The Indivisibility of Human Dignity and Sustainability

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2.1 INTRODUCTION

Human dignity means that all people have equal worth and deserve to live in dignity. This chapter posits that human dignity and a healthy environment are indivisible rights essential to the three dimensions of sustainability—environmental, social, and economic. A healthy environment is a necessary component of living in dignity: all have an equal claim to healthy air, water, and surroundings. Dignity is elemental to social sustainability, that is, building strong and resilient communities under the rule of law. Dignity is also essential to economic sustainability. Thus, dignity is the thread that binds the three dimensions of sustainability and evinces their indivisibility: if any one pillar is sacrificed or compromised, the ability to live with dignity is threatened. These relationships are becoming increasingly clear and enforceable as constitutions and constitutional courts around the world are protecting environmental and dignity rights for present and future generations, all of which advance sustainability.

It can be impractical (if not impossible) to realize dignity rights in conditions of unsustainable environmental, social, and economic conditions: ask people who live near toxic dumps and experience higher than normal rates of cancer, or in deforested areas whose shelters get washed away in the rains, or anyone who has lost a home, a limb, or a loved one in record-setting freezes, droughts, fires, and storms. Simply, unsustainable practices diminish individual and collective quality of life and, with it, human dignity. This chapter demonstrates that the three pillars of


1 We mean “economic sustainability” as one that reconciles the right to development and to earn a living with environmental and social sustainability, including intergenerational equity. See generally, R. N. Stavins, A. F. Wagner, and G. Wagner, “Interpreting Sustainability in Economic Terms: Dynamic Efficiency Plus Intergenerational Equity” (2003) 79 Economics Letters 339 (proposing a definition of “economic sustainability” that combines “dynamic efficiency and intergenerational equity”); J. Morelli, “Environmental Sustainability: A Definition for Environmental Professionals” (2011) 1 Journal of Environmental Sustainability 1 (“sustainability requires that current economic activity not disproportionately burden future generations . . . Economic sustainability should involve analysis to minimize the social costs of meeting standards for protecting environmental assets but not for determining what those standards should be” (internal references omitted)).
sustainability are best interpreted not as in competition with one another but as three aspects of the same indivisible interest in human dignity.

The right to human dignity embodies the fundamental notion that all individuals in present and future generations are entitled to equal respect from others, to live life well, with choices, and free from arbitrary action by those in positions of power. Dignity is not simply an aspiration or a wish; it is an actionable right that is being recognized by courts in thousands of cases around the world. Indeed, courts have applied the right and the value of human dignity in a wide variety of factual and legal settings that span the catalogues of both civil and political rights and socioeconomic and cultural rights, that now include environmental rights.

This chapter has four sections. Section 2.2 provides an introduction to the right to human dignity under law, a concept nearly as old as humanity and as fresh as the most recent cases. Section 2.3 then pivots to environmental rights, including domestic, regional, and emerging international means for recognition as a way of advancing environmental and social sustainability. Section 2.4 demonstrates the indivisibility of sustainability and the right to dignity as reflected in the UN Sustainable Development Goals (SDGs). Section 2.5 samples judicial decisions from around the globe that bridge these concepts. We conclude that it is instructive to recognize that advancing human dignity is sustainability’s core function.

### 2.2 THE RIGHT TO HUMAN DIGNITY

With deep roots in philosophic and religious traditions, dignity is also a legal right that is enforceable in courts around the world. The first and most important recognition of human dignity in an international legal instrument is in the 1948 Universal Declaration of Human Rights, whose preamble begins with an emphatic acknowledgment of every person’s dignity and a commitment to its centrality to human rights: “Whereas 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.” From there, the recognition of human dignity dispersed into the next generation of international law in the common language of both international covenants, which begin by recognizing that the rights enumerated therein “derive from the inherent dignity of the human person.”

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4 UN, International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171, Preamble [ICCPR] and International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 5, Preamble [ICESCR]. “Dignity” appears twice in the preambles in both covenants, and one additional time in each. In the ICCPR, it appears in connection with liberty: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Art. 10 (1)). In the ICESCR, it appears in connection with education: “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace” (Art. 13).
Dignity is thus both an inherent quality of being human and a legal entitlement. It signifies, in the simple but profound words of Hannah Arendt, “the right to have rights” — recognized as both a right in and of itself and the progenitor and justification for all other rights, whether social or political, individual or collective, or environmental. These various ways of thinking about dignity rights are reflected in current global constitutionalism: more than 160 of the world’s constitutions have incorporated dignity in some fashion, and hardly a new constitution is adopted without reference to the right to dignity. Many of these constitutions address dignity in multiple ways — as a foundational value, as a general personality right, and/or as a right associated with some specific interest (work, detention, etc.) or with a particularly vulnerable segment of the population (disabled, elderly, children, etc.). Some constitutions, either by text or by judicial implication, make it clear that the obligation to respect the dignity of every human being is imposed on all the organs of the state. Thus, dignity, the common ancestor of all modern human rights law, is also its future — informing and implicating most other human rights at the international and national levels.

