

Transnational Labour Law and the Environment: Beyond the Bounded Autonomous Worker

Sara L. Seck*

Abstract

Labour and environmental law operate in silos. This is equally true in the transnational sphere, despite the 2011 endorsement of UN Guiding Principles on Business and Human Rights. Labour rights as human rights appear easier to grasp than environmental human rights, and the UNGPs specifically highlight the work of the ILO. Due to egregious events such as the Bangladesh Rana Plaza factory collapse, transnational governance regimes have emerged to better ensure building safety and respect for labour rights. Yet the process of production of "fast fashion" is not only a problem for workers whose health and safety are put at risk, but also for children and families who live in the vicinity of polluting factories and experience "slow death" as a result of contaminated air and water. This paper will explore how a reconceptualization of the worker as a relational being and corporeal citizen might bridge the silos.

Keywords: transnational labour law, relational theory, business and human rights, transnational environmental law, sustainable development

Résumé

Le droit du travail et de l'environnement fonctionnent en silos. Malgré l'approbation, en 2011, des *Principes directeurs relatifs aux entreprises et aux droits de l'homme* de l'Organisation des Nations Unies, il semble également que la sphère transnationale soit caractérisée par ce type de travail en silo. Les droits du travail en tant que droits de la personne semblent d'ailleurs plus faciles à saisir que les droits de la personne liés à l'environnement, et les Principes directeurs mettent surtout en exergue le travail de l'Organisation internationale du travail. En raison d'évènements flagrants tels que l'effondrement de l'usine Rana Plaza au Bangladesh, des régimes de gouvernance transnationaux ont vu le jour afin de garantir la sécurité des bâtiments et le respect des droits des travailleurs. Or, le processus de production de la

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« mode rapide » ne s'avère pas uniquement problématique pour les travailleurs dont la santé et la sécurité sont menacées, elles touchent également les enfants et les familles qui vivent à proximité des usines polluantes et qui, sous l'effet de l'air et l'eau contaminés, connaissent une « mort lente ». Cet article explore comment une reconceptualisation du travailleur en tant qu'être relationnel et citoyen corporel pourrait bâtir des ponts entre les silos.

Mots clés : droit transnational du travail, théorie rationnelle, entreprise et droits de la personne, droit transnational de l'environnement, développement durable

Introduction

Environmental law and labour law exist in different silos of practice and study. This article will consider whether transnational labour law, as informed by the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs),[1] must also exist in a silo separate from environmental concerns. Ultimately, I will argue that a reconceptualization of the worker as a relational being, or corporeal citizen, rather than a bounded autonomous individual, may provide an opportunity to bridge the labour and environment silos. In order to explore this issue, I will introduce the work of Professor John Knox, the UN Human Rights Council's Special Rapporteur on Human Rights and the Environment. Knox's 2014 Mapping Report clarifies global consensus on procedural and substantive environmental rights, as well as the special needs of vulnerable groups, and informs his most recent and final report in 2018 of Framework Principles on human rights and the environment.[2] However, his contributions have provided limited guidance on how the business responsibility to respect human rights, the second pillar of the UNGPs, would apply to environmental rights. Instead, despite the fact that the UNGPs claim to apply to all businesses and to all human rights, there appears to be greater acceptance and attention to implementation of transnational labour rights than to environmental rights. This is not to say that transnational environmental practices do not exist; but rather, that they are generally not conceptualized as having a human rights dimension. Moreover, transnational labour and

1 *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UNOHCHR, 17th Sess, UN Doc A/HRC/17/31, (2011), online: Office of the High Commissioner for Human Rights http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf [UNGPs]

2 *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H. Knox: Mapping Report*, UNOHCHR, 25th Sess, UN Doc A/HRC/25/53, (2014), online: United Nations Mandate on Human Rights and the Environment http://srenvironment.org/wp-content/uploads/2014/03/A-HRC-25-53-clean-final-version-1.doc [Knox, *Mapping*]; *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment: Framework principles on human rights and the environment,* UNOHCHR, 37th Sess, UN Doc A/HRC/37/59, (2018), online: Office of the High Commissioner for Human Rights https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf?OpenElement [Knox, *Principles*]. See also the work of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, online: http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx.

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environmental law are understood as distinct responses to distinct problems, rather than interrelated and interdependent fields.

I first consider labour law and environmental law as distinct fields of study and expertise, each with a colonial history and contested boundaries. I then examine the business responsibility to respect rights under the UNGPs and its differing treatment of environment and labour rights, with explicit attention to Knox's work on environmental rights. Next, I will introduce the Rana Plaza factory collapse and consider how industry-led responses to this disaster that align with understandings of the business responsibility to respect labour rights adopt a bounded, autonomous model of the worker that I then critique, drawing upon relational theory. The critique reveals the worker as an embedded corporeal citizen with ecological and social needs that extend beyond those evident in traditional labour and human rights approaches. I then note how recent attention to the rights of the child, in conjunction with the 2015 Sustainable Development Goals (SDGs),[3] may offer an opportunity to both align action with business responsibilities for human rights and overcome the labour/environment divide.

The Contested Silos of Labour and Environment

In 2017, Labour Law and Environmental Law exist as well-accepted, independent fields of study and expertise. Yet, it was not always this way. As David Doorey argues in advocating for a new field of research and study to address the labour dimensions of climate change, "[a]ll new legal fields must confront their Law of the Horse moment, that point when a decision is made that a new legal field is warranted or desirable because developments in the law or the world around us have outgrown existing legal taxonomies."[4] While Labour Law emerged as a distinct field at the time of World War II, Environmental Law is said to date from the 1970s. Yet both legal fields, currently face an existential crisis, with environmental law scholars confronted with the challenges of climate change, while labour law scholars confront the erosion of "the standard employment model" and the erosion of "'labour' as a class and a movement."[5]

As Doorey observes, labour and environmental law scholars and practitioners rarely speak to each other, and they engage in their academic and professional work in independent spheres involving different journals, conferences, and tribunals.[6] Moreover, the "goals and outcomes" of the two fields are often in conflict, with labour law addressing tensions over demands for more and better jobs, while environmental law is concerned "with the impacts of consumerism and economic

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3 United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, UN DOC A/RES/70/1. United Nations Sustainable Development Platform, available at: https://sustainabledevelopment.un.org/post2015/summit (the *2030 Agenda*).

4 David Doorey, "Just Transitions Law: Putting Labour Law to Work on Climate Change" *Journal of Environmental Law & Practice* 30, no. 2 (2017): 201–203. See also David J Doorey, "A transnational law of just transitions for climate change and labour," in *Research Handbook on Transnational Labour Law*, ed. Adelle Blackett and Anne Trebilcock (Cheltenham, UK: Edward Elgar, 2015), 551.

5 Doorey, "Just Transitions Law," 204, 213–220. But see Doorey, "Just Transitions Law," 218, note 81 citing Wexler (2006) and other sources that suggest there is not agreement that environmental law is a distinct discipline.

