

PERSPECTIVES ON EMERGING ISSUES IN INTERNATIONAL ENVIRONMENTAL LAW: THE ROLE OF HUMAN DIGNITY IN ACHIEVING THE UN SUSTAINABLE DEVELOPMENT GOALS¹

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Abstract: Sustainable development – the idea that human development must be realized in conjunction with a commitment to leave for future generations an environment at least as livable as presently enjoyed – has become a common if not ubiquitous feature in legal expressions at the international, national and subnational levels, culminating in the United Nations setting 17 Sustainable Development Goals (SDGs) to achieve by 2030. What is not often appreciated is that the core purpose of the SDGs is to advance human dignity, which coheres and complements them. This article explores how the concept of dignity has evolved in law, what it means to environmental protection, and how taking it seriously would contribute to better outcomes in achieving the SDGs. Ultimately, taking due account of human dignity has the power to inform, if not transform, discourse about and implementation of the SDGs.

Keywords: Human dignity, dignity rights, sustainability, Sustainable Development Goals, environmental human rights, climate change

1 INTRODUCTION

‘Sustainability’ – the idea that those living have a responsibility to leave for future generations an environment at least as livable as presently enjoyed – has witnessed dispersive distribution, including applications to energy policy,² constitutionalism (MAY, 2018, p.130) e (MAY, 2017, p.308-318), and the concept of ‘sustainable development’. (MAY, 1998, p.197-212). The latter has become a common if not ubiquitous feature in legal expressions at the international, national and subnational levels, culminating in the United Nations setting 17 Sustainable Development Goals (SDGs) to achieve by 2030. (UNGA, 2015).

² See, generally, John C. Dernbach and James R. May, *Shale Gas and the Future of Energy: Law and Policy for Sustainability* (Edward Elgar, 2016); James R. May and John C. Dernbach, ‘Introduction: Shale Gas and the Future of Energy’ in *ibid.* at 1-16; John C. Dernbach and James R. May, ‘Shale Gas and Sustainable Future’ in *ibid.* at 293-308; James R. May and Erin Daly, ‘Ten Good Practices in Environmental Constitutionalism That Can Contribute to Sustainable Shale Gas Development,’ in Jordi Jaria i Manzano, Nathalie Chalfour and Louis J. Kotzé (eds), *Energy, Governance and Sustainability* (Edward Elgar, 2016) at 30-55; John C. Dernbach and James R. May, ‘Can Shale Gas Help Accelerate the Transition to Sustainability?’, 57(1) *Environment: Science and Policy for Sustainable Development* (2015) 4-15.

The SDGs face myriad conceptual, structural and other challenges, most importantly that they are often treated as if disconnected from within.³ For instance, the annual United Nations High Level Political Forum on Sustainable Development⁴ (formerly the UN Commission on Sustainable Development) focuses on a few connected SDGs at a time, such as (in 2019) achieving SDGs 13 (climate action) and 17 (peace, justice and strong communities). Moreover, the concept of ‘sustainability’ has a growing cadre of critics who hold that the concept has reached the limits of its own utility, is not a reliable basis for governance, has not much improved environmental outcomes, is no match for the Anthropocene, and should be replaced by the goal of ‘resilience.’⁵

Yet these criticisms and challenges overlook, if not ignore, the SDGs’ core purpose: to advance human dignity, which coheres and complements them. Appreciating this profound, if simple, attribute warrants exploration of the concept of dignity, how it has evolved in law, what it means to en-

3 See, for instance, John H. Knox, ‘Human Rights, Environmental Protection, and the Sustainable Development Goals’, 24 *Washington International Law Journal* (2015) 517-536 at 524 (‘the specific targets are often written in language that is neither concrete nor closely linked to existing human rights obligations.’); Ranjula Bali Swain, ‘A Critical Analysis of the Sustainable Development Goals’ in Walter Leal Filho et al. (eds), *Handbook of Sustainability Science and Research* (Springer, 2017) 341-355 at 341 (‘The ambitious UN adopted Sustainable Development Goals (SDGs) have been criticized for being inconsistent, difficult to quantify, implement and monitor.’); Jayati Ghosh, ‘3 obstacles that stand in the way of the UN’s Sustainable Development Goals’ (World Economic Forum, 2019), available at <<https://www.weforum.org/agenda/2019/09/3-obstacles-that-stand-in-the-way-of-the-un-s-sustainable-development-goals>> (visited 25 August 2020) (‘For starters, the international economic architecture and associated patterns of trade and capital flows continue to drive inequality... Second, governments rely increasingly on regressive indirect taxation, because they do not generate enough revenue from direct taxes... Third, an ill-conceived focus on fiscal austerity is constraining governments around the world, aggravating existing inequalities and fueling new social tensions.’); Laura Ortiz Montemayor, ‘The trouble with the UN SDGs 2030 global goals’ (Medium, 2018), available at <<https://medium.com/@lauraom/the-trouble-with-the-un-sdgs-2030-global-goals-99111a176585>> (visited 25 August 2020) (‘True Sustainable Development Goals would include individual empowerment, economy at the service of people and planet.’)

