. 24, June 27, 1981, 21 I.L.M. 58 [hereinafter African Charter on Human and People’s Rights] (“All peoples shall have the right to a general satisfactory environment favourable to their development.”).

\(^{326}\) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol San Salvador” art. 11, Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 1641 (stating that “everyone shall have the right to live in a healthy environment . . .”).
economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinates of health, such as . . . a healthy environment.”

In 2003, the Council of Europe’s Parliamentary Assembly issued a recommendation for the governments of the member states of the Council of Europe to “recognize a human right to a healthy, viable and decent environment.”

The European Convention on Human Rights (ECHR) does not expressly provide for a right to a healthy environment, but it covers those instances in which an unsafe environment threatens people’s right to life (article 2 ECHR), the right to privacy and family life (article 8 ECHR) and, in the ECHR’s Protocol No. 1, the right to property (article 1).

Though widely recognized domestically and internationally, the content of the right to a healthy environment is still in dispute. Some scholars argue for a broad definition of the right, namely as a right to a safe, healthy, secure, clean, sustainable, or ecologically-balanced environment, as enshrined in the constitutions of Honduras, Portugal, or South Korea. Another camp argues for a narrower interpretation of this right, i.e., for guaranteeing the right to a safe environment.

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331 Thorme, supra note 320, at 310 (1991); see also Shelton, supra note 320, at 265.

332 See REPÚBLICA DE HONDURAS CONSTITUCIÓN DE 1982 CON REFORMAS HASTA 2019 [CONSTITUTION], Jan. 29, 2019, art. 145 (Hond.) (mentioning “an adequate environment to protect the health of persons”).

333 See CONSTITUCIÓN DE LA REPÚBLICA PORTUGUESA [CONSTITUTION], Apr. 2, 1976, art. 66, ¶ 1 (Port.) (mentioning the right to “a healthy and ecologically balanced human living environment”).

334 See 대한민국 헌법 [CONSTITUTION], Oct. 29, 1987, art. 35 (S. Kor.) (mentioning the right to “a healthy and pleasant environment”).

335 Nickel, supra note 321, at 281–82. Scholars argue that, in the environmental domain, it is more appropriate to appeal to obligations and responsibilities towards the environment, or to the respect of environmental goods. See Cynthia Giagnocavo
be destructive to human health and must provide protection from contamination and pollution. Activities that cause adverse environmental effects but do not manifest a damage or threat to human health, such as noises emanating from nearby farms, are not covered by this narrower, anthropocentric reading. Critics question what such a narrow right adds to existing human rights, such as the right to life or the right to property, and denounce a “rights inflation”—dangers of “policy and resource overload” that may occur because of too many human rights enunciations. In the following, we examine the right to an environment through the narrower lens, due to the fact that this perspective seems to more closely follow the current state of international law, and because it acknowledges the close connection between human rights and the environment. After all, the environment is the physical basis, the sine qua non, without which there are no human rights to enjoy or protect, as famously stated by Judge Weeramantry in his separate opinion to the Gabčíkovo-Nagymaros judgment of the International Court of Justice.

The right to environmental protection only imposes a duty on natural and legal persons to refrain from activities that damage or threaten the environment to the determined extent (i.e., when these activities threaten human safety), and to restore damage and pay compensation to those affected. Governments, in contrast, are “obligated to respect, protect, and fulfill the right to a healthy environment,” as the UN Special Rapporteur on Human Rights and the Environment, David R. Boyd, noted in a report unanimously adopted by the UN General Assembly in January 2019. States have both a “negative duty to refrain from actions . . . [threatening] human life and health,” and a positive “duty to protect the inhabitants of their territories against environmental risks . . . [caused] by

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337 Non-anthropocentric values, such as “duties toward the environment” and “rights of nature,” are protected by the Earth Charter and numerous international environmental law treaties. Shelton, *supra* note 322, at 131–32.