6 Doorey, "Just Transitions Law," 205, 220–222.

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activity on climate, air, and water quality and other harmful effects on the natural environment."[7] Consequently, labour and environment advocates are often found on different sides of policy debates, with perhaps some of the most obvious recent North American examples concerning disagreement over oil sands production and pipelines as either a necessity due to the number of good jobs created and energy security, or an impossibility due to the seriousness of climate change impacts and other environmental harms.[8]

Beyond the domestic sphere, a bright line dividing labour and environment can be found in key corporate social responsibility (CSR) and sustainability standards that may be viewed as instruments of transnational law. While most CSR standards do reference both environment and labour, they are treated separately, as distinct silos within standards, rather than as interconnected or interdependent issues. For example, the United Nations Global Compact, launched in 2000, is a learning network that provides companies with the opportunity to align their strategies and operations with ten universal principles.[9] The first two principles concern human rights, while Principles 3 to 6 address labour issues, and Principles 7 to 9 address environmental issues.[10] These principles are informed by sources of international law, including the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, and the Rio Declaration on Environment and Development.[11]

Similarly, the OECD Guidelines for Multinational Enterprises (MNE),[12] originally dating from 1976, consist of voluntary guidelines for companies touching various areas of responsible business conduct. Adhering states are committed to recommending these guidelines to companies operating in or from adhering states.[13] The 2011 update of the OECD MNE Guidelines consists of eleven chapters, including Chapter IV, "Human Rights," Chapter V, "Employment and Industrial Relations," and Chapter VI, "Environment."[14] The Human Rights chapter closely mirrors the business responsibility to respect rights found in the 2011 UNGPs. The employment and industrial relations chapter explicitly embraces the work of

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7 Ibid., 205. See, for example, s. 3 of the Canadian Environmental Protection Act, 1999, which defines "environment" as: "the components of the Earth and includes:
(a) air, land and water
(b) all layers of the atmosphere
(c) all organic and inorganic matter and living organisms; and
(d) the interacting natural systems that include components referred to in paragraph (a) to (c)."

8 But see efforts by groups to bridge this divide: Jeremy Brecher and Brendan Smith, "Pipeline Climate Disaster: The Keystone XL Pipeline and Labor," online: Labor Network for Sustainability http://www.labor4sustainability.org/articles/pipeline-climate-disaster-the-keystone-xl-pipeline-and-labor/

9 "What is the Global Compact," United Nations Global Compact: https://www.unglobalcompact.org/what-is-gc

10 "The Ten Principles" United Nations Global Compact https://www.unglobalcompact.org/what-is-gc/mission/principles. Principle 10 concerns anti-corruption.

11 Ibid.

12 "About" OECD Guidelines for Multinational Enterprises, http://mneguidelines.oecd.org/about.htm

13 Ibid. Each adhering country also commits to creating a National Contact Point charged with promoting the Guidelines and resolving disputes.

14 OECD MNE Guidelines (2011) http://www.oecd.org/daf/inv/mne/48004323.pdf

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the ILO.[15] The environment chapter is said to reflect various instruments, including especially the Rio Declaration.[16]

Among the most integrated of global CSR standards are the 2012 Social and Environmental Performance Standards of the World Bank's International Finance Corporation (IFC).[17] The mission of the IFC is to mobilize finance to support private sector investment in developing countries.[18] The Performance Standards were initially released in 1998, updated in 2006, and then again in 2011. Designed as a tool to guide clients in the management of environmental and social risk, compliance with the Performance Standards is a condition of IFC support.[19] There are eight performance standards, and while several treat labour and environment as distinct silos,[20] others blur the lines, drawing attention to both community and worker health and safety when confronted with hazardous substances[21] and to the relationship between land acquisition and loss of land-based livelihoods for those who are physically or economically displaced.[22]

While the intersection of environment and health and safety laws is an obvious example of overlap between labour and environment,[23] the treatment of these issues in the IFC Performance Standards suggests a deeper and more expansive connection—one that reaches beyond workers to families and communities. Moreover, the consideration of land-based livelihoods reminds us that industrial labour is not the only "work" that merits attention. Indeed, as Anne Trebilcock has observed, there is a need for labour law to move beyond a focus on the formal sector and to embrace the need to "produce better outcomes for the poor" including for those in the informal sector, who are often women.[24]

The approach of the IFC Performance Standards also resonates with Adelle Blackett's reflections on the colonial history of labour law, in particular her

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15 Ibid. paragraph 48.

16 Ibid. paragraph 60. Infra note 33.

17 International Finance Corporation (IFC), Social and Environmental Performance Standards (World Bank, 2012), online: http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES. However, the IFC Performance Standards have been critiqued for failing to fully align with business responsibilities for human rights. See *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises:* "Human Rights Impact Assessments – Resolving Key Methodological Questions," UN HRCOR, 4th Sess, UN Doc A/HRC/4/74 (5 February 2007), paras 22, 25–26.

18 Sara L. Seck, "Emerging-Market Multinational Enterprises, Human Rights, and Sustainable Development: Lessons from the Canadian Experience," *Transnational Corporations* 22 (2013) 73–100.

19 Ibid. In addition, an independent Compliance Advisor Ombudsman responds to complaints from project-affected communities.

20 Compare IFC Performance Standard 2 (Labor and Working Conditions) with IFC Performance Standard 3 (Resource Efficiency and Pollution Prevention) and IFC Performance Standard 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources), supra note 17.

21 IFC Performance Standard 4 (Community Health, Safety, and Security), supra note 17. See also International Finance Corporation, "Environmental, Health, and Safety General Guidelines," online: http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES

22 IFC Performance Standard 5 (Land Acquisition and Involuntary Resettlement), supra note 17.

23 Doorey, "Just Transitions Law," 220.

24 Anne Trebilcock, "Using Development Approaches to Address the Challenge of the Informal Economy for Labour Law," in *Boundaries and Frontiers of Labour Law*, ed. Guy Davidov and Brian Langille (Oxford: Hart Publishing, 2006), 63–86.

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observation that colonial dispossession has led to the recharacterization of the "migrant" as the "modern industrial man."[25] According to Blackett, colonialism was "first and foremost about securing land," and she queries whether labour law must be "confined to discussions of exploitation that neglect their profound link to land, and dispossession?"[26] To suggest that labour law consider land and dispossession within its scope, as well as better outcomes for women in the informal sector, would appear to necessitate a redrawing of the boundaries currently associated with the field.[27]

Uncertainty also exists as to the boundaries of environmental law.[28] This is particularly so if attention is paid to the international arena and debates over environment and development that are inextricably intertwined with colonial histories.[29] Indeed, it is notable that while the international instruments most frequently referenced in the labour context originate clearly from an ostensibly labour-focused institution known as the International Labour Organization,[30] the international instruments most frequently referenced in the environmental context emerged from global conferences that ultimately endorsed not environmental protection but sustainable development as the winning theme.[31] Following the 1972 Stockholm Conference on the Human Environment,[32] the 1992 Rio Conference on Environment and Development endorsed the Rio Declaration,[33] a set of twenty-seven principles that have, to differing degrees, found their way into the texts and preambles of international environmental law treaties and domestic legislation and been re-endorsed time and again at international events, including Rio +20[34] in 2012 and, most recently, the *2030 Agenda* and the SDGs.[35] Among important

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25 Adelle Blackett, "Decolonizing Labour Law: A Few Comments," in *Labour Law and Social Progress: Holding the Line or Shifting the Boundaries*, ed. Roger Blanpain and Frank Hendrickx, guest ed. D'Arcy du Toit (Frederick, MD: Kluwer Law International, 2016)

26 Ibid., 91–92.

27 On the contested boundaries of labour law, see Guy Davidov and Brian Langille, ed., *Boundaries and Frontiers of Labour Law* (Oxford: Hart Publishing, 2006).

