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Animal Protection Law of the PRC and
Prevention of Cruelty to Animals Law of the PRC
—Experts' Proposal and the Public Response

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反虐待动物法：
专家建议与各界争锋

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前 言

一些人问研究小组，为什么要起草《动物保护法》或者《反虐待动物法》（专家建议稿）？其中的理由，本书的立法建议部分将予以充分地阐述。研究小组在这里想说的是，善待动物是人类文明进化的表现，虐待动物是任何国家、任何社会都接受不了的社会丑恶现象，危害极大，而且道德谴责在阻止虐待动物方面苍白无力。研究小组顺应世界文明发展的潮流，开展反虐待动物立法研究和立法推动工作，既是发展中华民族几千年来怜悯生命的良好传统的需要，也是坚持现代生态文明、坚持物质文明和精神文明“两手抓，两手都要硬”的方针、建设人和动物和谐相处、人与人和谐共处社会的需要。

一些人问研究小组，为什么中国社会科学院法学研究所要牵头组织研究反虐待动物立法项目研究？答案有两个：其一，众所周知，中国社会科学院隶属于中共中央和国务院，是这两家机构最重要的思想库和智囊团。该院一向以研究深入、观点客观、发言权威和成果影响大而著名。中国社会科学院学者的重要建议经常得到国家的高度重视。中国社会科学院的这些优势，是任何其他科研机构和国家部委难以做到的。在中国推动动物保护立法必需但艰难的今天，由中国社会科学院的著名学者牵头来研究，并把自己的研究成果报送给中国最高层参考，是促进社会文明建设的一条途径。在中国社会科学院，相关的动物保护法研究机构是法学研究所社会法研究室。该研究室在国际国内的学术地位非常高。该研究室的现任主任是在环境资源法和动物保护法研究方面非常有造诣的著名学者常纪文研究员，由他来领衔牵头研究动物保护立法项目，具有明显的学术优势。其二，中国的立法一般由全国人大专门委员会、国务院部委委托科研机构的学者参加甚至主持起草，然后提交全国人大或者国务院审议通过。中国社会科学院法学研究所在国家法制建设中发挥了巨大的作用，参加起草、主持起草了中国的一些重要立法和国家文件，如《国务院关于落实科学发展观 加强环境保护的决定》、《大气污染防治法》、《水污染防治法》、《野生动物保护法》等 30 多部环境资源方面的法律法规。也就是说，法学研究所的动物保护和环境资源立法参与能力得到了国家的认可。由其著名学者领衔研究反虐待动物立法，具有明显的技术和经验优势。中国土产畜产进出口总公司梁小宁等实务界人士的参与，使立法研究的实践性更加突出。

一些人问研究小组，你们的研究项目从启动到完成，为什么会引起社会广泛的关注和讨论？原因有三个：首先，我们做的是有利于维护和提高中华文明的事，

目的纯正。心正做事就会得到广大支持。其次，一批有良知的中国人，特别是一些接受过良好教育的知识分子，如毛主席晚年的古诗伴读芦荻教授等，不仅亲身参与救助，还摇旗呐喊，期望中华民族怜悯生命的传统能够在社会转型期得到延续和发展。最后，一些媒体人，如赵忠祥、崔永元、水均益、李小萌、何晶、张绍刚、撒贝宁、林白、陈新红、张斌、张丹、元元、涂燕、鄢建荣等，看到了社会道德建设中的问题，了解了这些问题所带来的社会危害后果，主动参与进来，在自己的岗位上，自觉自愿地引领中国先进文化和道德宣传教育的方向。尤其值得肯定的是，北京内外的媒体人还自觉组织了动物保护媒体沙龙，定期讨论动物保护的问题和下一步宣传教育的方向。在他们的号召下，一些著名艺人，如蔡国庆、成方圆等也加入到宣传队伍。他们的行动，使反虐待动物的实践得到了升华。这批职业人士亲历亲为的执著行为，是中国良心、良知对落后文化和习俗的抵抗。