340 Gabčíkovo-Nagymaros Project (Hung. v. Slovk.), Separate Opinion of Judge Weeramantry, 1997 I.C.J. 7, at 91 (Sept. 25) (“The protection of the environment is . . . a *sine qua non* for numerous human rights such as the right to health and the right to life itself.”).


governments or private agencies.” 343 The duty to protect more specifically calls on governments to prevent, investigate, and prosecute violations as well as to provide appropriate redress. 344 The right to environmental protection also encompasses procedural duties, such as the duty to allow individuals to sue polluters, participate in the formation of environmental laws, and access information. 345 In this scheme, international law does not directly enable victims to sue private enterprises; only states can be held accountable for failure to do so and for the resulting harm. 346 So far, claims that the human right to a safe environment is threatened or violated have mostly been raised against oil and logging industries.347

The consumption of meat and milk products has for years been marketed as beneficial to human health and even as an indicator

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343 Nickel, supra note 321, at 286.
344 Shelton, supra note 322, at 130.
346 Shelton, supra note 322, at 130.
of the prosperity of a civilized nation. This framing, pushed by corporate lobbying, largely ignores the human health costs of animal agriculture. As CAFOs become larger and more intensified, there is a rising awareness of the fact that emissions of excessive nitrates cause blue baby syndrome, affect the development of the central nervous system, and lead to miscarriages. Hydrogen sulfide is associated with mild cerebral dysfunction and brain damage for people living close to CAFOs. Asthma, chronic bronchitis, declining lung functions, cardiovascular irritation, headaches, and even brain damage and death have been observed due to the exposure of CAFO workers and their families to hydrogen sulfide, ammonia, and dust. People living near CAFOs have been reported to suffer from increased levels of depression, anxiety, and sleep disturbances. Surroundings of CAFOs are also increasingly exposed to pathogen outbreaks, including bacteria, fungi, viruses, helminths (parasitic worms), and protozoa. The high toxicity of CAFOs becomes evident with the example of Mexico: due to animal waste and fertilizer runoff, there is a now a dead zone of 20,000 km² with no marine life in the Gulf of Mexico. The multi-level contamination of water, air, and soil by CAFOs directly and fundamentally threatens people’s health and life.

Because they continue to subsidize and even to immunize CAFOs from environmental responsibility, governments can and should be held accountable for violating their duty to refrain from

348 After the postwar period, milk and other animal products were identified as products of wealth and economic growth. See ANNE MENDELSON, MILK: THE SURPRISING STORY OF MILK THROUGH THE AGES 45 (2008).
350 Wilson, supra note 32, at 445 & n. 45 (discussing ammonia emissions from animal agriculture and studies of the effects of such emissions in North Carolina and Iowa); Brehm, supra note 32, at 813–14; Marc B. Schenker et al., Respiratory Health Hazards in Agriculture, 158 AM. J. RESPIRATORY & CRITICAL CARE MED. S1, S2 (1998).
351 Brehm, supra note 32, at 814.
352 Id.; Wilson, supra note 32, at 446.
damaging human life and health, as well as for their failure to fulfill their duty to protect people from harm to life and health caused by third parties (i.e., animal agribusinesses). As Shelton argues, “there may be little difference between a state that arbitrarily executes persons and a state that knowingly allows drinking water to be poisoned by contaminants.”

D. Right to Land

The right to land, or land rights, can be defined as “rights to use, control, and transfer a parcel of land.” Some voices, including land rights movements within civil society, have called for the recognition of such a right in international human rights law. One such voice is that of Miloon Kothari, the former UN Special Rapporteur on adequate housing, Olivier de Schutter, the former Special Rapporteur on the right to food, even speaks of an “emerging human right to land.”

Together with food sovereignty claims, the legal recognition of the right to land is one of the main concerns of the transnational movement La Via Campesina, composed of farmers and members of rural and indigenous populations. The movement emerged in response to the growing commodification of land and to the large-scale acquisitions of land by corporate actors over the past decades. Presently, the right to land is not explicitly recognized as a self-standing human right in international human rights law; land is only mentioned at the margins or via related concepts, such as property or housing.

