



GRIFFITH JOURNAL OF  
**LAW & HUMAN DIGNITY**



# GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY

---

*Editor-in-Chief*  
Stuart Brown

*Executive Editors*  
Sofie Cripps  
Jarryd Cox

*Editors*  
Melissa Bansraj  
Ami Goeree  
Jordan Roles  
Briahna Conolly  
Nirmit Srivastava

*Consulting Executive Editor*  
Dr Allan Ardill

---

Volume 9 Issue 1  
2021

Published in August 2021, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*  
ISSN: 2203-3114

## CONTENTS

---

DR BRIDGET LEWIS	<i>THE POTENTIAL OF INTERNATIONAL RIGHTS-BASED CLIMATE LITIGATION TO ADVANCE HUMAN RIGHTS LAW AND CLIMATE JUSTICE</i>	1
LYDIA HAMER & KIERAN TRANTER	<i>PARENTS...NEXT: THE ONGOING NEOLIBERALISING OF AUSTRALIAN SOCIAL SECURITY</i>	28
DR ELAINE WEBSTER & PROFESSOR ELISA MORGERA	<i>TRANSFORMATIVE CAPACITY BUILDING AROUND A RIGHT TO A HEALTHY ENVIRONMENT: WHAT ROLE FOR 'DIGNITY' AS A HUMAN RIGHTS VALUE?</i>	55
DR TAUDEL HARPER	<i>DO WE CARE ABOUT WHAT WE SHARE? A PROPOSAL FOR DEALING WITH THE PROLIFERATION OF FALSE INFORMATION BY CREATING A PUBLIC PLATFORM</i>	87
RAUL MADDEN	<i>A NEW GIG FOR UNCONSCIONABILITY — EQUITY AND HUMAN DIGNITY IN UBER TECHNOLOGIES V. HELLER [2020]</i>	108



# TRANSFORMATIVE CAPACITY BUILDING AROUND A RIGHT TO A HEALTHY ENVIRONMENT: WHAT ROLE FOR 'DIGNITY' AS A HUMAN RIGHTS VALUE?

ELAINE WEBSTER AND ELISA MORGERA\*

*For decades, scholars have explored the potential merits and risks of a formal, self-standing human right to a healthy environment. While some have advocated this right in a way that may be perceived as too 'thin' to connect to local experiences, others have critiqued it in a way that may be perceived as too disconnected from the benefits of human rights processes. This article discusses ongoing experiences in Scotland, where a new national human rights framework is being developed. Drawing on this experience, we highlight methods of capacity building as a different channel for thinking about the potential merits of new articulations of a right to a healthy environment, and for developing understandings of this right's substance applied to specific contexts. Specifically, we reflect on the potential role of the foundational human rights value of respect for dignity as an anchor in capacity building around the right to a healthy environment. We explore an idea of capacity building which facilitates local-level ownership over international human rights law and underpinning values and is focused on implementation. We suggest that this kind of ethos as part of mutual learning and alliance building should be further explored as a means of creating lasting, positive engagement with a rights-based perspective on environmental protection.*

---

\* Dr Elaine Webster is Senior Lecturer in Human Rights Law and Professor Elisa Morgera is Professor of Global Environmental Law at Strathclyde Centre for Environmental Law and Governance and Centre for the Study of Human Rights Law, Law School, University of Strathclyde, UK.

CONTENTS

I INTRODUCTION ..... 56

II A RIGHT TO A HEALTHY ENVIRONMENT AND HUMAN RIGHTS LEADERSHIP IN SCOTLAND..... 59

III THE SUBSTANCE OF AN ENVIRONMENTAL HUMAN RIGHT: THE OPPORTUNITY PRESENTED BY A FOCUS ON ‘DIGNITY’ ..... 64

*A The Value Base of Human Rights as a Positive Resource in Capacity Building*..... 65

*B Challenges of Engagement with ‘Dignity’* ..... 67

*C Understanding ‘Dignity’ as Part of Mutual Learning and Alliance Building* ..... 73

IV CONCLUSION..... 78

I INTRODUCTION

For decades, scholars have explored the potential merits and risks of a formal, self-standing human right to a healthy (‘safe’/‘clean’/‘sound’/‘sustainable’)<sup>1</sup> environment.<sup>2</sup> Also for decades, the relationship between environmental protection and human rights has evolved through the push and pull of international policy developments.<sup>3</sup> Following decades of international case law on the inter-dependence of human rights and the environment, the former UN Special Rapporteur on Human Rights and the Environment described an international human right to a healthy environment as ‘an idea whose time has come’.<sup>4</sup> In parallel, environmental science has increased our knowledge of the current

---

<sup>1</sup> See the title of the mandate of the UN Special Rapporteur on Human Rights and the Environment at United Nations Human Rights Office of the High Commissioner, *Special Rapporteur on human rights and the environment* (Web Page) <<https://www.ohchr.org/en/Issues/environment/SRenvironment/Pages/SRenvironmentIndex.aspx>>. In this paper, we use the term ‘healthy environment’.

<sup>2</sup> There is a significant body of literature on different aspects of the relationship between human rights and the environment. For examples of recent discussions, see John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018), and, for a range of critical perspectives, see Anna Grear and Louis J Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edward Elgar Publishing, 2015).