反虐待动物立法项目的研究，起始于2007年暑期山东大学法学院主办的“动物福利研讨会”。在会上，中国社会科学院法学研究所与英国防止虐待动物协会(RSPCA)达成促进中国动物保护法研究的协议，当时RSPCA同意合作的前提是支持和尊重中国学者的独立自主性。2008年4月26~27日，中国社会科学院法学研究所与RSPCA召开了“中国动物保护法制建设国际研讨会”。来自国内外的110多人参加了会议。与会代表从多学科、多文化的角度分析了中国加强动物保护立法的必要性，形成了中国现阶段需要起草反虐待动物立法、长远阶段需要起草动物保护法典的共同认识。在中国社会科学院法学研究所学者的认真筹备下，为支持西北政法大学动物保护法研究中心的成立工作，2008年12月21日，《动物保护法》（专家建议稿）起草启动仪式在该校举行。在该会议上，起草小组总负责人和首席专家——中国社会科学院法学研究所社会法研究室主任常纪文研究员分配了起草任务。《新华网》等著名的媒体报道了《动物保护法》（专家建议稿）的启动仪式。

在经过接近7个月的艰辛起草研究工作之后，《动物保护法》（专家建议稿）初稿初步完成。2009年6月13日，中国社会科学院法学研究所与动物守护神共同召开会议，启动《动物保护法教程》的编写工作。2009年6月14日，《人民网》《新华网》《法制晚报》《法制日报》《中国环境报》《凤凰网》等大多数国内权威媒体和《美国之音》《卫报》等著名国际媒体报道了《动物保护法》（专家建议稿）。之后，项目负责人常纪文研究员接受了中国中央电视台新闻频道《新闻会客厅》《实话实说》等节目及北京电视台、上海电视台、齐鲁电视台、《法制日报》《检察日报》《青年周末》《财经杂志》的专访，为推动中国的动物保护立法营造了良好的舆论氛围。

2009年9月18日，中国政府承办了“世界法哲学与社会哲学大会”，来自国内外的1000多人参加了会议。常纪文研究员被国家有关部门指定为此会议环

境法分论坛的会议主席。在该分论坛上，常纪文研究员向国内外的学者和媒体公布了中英文《动物保护法》（专家建议稿）的全部内容，国务院新闻办公室的官方网——《中国网》同时向国内外公布了该稿的中英文条文和解读。当天，《北京日报》《法制晚报》等媒体做了深入报道。2009年9月19日，中央电视台新闻频道《东方时空》《新闻24小时》节目，对常纪文研究员做了长篇采访。北京电视台的晚间新闻播放了对常纪文研究员的15分钟专访。2009年9月22日左右，中国国际广播电台、北京人民广播电台、北京交通电台播放了常纪文研究员对《动物保护法》（专家建议稿）理解的专访。《新华网》《人民网》《上海画报》《中国青年报》《法制日报》《检察日报》《中国环境报》等予以了报道。2009年10月初，中央电视台第12频道《社会与法》节目播放了常纪文研究员参与的动物保护法节目。2009年10月24日晚，香港凤凰卫视《一虎一席谈》节目也播放了常纪文研究员和RSPCA的代表李博先生参与的节目。很多关注此事项的人给起草小组写信或者邮件，反映自己的看法。截至2010年2月1日，共收到国内约300条书面或者电子邮件建议，收到全国人大法制工作委员会、国务院新闻办、国家农业部、国家林业局等机关或部门的直接或者间接反馈。由于很多人认为《动物保护法》范围过宽，在现有国情下可操作性不强，不利于动物的保护，为此，2009年年底，起草小组决定在前期工作的基础上，既完善《动物保护法》（专家建议稿），也起草《反虐待动物法》（专家建议稿）。区别在于，《动物保护法》（专家建议稿）是参考国外立法现状，满足中国未来二三十年的长远需要起草的，而《反虐待动物法》（专家建议稿）是现在急需的。