Because of these provisions and the global movement to appreciate the fundamental role that recognition of dignity plays in the application of human rights, litigants around the world are framing claims in terms of human dignity and courts are responding. In the last two decades alone, dignity rights have been invoked, interpreted, and applied by courts in thousands of cases and in a wide variety of factual settings. Notable examples include: Argentina, where dignity is the foundation for freedom of speech and right of association; South Africa, where civic dignity protects voting rights and other rights associated with the political process; Israel, where 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; Colombia, where dignity is a measure of the state’s obligation to provide healthcare; Germany, where the level of pension benefits must allow a person to live in dignity; and India, where dignity guarantees the right to

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6 See for example Basic Law of Germany, Art. 1: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.” See also “This means that the principle of human dignity must be understood: (i) as a founding principle of the legal system; (ii) as a constitutional principle, and (iii) as an autonomous fundamental right. Additionally, the Court has established that the 1991 Charter is essentially humanistic, insofar as the entire normative system has been constructed to protect dignity and personal autonomy, not in the abstract, but from a material and concrete dimension: that is why the respect for human dignity should inspire all actions of the State.” Center for Social Justice Studies et al. v. Presidency of the Republic et al., Judgment T-622/16, Constitutional Court of Colombia (Nov. 10, 2016).
7 I. Currien and J. De Waal, Bill of Rights Handbook (Cape Town, SA: Juta, 2005). See also M. H. Cheadle, D. H. Davis, and N. R. L. Hasom, South African Constitutional Law: The Bill of Rights (Durban, SA: LexisNexis, 2014), s. 5.1; see also s. 5.2.2: “The right to dignity, a core value from which other rights derive, is frequently invoked together with the specific enumerated right relied upon to challenge conduct or laws. Dignity, thus, stands as a forensic reinforcement to the other specified rights. Not infrequently, constitutional litigation brought primarily on the grounds of another fundamental right has been decided on the question of the right to dignity. In other instances, the court has referred to or enquired into the impact on the right to dignity of the conduct or law complained of.”
8 See generally Daly, note 2.
9 Asociación Lucha por la Identidad Travesti-Transsexual v. Inspección General de Justicia, Argentina Supreme Court of Justice (Nov. 21, 2006).
12 Sentencia T-292/09 (Constitutional Court of Colombia).
travel. These broad statements about the role of human dignity in all state action also reveal the indivisibility of human rights – a characteristic that is all the more poignant in the context of sustainable environmental health and environmental justice.

Indeed, as detailed below, courts are increasingly recognizing the relationship between unsustainable environmental, social, and economic conditions and the ability to live with dignity. What we see is that depending on the nature of the claim and the orientation of the judges and advocates, courts may or may not invoke the SDGs, but even where the reference is not explicit, the effort is to move toward the fulfillment of the SDGs and more generally of the social aspects of sustainability.

2.3 ENVIRONMENTAL RIGHTS

Although environmental rights and human rights have been defined and protected at the international level for decades, only recently have the orbits of the two bodies of law begun to intersect so that environmental rights are being seen as human rights. The Stockholm Declaration in 1972 declared that “[b]oth aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, even the right to life itself.” But it took twenty years for the international community to follow up: in 1992 in Rio, participants in the Earth Summit proclaimed that “[h]uman beings . . . are entitled to a healthy and productive life in harmony with nature.” At the same time, more attention was being paid to the mechanisms by which international economic, social, and cultural human rights could be enforced, culminating in the Limburg and Maastricht principles relating to how governments should respect, protect, and fulfill such rights, as well as in the San Salvador Protocol in the Americas. Increasingly, the worlds of environmental and human rights have