28 See T. Aagard, "Environmental Law as a Legal Field: An Inquiry in Legal Taxonomy" *Cornell Law Review* 95 (2010): 221; J. Ruhl and J. Salzman, "Climate Change Meets the Law of Horse," *Duke Law Journal* 62 (2013): 975; D. Tarlock, "Is There a There in Environmental Law?" *Journal of Land Use & Environmental Law* 19 (2004): 21.

29 See generally Shawkat Alam, Sumudu Atapattu, G Carmen, Gonzalez, and Jona Razzaque, ed., *International Environmental Law and the Global South* (Cambridge University Press, 2015).

30 International Labour Organization, *International Labour Standards: Rules of the Game, 3rd Revised edition,* 2014, online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_318141.pdf

31 See for example Ruth Gordon, "Unsustainable Development," in Alam et al., supra note 29, 50–73; Karin Mickelson, "The Stockholm Conference and the Creation of the South-North Divide in International Environmental Law and Policy," in Alam et al., supra note 29, 109–129. See further Karin Mickelson, "South, North, International Environmental Law, and International Environmental Lawyers," *Yearbook of International Environmental Law* 11 (2000): 52.

32 Stockholm Declaration on the Human Environment, in *Report of the United Nations Conference on the Human Environment*, UN Doc.A/CONF.48/14, 2 and Corr.1 (1972).

33 Rio Declaration on Environment and Development, in *Report of the United Nations Conference on Environment and Development*, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, Annex I.

34 United Nations General Assembly, *The Future We Want*, Rio de Janeiro, 11 September 2011, UNGA 66th Sess., UN Doc. A/RES/66/288, 3–10.

35 *2030 Agenda for Sustainable Development*, supra note 3, 5 (para 12): "We reaffirm all the principles of the Rio Declaration on Environment and Development, including, inter alia, the principle of common but differentiated responsibilities, as set out in principle 7 thereof."

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principles in the Rio Declaration, Principle 11 makes it clear that states may choose lower environmental standards in the interest of development, rather than embracing the idea that there are minimum environmental standards below which no state may go.[36] While some international environmental law treaties do qualify this principle, it is a choice as to whether or not states become parties to these treaties, and, for the most part, there is little international environmental law that in fact prohibits pollution outright. Even chemicals management in multilateral environmental law treaties is often approached as an issue requiring prior informed consent of an importing country, rather than an outright prohibition on import/export of specified substances.[37]

Having said this, environmental justice scholars and advocates argue that international environmental law principles must be understood in light of the protections offered under international human rights law.[38] For example, according to Karin Mickelson, the contestation that led to the sustainable development consensus may be best understood as a failure by the "North" to recognize that the "South" was seeking fundamental recognition that the meaning of "environmentalism" itself must be open to interpretation.[39] "While environmentalism of the rich might have the luxury of valuing the environment for its own sake, quite apart from its value to humans, the environmentalism of the poor "originates as a clash over productive resources," with the result that "issues of ecology are often interlinked with question of human rights, ethnicity and distributive justice."[40] Accordingly, environmental human rights law has emerged as an additional source of international and transnational law that merits attention.[41]

Despite the existence of the ILO and its associated international instruments, it is nevertheless true that the wording of many of the "core" labour standards is often sufficiently vague that they cannot be said to provide clear substantive rules.[42] Similarly to what is seen in the environmental context, international labour standards are often contingent on levels of economic development.[43] Nevertheless, as

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36 Rio Declaration, supra note 33.

37 See for example the Basel Convention (transboundary movements of hazardous wastes) and Rotterdam Convention (chemicals management), although the Stockholm Convention takes a slightly stricter approach for persistent organic pollutants (ban/reduction, with exceptions). See further the relationship between these three treaties, online: http://www.brsmeas.org/Decisionmaking/Overview/AboutSynergies/tabid/2614/language/en-US/Default.aspx

38 See for example Carmen G. Gonzalez, "Environmental Justice, Human Rights, and the Global South" *Santa Clara. Journal of International Law* 13 (2015): 151.

39 Mickelson, "South, North," 62–66.

40 Sara L. Seck, "Transnational Business and Environmental Harm: A TWAIL Analysis of Home State Obligations," *Trade, Law and Development* 3 (2011): 192, citing Mickelson, ibid., 65.

41 Sara L. Seck, "Human Rights and Extractive Industries: Environmental Law and Standards," *Human Rights Law and the Extractive Industries*, Paper No. 12, Page No. 12-1 – 12–42 (Rocky Mountain Mineral Law Foundation, 2016).

42 For example, standards such as respect for freedom of association are open to interpretation. The author is grateful to an anonymous reviewer for this insight. See further ILO, *Rules of the Game,* supra note 30, 28–30.

43 For example, there is no agreed upon fixed "minimum wage" in international labour instruments, because it is recognized that countries are at vastly different levels of economic development. I am grateful to an anonymous reviewer for this insight. See further ILO, *Rules of the Game,* supra note 30, 19.

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will be seen below, the link between international labour law and human rights is more clearly accepted, even if it too is contested.[44]

Labour and Environment in Business and Human Rights

The endorsement in 2011 of the UNGPs[45] by the UN Human Rights Council provides an opportunity to reflect upon the relationship between labour law and environmental law through consideration of the relationship between each one and international human rights law. Produced through multi-year multi-stakeholder processes, the UNGPs are a polycentric governance framework comprised of three interrelated pillars: the state duty to protect human rights from violations by non-state actor businesses, as required under international human rights law; the business responsibility to respect human rights, a reflection of social expectations; and the need for effective access to remedies for victims, whether judicial or non-judicial, state-based or non-state-based, including company-level grievance procedures.

The UNGPs have been critiqued by those who believe that they fail to properly reflect existing international human rights law on the "extraterritorial" obligations of states. There are also those who believe that the "do no harm" expectation of the business responsibility to respect is inadequate, as the power of transnational corporations brings with it an obligation of legal stature to also promote and fulfil human rights.[46] Indeed, following the endorsement of the UNGPs, select states and civil society groups advocated successfully for a binding treaty process to begin discussions at the UN Human Rights Council.[47] At the same time, a Human Rights Council Working Group was established to further implementation of the UNGPs, and yearly Forums are held to consider and promote action.[48] In addition, the business responsibility to respect has been gradually embedded in multiple international CSR standards, as noted above.[49]

The content of the business responsibility to respect rights is elaborated in Principles 11 to 24, and requires businesses to adopt a human rights policy (Principle 16) and to engage in human rights due diligence throughout the business enterprise, so as to "identify, prevent, mitigate, and account for how they address human rights impacts" (Principle 17). Businesses should also remediate or participate in legitimate remediation processes when they identify that they have

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44 Anne Trebilcock, "Due diligence on labour issues – Opportunities and limits of the UN Guiding Principles on Business and Human Rights" in Adelle Blackett and Anne Trebilcock, *Research Handbook on Transnational Labour Law* (Cheltenham, UK: Edward Elgar, 2015), 93, and 97–98 citing Kevin Kolben, "Labor Rights as Human Rights?" *Virginia Journal of International Law* 50 (2010): 484.