4 See <<https://sustainabledevelopment.un.org/hlpf>>.

5 See, for instance, Melinda Harm Benson and Robin Kundis Craig, *The End of Sustainability. Resilience and the Future Of Environmental Governance in the Anthropocene* (University of Kansas Press, 2017) (‘The time has come for us to collectively reexamine – and ultimately move past – the concept of sustainability in environmental and natural resources law and management.’). Cf., Frederico Cheever and John C. Dernbach, ‘Sustainable Development and its Discontents’, 4(2) *Transnational Environmental Law* (2015) 247-287 (supporting concept). See also John C. Dernbach, ‘Navigating the U.S. Transition to Sustainability: Matching National Governance Challenges With Appropriate Legal Tools’, 44 *Tulsa Law Review* (2008) 93-120 at 120: ‘The suggested legal structure includes a required national strategy, long-term and short-term goals, better integration of environment into decision making across and among various levels of government, public education and engagement, a broad range of legal and policy tools, feedback mechanisms to foster learning, and designated governmental entities for coordinating or managing this effort as well as providing an independent review of their efforts.’

vironmental protection, and how taking it seriously would contribute to better outcomes in achieving the SDGs. Ultimately, taking due account of human dignity has the power to inform, if not transform, discourse about and implementation of the SDGs. (MAY & DALY, 2020).

Section 2 briefly summarizes how sustainability is reflected in law, primarily through the SDGs. Section 3 describes relevant legal expressions of human dignity. Section 4 then explores how human dignity informs understanding and implementation of sustainability, and Section 5 how advancing human dignity is the core purpose of the SDGs. Section 6 concludes the paper.

2 SUSTAINABILITY, THE SDGS, AND LAW

Sustainability has a vast reach, embodying environmental, social and economic equity in a variety of contexts, including dignity (DALY & MAY, 2016, p. 218, 242), human rights (UN Doc. A/HRC/28/6, 2015, p.11-12), climate change, access to and availability of fresh water (MAY, 1998), shale gas development (DERNBACH & MAY), corporate practices, and higher education, among others.

Sustainability is also a central feature in international and domestic relations (MAY & KELLY, 2012, p.13-24). It has long served as a general principle of international environmental law, including as an interpretive principle in international accords (PANJABI, 1997) and by international tribunals resolving environmental disputes. (HIGGINS, 1999).

Domestically, sustainability has infiltrated constitutionalism around the globe. Presently, more than three-dozen countries incorporate sustainability in their constitutions by advancing ‘sustainable development’, the interests of ‘future generations’, or some combination of these themes. (MAY & DALY, 2015)⁶ Switzerland’s constitution, for instance, contains a section

⁶ See James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press, 2015), Appendix E and associated text (denoting the role of sustainability in the development of international and national law, and analyzing constitutional provisions that embed sustainability from around the world); James R. May, ‘The North American Symposium on the Judiciary and Environmental Law: Constituting Fundamental Environmental Rights Worldwide’, 23 *Pace Environmental Law Review* (2006) 113-182, Appendix B (listing countries that

entitled ‘Sustainable Development’, which provides that ‘[t]he Confederation and the Cantons shall endeavor to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.’⁷ Albania’s constitution proclaims that the state ‘aims to supplement private initiative and responsibility with: Rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development.’⁸ Colombia’s constitution requires policy-makers to ‘plan the handling and use of natural resources in order to guarantee their sustainable development...’⁹ These constitutional provisions help bridge the gap left by international and domestic laws, even given the array of sustainability provisions already in existence.

That is not to say, however, that sustainable development has been implemented as a governing legal principle. For instance, while South Africa’s constitution was among the first to embrace sustainable development in 1996, the provision has had little practical effect. (KOTZÉ, 2012-2013) Likewise, while Section 225 of the Brazilian constitution requires that governmental policies promote ecologically sustainable development, apex courts there rarely enforce this provision.¹⁰ On the other hand, sustainability has earned a foothold with some international tribunals. (HIGGINS, 1999, p. 87-111). Nonetheless, even though the vast majority of these provisions do not create judicially enforceable rights, they affirm national values of environmental sustainability to which policy-makers and courts may advert.