由于动物守护神长期坚持反虐待动物的理念，且致力于以中国的国情为基础理性地促进中国的反虐待动物工作，2010年1月中旬，中国社会科学院法学研究所与该公司达成战略合作协议，决定其参与资助《反虐待动物法》（专家建议稿）的起草和2010年中国动物保护与管理法制建设国际研讨会所需要的经费。2010年1月底，《反虐待动物法》（专家建议稿）部分内容公布，其中涉及可能禁食猫狗肉的条款引起社会广泛且激烈的争论。一部分人认为，食猫、狗肉是中国的传统，动物就是一盘菜，是人类可利用的对象，政府不应当管。而另外一部分人认为，猫狗属于高智动物，食猫、狗肉太残忍，不人道。从收到的国外1000多封电子邮件的情况来看，国外的舆论则一边倒，倾向于完成禁止食猫、狗肉。这个态度上的差异令人深思。其后，起草小组尊重公众的意见，坚持原则性与灵活性、倡导性与强制性相结合的原则，修改了原来的条文，基本平息了争论。

2010年3月20日，《反虐待动物法》的中英文专家建议稿在《中国网》上公布，《动物保护法》（专家建议稿）法文版被欧洲学者自愿翻译并发布。之后，中央电视台《新闻调查》节目播放了被偷盗的猫狗因为法律上的缺失不断走上餐桌的节目，常纪文研究员在节目中予以点评，指出中国急需《反虐待动物法》或

者《动物保护法》予以制止。2010年3月27~28日，中国社会科学院法学研究所、动物守护神、RSPCA共同召开盛大的“中国动物保护与管理法制建设国际研讨会”，讨论《反虐待动物法》（专家建议稿）及修订刑法的相关建议。来自国内外的184人参加了会议。全国人大法工委、全国人大环资委、环境保护部、科技部、司法部、国家林业局、北京市农业局、北京市公安局、陕西省人大派代表出席会议并聆听发言。虽然会议代表争锋相当激烈，但还是形成了同意促进《反虐待动物法》的如下6个共识：一是立法有必要。无论是制定《反虐待动物法》，还是把有关条文融入其他法律中，都可以，我们都赞成。二是立法规划的纳入，无论是常规的方式还是非常规的方式，我们都赞成。三是《反虐待动物法》名字简单易懂，针对性强，反映了社会的底线共识，是绝大部分人同意的，少数人建议改。四是现在宜粗不宜细，以后宜细不宜粗。五是现在多些提倡，少些处罚；条件具备后，适当增加处罚条款。六是对未成年要采取挽救、挽救再挽救的措施；如果需要处罚，要慎重、慎重再慎重。对于会议信息，《中国网》《法制日报》《中国环境报》等重要媒体都予以了报道，其中《中国网》进行现场直播。中央电视台“聚焦三农”节目于2010年4月2日报道了会议信息。此次会议将中国的动物保护立法促进与宣传推到了一个新的高度。针对中学生虐待动物频发的社会现象，2010年4月，常纪文研究员再次做客中央电视台法制频道的《我建议》节目，阐述中国加快《反虐待动物法》立法的必要性。

2010年6月底，开放化、科学化、民主化的专家建议稿由中国社科院上报中央，2010年7月底，国家林业局出台规定禁止动物园进行虐待性表演。起草小组正在与全国人大、农业部、国家林业局、商务部开展有序的磋商，沟通意见，讨论专家建议稿存在的相关问题，并在法律、法规和规章的层次上推动中国的反虐待动物立法工作。

动物保护和反虐待动物的立法研究和推动工作，从2007年7月开始，至今已经3年了。在这3年之中，研究小组既遇到了前所未有的困难（如网络批评甚至人身攻击），也收获了国际社会的一致肯定和国内大多数民众的支持。总地看来，在国际国内的广泛关注下，在各方面的共同参与和推动之下，社会的动物保护理念或者意识在这3年之中上升了一个台阶，全国人大、环境保护部、农业部、科技部、司法部、商务部、国家林业局等也开始关注甚至参与、指导研究小组的项目活动。这说明，反虐待动物立法取得了阶段性的成果。基于此，研究小组把相关的成果和社会评价予以汇总出版，希冀对中华文明的健康发展有所贡献。