14 Maneka Ghandi v. Union of India (1978) 2 SCR 621.
16 In this chapter, we focus primarily on the relationship between sustainability and the substantive aspects of human dignity, although there are also important procedural aspects of human dignity that are pertinent to sustainability and environmental claims generally. For instance, the right to human dignity entails access to justice, as well as to the information and participation in environmental decision-making. These issues, however, are beyond the scope of this chapter. See for example Center for Social Justice Studies et al. v. Presidency of the Republic et al., note 6.
18 UN, Stockholm Declaration of the United Nations Conference on the Human Environment, June 16, 1972, UN Doc. A/CONF.48/14/Rev. 1, p. 3. Principle 1 further confirms that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”
intersected, with the result that more and more attention is being paid to the impact on human rights of environmental degradation and climate change, and on the positive impact that sustainability might have for human development. At the same time, at the domestic level, more than half the nations of the world have rewritten their constitutions, or adopted new ones since the late 1980s, usually including extensive bills of rights. According to the UN Environment Programme, about 150 countries currently have environmental provisions in their constitutions, expressed in a variety of ways. As of 2018, approximately eighty-eight of these countries have adopted an express constitutional right to a healthy environment. About a dozen more countries recognize a fundamental right to a healthy environment implicitly. Moreover, about 130 nations are subject to regional agreements that recognize a right to a healthy environment, such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Everyone shall have the right to live in a healthy environment"); the African Charter on Human and Peoples’ Rights ("all peoples shall have the right to a general satisfactory environment favorable to their development"); and the Association of South East Asian Nations (ASEAN) Human Rights Declaration ("Every person has . . . the right to a safe, clean and sustainable environment"). Among these, the African Charter on Human and Peoples’ Rights “is the only human rights treaty, albeit a regional one, to include a justiciable right to a healthy environment.” The 2004 Arab Charter on Human Rights includes a right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a decent life.

There is an ongoing debate as to whether and how environmental rights should be recognized and implemented at the international level. One school of thought advocates recognizing a right to a healthy environment at the international level. As a normative matter, formal recognition of such a right would confirm the indivisibility of human and environmental rights and, in particular, the ways in which the harms caused by environmental degradation constitute violations of well-recognized human rights, such as the right to life, to health, and to dignity. This is reflected in human experience throughout the world, in all natural and social settings. For example, the illegal dumping


[22] UN Environment, note 21, p. 2; see also, Envirorights Map, http://envirorightsmap.org.

[23] UN Environment, note 21, p. 2.


[27] Association of Southeast Asian Nations [ASEAN], ASEAN Human Rights Declaration, Nov. 18, 2012, Art. 28 (f).


of toxic waste endangers the surrounding ecosystems, as it contaminates drinking water, arable soils, and habitable land, and otherwise threatens people’s right to life, health, work, property, culture, dignity, and so on. Likewise, mining, deforestation, and environmental degradation brought about by climate change threaten both environmental and human interests and needs. As the former Special Rapporteur on Human Rights and the Environment has observed: “Human rights are grounded in respect for fundamental human attributes such as dignity, equality and liberty. The realization of these attributes depends on an environment that allows them to flourish . . . Human rights and environmental protection are inherently interdependent.”

As a legal matter, an internationally recognized human right to a healthy environment would impose supranational obligations on states to observe or protect rights that otherwise may not be reflected in domestic law or in regional instruments. Given the resistance that many states have to protecting their own natural environments, the argument goes, only a supranational legal norm can effectively control national urges to sacrifice their environments in the name of short-term financial or political gain. Inexorably – if belatedly – international law is beginning to recognize the interdependence and indivisibility of human dignity and environmental rights.

The indivisibility of human dignity and environmental sustainability can also be seen in the context of climate- and environment-related migration. The 2018 Global Compact for Safe, Orderly and Regular Migration recognizes that migration must be “safe, orderly and regular” to ensure the dignity and the protection of human rights of all migrants, whether the source of the migration is economic, environmental, or otherwise, noting that there is “unity of purpose” in working “together to create conditions that allow communities and individuals to live in safety and dignity in their own countries.”

In actuality, the link between human dignity and environmental rights has pedigree in the concept of sustainability. Since the concept of sustainability was first promoted as a single-sentence principle of international law at the Stockholm Conference in 1972, it is now a common feature in international treaties as an interpretive principle in international accords and with international tribunals resolving human rights claims.

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32 Human Rights Council, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Dec. 24, 2012, UN Doc. A/HR/22/43. See also, D. J. Whelan, Indivisible Human Rights: A History (Philadelphia: University of Pennsylvania Press, 2016); Daly, note 30 (“The constitutional right to a healthy environment is perhaps the paradigmatic example of the indivisibility claim. Environmental rights are inseparable from many other rights, including (depending on the factual nature of the claim) the right to life, to health, to dignity, to subsistence, to employment, to property and so on”).


environmental disputes. Sustainability advances environmental, social, and economic equity in a variety of contexts, including dignity, human rights, climate change, access to and availability of fresh water, shale gas development, corporate practices, and higher education.

Sustainability has also 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. These constitutional provisions help bridge the gap left by international and domestic laws, even given the array of sustainability provisions already in existence. Moreover, they advance the prospect of enforcing claims of sustainability.

Despite or perhaps because of sustainability’s diaspora, the concept has a growing cadre of critics who hold the view that it is neither workable nor relevant, has done little if anything to improve environmental outcomes, and is no match for the Anthropocene. The relative merits and second thoughts about sustainable development as a concept are beyond this chapter. What is within scope is the idea that sustainability can be better understood and utilized by viewing it through the lens of the role of human dignity under law. To be sure, sustainability’s virtue is in promoting the equal worth of everyone, everywhere, and for all time.