The most significant international expression of sustainable development is the United Nations’ 2015 Sustainable Development Goals, which are the culmination of four decades of multidisciplinary and legal thinking about what sustainable development means, and grasping that, how to effectuate it. The SDGs are 17 ‘Goals’ to achieve by 2030, including protecting biodiversity; ensuring clean water, air, land and food; ending poverty,

have constitutionally entrenched environmental policies as governing principles, some including sustainability).

7 Constitution of Switzerland, Ch. II, § 4, Art. 73.

8 Constitution of Albania, Part II, Ch. 5, art. 59(1)(dh).

9 Constitution of Colombia, Title II, Ch. 3, Art. 80.

10 For instance, *Associação Nacional do Transporte de Cargas e Logística v. Governador do Estado de São Paulo, S.T.F., ADPF 234 MC/DF, DJe 06.02.12 (Rel. Min. Marco Aurélio) (Braz.)* (case brought by asbestos transporters against a state law on constitutional grounds).

hunger and discrimination; and providing access to justice and opportunity for the future. (HIGGINS, 1999, p. 87-111). The SDGs

are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including those related to poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. The Goals interconnect and in order to leave no one behind, it is important that we achieve each Goal and target by 2030. (UN, 2020)

The adoption of the SDGs has the potential to influence law (if soft at that) under international and domestic regimes. (ARAJÁRVI, 2017) Specifically, sustainable development has served as a mostly normative concept in international, regional and domestic law. (VIÑUALES, 2019). In addition to the SDGs and other mechanisms designed to advance sustainable development directly, the concept of sustainable development informs or animates international law under various international accords, including Article 12 of the Kyoto Protocol (1998) (the ‘Clean Development Mechanism’) and in Article 6(4) of the Paris Agreement (2015-2016) (often called ‘Sustainable Development Mechanism’). Regionally, sustainable development is also an explicit component of several bilateral and regional trade agreements, including the 2018 European Union Action Plan on Trade and Sustainable Development.

Moreover, sustainable development has played an explicit or normative role in shaping the adjudication of international law. As to the former, the World Trade Organization (WTO) Appellate Body¹¹ invoked the General Agreement on Tariffs and Trade’s¹² expressed objective of sustainable development when interpreting the terms ‘exhaustible natural resources’ under Article XX(g) (‘relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption’) as reflecting ‘contemporary concerns of the community of nations about the protection and conserva-

11 See <https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm>.

12 General Agreement on Tariffs and Trade, Marrakech, 15 April 1994, available at <<http://www.wto.org>>.

tion of the environment.’ (WTO, 1998, p. 129). Similarly, in *China – Raw Materials*, the Panel noted ‘that the international law principles of sovereignty over natural resources and sustainable development... are relevant to our interpretive exercise in this dispute.’ (WTO, 2012, p. 306).

The *Gabčíkovo-Nagymaros* case provides an example of the latter, where the International Court of Justice noted that sustainable development had ‘to be taken into consideration, and... given proper weight, not only when States contemplate ³⁶ new activities but also when continuing with activities begun in the past.’¹³

Regional adjudicative bodies have made reference to sustainable development or, at least, to integration, even in the absence of a specific treaty basis, including in the *Ogoni* case, where the African Commission on Human and Peoples’ Rights¹⁴ reasoned that Article 24 of the African Charter on Human and Peoples’ Rights¹⁵ (the collective right to a generally satisfactory environment) required Nigeria ‘to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources’. (SERAC, CESR, 2001). Domestic courts have been least receptive to sustainable development, however, including in the United States. (MAY, 2009, 20-29, 81-82). These adjudicative developments noted, it is fair to observe that sustainable development seldom provides a ‘decision-making function’, and should be ‘considered a normative concept’, rather than a rule. (VIÑUALES, 2019).

What can be lost in conversations about the SDGs is the elegant idea that dignity stitches them together. Understanding the implications of this simple step warrants exploration of the concept of dignity, how it has evolved in law, what it means to environmental protection, how it is a core purpose of the SDGs, and how taking it seriously would improve implementation of the SDGs, discussed below.

13 *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, ICJ Reports (1997) 7, para. 140.

14 See <<https://www.achpr.org/>>.

15 African Charter on Human and People’s Rights, Nairobi, 27 June 1981, in force 21 October 1986, 21 International Legal Materials 58.