最后，对支持动物保护和反虐待动物的立法研究和立法推动的所有领导和朋友表示衷心的感谢！

Preface

Some people have asked the research team why China needs to introduce an Animal Protection Law or a Prevention of Cruelty to Animals Law. The research team addresses this question in detail in the “Experts’ Proposal” section of this book. Suffice it to say here that kindness to animals is an indication of the progress of human civilization. Cruelty to animals is an ugly social phenomenon unacceptable in any country and any community. It is very damaging to society. Moral pressure alone may be too indistinct and impotent to effectively prevent cruelty to animals. In line with trends in social progress around the world, the research team has begun to explore animal cruelty prevention and to work on promoting legislative change. This work serves the need to maintain and further develop the Chinese people’s long tradition of compassion for life. At the same time, it will strengthen ecological awareness, as well as both material and spiritual development, and will fulfill the need to build harmony between people and animals, and between people and people in society.

Some people have asked the research team why the Chinese Academy of Social Sciences (CASS) was requested to organize the prevention of cruelty to animals legislation research program. There are two reasons: Firstly, it is public knowledge that CASS is under the State Council of the Chinese Central Government and the Chinese Communist Party Central Committee, the highest institutes of political power in China. CASS is the most important think tank of these two organizations. In China today a decision on animal protection legislation is necessary but difficult. For a well-known scholar of CASS to lead the research and to present his report to China’s highest levels for reference is one approach to promoting social progress. Within CASS, it is the Social Law Research Office of the National Institute of Law that has undertaken this research on animal protection. This office has very high academic status in China and internationally, and is headed by the well-known scholar Prof Chang Jiwen who has had notable achievements in the research fields of environmental resources legislation and animal protection legislation. For him to lead the research for the animal protection legislative program has obvious academic advantages. Secondly, the legislative process in China generally starts from the National People’s Congress (NPC) specific

committees or the ministries and commissions under the State Council, which authorize scholars from relevant scientific research institutes to participate and even to lead the drafting. Then the draft is submitted to the NPC or the State Council for examination and approval. CASS National Institute of Law can exercise very important influence over the development of national legislation. It participates in legislative drafting and to date has also been responsible for producing more than 30 important laws or regulations concerning environmental resources, such as the order for “Strengthening Environment Protection by Implementing a Scientific Outlook on Development” issued by the State Council, “Air Pollution Control Act”, “Water Pollution Control Act” and “Protection of Wild Animals Act”. That is to say the government recognizes the participation and competence of CASS National Institute of Law in respect of animal protection and environment resources legislation.

The research program on the prevention of cruelty to animals started in the summer vacation of 2007 when an Animal Welfare Forum took place at the Law School of Shandong University. At the forum CASS National Institute of Law and the Royal Society for Prevention of the Cruelty to Animals (RSPCA) reached an agreement to promote research on animal protection legislation in China. The RSPCA agreed as a precondition for co-operation to support and respect the independence of the Chinese research scholars. On 26-27 April 2008, CASS National Institute of Law and the RSPCA organized an International Forum on Animal Protection Legislation in China. There were more than 110 participants from within China and overseas. From different scientific and cultural angles the participants analyzed the need to strengthen China’s animal protection legislation. As result, there was consensus that in the immediate term China should start drafting anti-cruelty law and in the longer term draft comprehensive animal protection legislation. On 21 December 2008 scholars of CASS National Institute of Law gathered to mark the establishment of the Animal Protection Law Research Center of Northwest University of Politics and Law in Xi’an. At the same event they organized a launch ceremony for the drafting of the Animal Protection Law Experts’ Proposal. Prof. Chang Jiwen as the leader of the expert drafting team and head of the Social Law Office of CASS National Institute of Law, assigned the drafting of the law’s various chapters to individual scholars. Xinhuanet and other major media reported the launch ceremony. After seven months of hard work the first draft of the Animal Protection Law Expert’s Proposal was completed. On 13 April 2009, CASS and Animal Guardians held a meeting to start the work of compiling an animal protection law textbook. At the meeting Prof. Chang released the news to the Chinese

media.