356 Shelton, supra note 322, at 171.
361 De Schutter, supra note 27, at 303.
363 Claey s, supra note 358, at 117.
364 Id. at 116–17.
365 E.g., CEDAW, supra note 246, art. 14.
366 E.g., UDHR, supra note 242, art. 17.
367 E.g., ICESCR, supra note 238, art. 1(1).
Why talk about land if no corresponding right exists in contemporary international law? Simply because it is widely accepted that access to land is key to the realization of other human rights.\(^{368}\) As a matter of fact, land rights are present in several ways in international human rights law.\(^ {369}\) In a report published in 2014, the UN High Commissioner for Human Rights noted that land issues, including large-scale agriculture, affect a variety of human rights, namely the right to self-determination, non-discrimination and equality, the right to life, the right to an adequate standard of living (including food, housing, and water), freedom from hunger, the right to an effective judicial remedy, freedom of opinion, expression, assembly and association, and the right to take part in public affairs.\(^ {370}\) Following a number of scholars,\(^ {371}\) the Commissioner has advocated viewing land issues through a human rights lens.\(^ {372}\)

Right-to-farm laws and exemptions for animal agricultural industries greatly threaten the (emerging) human right to land. In 2014, agriculture took up 36.99% of all available land.\(^{373}\) Meat-

\(^{368}\) E.g., Gilbert, supra note 357, at 115; see also Land and Human Rights, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMMISSIONER, http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx (last visited Oct. 14, 2019) [hereinafter Land and Human Rights].

\(^{369}\) Gilbert, supra note 357, at 115 (mentioning property law, the protection of indigenous peoples, the right to food, and housing); see UDHR, supra note 242, arts. 15, 25; see International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Mar. 7, 1966, 660 U.N.T.S. 195; see CEDAW, supra note 246, arts. 14(2)(h), 16; see ICCPR, supra note 345, art. 27; see ICESCR, supra note 238, art. 11; see CRC, supra note 245, art. 27(3); see also U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, art. 11(1), U.N. Doc. E/1992/23 (Dec. 13, 1991); U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, art. 11.1, U.N. Doc. E/1998/22 (May 20, 1997).


\(^{371}\) E.g., Gilbert, supra note 357, at 115; De Schutter, supra note 27, at 303.


\(^{373}\) Land Use Statistical Data, FOOD & AGRIC. ORG., http://www.fao.org/faoestat/en/#data (last visited Dec. 21, 2019) (follow “Land Use Indicators” hyperlink under “Agri-Environmental Indicators” heading; select “World + (Total)” under
based nutrition requires significantly more land than plant-based nutrition.\textsuperscript{374} According to the FAO, the livestock sector uses 78% of all agricultural land and 33% of all cropland.\textsuperscript{375} More specifically, a study conducted in the Netherlands for the year 1990 has shown that meat production required 57.9 m\textsuperscript{2} of land per kg (with beef meat requiring 20.9 m\textsuperscript{2}/kg), while the total production of cereals, sugar, potatoes, vegetables, and fruit required only 3.8 m\textsuperscript{2} of land per kg (over fifteen times less).\textsuperscript{376} To satisfy the demand for meat, many minority world countries today need more land than the surface that is available domestically. For instance, between 2008 and 2010, the EU used a surface of almost fifteen million hectares of land, thirteen of which were located in South America.\textsuperscript{377}

These developments do not necessarily lead to investment relationships from which all parties benefit. As a matter of fact, these global “land grab policies” often lead to dire conflicts as arable land is taken away from populations in the Global South, who simultaneously bear the environmental and human rights externalities of meat production.\textsuperscript{378} In South America, for example, approximately four million hectares of forest are disappearing every year, mainly due to the spread of agricultural activity.\textsuperscript{379} CAFOs also threaten grasslands, which are frequently replaced by monoculture production.\textsuperscript{380} Given the continuous growth of the world population and the steady increase in meat consumption,\textsuperscript{381} these issues will only become more severe in the future.