45 UNGPs, supra note 1.

46 See generally Surya Deva and David Bilchitz, ed., *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect* (Cambridge: Cambridge University Press, 2013).

47 United Nations Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, online: http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx

48 United Nations Working group on the issue of transnational corporations and other business enterprises with respect to human rights, online: http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx

49 Sara Seck, "Business, Human Rights, and Canadian Mining Lawyers," *Canadian Business Law Journal* 56 (2015): 208–237.

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caused or contributed to adverse human rights impacts (Principle 22). The overarching responsibility, described in Principle 13, is to:

(a) "Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

The business responsibility is understood as distinct from the state duty and exists irrespective of state compliance with its own obligations.[50] Ultimately, business enterprises should both "comply with all applicable laws" and "respect internationally recognized human rights, wherever they operate."[51]

The scope of the business responsibility to respect rights is of particular interest here. Specifically, Principle 12 states: "The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work."

The Commentary to Principle 12 clarifies that the International Bill of Rights consists of "the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights," together with "the principles concerning the fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work."[52] The Commentary notes that, in particular circumstances, additional standards need to be considered, including United Nations instruments elaborating "the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law."

Notable is the lack of any explicit or even (intentionally) implicit reference to environmental rights or standards, and without explanation. This is not surprising, as there is no single institutional authority that promulgates environmental norms that would obviously merit inclusion, unlike the body of international labour standards of the ILO.[53] While the legal normativity of ILO Conventions as

[50] UNGPs, supra note 1, Principle 11, Commentary.
[51] Ibid., Principle 23 (a).
[52] United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; International Labour Organization (ILO), *ILO Declaration on Fundamental Principles and Rights at Work*, June 1988.
[53] Compare, the work of the UN Environment Programme, with that of the ILO. See UNEP, "Why Does UNEP Matter?" online: https://www.unenvironment.org/about-un-environment/why-does-un-environment-matter

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compared with ILO recommendations differs,[54] for example, the fact of association with the ILO and the existence of rights-based conventions makes obvious the relationship between the norms evident in instruments of the ILO and human rights. However, deeper consideration reveals that there is indeed increasing global consensus on the content of both procedural and substantive environmental rights, as well as the need to pay particular attention to the environmental concerns of vulnerable groups, including indigenous peoples, women, and children. This has been well documented in the UN Human Rights Council work of John Knox.[55]

As inputs to an overarching Mapping Report, fourteen individual research reports were prepared that describe statements made by specific sources of international law on the topic of "human rights obligations, including non-discrimination, relating to the enjoyment of a safe, clean, healthy and sustainable environment."[56] While all states may not have "formally accepted" all the norms identified in the Mapping Report, Knox highlights that, given the "diversity of the sources from which they arise" and their "remarkabl[e] coheren[ce]," they "provide strong evidence of converging trends towards greater uniformity and certainty in the human rights obligations relating to the environment."[57] Notably, there is "striking" "agreement among sources" that States have procedural obligations including "duties (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm."[58] Knox further notes the "special importance" of "rights of freedom of expression and association" and the protection of life, liberty, and security of individuals exercising these rights in relation to public participation in environmental decision-making. This is due to the "extraordinary risks" facing human rights defenders who work to protect the environment, land rights, and natural resources.[59]

With regard to substantive rights protection, Knox concludes that states are obligated to protect against environmental harm that interferes with the enjoyment of a broad spectrum of human rights, and that this includes an obligation to adopt a legal framework both to protect against environmental harm and to regulate private actors to protect against such harms.[60] Finally, the Mapping Report

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54 AGO Shin-ichi, "Whether to Adopt a Convention or a Recommendation – The Experience of International Labour Legislation," in *The Future of Business and Human Rights: Theoretical and Practical Considerations for a UN Treaty*, ed. Jernej Letnar Černič and Nicolás Carrillo-Santarelli (Cambridge, UK: Intersentia, 2018), 253–272.

55 UN HRC Resolution 19/10 Human Rights and the Environment, A/HRC/RES/19/10 (19 April 2012) (resolution appointing Knox to his mandate); Knox, *Mapping,* supra note 2, 6.

56 UN HRC Resolution 19/10, ibid., para. 2(a); Knox, *Mapping,* ibid. See generally Seck, "Human Rights and Extractive Industries," supra note 41.

57 Knox, *Mapping*, supra note 2, 8 (para 27).

58 Ibid., 8 (para 29). See further paras 30–35 (duties to assess environmental impacts and make information public); paras 36–40 (duties to facilitate public participation in environmental decision-making); and paras 41–43 (duty to provide access to legal remedies) (pages 9–12).

59 Ibid., 11 (para 39), referring to the work of the Special Rapporteur on the situation of human rights defenders.

60 Knox, *Mapping*, supra note 2, 12–13, paras. 79–84.

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considers the obligations of states to protect members of groups in "vulnerable situations," including women, children, and indigenous peoples.[61]

The Mapping Report confirms that the state duty under the UNGPs requires states to regulate and adjudicate abuse by business enterprises, "including environmental harm that infringes human rights."[62] Knox notes that in a review of business and human rights cases, "nearly one-third of the cases alleged environmental harm that affected human rights, including the rights to life, health, food and housing," with most of the "direct harm to communities" cases involving environmental impacts.[63] All three pillars of the UNGPs clearly "apply to environmental human rights abuses."[64]

In Knox's final 2018 report to the UN Human Rights Council, he presents Framework Principles on human rights and the environment which elaborate upon the themes of the Mapping Report.[65] Here, he specifically acknowledges that there is a need for more work to clarify "the responsibilities of businesses in relation to human rights and the environment."[66] The Framework Principles and related commentary note that businesses "should conduct human rights impact assessments in accordance with the [UNGPs],"[67] and that the business responsibility includes to "avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships."[68] However, further guidance for business enterprises is not provided.

One concern with a human rights approach to environmental protection is that it reinforces a perception that humans are separate and distinct from the environment.[69] It may also be seen to disregard the intrinsic worth of nature, as well as the possibility that nature herself has rights, views common to many Indigenous cultures.[70] Indeed, in a 2017 report focused upon the value of biodiversity to humans, Knox explicitly acknowledges that "the components of biodiversity also have intrinsic value that may not be captured by a human rights perspective, while

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61 Ibid., 19–22.

62 Ibid., para 58. See further paras 58–61.

63 Ibid, citing United Nations General Assembly, "Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse," 23 May 2008, Human Rights Council, Addendum to the *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, UN DOC A/HRC/8/5/Add.2, para. 67.