3 HUMAN DIGNITY AND LAW

Dignity refers to the inherent humanness of each person; it is an elemental value that presupposes that every human being has equal worth. It emphasizes the fundamental value and equality of all members of society – humans not only are endowed with dignity, but each is endowed with an equal quantum of dignity. (DALY, 2020, 2018, 2019, 2015, 2008)¹⁶

But it was not always thus. As a philosophical matter, in ancient Western traditions, for instance, dignity was ordinarily reserved to denote high social or political *status*. The Stoics then developed the *humanness* of dignity, that is, the idea that every person considered to be a person possesses dignity; this may have expanded the scope of application of the conception but still left out the half of the population that was female, as well as most immigrants, the conquered, the enslaved and the rest whose status as citizens could be questioned. Cicero's writings may have reflected both the status conception and the inherence conception applied slightly more broadly. (CÍCERO, 1965). In the Islamic world, by contrast, a distinctive dignity was given to all 'children of Adam'. (KAMALI, 2002). Middle-ages Christian theology then aligned dignity with human suffering (BAYERTZ, 1996). and again limited its applications to those within the defined community.

Some early Renaissance humanist scholars wrote about man's distinctiveness from other planetary inhabitants and his – always *his* – capacity for the exercise of free will, in sometimes uneasy conversation with Church teachings. (MIRANDOLA, 1956). As notions of citizenship expanded and with it notions of humanity, Enlightenment and other philosophers began to consider that dignity inhered in the human person and did not have to be granted by the will of another. With Immanuel Kant in the

¹⁶ See, generally, Erin Daly, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (University of Pennsylvania Press, 2d ed., 2020); Erin Daly and James R. May, 'A Dignity Rights Primer', 3 *Juriste Internationale* (2018) 21; James R. May and Erin Daly, 'Why Dignity Rights Matter', 19 *European Human Rights Law Review* (2019) 129-134; Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press, 2015); Catherine Dupré, *Age of Dignity: Human Right and Constitutionalism in Europe* (Hart Publishing, 2018); Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', 19 *European Journal of International Law* (2008) 655-724 at 667 and 718.

lead, the seeds of universal dignity were sown. (HARPER & ROW, 1964), (LIBERTY CLASSICS, 1987), (P. F. COLLIER & SON COMPANY, 1938); (ROUTLEDGE & KEGAN PAUL, 1977).¹⁷ Many Eastern traditions reflected congruent considerations of human dignity. (BRÜNING, 2013, p. 150-175). Twentieth century philosophers, including Hannah ARENDT (1949, p. 24-36). and Ronald Dworkin (2011 and 2018), also drew attention to the place of dignity in the human experience, now as an inherent and truly universal concept.

As understood in modern times, dignity has six interconnected elements. First, each person – every member of the human family – has value; no one can be dismissed, ignored, mistreated, or abused as if their humanity means nothing. Dignity stands for the proposition that each person's humanity *means something* and has *worth*. Each person has a right to live as if his or her life matters and to be treated 'as a person'. (DALY & MAY, 2016).

Second, each person's worth is equal to every other person's. As we have noted elsewhere,

No one's life is more important than any other person's. If each person's right to agency, to self-development, to choose one's life course is the same as every other's, then no one can determine another person's choices, treat another as an object, or treat a person as if his or her life does not matter. Despite our differences, in our humanity, we are all equal. It is in dignity that we are united. (DALY & MAY, 2016).

Third, dignity inheres in the human person. The Universal Declaration of Human Rights¹⁸ defines the scope in time and space: it applies to every

17 Immanuel Kant, 'Groundwork of the Metaphysics of Morals' translated and analysed by Herbert James Paton (Harper & Row, 1964). See further, David Hume, 'Of the dignity or meanness of human nature' in Eugene F. Miller (ed. with a Foreword, Notes and Glossary), *Essays Moral, Political and Literary* (revised ed., Liberty Classics, 1987) 80–86; Jean Jacques Rousseau, 'Discourse on Inequality' in Charles W. Eliot (ed.), *French and English Philosophers*. Descartes, Rousseau, Voltaire, Hobbes (P. F. Collier & Son Company, 1938); John Stuart Mill, 'On Liberty' in John M. Robson (ed.), *Collected Works of John Stuart Mill*, Vol XVIII: *Essays on Politics and Society* (University of Toronto Press and Routledge & Kegan Paul, 1977).

18 Universal Declaration of Human Rights (UDHR), Paris, 10 December 1948, <[http://www.ohchr.org/ EN/UDHR/Documents/UDHR_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)> (visited 10 May 2020).

person ‘born’ into ‘the human family.’¹⁹ It requires only birth – not the granting or conferral of dignity by someone with greater dignity (which of course would be impossible given the equality of dignity). This is critically important for understanding dignity’s relationship to law: human dignity transcends positive law; it exists whether law or other conditions recognize it or not. It thus can stand as a *measure* of the justness of law or of a legal regime. Dignity also exists regardless of the conditions in which people live: pollution, poverty, discrimination and so on threaten the ability to live with dignity, but human dignity remains inviolable and inherent in the human person.