2.4 SUSTAINABILITY AND THE INDIVISIBILITY OF DIGNITY AND ENVIRONMENTAL RIGHTS

Whether at the international or national constitutional level, the protection of the human right to a healthy environment demonstrates the indivisibility of rights. Indivisibility describes the integral nature of a set of human rights. The image might be that of a diamond: no single facet can be separated from a diamond, and the diamond does not exist without its many facets. It is only if the relationship among the rights is that close that we can say that human rights are indivisible. As such, indivisibility does not describe the entire system of rights: not all rights are indivisible, though they might be interrelated or interdependent. But the right to dignity and the right to environmental protection are indivisible: one cannot exist without the other.

37 See R. Higgins, “Natural Resources in the Case Law of the International Court,” in Alan Boyle and David Freestone (eds.), International Law and Sustainable Development (Oxford: Oxford University Press, 1999), pp. 87, 111 (using the International Court of Justice to highlight environmental sustainability in international courts and other arenas).
38 Daly and May (2016), note 34.
41 J. C. Dernbach and J. R. May, Shale Gas and the Future of Energy: Law and Policy for Sustainability (Cheltenham, UK: Edward Elgar, 2016) (suggesting laws and policies needed to ensure that shale gas development fosters transition to sustainability).
42 May and Daly (2015), note 21; Appendix E and associated text (denoting role of sustainability in the development of international and national law, and analyzing constitutional provisions that embed sustainability from around the world); J. R. May, “Constituting Fundamental Environmental Rights Worldwide” (2006) 23 Pace Environmental Law Review 113, Appendix B (listing countries that have constitutionally entrenched environmental policies as governing principles, some including sustainability).
44 See generally Whelan, note 32.
To say that some rights are indivisible is to pose significant challenges to the interpretation and vindication of that right. The right to vote, to free expression, and other rights that are sometimes referred to as “negative rights” are comparatively simple to vindicate, usually by ordering the removal of barriers to the exercise of the right. And socioeconomic rights are becoming increasingly amenable to judicial interpretation and vindication thanks to the development of the law of progressive realization.\textsuperscript{45} Thus, when a court or international tribunal finds that the right to housing has been violated, it may order the government to take reasonable legislative measures to develop a plan that would progressively realize that right in accordance with the nation’s available resources.\textsuperscript{46} Likewise, when the right to water is viewed as a \textit{human} right, the court will vindicate the right by determining whether the claimant’s access to clean water is adequate to ensure the person’s dignity or other human right.\textsuperscript{47}

As applied to environmental rights, indivisibility means that claims of environmental wrongs—deforestation, water pollution, mining, oil spills, climate change—in and of themselves, have consequences for other human rights, such as the right to life, to live with dignity, to health, to privacy and family life, as well as for civil and political rights like the right to political participation and the right to free expression, and for collective and solidarity rights like those of indigenous communities or of future generations, with implications for environmental and climate justice.\textsuperscript{48} When there is a violation of an environmental right, the effect is experienced as a deprivation of human dignity. For this reason, environmental rights provide a paradigmatic example of the thesis of indivisibility.

Current constructions of sustainability well support this observation. The United Nations’ 2015 SDGs are the culmination of four decades of multidisciplinary thinking about what sustainable development means, and grasping that, how to put it into place.\textsuperscript{49} The sustainability framework features seventeen “Goals” to achieve by 2030, including protecting biodiversity, ensuring clean water, air, land and food, ending poverty, hunger and discrimination, and providing access to justice and opportunity for the future.\textsuperscript{50}

While the seventeen 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 treated as if they are independent of one another. For example, the High-Level Political Forum focuses on two connected SDGs at a time, such as (in 2019) achieving SDGs 13 (climate action) and 17 (peace, justice, and strong communities).\textsuperscript{51} But what can be lost in conversations about the SDGs and its component parts is the elegant idea that dignity is the thread that stitches the SDGs together, reflected in the SDGs’ core provisions.\textsuperscript{52}

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.\textsuperscript{53}

\textsuperscript{45} ICESCR, note 4, Art. 2(1). See also for example Mazibuko and Others v. City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (Oct. 8, 2009).
\textsuperscript{47} See for example Mazibuko and Others v. City of Johannesburg and Others, note 45.
\textsuperscript{48} Daly and May (2019), note 34.
\textsuperscript{50} Ibid.
\textsuperscript{52} Ibid.
\textsuperscript{53} UN General Assembly, \textit{Transforming Our World: The 2030 Agenda for Sustainable Development}, Oct. 21, 2015, UN Doc. /RES/70/1, Preamble.
As we embark on this great collective journey, we pledge that no one will be left behind. Recognizing that the dignity of the human person is fundamental, we wish to see the Goals and targets met for all nations and peoples and for all segments of society. And we will endeavour to reach the furthest behind first.