The use of land for the purpose of animal agriculture affects individuals and their environment in a myriad of ways: it accelerates climate change and it leads to the pollution of water and soil, land degradation, and water depletion.\textsuperscript{382} Intensive animal agriculture

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\textsuperscript{374} FOOD & AGRIC. ORG., \textit{supra} note 33, at 74. \\
\textsuperscript{375} Id. \\
\textsuperscript{376} See P. Winnie Gerbens-Leenes, Sanderine Nonhebel & Wilfried P.M.F. Ivens, \textit{A Method to Determine Land Requirements Relating to Food Consumption Patterns}, 90 AGRIC., ECOSYSTEMS AND ENV’T. 47 (2002) (discussing the amount of agricultural land required for plant-based versus meat-based food production); see also WITZKE, NOLEPPA & ZHIRKOVA, \textit{supra} note 273; FOOD & AGRIC. ORG., \textit{supra} note 33, at 23–74. \\
\textsuperscript{377} WITZKE, NOLEPPA & ZHIRKOVA, \textit{supra} note 273, at 6. \\
\textsuperscript{378} Id. at 7. \\
\textsuperscript{379} Id. at 17. \\
\textsuperscript{380} FOOD & AGRIC. ORG., \textit{supra} note 33, at 34–35. \\
\textsuperscript{381} WITZKE, NOLEPPA & ZHIRKOVA, \textit{supra} note 273, at 15–17 (discussing the increasing consumption of meat in Germany in recent years). \\
\textsuperscript{382} In the US, for example, livestock is estimated to be responsible for 55% of soil erosion on agricultural land. FOOD & AGRIC. ORG., \textit{supra} note 33, at 73.
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also catalyzes soil acidification, notably because of the fertilizers on which it relies. The appropriation of land to meet the demands of agriculture can threaten specific human rights, such as the right to housing when the demand for land triggers forced evictions and displacements. The environmental and human rights side effects of animal agriculture are particularly palpable for specially vulnerable groups, such as indigenous communities.

Land issues related to factory farming have major consequences for the right to food. The UN Special Rapporteur has frequently stressed that access to land is a prerequisite for realizing the right to food. It emerges from de Schutter’s analysis that factory farming increases the poverty (and hence jeopardizes the right to food) of small-scale farmers, but also of agricultural workers on large farms. Addressing these issues requires reforming agricultural policy to ensure an equal distribution of land and security of tenure. Moreover, given the high impact of animal agriculture on these rights, the relevant policies need to be designed based on a holistic approach so as to take into account the interlinkage between CAFO production, land use, and the enjoyment of human rights.


See U.N. Doc. A/57/356, supra note 260; see also U.N. Doc. A/65/281, supra note 280, ¶ 27 (discussing access to land and the right to food); Olivier de Schutter (Special Rapporteur on the Right to Food), Rep. of the Special Rapporteur on the Right to Food, Addendum on Large-Scale Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge, U.N. Doc. A/HRC/13/33/Add.2 (Dec. 28, 2009). De Schutter argues that access to land is sometimes a self-standing right and sometimes instrumental to the right to food. See De Schutter, supra note 27.

De Schutter, supra note 27.

E. Right to Animal Protection

Today, many animal protection and animal welfare acts throughout the world recognize animals as sentient, living beings, whom we owe moral and legal duties. These laws provide that animals ought not to be treated inhumanely or caused unnecessary suffering. This “general principle of animal welfare” is established law in, among others, the following countries and supra- or international organizations: the EU, the Council of Europe, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Costa Rica, Croatia, Estonia, Fiji, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, India, Indonesia, Israel, Kenya, Latvia, Liechtenstein, Lithuania, Malaysia, Malta, Myanmar, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Papua New Guinea, Paraguay, the Philippines, Poland, Portugal, Puerto Rico, Slovenia, Solomon Islands, South Africa, South Korea, Sri Lanka, Sweden, Switzerland, Taiwan, Tanzania, Tonga, Turkey, Uganda, Ukraine, the UK, the US, Vanuatu, Venezuela, and Zambia. In addition, more and more states (such as Brazil, Egypt, Germany, India, Luxemburg, and Switzerland) have expressed their concern for animals at a constitutional level, including by setting up duties owed to animals. These provisions make an important value statement about the claims of animals against us and