Thus, fourth, dignity is universal; it applies to every ‘member of the human family’, wherever and whenever they live. This premise has special significance in the context of sustainability because it implies a principle of intergenerational equity: if those who are born after have the same quantum of dignity that we have, then they are entitled to the same (or better) living conditions, which necessitates an environmentally sustainable planet.

Fifth, dignity instantiates rights. As we will see, the post-war burgeoning of international human rights law rests on the foundation of human dignity, as if to say that once we know dignity, we must assure that people have the right to claim all other rights that will protect their dignity. (ARENDDT, 1949). In this sense, it is what animates rights-based approaches to well-being.

And sixth, it represents a quality of life that every person is entitled to, which includes opportunities for human flourishing and the provision of a level of comfort that includes many of the specific goals that comprise the SDGs.

Despite its ancient roots in philosophical traditions, the idea of dignity is a fairly recent addition to the concept of global governance but, steeped in tradition, shaped by atrocity, and, formed by legal principles at every level and in all parts of the inhabited world, dignity is now reflected throughout the human rights enterprise including in the SDGs. While

¹⁹ Article 1 of the UDHR.

dignity's turn as a legal right was slow in coming, the second half of the twentieth century witnessed a maturity in the development of dignity as a legal right (SKINNER, 1972) and an indispensable component of democracy (DALY, 2011), a process propelled by international and legal urgency in the aftermath of the atrocities of World War II. To be sure, human dignity is a foundation of the Charter of the United Nations²⁰ in 1945 (one of whose purposes is 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'), and the cornerstone of the Universal Declaration of Human Rights in 1948 (adopting the recognition of human dignity in the United Nations Charter and affirming that 'All human beings are born free and equal in dignity and rights').²¹ It is found in *identical* form as a tenet shared by both the Covenant on Civil and Political Rights²² and the Covenant on Social, Economic and Cultural Rights²³ ('Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...'),²⁴ both adopted in 1966 and put into force in 1977.

Dignity has since been recognized in myriad international and regional laws – including the Convention on the Rights of the Child,²⁵ the United Nations Declaration on the Rights of Indigenous Peoples,²⁶ and

20 Charter of the United Nations, 26 June 1945, available at <<http://www.un.org/en/documents/charter/index.shtml>>.

21 Article 1.

22 International Covenant on Civil and Political Rights, New York, 16 December 1966, in force 23 March 1976, 999 United Nations Treaty Series 171.

23 International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, 993 United Nations Treaty Series 195.

24 International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, 993 United Nations Treaty Series 195.l.d. at Preamble.

25 Convention on the Rights of the Child (New York, 20 November 1989, in force 2 September 1990, 28 International Legal Materials 1456), Art. 28(2): 'States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.'

26 'United Nations Declaration on the Rights of Indigenous Peoples', UNGA Res. 61/295 of 2 October 2007, Art. 15: 'Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.'

the African Charter on Human and Peoples' Rights²⁷ – thus stitching international human rights law together with common dignity rights as the thread. In the Americas in particular, the coalescing nature of dignity is patent. The American Declaration of the Rights and Duties of Man, (IACHR, 2020) which predated the Universal Declaration, presaged the foundational role of dignity in the first words of its preamble: 'All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.' (IACHR, 2020) As the articulation of rights became more elaborate, so did the emphasis on dignity: the additional protocol to the American Convention on Human Rights (OAS, 1988-1999) considers

the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified. (OAS,1988-1999)

It is at the constitutional level that dignity rights under law have been most dramatic. Nearly every constitution adopted or significantly amended since 1945 – that is, the constitutions of more than 160 countries – acknowledges a right to human dignity. (SHULZTINER and CARMI, 2014, p. 461–490, 465–466). Simply, dignity matters under law. As constitutionalized, dignity is a fundamental value,²⁸ a stand-alone right,²⁹ or a

²⁷ See, for instance, African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981, in force 21 October 1986, 21 International Legal Materials 58 (Banjul Charter), Art. 5: 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status'; and American Convention on Human Rights, San José, 22 November 1969, in force 18 July 1978, <<https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>> (visited 10 May 2020) (Pact of San Jose, Costa Rica), Art. 11(1): 'Everyone has the right to have his honor respected and his dignity recognized.'

²⁸ Constitution of the Dominican Republic, Art. 42: 'The State [bases itself] on [] respect for the dignity of the person and [] organizes [itself] for the real and effective protection of the fundamental rights [that are] inherent to it. The dignity of the human being is sacred, innate, and inviolable; its respect and protection constitute an essential responsibility of the public powers.'