We 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.

We are meeting at a time of immense challenges to sustainable development. Billions of our citizens continue to live in poverty and are denied a life of dignity. There are rising inequalities within and among countries. There are enormous disparities of opportunity, wealth and power. Gender inequality remains a key challenge. Unemployment, particularly youth unemployment, is a major concern. Global health threats, more frequent and intense natural disasters, spiralling conflict, violent extremism, terrorism and related humanitarian crises and forced displacement of people threaten to reverse much of the development progress made in recent decades. Natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces. Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.

The recognition in 2002 by the UN Committee on Economic, Social and Cultural Rights (CESCR) of the right to water is another example of the indivisibility of dignity and environmental rights. In its General Comment 15, the CESCR recognized that while the right to water is protected by specific international instruments, it is indispensable to many rights protected by human rights instruments. Throughout the text of the General Comment, the CESCR noted the relationship between water and other recognized rights. The Comment begins: “Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.” But this does not merely describe a familial relationship (a pristine environment has a relationship with human dignity) nor even an interdependence (human life depends on forests, or forests depend on life); rather, it manifests an inextricable link between the two concepts that makes one virtually meaningless without the other. The nature of the environmental right is bound up in the nature of the social and economic rights. The Comment shows how the right to water also necessarily requires recognition of other rights, such as political rights, rights against...
discrimination, and even due process rights, all of which help to reinforce the enjoyment of the right to water. Rights to water, food, health, and a healthy environment are all interdependent, as are the rights to secure and protect them. And all are aspects of the right to live with dignity as it has been recognized by courts. These are the conditions for survival of present and future generations.

Thus, water as described in the General Comment instantiates the indivisibility thesis at several different levels. First, it confirms the connection among different rights: health, life, employment, food, safety, discrimination, due process, and so on. Second, at another level, it bridges the divide between the two types (or generations) of rights by implicating both civil and political rights, as well as economic, social, and cultural rights, without distinguishing in any way between the two or privileging one over the other. Water is as important to equal protection and political participation as it is to housing, food, and health. This is evident, too, in the General Comment’s discussion on implementation of water rights, where the CESCR noted that “While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect, invoking the general principle of implementation associated with the ICCPR. Third, it unifies the disparate geopolitical interests of the world, as it transcends temporal interests. Water rights have national, as well as international, implications as water sources often cross-national boundaries, and resource and management plans to ensure adequate access to clean water may have to take into account the interests of a wide range of stakeholders: local and global interests, industrial and rural uses, personal and commercial uses, and so on. Moreover, as the CESCR and many courts have recognized, water rights must be assured not only for the current burgeoning population, but for future generations as well.

What is true of water is also true of other rights relating to the environment: the right to clean air is also essential not only to the effective enjoyment of other rights but to any enjoyment of groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties”; UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, Aug. 11, 2000, UN Doc. E/C.12/2000/4, para. 37(f), requiring governments “To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process.”

62 CESCR, note 58, para. 13: “The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 3), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.”

63 Ibid., para. 10: “The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.”

64 Ibid., para. 3.

65 See also Rio Declaration, note 19: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

66 CESCR, note 58, para. 17.
other rights. If the air is so polluted as to cause ill health, then the right to a clean environment and the right to health are simultaneously and jointly violated and to the same extent. Likewise, when a government authorizes companies to clear-cut forests or to mine mountains, the right to sustenance of those who depend on the forests for food, or the right to development for those who depend on the mountainside for farming or maintaining their communities may, to that extent, be compromised. Climate change in general presents new challenges to the human rights regime as it increases human vulnerability to poverty and disease, which in turn creates opportunities for political oppression and myriad forms of human rights abuses. Climate change may well turn entire populations into refugees, raising human rights issues to a new level. Increasingly, courts are entertaining claims that liberty includes the right to a climate capable of sustaining human life.67

The effects of climate change provide vivid examples of how environmental conditions affect human dignity. Climate change “directly and indirectly implicates” important human rights and responsibilities because it “connects the many dangerous climate impacts to the human rights commitments states have already undertaken.”68 The right to life is increasingly threatened as floods, landslides, and fires become more common and more severe; the right to health is impacted when droughts make access to food less secure or when pollution makes potable water less available, which in turn threatens the right to employment and education; rights relating to property (including agricultural, inheritance, and development rights) are threatened when rising sea levels erode land; cultural rights may be threatened by reckless logging, overfishing, or mining, as may be labor and employment rights – to give just a few examples.