<sup>3</sup> John H Knox, ‘Human rights, environmental protection, and the sustainable development goals’ (2015) 24(3) *Washington International Law Journal* 517 at 519. For a detailed overview, see Ben Boar, ‘Environmental principles and the right to a quality environment’ in *Elgar Encyclopaedia of Environmental Law* (Edward Elgar Publishing, 2018), Chapter VI.4.

<sup>4</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human*

damage and future impacts of environmental degradation. For example, the 2019 *Global Assessment Report on Biodiversity and Ecosystem Services* observes an: '[...] increasingly shared understanding that the human imprint at a global scale has made our social worlds intertwined with the larger Earth biophysical systems and fabric of life.'<sup>5</sup> Environmental science has now been brought even closer to everyday lives as the links between the environment and the health of all forms of life has become more widely discussed and understood in relation to the COVID-19 pandemic.<sup>6</sup>

Against this backdrop, we have aimed to draw insights from different strands of academic scholarship and environmental science while contributing to practical policy development in the field of human rights and environmental protection in our local context in Scotland. While practice-informed policy development has its own drivers and rhythms, a shared aim has been to understand optimal mechanisms for effective and long-lasting progress. In this article, we reflect on how this shared aim has guided one aspect of our current policy work and how it has prompted us to explore the contribution of *capacity building processes* in navigating a range of critical opportunities and concerns from both scholarly and practice-informed perspectives on environmental protection.

In Scotland, the devolved Government established a National Taskforce on Human Rights Leadership (hereafter 'the Taskforce') in 2019 to support the development of new Scottish Parliament legislation to enhance the legal human rights framework. As a part of this process, we have been mandated to consider both the place of environmental protection within the framework and the place of the foundational human rights idea of 'human dignity' as the framework's underpinning value. We have done so in our roles as

---

*rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/37/59 (24 January 2018) para. 20. See also *Draft Global Pact for the Environment* ('Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment') at Global Pact for the Environment International Group of Experts for the Pact, *Draft Global Pact for the Environment*, 24 June 2017, Article 1, <<https://globalpactenvironment.org/uploads/EN.pdf>>. See also United Nations Human Rights Council, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/73/188 (19 July 2018) para. 39.

<sup>5</sup> Eduardo S Brondizio et al (eds), *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES secretariat: Bonn, 2019) at 6.

<sup>6</sup> Elisa Morgera and Alan Miller, 'COVID-19, Environmental Protection & Human Rights Leadership', *Strathclyde Law School Blog* (Blog Post, 28 May 2020) <<https://www.strath.ac.uk/humanities/lawschool/blog/covid-19environmentalprotectionhumanrightsleadership/>>.

members of an Advisory Group on Human Rights Leadership established in 2018 by First Minister Nicola Sturgeon MSP (Member of the Scottish Parliament and leader of the Scottish Government), the Taskforce (Morgera), and the Academic Advisory Panel to the Taskforce (Webster).<sup>7</sup> A key ambition within the Scottish process is transformative capacity building in support of long-term implementation. In this context, and for the present argument, ‘transformative’ conveys a form of capacity building that can enable duty bearers to arrive at effective outcomes within a human rights culture. It is capacity building that benefits rights holders because it aims to radically shift from a reactive implementation culture to one in which duty bearers are supported to ‘get it right first time’.<sup>8</sup> ‘Transformation’ is an idea that reflects broader international trends; recently, in the environmental governance context, transformation has been described as ‘a fundamental, system-wide change’, including re-examination of ‘paradigms, goals or values’ that can overcome entrenched barriers such as unequal relationships of power, short-term decision making approaches, and lack of policy coherence.<sup>9</sup> This focus on capacity building has been intertwined with our reflections on the most effective shape and substance of both a human right to a healthy environment and the underpinning value of human dignity. This led us to explore how considering approaches to building capacity amongst practitioners could inform the development of the content—not only procedural but also substantive content—of a right to a healthy environment and whether the underpinning idea of human dignity could play a role therein.

We first provide contextual information on the situation in Scotland and the development of discussions around a right to a healthy environment. These discussions have engaged with a range of substantive issues of special policy concern in Scotland, including land reform and health inequalities.<sup>10</sup> We then explore the potential contribution of the idea

---

<sup>7</sup> Scottish Government, *National Taskforce for Human Rights Leadership* (Web Page) <<https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>>.

<sup>8</sup> Scottish Government, *National Taskforce for Human Rights: Leadership Report* (Report, March 2021) 45 <<https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/documents/>>.

<sup>9</sup> *Initial scoping report for Deliverable 1 (c): A thematic assessment of the underlying causes of biodiversity loss and the determinants of transformative change and options for achieving the 2050 Vision for Biodiversity* (Scoping Report, 2020) <[https://ipbes.net/sites/default/files/Initial\\_scoping\\_transformative\\_change\\_assessment\\_EN.pdf](https://ipbes.net/sites/default/files/Initial_scoping_transformative_change_assessment_EN.pdf)>.