64 Knox, *Mapping*, supra note 2, para 59.

65 Knox, *Principles,* supra note 2, Annex.

66 Ibid., para 18.

67 Ibid., Commentary to Principle 8, para 22.

68 Ibid., Commentary to Principle 12, para 35.

69 Anna Grear, "The Vulnerable Living Order: Human Rights and the Environment in a Critical and Philosophical Perspective," *Journal of Human Rights and the Environment* 2, no. 1 (2011): 23–44.

70 See for example Cristiano Gianolla, "Human rights and nature: intercultural perspectives and international aspirations" *Journal of Human Rights and the Environment* 1 (2013): 58–78; David R. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (ECW Press, 2017); Jacinta Ruru, "A Treaty in Another Context: Creating Reimagined Treaty Relationships in Aotearoa New Zealand," in *The Right Relationship: Reimagining the Implementation of Historical Treaties*, ed. John Borrows and Michael Coyle (Toronto: University of Toronto Press, 2017), 305–324.

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at the same time asserting that "the full enjoyment of human rights … depends on biodiversity."[71] There is no doubt that the adoption of an environmental human rights approach, and especially one that draws attention to business responsibilities, is a strategic choice.

In conclusion, the business responsibility to respect rights as articulated in the UNGPs applies to all rights. While the UNGPs highlight labour rights as an area of concern, they are silent on environmental rights, even though there is increasing evidence of a consensus surrounding the existence and content of both procedural and substantive environmental rights, as well as the rights of members of vulnerable groups subject to environmental harm.

Fast Fashion Case Study: Rana Plaza and the Environment

Despite the existence of environmental human rights, as documented by Knox, the business and human rights movement appears preoccupied with labour rights, including health and safety of workers, while remaining largely oblivious to violations of environmental rights that arise in the same industrial factory contexts.[72] This is not to say that environmental problems are ignored by powerful corporate actors. Indeed, "big brand companies" are increasingly "integrating environmental goals into their core business strategy" with measurable targets that are independently audited.[73] Environmental sustainability tools include "life-cycle assessment, supply chain tracing, eco-certification, and sustainability reporting."[74] The adoption of these tools and targets has led to incremental improvements through reductions in the ecological footprint of many consumer goods, yet the big brand sustainability embrace has been criticized for failing to address the underlying problem of increasing consumer consumption on a finite planet.[75] Moreover, social concerns including child labour and forced labour tend to be treated separately from concerns over environmental issues, allowing firms to choose to improve in one sphere while ignoring the other.[76]

My limited claim is qualitatively different: even when big brands choose to address labour and environmental issues by adopting supply chain responsibility tools, labour-related problems are treated as raising human rights concerns, while

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71 John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: biodiversity*, UNHRC, 34th Sess, UN Doc A/HRC/34/49 (2017), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>, 3.

72 Sara Seck, "Reflections on Business, Human Rights, the Environment, and Climate Justice" (December 4, 2017), Dalhousie Environmental Law News blog, online: https://blogs.dal.ca/melaw/2017/12/04/reflections-on-business-human-rights-the-environment-and-climate-justice-december-4-2017/ (reflecting on the 2017 UN Forum on Business and Human Rights).

73 Peter Dauvergne and Jane Lister, "Big brand sustainability: Governance prospects and environmental limits," *Global Environmental Change* 22 no. 1 (2012): 36–45. I am grateful to an anonymous reviewer for drawing my attention to the work of Dauvergne, LeBaron, and Lister.

74 Ibid., 38.

75 Ibid., 45.

76 Genvieve LeBaron and Jane Lister, "Ethical Audits and the Supply Chains of Global Corporations" *Sheffield Political Economy Research Institute (SPERI)*, (2016) University of Sheffield. SPERI Global Political Economy Briefs (1), Report, 5, online: http://eprints.whiterose.ac.uk/96303/1/Global-Brief-1-Ethical-Audits-and-the-Supply-Chains-of-Global-Corporations.pdf.

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environmental problems are not. An examination of the environmental degradation associated with fast fashion at industrial sites such as Rana Plaza in Bangladesh provides a useful starting point for my claim. The horrors associated with factory fires and the horrendous loss of life suffered in the Rana Plaza factory collapse[77] are clearly worthy of serious international attention. Perhaps particularly horrendous in the Rana Plaza story is that workers, largely female, were forced to enter the factory or lose their jobs, even though they raised fears over large cracks in the foundation.[78] Yet, the claim in this paper is that the "slow death" that arises from environmental harm must also draw attention from the international community if we are to take seriously a human rights approach to transnational governance of industrial activities. For example, as documented in a *New York Times* article from 2013, the pollution problems associated with the fast fashion industry in Bangladesh are serious:[79]

> Bangladesh's garment and textile industries have contributed heavily to what experts describe as a water pollution disaster, especially in the large industrial areas of Dhaka, the capital. Many rice paddies are now inundated with toxic wastewater. Fish stocks are dying. And many smaller waterways are being filled with sand and garbage, as developers sell off plots for factories or housing.
>
> …
>
> Here in Savar, an industrial suburb of Dhaka and the site of the collapsed Rana Plaza building, some factories treat their wastewater, but many do not have treatment plants or chose not to operate them to save on utility costs. Many of Savar's canals or wetlands are now effectively retention ponds of untreated industrial waste.

The article then suggests that it is the "political and economic power of industry" that is responsible for an increase in pollution, despite better laws and new environmental courts, with impacts felt directly by children of factory workers: "'The school always smells,' Golam said. 'Sometimes we can't even eat there. It is making some kids sick. Sometimes my head spins. It is hard to concentrate.'"[80]

The Rana Plaza factory collapse spurred action at multiple levels as attention focused on how to ensure that worker safety in the Bangladesh factories could be protected in the future, while addressing remedy and responsibility for victims of the tragedy and their families. According to Larry Catá Backer, responses to the disaster included initiatives at every level: criminal prosecutions were brought in Bangladesh against factory owners and engineers;[81] the United States suspended its generalized system of preferences with Bangladesh and then renegotiated the terms

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77 See for example Larry Catá Backer, "Are Supply Chains Transnational Legal Orders? What We Can Learn from the Rana Plaza Factory Building Collapse" *UC Irvine Journal of International, Transnational, and Comparative Law* 1, no. 11 (2016): 11–65.