391 Article 225 paragraph 1 VII of the Brazilian Constitution states that it is “the responsibility of the Government to . . . prohibiting, as provided by law, all practices that . . . subject animals to cruelty.” CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL [C.F.] [Constitution] Oct. 5, 1988, art. 225, para. 1(IV) (Braz.). Article 45 of the Egyptian Constitution commits the state to “the protection of plants, livestock and fisheries; the protection of endangered species; and the prevention of cruelty to animals.” CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT [Constitution] Jan. 15, 2014, art. 45 (Egypt); see also Egypt’s Constitution of 2014, INT’L IDEA, https://www.constituteproject.org/constitution/Egypt_2014.pdf (last updated Dec. 4, 2019) (providing a translated version of Egypt’s Constitution). In Germany, article 20a of the Basic Law identifies animal protection as a state objective. See GRUNDEGEGETZ [GG] [BASIC LAW] May 23, 1949, art. 20a (Ger.), https://www.bundestagsreferat.de/pdf/80201000.pdf; ENTWURF EINES GESETZES ZURÄNDERUNG DES GRUNDEGEGETZES (STAATSPRÄLICKE TIERSCHEITZ) [LAW TO CHANGE THE BASIC LAW
“bring . . . [animals] into the very structure of the body politic.”

Also on the international level, we are observing a growing awareness of the importance of thinking about the impacts of human activity on animals, e.g., under the auspices of the World Organization for Animal Health (OIE), the UN, the Council of
Europe, and the World Trade Organization (WTO). Viewed together, these developments suggest an emerging universal consensus about the relevance of animal issues and that human diligence must be exercised when interacting with animals.

In parallel, more and more scholars argue that humans feel violated themselves—in their dignity, and even in their rights—when animal protection laws are not adhered to or when governments fail to enact such laws in the first place. This claim rests on an argument that ethicists have been raising for centuries, namely that there is a direct link between treating animals unkindly and the degradation of man. Immanuel Kant famously stated it as:

"If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind. If he is not to stifle his human feelings, he must practice kindness towards animals, for he who is cruel to animals becomes hard also in his dealings with men."

Today, policy makers recognize the connection between preventing animal cruelty and curbing human crimes, on the one hand, and animal cruelty and the brutalization of society, on the other. People who are cruel towards humans often have a history of animal cruelty; vice versa, animal abuse is regularly an indicator for abuse of other family members (in the literature, these correlations are known as “the link”).

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397 IMMANUEL KANT, *LECTURES ON ETHICS* 212 (P. Heath & J.B. Schneewind trans., 1997).

398 This link is noticed and examined by Rebecca L. Bucchieri. See Rebecca L. Bucchieri, *Bridging the Gap: The Connection between Violence Against Animals and Violence Against Humans*, 11 J. ANIMAL & NAT. RESOURCE L. 115 (2015); see also
Drawing on these insights, Konstantin Leondarakis argues for a human right to animal protection, providing the following: “It is a right of every person to reasonably safeguard the lives and integrity of animals, and ensure they are treated with dignity.” Such a right is needed, he claims, because current violations of animal interests cannot be redressed by animals, and because humans have only a limited ability to contribute to the proper enforcement of these laws; indeed, humans themselves lack standing because they have not suffered an injury.

Leondarakis argues that a discrete human right to animal protection should be established, but that it could also be drawn from existing human rights guarantees, like the human right to privacy and family life, and the protection of human dignity.

In CAFOs, farmed animals suffer from numerous production-related cardiovascular, skeletal, and respiratory diseases as well as mutilation, mourning, aggression, frustration, and lethal stress syndromes. Against this background, exempting animal cruelty in agriculture from the purview of the law is problematic in two ways. First, the general principle of animal welfare demands


Id. at 30.

Id. at 41. Article 8 ECHR protects relationships to other beings, namely animals. See ECHR, supra note 329, art. 8 (providing that “[e]veryone has the right to respect for his private and family life, his home and his correspondence.”).

Not only does a violation of animal protection violate a person’s subjective dignity; it also infringes the objective worth of dignity. LEONDARAKIS, supra note 398, at 42.

The animal industry has changed the morphology and physiology of animals, which impairs their ability to adapt. Today, chickens reach the weight of two kilograms twice as fast as they did fifty years ago. Dairy cows were intensively bred for more productive mammary glands. Cows used for meat production now have enormous muscle mass, which strains their internal organs. Joy M. Verrinder, Nicki McGrath & Clive J.C. Phillips, Science, Animal Ethics and the Law, in ANIMAL LAW AND WELFARE: INTERNATIONAL PERSPECTIVES 63, 63–64 (Deborah Cao & Steven White eds., 2016). In CAFOs, animals are mutilated to prevent injuries that arise at high stocking densities: tails are docked; beaks, teeth, and toes are clipped; ears are notched; horns are removed; and castration is undertaken without anesthetics. See David N. Cassuto, Bred Meat: The Cultural Foundation of Factory Farm, 70 L. & CONTEM. PROBS. 59, 64 (2007); Matheny & Leahy, supra note 122, at 328; PEW COMM’N, supra note 29, at 35.