<sup>10</sup> Regarding land reform, Scotland has a particularly high concentration of private land ownership: Rachel Warren et al, ‘Attitudes to Land Reform’ (Research Paper, Scottish Government, March 2021) 7-8, <<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and->



of dignity within capacity building around a right to a healthy environment, articulating opportunities and challenges. We suggest that the idea of dignity, as the core of the value base underpinning international human rights law, could potentially act as an anchor for engagement with the human rights framework, including a right to a healthy environment. We suggest that integrating 'dignity' language in capacity building could support a sense of internationally informed and locally embedded ownership over the proposed right (and legislation as a whole). We pose the question: to what extent can national-level recognition of the right be filled with content by enabling practitioners to engage with international legal materials on the substance of the right, and to further develop its substance within the local context on the basis of experientially known and identifiable understandings of 'dignity'? We use the term 'practitioners' to encompass civil society actors and policy makers working within the environmental governance sector or working across sectors (such as local government bodies as human rights duty-bearers) and concerned with implementation. We suggest that a 'dignity' based approach to reflexive, mutual learning and alliance building has potential to facilitate stakeholder access to, and engagement with, the substantive scope of the right as part of a broader human rights picture, across multi-faceted and interconnected contexts of practice. We conclude that this ethos of capacity building is a useful channel for understanding processes of developing local understandings of human rights law and should be further explored as a means of creating lasting, positive engagement with a rights-based perspective on environmental protection.

## II A RIGHT TO A HEALTHY ENVIRONMENT AND HUMAN RIGHTS LEADERSHIP IN SCOTLAND

Although Scotland's autonomy is constrained in some policy areas due to its status as a sub-state nation within the United Kingdom, its autonomy to give effect to existing international law commitments is not *in general* constrained.<sup>11</sup> The current process of

---

analysis/2021/03/attitudes-land-reform/documents/attitudes-land-reform/attitudes-land-reform/govscot%3Adocument/attitudes-land-reform.pdf>; and regarding health inequalities, Scotland has a lower average life expectancy than other UK nations and other Western European countries: Scottish Government, *Health Improvement* (Web Page) <<https://www.gov.scot/policies/health-improvement/>>. See penultimate section below for an overview of discussions on environmental issues of concern within the National Taskforce process.

<sup>11</sup> *Scotland Act 1998* (UK), Schedule 5(2)(a) explicitly states that 'observing and implementing international obligations' is not reserved to the United Kingdom Government/Parliament. See also First

human rights renewal in Scotland is Government-mandated and the Taskforce itself is co-chaired by a Scottish Government Minister.<sup>12</sup> It is one example of a progressive approach to human rights policy that has come from the Scottish Government and Parliament.<sup>13</sup> In practice, gaps exist in the effective implementation of human rights laws across a whole range of areas of peoples' lives.<sup>14</sup>

Scottish policy on environmental protection has been progressive in several ways—for example, as seen in early climate change legislation (2009) and ambitious targets in newer legislation<sup>15</sup>—but there is undoubtedly much progress that still needs to be made in relative international terms. Scotland lags behind the 100 plus countries which already have a domestic constitutional law provision on protection of the environment.<sup>16</sup> There is no equivalent home for such a provision given that the United Kingdom has no codified constitution. Furthermore, the United Kingdom has opposed internationally the recognition of a substantive human right to a healthy environment.<sup>17</sup> Currently, the closest to a Bill of Rights in the United Kingdom, including Scotland, is domestic legislation (the Human Rights Act 1998) which gives further effect to rights within the European Convention on Human Rights. On international environmental regulation, the United Kingdom has been described as 'an active supporter'<sup>18</sup>; on the international legal

---

Minister's Advisory Group on Human Rights Leadership, *Recommendations for a new human rights framework to improve people's lives: Report to the First Minister* (Final Report, December 2018) 22 <<https://humanrightsleadership.scot>>.

<sup>12</sup> *National Taskforce for Human Rights Leadership* (n 7).

<sup>13</sup> A progressive approach is also evidenced in the Scottish Government's endorsement of the UK's first national human rights action plan; Scottish Human Rights Commission, *Scotland's National Action Plan for Human Rights* (Web Page) <<https://www.scottishhumanrights.com/projects-and-programmes/scotlands-national-action-plan/>>.

<sup>14</sup> See Scottish Human Rights Commission, 'SNAP 2: Proposal for Scotland's second National Action Plan for Human Rights', *Scotland's National Action Plan for Human Rights* (PDF, September 2019) at 16-18 <[http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2\\_Online.pdf](http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2_Online.pdf)>.

<sup>15</sup> *Climate Change (Scotland) Act 2009*; See also Mary Robinson, 'Climate Justice – Challenges and Opportunities' (Speech, Magnusson Lecture, Glasgow, 7 October 2011) <<https://www.scottishhumanrights.com/our-law-and-policy-work/environment-and-climate/>>; *Climate Change (Emissions Reduction Targets) (Scotland) Act 2019*.

<sup>16</sup> See United Nations Environment Programme, *What are your environmental rights?* (Web Page) <<https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what-0>>.