78 Ibid., 22–23.

79 Jim Yardley, "Bangladesh Pollution, Told in Colors and Smells," *New York Times*, 14 July 2013: http://www.nytimes.com/2013/07/15/world/asia/bangladesh-pollution-told-in-colors-and-smells.html

80 Ibid. (citing a top-ranked student at the school 2 miles from Rana Plaza).

81 Backer, supra note 77, 23–24.

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in order to induce legal reform in Bangladesh;[82] the EU launched a Sustainability Compact together with the ILO and others designed to improve conditions for workers;[83] and lawsuits were brought in foreign courts seeking damages for wrongful death and negligence.[84] More importantly from a transnational law perspective, brand companies and allied stakeholders formed two initiatives, the Alliance for Bangladesh Worker Safety (a project of North American apparel companies and retailers),[85] and the more rigorous Accord on Fire and Building Safety in Bangladesh (a binding agreement between brands and trade unions, with broader membership and a tripartite structure like that of the ILO).[86] Both were designed to become regulators of building safety through facilities inspections throughout the global garment production chains. In addition, the Arrangement was established to provide an independent and comprehensive process to deliver support to victims and their families. A Rana Plaza Coordination Committee was created to administer the Arrangement, comprised of representatives from the government of Bangladesh, together with local and international representatives of the garment industry, trade unions, and NGOs, with the ILO serving as a "neutral and independent chair."[87] A Trust Fund was established and managed by the ILO, with donations from companies sourcing from Bangladesh.[88]

The merits of each of these initiatives alone or in combination can be debated. Backer argues that these multiple initiatives might be seen as the construction of "a factory building designed to create space for the production of regulation/governance by a variety of producers to satisfy the domestic and global needs of markets in regulation/governance" while also provocatively asking: "Is the Rana Plaza regulatory/governance factory also structurally compromised and ready to collapse?"[89] Yet I wish to focus on a different dimension: what of the environmental consequences of fast fashion, and the rights of vulnerable children of factory workers, for example, to live in a healthy environment? Might these issues be better embedded in transnational governance responses? This is not to suggest that environment plays no role—for example, according to Backer, supplier codes of conduct that form part of agreements between manufacturers and apparel retailers may include provisions on environmental practices.[90] And environment features in transnational governance initiatives like the Global Compact and the OECD MNE Guidelines. Yet there is a sense that environmental human rights issues are not obvious. In the context of the Rana Plaza case study, we might conclude that this is because they are not sudden or spectacular (in the horrific sense), but rather

82 Ibid., 24–25.
83 Ibid., 25–26.
84 Ibid., 27. See for example Michelle Chen, "A Western Company Could Finally Be Held Accountable for the Rana Plaza Disaster," *The Nation*, April 29, 2016, online: https://www.thenation.com/article/a-western-company-could-finally-be-held-accountable-for-the-rana-plaza-disaster/.
85 Backer, supra note 77, 28–30. See *Alliance for Bangladesh Worker Safety,* online: http://www.bangladeshworkersafety.org
86 Ibid., 31–33. See *Accord on Fire and Building Safety in Bangladesh,* online: http://bangladeshaccord.org
87 Ibid., 33–34.
88 Ibid., 35–36.
89 Ibid., 45.
90 Ibid., 19–20, citing Walmart's Standards for Suppliers Manual (April 2014).

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long and slow harms arising from multiple synergistic interactions, absent easy proof of causation of harm (a common problem in the environmental field). It is therefore easy for them to be overlooked, or treated as secondary, or as having a lesser human consequence. The same, of course, can be said about climate change, an issue that is also present in the background context of Rana Plaza. Indeed, not only is Bangladesh particularly vulnerable to climate change, as noted in the *New York Times* article, but women and children of the global south are particularly climate vulnerable.[91]

Relational Autonomy, Workers, and Corporeal Citizenship

The focus of the response to Rana Plaza, and the structure of international (transnational) labour law more generally, is upon workers and their rights. One might suggest that the aim is to provide protections that are sufficient so that workers can work without fear of imminent death or undue exploitation but are not sufficient to make sure that workers, their families, and the community lead sustainable livelihoods. Would it be useful to re-imagine transnational labour law to better embrace environmental rights? How might this relate to ideas of sustainability or sustainable development?

The workers in the Rana Plaza factory were largely female, and, as evident from the *New York Times* article, many had family, including young children, close at hand. While feminist labour law theorists have argued persuasively for the need to broaden the scope of labour law to embrace the unpaid work of caregivers, usually women, that often takes place within the home,[92] the aim of this analysis is slightly different. As a starting point, and inspired by the concept of relational autonomy as developed by Jennifer Nedelsky, I propose that we need to move beyond an image of the worker as a bounded, autonomous being, and embrace a view of the worker as a relational being with porous boundaries. Of course, the labour movement as a whole is based upon ideas of collective action. But is it conceptualized as collective action of bounded autonomous individuals (the key building blocks of liberalism)? If so, what might it mean to reimagine this?

According to Nedelsky, the common feminist critique of traditional liberalism is that "atomistic individuals" are taken as the "basic units of political and legal theory" and so the "inherently social nature of human beings" is ignored.[93] Her claim is that a relational view of the individual sees that "the persons whose rights and well-being are at stake are constituted by their relationships such that it is only in the context of those relationships that one can understand how to foster their capacities, define and protect their rights, or promote their well-being."[94]

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91 See Climate Change Cell, DoE, MoEF, *Climate Change, Gender and Vulnerable Groups in Bangladesh* (Dhaka: 2009), online: http://lib.icimod.org/record/13786/files/4600.PDF; and more generally Sara L. Seck, "Revisiting Transnational Corporations and Extractive Industries: Climate Justice, Feminism, and State Sovereignty," *Transnational Law and Contemporary Problems* 26, no. 1 (2017): 384–413.

92 See for example Joanne Conaghan, "Gender and the Idea of Labour Law," feminists@law 4, no. 1 (2014) (citing numerous scholars).

93 Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press, 2011), 120.

94 Ibid., 121.

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Nedelsky also considers the way in which boundary metaphors are commonly invoked in legal relationships, including property, and suggests the need to move beyond boundary metaphors to focus upon the real question: "what patterns of relationship among people and the material world [do] we want"?[95]

Thus, workers are embedded in relationships at work and in family and community, and realize autonomy as a result of relationships that nurture and support the possibility of autonomy. This suggests that a view of the worker as an individual with rights that are detached from family and community and even ecological contexts is misguided; a better view, then, might be of a relational worker constituted by porous boundaries.

A different but complementary approach is inspired by the work of Dayna Nadine Scott and her co-authors Jennie Haw and Robyn Lee on consumerism and toxins,[96] who embrace a vision of the individual as a corporeal citizen. According to Scott, Haw, and Lee, precautionary consumption of household goods so as to reduce toxins in the home and family is feminized labour. They argue for an embrace of the concept of corporeal citizenship, drawing upon the insight of material feminists to move beyond the common conceptualization of the individual as "stand[ing] outside of, and separate from, the environment."[97] Precautionary consumption "accepts the assumption of a fully autonomous, clearly bounded individual who is able to act 'against' the environment to keep toxins out."[98] Yet this "limits agency to the individual and essentially depoliticizes efforts to address toxins."[99]

Scott, Haw, and Lee propose the frame of corporeal citizenship for anti-toxin advocacy, suggesting that the "movement of toxics across bodies, and through our environments and economies, provides a rationale for *why* we should extend out our spheres of political and ethical responsibility from the level of the individual or family to cover broader ecosystems and communities."[100] The concept of corporeal citizenship, originating in the work of Gabrielson and Parady (who bring material feminism together with environmental political theory), addresses in part the problem of green citizenship theories, which assume "autonomous human subjects" "have the knowledge and ability to participate in appropriate 'green' activities" while excluding those who cannot participate equally due to "unequal social locations."[101] "Corporeal citizenship … turns attention to thinking about the environment *through the body,* emphasizing difference, with the ultimate aim of collective action and decision-making."[102]

To better understand corporeal citizenship, it is necessary to consider the "porosity of bodily boundaries" and to consider the insights of material feminists,

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95 Ibid., 117.