And, yet, the law can sometimes be slow to catch on, particularly when the impacts are most acutely and chronically felt by the poor and the disenfranchised. Thus, it is a welcome advance that courts around the world are beginning to occupy the space where environmental rights and the right to live with dignity meet.

2.5 Judicial recognition of the indivisibility of human dignity and the environment

As constitutional courts around the globe are turning their attention to environmental human rights, they are becoming increasingly aware of the impact that environmental degradation has on human dignity. Dignity can be a useful concept in environmental litigation for several reasons:

First, it provides a vocabulary for foregrounding the damage to people of environmental and climate harms. Second, it draws attention to how environmental harms affect all of the essential aspects of a person’s life: where food security, access to clean water, and breathable air are threatened, a person’s ability to design her own life plan is weakened and her ability to live in material comfort is impossible . . . Thus, it draws attention to how people live in their environments and seeks to ameliorate the impacts that adverse environmental conditions have on people’s ability to live as people of worth.69

Third, and relatedly, inherent in the concept of human dignity is that the right must be enjoyed by every person on an equal basis, a principle that has particular salience in the context

69 Daly and May (2019), note 34, p. 187.
of environmental injustice which visits the burdens of environmental destruction disproportionately on communities of color and poor communities. Advancing the SDGs requires taking seriously the challenge of ensuring that environmental benefits and burdens are experienced by all without privilege or discrimination.\(^70\)

One of the earliest cases to see the connection between environmental conditions and the ability to live with dignity 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.”\(^71\) Although a declaratory judgment without remedy or continuing judicial oversight, the case signals a growing appreciation of the connection between dignity and environmental conditions.

More recently, the High Court of Lahore in Pakistan recognized the connection between life, dignity, and environmental and climate justice in 2015, and again when it revisited the same case in 2018:

> Fundamental rights, like the right to life (article 9) which includes the right to a healthy and clean environment and right to human dignity (article 14) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine.\(^72\)

Other courts have followed a similar path recognizing the indivisibility of human dignity and the environment. Kenya’s Environmental and Land Court in Nairobi acknowledged that environmental rights must be read in light of the constitutional commitment to human dignity: \(^73\)

> The Preamble to the Constitution . . . proclaims that the people of Kenya, when making the Constitution were committed to nurturing and protecting the well-being of the individual, the family, communities and the nation. Likewise, the national values and principles that bind this Court . . . include human dignity, equity, social justice, human rights, non-discrimination, protection of the marginalized and sustainable development.\(^74\)

The Nepalese Supreme Court has articulated a similar commitment to environmental dignity:

> Article 12(1) of the Interim Constitution has also incorporated the right to live with dignity under the right to life. It shall be erroneous and incomplete to have a narrow thinking that the right to

\(^70\) Ibid.


\(^72\) Ashgar Leghari, Lahore High Court, 2018.

\(^73\) Kenya Const., Art. 10(2)(b) and (d).

\(^74\) *Friends of Lake Turkana Trust v. Attorney General & Two Others* [2014] KLR, in the Environment and Land Court at Nairobi ELC Suit No. 825 of 2012 (finding insufficient evidence of actual violations of the right to dignity, life, livelihood, and cultural and environmental heritage by the Gibe III hydroelectric project at the planning and implementation stages, but finding that the risks involved in “the harnessing of such electricity in Ethiopia is likely to affect its right to life and [] livelihood and its cultural and environmental heritage . . . [and this] imposes a positive duty upon the Respondents and Interested Party to provide the Petitioner with the all relevant information in relation to importation and/or purchase and transmission of electric power from Ethiopia”).
life is only a matter of sustaining life. Rather it should be understood that all rights necessary for living a dignified life as a human being are included in it. Not only that, it cannot be imagined to live with dignity in a polluted environment rather it may create an adverse situation even exposing human life to dangers.\(^{75}\)

Beyond mere statements acknowledging the interdependence of human dignity and environmental and climate rights, courts could acknowledge the right to dignity in at least two phases of constitutional litigation: defining the cause of action and fashioning remedies.

### 2.5.1 Establishing a Violation

One of the most pressing challenges for environmental constitutionalism is definitional. Most substantive environmental rights provisions are vague, which can deter judicial officers from applying them: judges are often unwilling to make judgments about what is a “quality environment” or a “healthy environment,”\(^{76}\) a “sound” environment,\(^{77}\) or a “healthy and ecologically balanced human environment.”\(^{78}\) Applying these terms to a given situation can also be daunting: How can a court decide whether a timber license violates a healthy environment, or whether pollution levels in a river or bay or in the air reaches a point where the air or water is no longer clean?