²⁹ The constitution of Kenya, Art. 28: 'Every person has inherent dignity and the right to have that dignity respected and protected.'. (emphasis added).

right associated with particular pursuits (for instance, the right to work³⁰) or segments of the population (women, disabled people, people in state custody, etc.³¹). Dignity has also been especially influential to constitutionalism in Europe (DUPRÉ) and in the constitutional jurisprudence of countries throughout Latin America, and parts of Asia and Africa. At the heart of dignity jurisprudence is the recognition that governments must respect people's capacity to fully develop their personalities and to control the course of their lives. (DALY, 2016)

Courts around the globe have interpreted such dignity rights to protect people from improvident government action or inaction that adversely affects family relations, education, health, gender equality and against mistreatment while detained, imprisoned, or seeking asylum. (DALY, 2016)

Moreover, courts worldwide are increasingly enforcing constitutionally-recognized rights to dignity, such as the High Court of Justice of the Federal Capital Territory in Nigeria deciding that the police violated a prisoner's constitutional right to human dignity when it handcuffed and paraded him before his wife and children; (FCT, 2011)³² the Lahore High Court in Pakistan striking a law's use of the terms 'disabled', 'physically handicapped', and 'mentally retarded' as a violation of a constitutional right to dignity;³³ and the Constitutional Court of South Africa invalidating the death penalty as a violation of a constitutional right to dignity.³⁴

Courts elsewhere are enforcing constitutionally recognized rights to dignity in an assortment of contexts. We see courts in the United States and Argentina identifying dignity as the foundation for freedom of spee-

30 The constitution of Nepal, Art. 51 (1)(2): '[G]uarantee[ing] social security, [by] ensuring the basic rights of all laborers[] in [accordance] with the concept of [dignity of labor][.]'. (emphasis added).

31 Constitution of the Republic of Haiti, Art. 44(1): 'Prisons must be operated in accordance with standards reflecting respect for human dignity according to the law on this subject.' (emphasis added).

32 *Moses Egenokwu v. Attorney General of The Federation* (FCT High Court, 2011), available at <<https://www.fcthighcourt.gov.ng/download/Microsoft%20Word%20-%20Christian%20onuigbo%20MN.pdf>> (visited 10 May 2020).

33 *Barrister Asfandyar Khan Tareen, etc. v. Govt. of the Punjab*, W-P No. 29131/2017 (Lahore High Court, 2017), available at <<https://delawarlaw.widener.edu/files/resources/brasfandyara.pdf>> (visited 10 May 2020).

34 See, for instance, *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995), available at <<http://www.saflii.org/za/cases/ZACC/1995/3.html>> (visited 10 May 2020).

ch and right of association,³⁵ and in South Africa protecting the ‘civic dignity’ of voting rights and other rights associated with the political process.³⁶ In some countries it is also associated with socio-economic justice including pensions in Germany,³⁷ health care in Colombia,³⁸ travel in India, (*MANEKA GHANDI V. UNION OF INDIA*, 1978) and a clean and stable environment in Nigeria.³⁹ In Israel, it is a ‘mother right’ whose ‘daughters’ include the right of family unity as well as the right of prisoners to be treated humanely, among many other rights (*GOLAN*, 1996) while in Pakistan a narrow textual recognition of dignity has been interpreted as protecting the right to be treated as a person, and to be protected from discrimination.⁴⁰

4 DIGNITY AND SUSTAINABILITY

In understanding the role of dignity and sustainability, it is helpful to begin with recognizing that the concept of human dignity is no stranger to the development of environmental law.⁴¹ International law already acknowledges that the right to human dignity embeds a right to live in a quality environment. The 1972 Stockholm Declaration⁴² – largely viewed as the origin of modern global environmental law – recognizes the ‘fundamental

35 *Asociación Lucha por la Identidad Travesti-Transsexual v. Inspección General de Justicia*, Argentina Supreme Court of Justice (21 November 2006), available at <<https://www.icj.org/sogicasebook/asociacion-luchapor-la-identidad-travesti-transsexual-v-inspeccion-general-de-justicia-argentina-supreme-court-of-justice-21-november-2006/>> (visited 10 May 2020).

36 *August and Another v Electoral Commission and Others* (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999), available at <<http://www.saflii.org/za/cases/ZACC/1999/3.html>> (visited 10 May 2020).

37 *BVerfG*, Judgment of the First Senate of 09 February 2010, 1 BvL 1/09, paras 1-220, available at <http://www.bverfg.de/e/ls20100209_1bvl000109en.html> (visited 10 May 2020).