96 Dayna Nadine Scott, Jennie Haw, and Robyn Lee, "Wannabe Toxic-Free? From precautionary consumption to corporeal citizenship" *Environmental Politics* (2016), DOI: http://dx.doi.org/10.1080/09644016.2016.1232523

97 Ibid., 331.

98 Ibid.

99 Ibid.

100 Ibid.

101 Ibid., 334. See further T. Gabrielson and K. Parady, "Corporeal citizenship: rethinking green citizenship through the body" *Environmental Politics* 19, no. 3 (2010): 374–391.

102 Ibid., 335.

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who "adopt an ontological frame in which entities do not pre-exist their relationality: both humans and non-humans, subjects and objects, and social and physical entities, mutually co-constitute each other."[103] As "human corporeality continuously interacts with the materiality of the environment," it becomes important to rethink human agency and to accept the importance of taking responsibility for the maintenance of boundaries that are "semi-permeable and established and stabilized through social and natural interactions."[104] Rather than giving in to "defeatism," a corporeal citizenship model suggests that "the state's responsibility to manage and protect the health of its population is inseparable from its responsibility to care for the health of the environment."[105] It also has implications for the "sphere of ethical and political responsibility of 'individual' citizens" to care for the "wider social community and the environment."[106]

The corporeal citizen should therefore think not only about the consequences of toxins for individual and family health, but for everyone, including plants and animals. Adopting a corporeal citizen model of the worker in transnational labour law would extend the boundaries of the field, aligning it with environmental human rights claims and so beyond workers to families and communities. It could even push beyond anthropocentric understandings of human rights to culturally informed visions that acknowledge the rights of nature. The localized consequences of industrial externalities would thus be brought within transnational labour law itself. Satisfactory working conditions would be understood by workers and the instruments of transnational governance as necessitating more than simply the enabling of survival in a factory. A corporeal citizen approach to transnational labour law would enable sustainable livelihoods of family and community in a healthy environment. In the process, the labour/environment divide would begin to dissolve.

Children's Rights and the Sustainable Development Goals

While I have argued that a reconceptualization of the worker and thus transnational labour law is essential, here I inquire into whether there are already signs that such conceptual shifts exist in practice. Two developments will be briefly considered: first, the results of research conducted by UNICEF on children in the ready-made garment sector in Bangladesh, and second, the adoption in 2015 of global Sustainable Development Goals.

In 2012, UNICEF, the Global Compact, and Save the Children, released the results of a joint initiative to develop a set of "Children's Rights and Business Principles," inspired by the 2011 UNGPs and the Convention on the Rights of the Child.[107]

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[103] Ibid., 331–332 citing S. Alaimo and S. Hekman, ed., *Material feminisms* (Bloomington: Indiana University Press, 2008), and others.

[104] Scott, Haw, and Lee, 12, citing N. Tuana, "Viscous porosity: witnessing Katrina," in Alaimo and Hekman.

[105] Ibid., 334.

[106] Ibid.

[107] UNICEF, Global Compact, and Save the Children, "The Children's Rights and Business Principles," online: https://www.unicef.org/csr/css/PRINCIPLES_23_02_12_FINAL_FOR_PRINTER.pdf. See also https://www.unicef.org/csr/theprinciples.html

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The elimination of child labour features prominently in Principle 2, while Principle 7 asks businesses to "[r]espect and support children's rights in relation to the environment and to land acquisition and use."[108] The Principles observe that children "absorb a higher percentage of pollutants to which they are exposed" and that their immune systems are more vulnerable than those of adults.[109] As with other CSR guidance, then, both labour and environment feature in the Principles, and they appear to be treated as distinct concerns. Moreover, additional guidance is available on supply chain responsibility, which identifies both labour and environment issues as of importance to children's rights.[110]

However, Principle 3 also provides that "all business should provide decent work for young workers, parents and caregivers."[111] While on the surface this text and related commentary are not obviously relevant to the reconceptualization of the worker, it is the application of this principle in the context of the Bangladesh garment sector that suggests a bridging of the labour and environment silos. In a study released in 2015 on the ready-made garment sector and children in Bangladesh, UNICEF notes that the rights of the children of the predominantly female garment workers are affected by the "working and living conditions of garment workers" through interlinked impacts that "relate to the practices and conditions inside and outside the factory gates."[112] Solutions that improve the impact on children, therefore, "require holistic approaches that address the situation in both the factory and the community context."[113] The study examines eight impact areas. Impact area 7, "Lack of decent living conditions," explicitly considers how the living conditions of the female garment sector workers impact the health of their families, including children, and identifies the role of the garment sector itself in contributing to both water pollution and water scarcity, with "disproportionate impact on the urban poor," including a lack of access to safe water for children.[114]

The focus on the worker as a parent of children who live in communities with contaminated environments as a consequence of industry conduct clearly adopts a relational view of the worker, although perhaps not quite a corporeal vision. Appropriately, in 2018, Knox released a study on the rights of the child and environment as part of his Special Rapporteur mandate.[115] Already in 2016, the Special Rapporteur on hazardous wastes and substances presented a report on the rights

[108] Children's Rights and Business Principles, ibid., 11.
[109] Ibid., 3, 28–29.
[110] UNICEF, CSR, "Global Supply Chains," online: https://www.unicef.org/csr/global-supply-chains.html
[111] "Children's Rights and Business Principles," supra note 107, 11, 20–21.
[112] UNICEF, *The Ready-Made Garment Sector and Children in Bangladesh* (2015), 3, online: https://www.unicef.org/csr/files/CSR_BANGLADESH_RMG_REPORT.PDF
[113] Ibid.
[114] Ibid., 10–11.
[115] *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, John Knox: children's rights* OHCHR 37th Sess UN Doc A/HRC/37/58 (2018), online: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/29/PDF/G1801729.pdf?OpenElement

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of the child, with recommendations that businesses conduct human rights due diligence throughout their global supply chains.[116]

The second source that I will briefly consider here is the set of 17 Sustainable Development Goals, endorsed by 170 world leaders in September 2015 in *Transforming Our World: The 2030 Agenda for Sustainable Development* (the *2030 Agenda*).[117] The Preamble to the *2030 Agenda* explicitly states that the SDGs "seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls."[118] Moreover, the SDGs "are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social, and environmental."[119] The overarching vision embraced by the *2030 Agenda* is of "a world in which every country enjoys sustained, inclusive and sustainable economic growth and decent work for all. A world in which consumption and production patterns and use of all natural resources […] are sustainable."[120] This world is also "climate-sensitive" and resilient, with respect for biodiversity. It is, moreover, a world in which "humanity lives in harmony with nature and […] living species are protected."[121] Crucially, for the purpose of this paper, the *2030 Agenda* explicitly states that the SDGs are grounded fully in respect for international law, including international human rights law.[122] Implementation of the SDGs by business is explicitly discussed in paragraph 67 of the *2030 Agenda*.[123]