On 14 June 14 2009, the news appeared on Chinese media websites and in newspapers, including People.com, Xinhuanet, The Mirror, Legal Daily, China Environment News, Phoenix TV, while Western media such as The American Voice, The Guardian, etc. later reported the news of the completion of the draft experts' proposal. Afterwards, Prof. Chang was interviewed by CCTV News Programs – “People in the news”, “Tell it as it is”, etc. and Beijing TV, Shanghai TV, Qilu TV, Legal Daily, Prosecution Daily, Youth Weekend, Financial Magazine. These activities created a good atmosphere for the promotion of China's animal protection legislative program.

On 18 September 2009, the Chinese Government hosted the 24th World Congress of the International Association for Philosophy of Law and Social Philosophy. More than 1,000 people attended the Congress. Prof Chang was appointed chairman of the workshop on Environmental Law Science. At the workshop Prof Chang announced the full contents of the Animal Protection Law Experts' Proposal to the international scholars and media. At the same time, China.com.cn, the official site of the State Council News Office published the full drafts of these laws with explanations. On the same day, Beijing Daily, the Mirror and other media covered the news in depth. On 19 September 2009, CCTV News Programs Oriental and News 24hrs interviewed Prof Chang Jiwen in detail. That evening Beijing TV news broadcast a 15-minute special interview with Prof. Chang. Around 22 September, China Radio International, Beijing People's Radio, Beijing Traffic Radio broadcast the special interview with Prof. Chang on understanding the Animal Protection Law Experts' Draft. Xinhuanet, People.com.cn, Shanghai Pictorial, China Youth Daily, Legal Daily, Prosecution Daily and China Environment News also covered the news. At the beginning of October 2009, CCTV Channel 12's program The Society and the Law broadcast Prof. Chang's participation in Animal Protection Legislation. On the evening of 24 October, the popular Phoenix TV website ifeng.com also presented the program in which Prof Chang and Mr. Paul Littlefair of the RSPCA participated. Many members of the public interested in this matter emailed letters to the drafting team to give their views. Up to 1 February 2010, about 300 items of correspondence suggesting amendments to the draft were received from within the country. The NPC Legal System Committee, the State Council News Office, Ministry of Agriculture and the Administration Office of Forestry also gave their feedback directly or indirectly. Many people considered that the scope of the Animal Protection Law was too broad and under China's current conditions enforceability would be weak. This would not be beneficial to

animal protection. Therefore, by the end of 2009 the drafting team had decided to further refine the Animal Protection Law Experts' Draft into a Prevention of Cruelty to Animals Law Experts' Draft.

In view of Animal Guardians' long history of campaigning against animal cruelty, CASS reached an agreement with the US-based organization in January 2010. The agreement set terms for Animal Guardians' participation in and funding of the research project of the Prevention of Cruelty to Animals Law Proposal and the Conference on Chinese Legislation for the Protection and Management of Animals, which was to be held in Beijing in March 2010.

At the end of January 2010, part of the proposed experts' draft of the Prevention of Cruelty to Animals Law was published, which suggested a possible ban on dog and cat meat consumption. The proposals attracted wide public discussion. Within China the debate was very heated. Some people felt that dog and cat meat were part of China's culinary tradition, and that the government should not concern itself with which animals people choose to eat. Others felt that dogs and cats are highly intelligent animals and that to eat them is inhumane. More than 1,000 emails received from outside China generally indicated a preference for a total prohibition on dog and cat meat. The wide difference of views required deep reflection. Consequently, the drafting team took into consideration views from the various interested parties, and amended the original draft by merging the principles of flexibility, advocacy and regulation.

The experts' draft proposals of the Prevention of Cruelty to Animals Law were made public on the internet on 20 March 2010. After that the CCTV News Program "News Investigation" broadcast a program showing the trade in stolen pet cats and dogs destined for the table. Prof Chang Jiwen gave provided commentary on the program. He pointed out that China urgently needs a Prevention of Cruelty to Animal Law. On 27-28 March 2010, CASS National Institute of Law, Animal Guardians and the RSPCA jointly held the International Forum of Chinese Legislation for Protection and Management of Animals to discuss the Prevention of Cruelty to Animals Law Experts' Proposal and the additional Experts' Proposal of amendments to the Criminal Law of PRC. A total of 184 participants from within China and overseas attended. The NPC Legal System Office, NPC Environment and Resources Committee, Ministry of Environmental Protection, Ministry of Science and Technology, Ministry of Justice, the State Administration of Forestry, Beijing Agriculture Bureau, Beijing Public Security Bureau, Shaanxi Province People's Congress, Shaanxi Province Forestry Bureau sent representatives to listen and express their views. There were heated and complex