<sup>17</sup> See UK declaration in the United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters*, 2161 UNTS 447 (Aarhus Convention, 25 June 1998); see also discussion in Elisa Morgera and Gracia Marin, 'Commentary to Article 37 – Environmental Protection' in Peers, Hervey, Kenner, and Ward (eds), *Commentary on the EU Charter of Fundamental Rights* (2<sup>nd</sup> ed, Oxford: Hart Publishing, 2013).

<sup>18</sup> Richard Macrory, 'Environmental law in the United Kingdom post Brexit' (2019) 19 *ERA Forum* 643–657, at 655.

plane, Scotland is represented by the UK Government. However, we are entering a new phase in which it is yet to be seen how the UK's implementation of international agreements will take shape since its exit from the European Union's regulatory framework.<sup>19</sup>

In the aftermath of the Brexit referendum in the UK, the first Minister of Scotland established an Advisory Group guided by principles of non-regression from, and keeping pace with, rights protections at European Union level, and by an ambition to demonstrate human rights leadership.<sup>20</sup> The aim is to enable better protection of people's rights in everyday life by giving effect to a wider range of international human rights standards within Scots law. The proposed framework will enhance the standards of the European Convention on Human Rights, which are, since the United Kingdom's exit from the European Union, the only domestically enforceable supranational human rights standards. In its final report, published in 2019, the Advisory Group proposed that social, economic, cultural and environmental rights be embedded in a new legal framework for Scotland, and be accompanied with a 'duty to comply' after an initial period of a 'due regard' duty.<sup>21</sup> This development would involve bringing together for the first time a range of human rights standards, including those in the International Covenant on Economic, Social and Cultural Rights, and provide an opportunity to integrate international legal developments on a human right to a healthy environment.<sup>22</sup>

Specifically, the Report of the First Minister's Advisory Group on Human Rights Leadership recommended that a 'right to a healthy environment' would:

[...] include the right of everyone to benefit from healthy ecosystems which sustain human well-being as well the rights of access to information, participation in decision-making and access to justice. The content of this right will be provided within a schedule in the Act with reference to international standards such as the Framework Principles on Human Rights and Environment developed by the UN Special Rapporteur on Human Rights and the Environment, and the Aarhus

---

<sup>19</sup> *Ibid.*

<sup>20</sup> First Minister's Advisory Group on Human Rights Leadership (n11) at 20-21.

<sup>21</sup> *Ibid* 33-34.

<sup>22</sup> *Ibid* 31-32.

Convention [...].<sup>23</sup>

Subsequently, the development of an environmental right has continued since the establishment of the National Taskforce. In addition to cross-sector participation events, the Taskforce hosted three roundtables between June 2020 and January 2021 on the right to a healthy environment in Scotland. At these events, more than fifteen organisations were represented, including umbrella organisations for Scottish environmental civil society,<sup>24</sup> as well as a cross-section of public authorities and bodies within and outside the environmental policy area.<sup>25</sup> Discussions, which involved current and former UN Special Rapporteurs,<sup>26</sup> included challenges and opportunities from the perspective of local experience, which could inform: procedural and substantive dimensions of the proposed new right; the international context, including UN Framework Principles on Human Rights and the Environment, and progress in recognition of a human right to a healthy environment; and potential key features of the human right to a healthy environment in the proposed framework. The roundtables also discussed case studies to assess to what extent existing practices in Scotland were already addressing the inter-relationship of human rights and the environment and to explore the potential added value of recognising a human right to a healthy environment. It also links to policy recommendations emerging from other aspects of the Taskforce process relating to economic, social and cultural rights, access to justice and remedies.

Roundtables also discussed future capacity building needs and opportunities. A great emphasis was placed by rightsholders and duty-bearers on clarifying the content of the right to a healthy environment for the purpose of future planning processes in Scotland. NGOs underscored the high degree of subjectivity applied by planning bodies when

---

<sup>23</sup> Ibid 32.

<sup>24</sup> ERCS (Environmental Rights Centre for Scotland), *Why Scotland needs a human right to a healthy environment?* (Web Page, 2 February 2021), <<https://www.ercs.scot/blog/why-scotland-needs-a-human-right-to-a-healthy-environment/>>. ERCS is the Environmental Rights Centre for Scotland that participated in the roundtables together with Scottish Environment LINK, representing 35 civil society members including Friends of the Earth Scotland; Keep Scotland Beautiful; Royal Society for the Protection of Birds Scotland; Scottish Wild Land Group; Scottish Wildlife Trust; Woodland Trust Scotland; WWF Scotland.

<sup>25</sup> Scottish Parliament; Law Society for Scotland; Environmental Standards Scotland; Commission on Children and Young People's Rights; NatureScot; Scottish Environment Protection Agency; Land Commission; Public Health Scotland; Scottish Human Rights Commission; Scottish Crofting Commission; Faculty of Advocates; Convention on Scottish Local Authorities.