The SDGs address labour issues in Goal 8, which aims to "[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all," with the protection of labour rights specifically identified in target 8.8.[124] Goal 16, focused on the promotion of "peaceful and inclusive societies for sustainable development" and the provision of "access to justice for all" is arguably implicitly consistent with procedural environmental rights.[125] Many goals address environmental concerns ranging from water to climate change to biodiversity protection, yet none explicitly endorse the protection of environmental rights.[126] However, many SDGs use language that suggests an overlap between environment and labour issues, hinting or explicitly endorsing the importance of

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116 OHCHR, "The Rights of the Child and Hazardous Substances and Wastes," online: http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/RightsoftheChildHazardousSubstancesWastes.aspx. See further *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management of hazardous wastes and substances*, UN Doc A/HRC/33/41 (2 August 2016), online: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/169/26/PDF/G1616926.pdf?OpenElement

117 SDGs, supra note 3; United Nations Office of the High Commissioner for Human Rights, *Human Rights and the 2030 Agenda for Sustainable Development*, online: https://www.ohchr.org/EN/issues/MDG/Pages/The2030Agenda.aspx

118 *2030 Agenda for Sustainable Development*, supra note 3 (Preamble). On gender, see ibid., Goal 5.

119 Ibid. (Preamble).

120 Ibid., para 9.

121 Ibid.

122 Ibid., para 10.

123 Ibid., para 67.

124 Ibid., Goal 8. See especially Goal 8.8.

125 Ibid., Goal 16. See further John H. Knox, "Human Rights, Environmental Protection, and the Sustainable Development Goals," *Washington International Law Journal* 24 (2015): 517 (commenting on an earlier draft of the SDGs).

126 See especially *2030 Agenda for Sustainable Development*, ibid., Goals 6 (water), 13 (climate change), 14 (marine resources), 15 (terrestrial ecosystems).

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access to land and small-scale livelihoods, while simultaneously highlighting the need to reduce hazardous substances and minimize adverse impacts on both people and the environment.[127]

The content of the SDGs is important, as international CSR instruments are actively aligning their guidance tools with the SDGs. For example, the UN Global Compact has transformed its agenda in light of the SDGs, noting that in addition to the Ten Principles, companies should embrace the SDGs.[128] A paper commissioned by the Business and Sustainable Development Commission explicitly examines the relationship between the UNGPs and the SDGs, concluding in part that a "concerted campaign to advance respect for human rights through global value chains" would align with the expectation that "companies use their leverage to drive respect for human rights," an expectation that should be "a centrepiece of […] advocacy for the role of business in advancing the SDGs."[129] It remains to be seen whether this advocacy and action will take seriously the environmental dimensions of human rights, perhaps by re-imagining the worker as a corporeal citizen.

Conclusions

I have drawn attention to the contested boundaries of the disciplines of labour law and environmental law and the importance of rooting an understanding of each in acknowledgement of their colonial pasts as well as present social justice claims expressed in the language of human rights. In addition, I have considered feminist critiques of the autonomous individual that I argue are implicit in human rights approaches to labour law that focus on the rights of workers rather than embracing a holistic assessment of rights that considers industrial impacts on families and communities, including a right to live in a healthy environment rather than suffer the slow death of industrial pollution or the sudden but unpredictable death of climate disaster. One question for future research is whether in new instruments of transnational law, designed to embed both the UNGPs and SDGs, labour and environmental issues will remain distinct issues considered in separate silos or whether they will become intertwined in a relational embrace, with workers understood as corporeal citizens embedded in material environments. The answer may depend on the ways in which respect is given to alternate ways of viewing labour and environment, rooted in rights to access food, water, and natural resources; to engage in sustainable small-scale livelihoods; and to respect land through a long-term relationship without fear of dispossession. Equal attention to procedural and substantive environmental rights, as well as the rights of environmentally vulnerable groups may also be a key part of the way forward. Or it may be, as the UNICEF research suggests, that a focus on the rights of the child will be the key.

[127] Ibid., Goals 1 (poverty), 2 (hunger), 3 (health), 12 (consumption and production).
[128] UN Global Compact, Sustainable Development, online: https://www.unglobalcompact.org/what-is-gc/our-work/sustainable-development
[129] *Business, Human Rights and the Sustainable Development Goals: Forging a Coherent Vision and Strategy,* A paper from Shift commissioned by the Business and Sustainable Development Commission (November 2016), 34–35.

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A related question for future research must be how to transform industries such as fast fashion to take into account not only local externalities, but also those associated with the ecological footprint of fabrics and other materials brought into the factories from outside. A corporeal citizen approach to industrial labour could contribute to this mission, if used to inform industrial agricultural production of cotton, for example, or industrial chemical production of synthetic fibres. More challenging, perhaps, may be to envision how lessons from relational theory or corporeal citizenship could address other ecological consequences of fast fashion, including its relentless overconsumption-oriented business model. There are hopeful signs, however, that recycled fabrics may already be seen as vital to the future of the industry.[130]

Adelle Blackett observes that transnational labour lawyers understand that "social justice at work must be addressed through engagement with a range of intersecting and interdependent fields, from trade and investment law, to corporate social responsibility, to environmental law."[131] This observation parallels that of Usha Natarajan and Kishan Khoday who, in exploring the relationship between nature and international law at a time of ecological crisis, wonder "why international lawyers working in fields such as economic, trade, labour, or investment law, or law and development, do not feel an imperative to consider the environmental aspects of their work," even as "few would deny that the natural environment is fundamental to economic development."[132] I have argued that what is needed is a re-imagining of transnational labour law. I could equally have argued that it is international environmental law that needs to be re-imagined so as to explicitly bring people within its embrace. However, as noted earlier, international environmental law is often seen as encompassed within the embrace of sustainable development, with the SDGs the most prominent effort to date. It may be, then, that the answer lies in reimagining both fields within a human rights framework, embedded within an overarching vision of sustainability and resilience informed by theories of justice, human capabilities,[133] and corporeal citizenship.

Sara L. Seck
Associate Professor
Schulich School of Law and Marine & Environmental Law Institute
Dalhousie University
Sara.Seck@dal.ca

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130 Anna Hirtenstein, "Fast Fashion Goes Green with Mushrooms, Lumber Scraps, and Algae: Inditex and H&M are developing textiles to reduce the environmental cost of throwaway clothes," *Bloomberg* (1 May 2018), online: https://www.bloomberg.com/news/articles/2018-05-01/fast-fashion-goes-green-with-mushrooms-lumber-scraps-and-algae

131 Blackett, "Decolonizing Labour Law," supra note 25, 93–94.

132 Usha Natarajan and Kishan Khoday, "Locating Nature: Making and Unmaking International Law," *Leiden Journal of International Law* 27 (2014): 573–593.

133 See further Doorey, supra note 4, 24–30, citing among others Amartya Sen, "The Ends and Means of Sustainability" *Journal of Human Development and Capabilities* 14 (2013): 6; And Shannon Roesler, "Addressing Environmental Injustices: A Capability Approach to Rulemaking" *West Virginia Law Review* 114 (2011): 49, 78. See also Trebilcock, supra note 24, 63–86 (outlining three development paradigms: the sustainable livelihoods approach; human capability perspective; and the empowerment approach).

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