38 *Sentencia T-292/09* (Constitutional Court of Colombia), available at <<http://www.corteconstitucional.gov.co/relatoria/2009/T-292-09.htm>> (visited 6 February 2019).

39 *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005).

40 *Ameen Masih v. Federation of Pakistan*, Lahore High Court, Case No: W.P.No.623/2016, available at <<https://delawarelaw.widener.edu/files/resources/ameenmasiha.pdf>> (visited 10 May 2020). See, generally, James R. May and Erin Daly, *Human Dignity and Environmental Outcomes in Pakistan*, 10 *Pakistan Law Review* (2019) 1-28.

41 See Erin Daly and James R. May, ‘Environmental Dignity Rights’ in Sandrine Maljean-Duboix (ed.), *The Effectiveness of Environmental Law* (Intersentia, 2017) 125-148; James R. May and Erin Daly, ‘Bridging Constitutional Dignity and Environmental Rights Jurisprudence’, 7(2) *Journal of Human Rights and the Environment* (2016) 218-242 at 234; Dina Townsend, ‘Taking Dignity Seriously: A Dignity Approach to Environmental Disputes before Human Rights Courts’, 6(2) *Journal of Human Rights and the Environment* (2015) 204-225.

42 Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, UN Doc. A/CONF.48/14/Rev.1 (1973), 11 *International Legal Materials* (1972) 1416.

right to freedom, equality, and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being'. The 1990 Hague Declaration expressly acknowledges 'the right to live in dignity in a viable global environment.'⁴³ In 1992, Principle 1 of the Rio Declaration (UN, 1992) focused attention on the human-centered approach of environmental protection and sustainable development in particular: 'Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.' Two years later, the United Nation's influential Ksentini Report is also explicit on the subject:

Environmental damage has direct effects on the enjoyment of a series of human rights, such as the right to life, to health, to a satisfactory standard of living, to sufficient food, to housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one's personality, to security of person and family, to development, to peace, etc. (UN, 1994).

Recently, the principal human rights organs of the United Nations have become increasingly explicit about the relationship between life, dignity, and a sustainable environment. In its General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, (UN, 2019)⁴⁴ on the right to life, the UN Human Rights Committee expressly defined the right to life as the right to live with dignity and noted in particular the need for a healthy and sustainable environment in order to ensure a life of dignity. This recognition imposes on the state Parties the obligations to 'take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity [including *inter alia*] degradation of the environment [and] deprivation of land, territories and resources of indigenous peoples (UN, 2019). Moreover, the Committee explained that '[i]mplementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures

43 Hague Declaration on the Environment, the Hague, 11 March 1989, 28 International Legal Materials 1308.

44 International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 36 Article 6: right to life, UN Doc. CCPR/C/GC/36 (2019).

taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.’ (UN, 2019) This, in turn, requires a specific commitment to sustainability:

States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach. (UN, 2019)

More recently, UN Human Rights Office of the High Commissioner has noted:

All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity. (UN, 2019)

National constitutions are also beginning to appreciate the linkages between dignity and the environment. Belgium’s constitution expressly entwines environmental and dignity rights constitutionally: ‘Everyone has the right to lead a life worthy of human dignity... [including] the right to enjoy the protection of a healthy environment.’⁴⁵ South Africa’s constitution is among those that echoes dignity dimensions by providing that ‘everyone has the right to an environment that is not harmful to their health or well-being.’⁴⁶ Yet few other constitutions directly recognize the impact of the

⁴⁵ The constitution of Belgium, Title II, Art. 23(4).

⁴⁶ Section 24 of the Constitution of the Republic of South Africa provides that: ‘everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that: (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.’

natural environment on the quality of human life, and none yet link dignity and sustainability.

Courts sometimes turn to effects on human dignity as a basis for recognizing a right to live in a healthy environment. One of the earliest cases to connect dignity and environmental harm is from Nigeria. In *Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others*, the lower court held that gas flaring violated the petitioners' constitutional 'right to respect for their lives and dignity of their persons and to enjoy the best attainable state of physical and mental health as well as [the] right to a general satisfactory environment favourable to their development' and that the gas flaring activities formed 'a violation of their said fundamental rights to life and dignity of human person and to a healthy life in a healthy environment.'⁴⁷ Although a declaratory judgment without remedy or continuing judicial oversight, the case signals a growing appreciation of the connection between dignity and environmental conditions.

Human dignity also informs conversations about the disproportionate effects of environmental policies on the most vulnerable, what is generally known as 'environmental justice.' (DALY and MAY, 2019, p. 177-194) All of these developments in turn inform the role that human dignity can play in shaping narratives about implementing the SDGs.