<sup>26</sup> On Human Rights and the Environment, Professor John Knox (June 2020) and Professor David Boyd (January 2021). On Toxics, Mr Baskut Tuncak (August 2020).

interpreting the law and instances in which not only environmental protection interests were de-prioritised compared to economic development, but also climate change action (notably renewables development) was pitted against other environmental protection interests (biodiversity conservation).<sup>27</sup> Another opportunity identified for the capacity building programme was to discuss lessons learnt in the context of the human rights-based approach to land reform in Scotland (focused on ‘responsible access’ and ‘communities’ as means of change), on the understanding that human rights in land reform helped emphasise the broader public policy dimensions of land and focus attention on the lived experience of the negative impacts of land concentration on local economies, community development, housing provision and business opportunities.<sup>28</sup> In addition, capacity building was considered important to further understand the linkages between the human right to a healthy environment, non-discrimination and the human right to health<sup>29</sup> as part of Scotland’s national public health priorities (‘places and communities’) and its agenda on health and equality.<sup>30</sup> Given Scotland’s incorporation of the UN Convention on the Rights of the Child,<sup>31</sup> the capacity building programme was also seen as an essential opportunity to understand how these specific standards of protection could assist in raising the bar in the protection of the environment to the benefit of all, with a view to also better protecting other parts of the population that may be particularly vulnerable to environmental degradation. Finally, the need to better understand what the human right to a healthy environment would mean at the interface between the natural and built environment in Scotland, in rural as well as in urban areas, was singled out as an important area for capacity building, including in the context of Scotland’s efforts to eliminate homelessness and achieve net-zero emissions.<sup>32</sup>

---

<sup>27</sup> Environmental Rights Centre for Scotland, *The Case for a Substantive Right to a Healthy Environment: Prepared by the Environmental Rights Centre for Scotland for the National Taskforce for Human Rights* (Report, November 2020) <<https://www.ercs.scot/wp/wp-content/uploads/2020/11/The-case-for-a-substantive-right-to-a-healthy-environment-November-2020.pdf>>.

<sup>28</sup> Scottish Parliament Information Centre (SPICe) and Scottish Land Commission, *Case study to the Taskforce for Human Rights Leadership* (Unpublished Report, August 2020) (Copy on file with author).

<sup>29</sup> Public Health Scotland, *Case study to the Taskforce for Human Rights Leadership* (Unpublished Report, August 2020) (Copy on file with author).

<sup>30</sup> SNIFFER (Scotland and Northern Ireland Forum for Environmental Research), ‘Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation’ (PDF, March 2005) <<http://eprints.staffs.ac.uk/1828/1/1828.pdf>>.

<sup>31</sup> *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill 2020*.

<sup>32</sup> Public Authorities’ Reference Group meeting, 15th December 2020. For an overview of meeting attendees and broad discussion points, see Scottish Government, *National Taskforce for Human Rights Leadership: Summary of Stakeholder Engagement Events* (Report, March 2021)

The need for a large-scale programme of capacity building was emphasised in the report of the National Taskforce for Human Rights Leadership published in March 2021.<sup>33</sup> Scotland's small population of approximately 5.4 million arguably makes this vision more achievable than in larger nations. Nevertheless, the aim is ambitious. It requires buy-in from political and policy actors, the public sector, civil society, and wider communities. This *shared responsibility* for ambitious progress is what is described in the Scottish context as 'human rights leadership'. The aim of this 'human rights leadership' approach is to develop a shared top-down *and* bottom-up approach to make human rights real in peoples' everyday lives, whilst signaling to the outside world that the international human rights framework is reaffirmed. It is anticipated that an outcome of shared leadership in Scotland will be 'sustainable progress' for rights-holders and 'manageable progress' for duty-bearers.<sup>34</sup> This is the broader context within which an environmental right is being developed, underpinned by a vision of long-term transformative capacity building.

### III THE SUBSTANCE OF AN ENVIRONMENTAL HUMAN RIGHT: THE OPPORTUNITY PRESENTED BY A FOCUS ON 'DIGNITY'

At first glance it is perhaps difficult to see how a focus on the idea of dignity could be a helpful fit, either in the environmental context or for capacity building. There are several reasons for this, which will be discussed below. Nevertheless, we suggest that the idea of dignity could provide a starting point for promoting a sense of rightful claim over the proposed human rights legislation, including its environmental right as well as more holistically. In this way, the status of 'dignity' as a human rights value can potentially support practitioners to confidently engage with the normative scope of the proposed right. If engagement on the basis of identifiable understandings of 'dignity' can take place within a process of mutual learning to embed and develop international standards, this

---

<<https://www.gov.scot/publications/national-taskforce-for-human-rights-leadership-summary-of-stakeholder-engagement-events/>>; Scottish Parliament Environment, Climate Change and Land Reform Committee, 'Environment, Climate Change and Land Reform Committee Agenda (ECCLR/S5/21/3/M)' (PDF, 26 January 2021) at the evidence session minutes, <[https://archive2021.parliament.scot/S5\\_Environment/Meeting%20Papers/ECCLR\\_2021.01.26\\_Meeting\\_papers\\_\(public\).pdf?>](https://archive2021.parliament.scot/S5_Environment/Meeting%20Papers/ECCLR_2021.01.26_Meeting_papers_(public).pdf?>).

<sup>33</sup> *National Taskforce for Human Rights Leadership* (n 7).