debates. However, the conference eventually reached the consensus that the Prevention of Cruelty to Animals Law should be pushed forward. At the same it considered that at present the proposed draft should be general and not too detailed. The major media such as China.com.cn, Legal Daily, China Environment News all reported on the conference. China.com.cn broadcast the conference live. CCTV Channel 3's Agriculture News Program broadcast the news of the conference. This event had carried publicity for the promotion of China's animal protection legislation issue to new heights. In the light of the social phenomenon of animal cruelty carried out by middle school students, in April 2010, Prof Chang appeared as a guest on the CCTV Legal Program—My Recommendation. He explained the urgent need for China to enact a Prevention of Cruelty to Animals Law.

Currently, the drafting team and the NPC, Ministry of Agriculture, the State Administration of Forestry and Ministry of Commerce are undertaking systematic consultation, exchange of views and discussions to thrash out remaining problems in the experts' proposed draft. At the same time, they are pushing forward at the level of law and regulation China's anti-cruelty legislative work.

It has been three years since July, 2007 when the prevention of cruelty to animals law research and promotion started. In this time the research team encountered unprecedented difficulties, even personal attacks on the internet and elsewhere. However, it also received positive responses from the international community and the majority of the Chinese public. On the whole, with the overwhelming attention of those inside China and internationally, and the involvement and promotional help from many quarters within China and internationally, the public's concept and awareness of animal protection have escalated steadily in three years to a higher level. The NPC, Ministry of Environment Protection, Ministry of Agriculture, Ministry of Science and Technology, Ministry of Justice, Ministry of Commerce and the State Administration of Forestry are beginning to pay more attention, even to participate and lead the research team in its activities. This shows that legislation on the prevention of cruelty to animals has made significant strides. Based on this the research team has compiled its research results and the public's response in this publication, which we hope can serve to play a role in promoting social progress within China.

Lastly, we would like to sincerely thank all friends who support animal protection or anti-cruelty legislation research and the promotion of such legislation!

Editorial team

15 August 2010

立法促进的精彩瞬间



在2007年山东大学法学院召开的动物福利立法研讨会上，中国社会科学院法学研究所与英国防止虐待动物协会达成促进中国动物保护立法研究的协议



2008年4月26~27日，中国社会科学院法学研究所与英国防止虐待动物协会举办中国动物保护法制建设国际研讨会



2008年12月21日，中国社会科学院法学研究所与英国防止虐待动物协会、国际爱护动物基金会合作的《动物保护法》(专家建议稿)研究项目启动仪式在西北政法大学举行



2009年6月17日，首席起草专家常纪文研究员做客中央电视台新闻频道《新闻会客厅》节目，介绍《动物保护法》(专家建议稿)的基本情况

2009年8月3日，首席起草专家常纪文研究员做客中央电视台新闻频道《实话实说》节目，宣传反虐待动物立法



2009年9月18日，首席起草专家常纪文研究员在其任主席的第24届世界法哲学和社会哲学大会环境法分论坛上公布《动物保护法》（专家建议稿）。次日，中央电视台新闻频道《东方时空》播放此消息



2009年10月24日，常纪文研究员作客凤凰卫视《一虎一席谈》节目，宣传反虐待动物立法

2010年3月，常纪文研究员接受美国CNN采访，论证中国加强反虐待动物立法的必要性





2010年1月17日，中国社会科学院法学研究所与动物守护神达成第二届中国动物保护与管理法制建设国际研讨会战略合作协议



2010年3月27~28日，中国社会科学院法学研究所、动物守护神与英国防止虐待动物协会共同主办中国动物保护与管理法制建设国际研讨会，来自国内外的184人参加了会议



会议主席常纪文研究员主持中国动物保护与管理法制建设国际研讨会（北京2010）