See supra text accompanying note 389.
that animals be treated humanely and that they be spared from suffering. Because agricultural production affects the highest number of domesticated animals, it is, from a teleological perspective, unjustifiable not to apply this principle to the agricultural sector. This prompts us to address and question the blanket authorizations given to CAFO industries to inflict systematic cruelty on animals through broad right-to-farm laws and far-reaching immunities from the law. Second, should the human right to animal protection be established as a stand-alone right or as an integral part of the human right to privacy and family life, then states would violate their legal duties to protect and respect this right by not establishing the necessary legal framework to review practices that threaten and likely violate it. In other words, the human right to animal protection would apply regardless of sweeping farmers’ rights. Together, these developments make clear that the interests of animals and humans are often intertwined and that there are numerous entry-points that could be used more systematically in the future for litigation and advocacy purposes.

V. Conclusion

Across the world, most people cling onto a “happy farm” image, be it the red barn in the US or cows roaming on green pastures in Europe. This image has been produced and sustained through heavy marketing campaigns. The reality is markedly different. Laws originally designed to govern small family farms now protect corporate giants, many of which are multinationals. By benefitting from farmers’ rights (i.e., right-to-farm laws and exemptions from environmental and animal laws), agribusinesses are, in many cases, shielded from regulation. In fact, as we argued, the combination of rampant corporate activity and de facto immunity from the law acts as a toxic agent that threatens the environment and our livelihoods.

The host of negative effects of animal agriculture on the immediate environment, workers, and the local community are well-documented. However, little is done academically to explore their global repercussions, particularly on human rights guarantees. Human rights litigation, advocacy, and research have yet to recognize and address this angle. With this contribution, we have attempted to fill this soaring gap. We have shown how intensified animal agriculture threatens and violates the human rights to food, water, a safe environment, land, and animal protection, and we have made apparent the urgency to address these issues. Under international law, states are obligated to respect, protect, and fulfill

405 Wilson, supra note 32, at 451.
human rights—duties which they violate when they exempt from the law the many activities of animal agriculture that directly cause human suffering and violate or threaten well-established basic rights. While in domestic law, states are *prima facie* at liberty to establish insulations for agriculture, international law (particularly the human rights regime) binds all states and puts a halt to the most sweeping forms of agricultural exceptionalism. This knowledge can and should be used as a strategy for litigation and advocacy to hold states accountable, and further prompt us as a society to seriously question the rationale underlying the many right-to-farm laws and exemptions enjoyed by this type of agriculture.\(^{406}\)

Through our contribution, we hope to forge a pathway for the many more analyses that are needed at this juncture. In particular, more research is necessary to determine which other human rights are violated or threatened by animal agriculture, such as the right to life, housing, privacy, and family life. Future research should notably also explore the responsibility of agricultural businesses to protect these human rights and how such actors can be held accountable for violations.\(^{407}\)

As time passes, finding alternatives to CAFOs will become a matter of practical necessity due to the biophysical limits of land, water, and biomass. In the meantime, for the sake of human health and life, animals, and a safe environment, appropriate regulation—including and perhaps especially on the international plane—is essential to anticipate, address, and remedy these violations. International human rights lawyers are uniquely equipped to address these issues and contribute to the further development and reconceptualization of this nexus, acting as catalysts for much-needed change.

\(^{406}\) Ruhl, *supra* note 111, at 263; see also Alford & Berger Richardson, *supra* note 44, at 136 (“RTFs [right-to-farm laws] have failed to adapt to changing industry standards in agricultural production and to incorporate the level of public accountability required to ensure the continued sustainability of the industries and lands they exist to protect.”).

\(^{407}\) See *supra* text accompanying note 24.