<sup>34</sup> Alan Miller, *Time for Leadership*, Strathclyde Law School Blog (Blog Post, 19 February 2020) <<https://www.strath.ac.uk/humanities/lawschool/blog/timeforleadership/>>.

can simultaneously build local alliances to support implementation.

*A The Value Base of Human Rights as a Positive Resource in Capacity Building*

In Scotland, the First Minister’s Advisory Group recommended that the proposed human rights legislation should make explicit reference to ‘human dignity’ as the underpinning value of human rights.<sup>35</sup> The National Taskforce has explored in more depth the role and meaning of ‘human dignity’ as the new legislation’s underpinning value.<sup>36</sup> The Advisory Group’s first recommendation stated: ‘The Preamble of the Act should make clear that its purpose is to give further effect to human rights and that human dignity underpins all rights.’<sup>37</sup> The link between ‘dignity’ and all rights is reinforced several times in the Report,<sup>38</sup> which itself picks up on ‘dignity’ mentions in the Group’s terms of reference<sup>39</sup> and in Scotland’s governance outcomes framework linked to the Sustainable Development Goals.<sup>40</sup> The Report suggested that ‘human dignity’ could act as ‘a route for promoting a sense of ownership of the legislation within Scotland’s public culture [...]’.<sup>41</sup>

‘Ownership’ underpins the possibility of effective implementation. The purpose of the current process in Scotland is to improve the realisation of rights—to drive long-term transformation in the delivery of public services and the shape of public policy. This is why capacity building is a core element of the process—to support the development of a sustainable and widespread human rights culture. Capacity building must thus be about more than facilitating knowledge of human rights law. This is the case in all contexts, including the environmental one. Capacity building must improve confidence to make informed claims about risks of human rights violations within receptive organisational cultures. This confidence maps onto a distinction between *knowing about* a human right to a healthy environment and *interpreting* a human right to a healthy environment in a

---

<sup>35</sup> First Minister’s Advisory Group on Human Rights Leadership (n11).

<sup>36</sup> Elaine Webster, ‘The Underpinning Concept of Human Dignity’, Academic Advisory Panel to the National Taskforce on Human Rights Briefing Paper (Briefing Paper, June 2020) <<https://www.gov.scot/publications/national-taskforce-for-human-rights-leadership-academic-advisory-panel-papers/>>.

<sup>37</sup> First Minister’s Advisory Group on Human Rights Leadership (n11) at Annex B, 33.

<sup>38</sup> *Ibid* 7, 33-7, 50.

<sup>39</sup> *Ibid* Annex C, 60.

<sup>40</sup> ‘Scotland’s National Performance Framework: Our Purpose, Values and National Outcomes’, *National Performance Framework* (Web Page)

<[https://nationalperformance.gov.scot/sites/default/files/documents/NPF\\_A4\\_Booklet.pdf](https://nationalperformance.gov.scot/sites/default/files/documents/NPF_A4_Booklet.pdf)>.

<sup>41</sup> Webster (n 36) at 15.

locally embedded way.<sup>42</sup> Local-level interpretation should be informed by the existing state of international law understandings of human rights and environmental protection because maintaining this connection ties local understandings of the substance of a right to a healthy environment to the power of existing international law interpretations and state obligations. At the same time, local-level interpretation can go beyond the international minimum floor of protection. Previous research on civil society actors using human rights law in Scotland found evidence of a link between those actors' engagement with the legal standards and a sense of entitlement to make claims about when those standards had not been upheld.<sup>43</sup>

To attain this kind of internationally informed, locally embedded interpretation of a right to healthy environment as a core goal of transformative capacity building, mechanisms for enabling local engagement with human rights law is required. One such mechanism is a focus on 'human dignity' as a foundational human rights law value. As an underpinning value it can potentially act as a portal, providing a *way in* for stakeholders (who do not necessarily have legal expertise) to feel entitled to take ownership and to engage with the legal standards. Pilot empirical research is underway in Scotland to explore how 'human dignity' as an underpinning value is seen to contribute to the way that international human rights law is taken up within local civil society communities in Scotland.<sup>44</sup> This project aims to build upon findings from socio-legal research which notes the potential positive role of values underpinning law for making the legal framework accessible. Merry, Levit, Rosen and Yoon describe human rights law as characterised by three dimensions: law, values, and ideals of good governance.<sup>45</sup> In their study on the use of human rights by grassroots social movements against discrimination in the United States, they found that: '[...] the values side of human rights is more open to mobilization by grassroots social movements than the law side [...].'<sup>46</sup> This research concerns the invocation of human rights by grassroots activists within social movements rather than professional practitioners, but its insight into 'the way that human rights work as law

---

<sup>42</sup> Elaine Webster and Deirdre Flanigan, 'Localising human rights law: A case-study of civil society interpretation of rights in Scotland' (2018) 22(1) *International Journal of Human Rights* 22 at 36.

<sup>43</sup> *Ibid* 34-35.

<sup>44</sup> Elaine Webster, 'Human Dignity' and Local Engagement with International Human Rights Law' project, funded by the UK Society of Legal Scholars, 2020-2021.

<sup>45</sup> Sally E Merry et al, 'Law from Below: Women's Human Rights and Social Movements in New York City' (2010) 44(1) *Law & Society Review* 101 at 106-09.