5 DIGNITY AND THE SDGS

The SDGs – the embodiment of sustainability in the international legal order – are designed to advance human dignity, something reflected in the very text of the SDGs. The SDGs 'envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.' (DALY and MAY, 2019) Moreover,

47 *Gbemre v. Shell Petroleum Dev Corp & the Nigerian National Petroleum Corporation* (2005). See, generally, James R. May and Tiwajopelo O. Dayo, 'Dignity and Environmental Justice in Nigeria: The Case of *Gbemre v. Shell*', 25 *Widener Law Review* (2019) 269-284.

the SDGs expressly '[r]ecognize that the dignity of the human person is fundamental...' (DALY and MAY, 2019)

Dignity then informs and influences the implementation of myriad SDGs, including water and sanitation (Goal 6), energy (Goal 7), economic growth (Goal 8), infrastructure and industrialization (Goal 9), consumption and production (Goal 12), oceans, seas and marine sources (Goal 14), terrestrial ecosystems (Goal 15), the role of the rule of law (Goal 16), and global cooperation (Goal 17). In particular, the SDGs underscore the correspondence between poverty, hunger and dignity: 'We are determined to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment,' (UNGA) and that '[b]illions of our citizens continue to live in poverty and are denied a life of dignity.' (UNGA)

While the 17 SDGs are indivisible insofar as it is not possible either to realize human rights in a degraded environment or to protect the environment in the absence of human rights, the SDGs are often discussed as if they are stand-alone goals. (MAY and DALY) For instance, the High Level Political Forum focuses on a handful of connected SDGs at a time, such as (in 2019) achieving SDGs 13 (climate action) and 16 (peace, justice and strong communities). Yet what is clear is that advancing human dignity is what the SDGs have in common, and give it a unifying vision, a singular voice.

To be sure, poverty eradication and common but differentiated responsibilities has been a great undermining thrust of many international accords. Thus, non-discrimination is an essential tenet of the SDGs. Bodily integrity is also an essential aspect of human dignity, intimately linked to the other two. Threats to the ability to maintain the integrity of one's body have multiple manifestations, many of which are exacerbated by environmental degradation and climate change.⁴⁸ These can include everything from food insecurity and lack of clean water to unstable weather patterns

48 See, generally, Global Initiative for Economic, Social and Cultural Rights, 'States' Human Rights Obligations in the Context of Climate Change – 2020 Update', available at <<https://www.gi-es.cr.org/publications/states-human-rights-obligations-in-the-context-of-climate-change-2020-update>> (visited 10 May 2020).

that impede agricultural output or force migration and community displacement. Thus, dignity rights reflect that human suffering is experienced not so much as violations of abstract rights such as that to due process, equal protection, liberty, or property but as a violation of the principle that all human beings have equal worth.

6 CONCLUSION

The global surge in juridical attention to human dignity rights has taught us important lessons about what it means to be human in the 21st century, (DALY) all of which has implications for our understanding of the SDGs. We learn that human beings – perhaps by virtue of their ‘conscience and reason’ – have the capacity, and the need, to have agency over their own lives. As the SDGs recognize, poverty, environmental degradation, and other stressors impede the ability of billions of people around the world to effectively control the course of their own lives. Another lesson is that equality of dignity must be taken seriously: no one has the right to control or limit the exercise of another person’s dignity. Relatedly, equality is not served when some fraction of the human population has their dignity realized while others do not.

Sustainable practices are necessary to protect human dignity and the full achievement of human dignity for all will ensure that development will proceed sustainably. Thus, the concerns of the SDGs – poverty, hunger and lack of education, equality and access to justice – can be affronts to dignity. The dignity implications of environmental degradation are especially trenchant, including climate change and the lack of access to potable water, clean air, and safe soils. At the same time, peaceful and inclusive societies based on human dignity will conduce to sustainable development.

This paper shows that sustainability can be better advanced if we understand the goal to be to advance and protect human dignity. The SDGs provide a useful framework for addressing global environmental challenges and do so by respecting and advancing human dignity. Dignity is the thread that runs through the SDGs, weaving them together into a coherent

and comprehensive tapestry will help to protect the planet and improve the lives of its human inhabitants. Human dignity cannot be achieved without sustainable practices, and vice versa.

Viewing the SDGs through the lens of human dignity – the single idea that the drafters of the United Nations Charter itself thought was the foundation of peace, justice, and freedom in the world and that grounds human rights law today – can help to improve understanding and implementation. Simply, sustainability’s virtue is in promoting the fundamental precept of human dignity: recognizing the equal worth of everyone, everywhere.

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