In the face of such interpretive challenges in environmental adjudication, dignity can alleviate the nebulous nature of environmental rights by providing a benchmark against which a violation or a remedy should be judged: in implementing, enforcing, and vindicating constitutional environmental rights, dignity rights can help a court determine when the right to a quality (or healthy or balanced) environment is violated. While all human activity impairs the environment, a constitutional violation would occur when the impairment impacts the dignity of those affected – a standard of evaluation that is loose, but still more familiar to the judiciary. A timber license might be constitutional, but not if the clear-cutting removed trees that people relied on for shelter and protection against storm damage, or food or natural water were imperiled. Dams could be constructed to provide electricity, but a violation of the constitutional right to dignity might be found where the construction of the dam displaced communities without meaningful compensation and without opportunities for participation in discussions about timing and impact. Government policies that destroyed the aesthetic or recreational value of natural environments would also come under scrutiny for the impact they would have on the dignity interest in social and cultural self-development, for example.

A dignity-based definition of harm would apply similarly to procedural environmental rights: absolute transparency and infinite participation is impracticable, but information and opportunities to participate in environmental decision-making would need to be sufficient to enable those affected to exercise their civic dignity.\(^{79}\) Plaintiffs would still have to show harm, but the harm in question would be to their dignity interests – whether individual or collective, and whether sounding in civil and political rights or social, economic, and cultural rights. In many cases, it might be easier for plaintiffs to allege harm to their dignitary interests because they would not

\(^{75}\) Pro Public v. Godavari Marble Industries Pvt. Ltd. and Others (Supreme Court of Nepal, 2015).

\(^{76}\) See for example Nicaragua Const., Title IV, Ch. 3, Art. 60; Colombia Const., Title II, Ch. 3, Art. 79.

\(^{77}\) Montenegro Const., Art. 23.

\(^{78}\) See for example Portugal Const., Part I, Section 3, Ch. 2, Art. 66(1); Dominican Republic Const., Art. 67(1); Costa Rica Const., Title V, Art. 50.

need to show the causal effects of adverse health impacts or scientific evidence about water shortages, for instance, but could rely instead on subjective and objective testimony that draws attention to the impact of environmental degradation on the ability of individuals, families, and communities to live in dignity. Such a dignity-based approach would enable courts to be more sensitive and holistic in pursuing a rights-protective role in both substantive and procedural terms.

2.5.2 Fashioning Remedies

Environmental cases are among constitutional law’s most complicated to remedy because the injuries can be multifaceted, layered, and interdependent; defendants can be recalcitrant and are often among the country’s most politically powerful and economically resourceful; and the damage to both humans and their environment can be literally irremediable. In addition, it can be daunting to quantify the damage not only to present but also to future generations. Most courts are keenly aware of the limitations of their own power – of the fact, namely, that courts have no particular resource other than their own legitimacy to ensure respect for or compliance with judicial orders.80

But just as recourse to the right to dignity can help identify violations, it can also help define remedies. And, again, dignity-based remedies can be both substantive and procedural. When the Supreme Court of India ordered the closure of tanneries that had been polluting the River Ganga, it required that the new operation protect the jobs and rights of the displaced workers, including requiring that they be paid during the period of closure and that they be given a substantial “shifting bonus” to help them settle at the new location.81 Similarly, when landfills were being closed in Colombia, the Court took special care to assure the dignity of those individuals whose only means of support had been collecting recyclables from the landfill. The Court’s extensive remedial order required each affected municipality to, within a few months, adopt necessary measures to “protect the recyclers’ rights to health, education, dignified living, and food, ensuring in each particular case that the means were connected to specific social programs.”82 And, without risking charges of judicial activism, courts could even go further: they could ensure that governmental decisions that impact the environment would be made only on the basis of human dignity, in its various manifestations. And when courts issue orders in cases involving procedural environmental rights, they can advance the civic dignity of individuals who would seek to participate meaningfully in the environmental protection of their communities. Indeed, one could even ask how a remedy could reasonably be designed except by reference to human dignity. After all, the protection of human dignity is arguably how we know how much clean water is needed or what constitutes appropriate environmental safeguards for the extraction of natural resources, or how to advance climate justice.

And, yet, while the right to dignity is universal, its application in the context of litigation would be left to courts to decide and define based on the facts of the case and according to the existing dignity jurisprudence that is judicially relevant.