<sup>46</sup> *Ibid* 109.



from below'<sup>47</sup>, particularly regarding the accessibility of human rights law via values, is relevant for exploring effective approaches to capacity building. 'Dignity' as a value arguably also has potential to support practitioners, including duty-bearers, to access and engage with the normative scope of the proposed right when it raises new or not fully understood legal issues, which is the case of the human right to a healthy environment in Scotland. It can potentially lay a foundation for development of rich homegrown interpretations of the right, less reliant on instances of (past or projected future) judicial interpretation and rather based on the views of rightsholders and duty-bearers at earlier stages of implementation. In other words, 'dignity' as a value has potential to open a door to the level of engagement that could transform processes of local implementation.

Further, the idea of dignity, because it concerns the purpose behind all human rights, has potential to support a 'big picture' perspective in a three-fold way. One benefit of this might be in facilitating different stakeholders to understand other stakeholders' perspectives. Second, some stakeholder engagement with the point of the framework, beyond individual/organisational interests and expertise, also has potential to minimise siloed understandings, which might be detrimental to implementation in multi-faceted contexts of practice. This big-picture perspective could support understandings of interconnections between rights, which is crucial in respect of a human rights perspective on the environment, and has raised interesting points about the right to a healthy environment and intersectionality.<sup>48</sup>

### *B Challenges of Engagement with 'Dignity'*

However, to achieve all of this, numerous barriers will have to be overcome. Some such barriers will be practical—What is realistic in terms of the scale of capacity building? What is the best way to engage the widest range of practitioners with seemingly abstract human rights ideas? Again, empirical research will be required to gain a nuanced picture of the nature of these challenges and to gain an evidence-based understanding of how best to address them. In addition to practical barriers, there are preliminary and

---

<sup>47</sup> Ibid 102.

<sup>48</sup> Scottish Government, *National Taskforce for Human Rights Leadership: Minutes of the Third Roundtable on the Right to a Healthy Environment* (Unpublished Meeting Notes, January 2021) (Copy on file with author).

significant conceptual barriers.

Conceptually, the link between ‘dignity’ and the human right to a healthy environment is in some ways obvious and in some ways not obvious at all. Some conceptual challenges relate to dealing with ‘dignity’ as an idea in general, and one is specific to the human right to a healthy environment.

International human rights law indicates that ‘dignity’ is relevant for understanding all human rights and for understanding particular human rights through interpretation, but (unsurprisingly) the founding texts do not tell us what ‘dignity’ means.<sup>49</sup> It is accepted in practice and scholarship that ‘dignity’ expresses something about the worth of human persons, mirroring the connection to ‘worth’ that is visible in the founding documents of international human rights law.<sup>50</sup> Describing the meaning of ‘dignity’ as being about recognition of the equal worth of persons is a starting point but only takes us so far. What this recognition of worth consists of, and gives rise to in particular contexts, will be understood differently by different people (whether scholars, legal or policy practitioners, or individuals). When we look to broader conceptual debates outside of human rights law and practice for guidance as to a *more developed meaning* of ‘dignity’, we are confronted with an array of possible meanings in diverse contexts.<sup>51</sup> This is partly because ‘dignity’ may have different meanings within different ‘language games’.<sup>52</sup> It is also partly because of a close tie between the language of ‘dignity’ and the language of ‘worth’ which derives from different worldviews<sup>53</sup> and, thereby, from inherently contestable perspectives.<sup>54</sup> The shared-yet-abstract recognition of human worth

---

<sup>49</sup> See, e.g., Beitz referring to the UN Charter and UDHR in Charles R Beitz, ‘Human Dignity in the Theory of Human Rights: Nothing But a Phrase?’ (2013) 41(3) *Philosophy and Public Affairs* 259 at 265-268.

<sup>50</sup> UN, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Preamble; UN General Assembly, Universal Declaration of Human Rights (10 December 1948) 217 A (III), Preamble; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Preamble; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Preamble.

<sup>51</sup> For a discussion of these two points, see Elaine Webster ‘Interpretation of the Prohibition of Torture: Making Sense of ‘Dignity’ Talk’ (2016) 17(3) *Human Rights Review* 371.

<sup>52</sup> Mary Neal, ‘Dignity, Law and Language-Games’ (2012) 25(1) *International Journal for the Semiotics of Law* 107.

<sup>53</sup> Doron Shultziner, ‘Human Dignity – Functions and Meanings’ in Jedd Malpas and Norelle Lickiss (eds), *Perspectives on Human Dignity: A Conversation* (Dordrecht: Springer, 2007), 73 at 78-81.

<sup>54</sup> Mary Neal and Elaine Webster, ‘Dignity as Rank: Triangulating the relationship between human rights and intrinsic worth’ (The Future of Human Dignity Conference, 11 October 2016). This argument

provides only the starting point for more developed meanings of 'dignity', able to inform local-level interpretive decisions.