To say that the human and environmental interests are interlocked leaves open the question of whether the interests are mutually reinforcing or antagonistic. We might call a mutually reinforcing relationship “positive” in that understanding the claim in both its dimensions makes the claim stronger. Ordering the closure of tanneries on the Ganges River unless they stop

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80 Ibid., p. 149.
82 Sentencia T-291/09 (Colombia Constitutional Court, 2009), para. 9.2.5.
discharging pollutants illustrates the indivisibility of environmental and human rights: respecting the environment invariably promotes the human right to life.\textsuperscript{83} Indeed, the effort to incorporate environmental rights into the catalogue of human rights assumes that what is good for one is good for the other and that relying on both will strengthen the arguments of claimants who seek to vindicate environmental rights. Making explicit their indivisibility with rights to life, health, dignity, and so on, the conventional wisdom goes, will encourage courts to recognize the claimants as legitimate plaintiffs, to see their injuries as cognizable, and to see the violation as remediable. Positive indivisibility does not present any significant juridical problems because both the harms and the remedies are interlinked.

But not all environmental rights relate positively with other dignity-reinforcing rights. For instance, in the tanneries case, the Supreme Court of India recognized that “Closure of tanneries may bring unemployment and loss of revenue, but life, health and ecology have greater importance to the people.”\textsuperscript{84} Thus, environmental rights must be considered in light of employment, life, and health, and in that sense they are indivisible with these latter human rights. But while they positively reinforce claims to life and health, they detrimentally impact claims to employment, also a human and constitutionally protected right closely associated with the right to live with dignity. Or, in the case of Maria Elena Burgos \textit{v. Municipality of Campoalegre (Huila)}, the Constitutional Court of Colombia upheld a lower court’s order to destroy pig stalls that caused respiratory distress and fevers in neighbors.\textsuperscript{85} While the environmental claim supported the right to life and health, it impaired the pig stall owners’ right to employment and to the free enjoyment of their property. The environmental claimant should understand that the environmental claim, and its remedy if it is successful, will necessarily affect some human rights, but the effect will be positive in the case of some human rights and negative in the case of others. Indeed, in many cases the environmental claim will detrimentally affect the right to property and economic development. The indivisibility is no less relevant where the claim is made first from the standpoint of the human right rather than the environmental right. For instance, when the South African Constitutional Court ruled that the residents of Johannesburg are entitled to access to a certain amount of water per day, the claim was made in terms of the human right to water and it was thus partially vindicated. But this victory for human rights may be a defeat for environmental rights: to secure a certain amount of water may very well require irrigation toward the population center that will have adverse environmental consequences on the surrounding watershed area. Thus, environmental rights and human rights are interlocked, but, in this case, they correlate negatively. The issues get more complicated when we think of dignity in all its substantive dimensions. Human dignity, as it has been recognized in the courts, affects all civil as well as social and economic and cultural rights: when we think about dignity, we should be thinking not only about the environment, but also about health, livelihood, food and water security, and all other aspects of a life that implicate the ability to live with dignity. Moreover, dignity is judicially understood not only as the right of autonomous individuals, but as rights to live in community with family and others.\textsuperscript{86} Thus, the impacts

\textsuperscript{83} See M.C. Mehta \textit{v. Union of India} (1987) 4 SCC 465, discussed in May and Daly (2009), note 21, p. 400.

\textsuperscript{84} Ibid.

\textsuperscript{85} Maria Elena Burgos \textit{v. Municipality of Campoalegre (Huila)}, Constitutional Court, Feb. 27, 1997.

\textsuperscript{86} In one Colombian case about the right to water, the Court said that “the water that people use is indispensable to guarantee physical life and human dignity, understood as the ability to enjoy the material conditions of life that permit the development of an active role in society.” Colombia Constitutional Court, Sentencia T-81/02. “El agua que usan las personas es indispensable para garantizar la vida física y la dignidad humana, entendida esta como la posibilidad de gozar de condiciones materiales de existencia que le permitan desarrollar un papel activo en la sociedad.” See also Colombia Constitutional Court, Sentencia C-793/09 (discussing dignity as “convivencia ciudadana” (i.e. living together as citizens)).
of environmental decision-making on the whole social fabric should also be taken into consideration. These all matter, indivisibly.

2.6 CONCLUSION

Human dignity is essential to sustainability’s environmental, social, and economic pillars; attention to the equal worth of all those involved in environmental outcomes evidences a respect for the human dignity of each person in present and future generations, something the SDGs capture in their core provisions. Courts have increasingly recognized the links between environmental protection and the enjoyment of human rights, in large part by reference to human dignity and to the rights that human dignity entails. As a conceptual matter, attention to human dignity foregrounds the impacts on human beings of environmental decisions, including decisions that contribute to climate change, and requires courts to address ways in which those decisions diminish the ability of people to manage their own lives, often in ways that disproportionately affect those who are already the most vulnerable and marginalized. Thus, in the context of judicial implementation, attention to dignity can also help shape the contours of environmental human rights by providing a measure of when a violation of an environmental right has occurred. Dignity can also serve as a benchmark for remedies, ensuring that environmental harms are remedied in ways that protect the dignity interests of all those who are affected.