Circular conversations within conceptual academic debate on 'dignity' stem not only from different contextual and philosophical/spiritual/socio-cultural perspectives, but also from a lack of clarity about different dimensions of the multi-faceted idea of 'dignity'. There are diverse, often implicit, understandings of what 'dignity' actually is (e.g. a property, a potential, a status); of 'dignity' as something that is negatively acted upon and/or something that is positively realised; and of the subjects of 'dignity' (individual and/or community).<sup>55</sup> The potential negative consequences of circular conversations have long been observed.<sup>56</sup> This poses a challenge because if we do not take steps to begin from a shared baseline there is a risk that conversations about 'dignity' will involve talking in circles about quite different ideas. In the human rights practice context, the founding documents of the international regime position the idea of dignity as a foundational value and this idea has been described as central to understanding the very 'essence' of human rights laws.<sup>57</sup> This foundational connection heightens a risk that serious scepticism in debate about the idea of 'dignity' can lead to a deeper scepticism about the very foundations of the human rights regime. Lack of a clear baseline is thereby not only a high-level conceptual risk, but a practical one also. Crucially, a similar risk applies to discussions taking place much closer to contexts of local practice. Here, everyday language and implicit understandings about dignity interact with the international human rights context. If we talk in circles from conflicting starting points about 'dignity' in the context of capacity building, we minimise the likelihood of this idea making a valuable contribution to practice-driven decisions. In general, if the language of dignity is overused, it risks losing added value.

---

advocates a radical linguistic and conceptual shift in how academic debate addresses the relationship between 'dignity' and international human rights discourse in order to overcome a lack of consensus and to avoid devaluing the contribution of the idea of human dignity; see also Elaine Webster, 'Reconceptualising the Relationship between Rights, Dignity and Intrinsic Worth workshop presentation' (4th Dignity Rights Virtual Workshop Commemorating the 70th Anniversary of the Universal Declaration of Human Rights, 30 November 2018).

<sup>55</sup> Elaine Webster, 'Interpretation of the Prohibition of Torture: Making Sense of 'Dignity' Talk' (2016) 17(3) *Human Rights Review* 371, at 382-385.

<sup>56</sup> Herbert Spiegelberg, 'Human Dignity: A Challenge to Contemporary Philosophy' in R Gotesky and E Laszlo (eds) *Human Dignity: This Century and the Next* (New York: Gordon and Breach, 1970) 39-64.

<sup>57</sup> See, e.g., European Court of Human Rights, *Bouyid v Belgium*, App. No. 23380/09, 28 September 2015, paras. 89 and 101.

To overcome this challenge, we should encourage care and precision in how we use the language of ‘dignity’ in the human rights context. In the case of capacity building, we should aim to be as sure as possible that we are asking the same question, from the perspective of a shared understanding. This means refraining from accepting at face value any particular developed understanding of ‘dignity’ and instead to pay close attention to personal and professional assumptions about the dignity idea’s ‘meaning’, to explicitly address uses of the language of dignity and how it might be navigated, and to attend to how certain conceptual understandings interact with intuitive understandings in local contexts.

A further challenge that is specific to the human rights and environment context is a perhaps common view (whether unarticulated assumption or developed academic argument) that ‘dignity’ is an individualised idea (based on human value deriving from, for example, capacities of persons), and that this is difficult to reconcile with the ‘ecological embeddedness’<sup>58</sup> needed to make sense of a right to a healthy environment. The question of how to conceptualise the relationship between ‘dignity’ and a right to a healthy environment is tied to the aforementioned general challenges—there is no agreed upon meaning at present and there are many ways in which we might formulate a meaning. What we do know is that a connection has been made in international law that we have to work with:<sup>59</sup> any newly articulated international human rights should ‘[b]e of fundamental character and derive from the inherent dignity and worth of the human person’.<sup>60</sup> This would include a human right to a healthy environment. So, in developing an understanding of ‘dignity’ within the context of such a right we should be aware of the more general challenges: we should first recognise the complexity of the question<sup>61</sup> of where to start in order to make sense of the meaning of ‘dignity’ in the environmental context.

Academic debate addressing in depth the relationship between dignity and an

---

<sup>58</sup> Gail Whiteman and William H Cooper, ‘Ecological Embeddedness’ (2000) 43(6) *The Academy of Management Journal* 1265.

<sup>59</sup> Jeremy Waldron, ‘Is Dignity the Foundation of Human Rights?’ in Rowan Cruft, S Mathew Liao and Massimo Renzo (eds) *Philosophical foundations of human rights* (Oxford University Press, 2013) at 125-126.

<sup>60</sup> United Nations General Assembly, *Setting International Standards in the Field of Human Rights*, UN Doc A/RES/41/120 (4 December 1986), para. 4.

<sup>61</sup> Webster (n 55).

environmental human right has been limited. Foremost and most recent, is the work of Daly and May, and of Townsend, who have begun to explore the ‘undervalued and underexplored’<sup>62</sup> contribution of the dignity idea. Daly and May focus on constitutional level protections, and most recently they have drawn out links between ‘dignity’ and ideas of environmental justice.<sup>63</sup> Writing both separately and together, they recognise nuances in the role that ‘dignity’ plays and the way that dignity-related standards are formulated in the contexts that they analyse.<sup>64</sup> However, they also use the language of a ‘right to dignity’ and ‘dignity rights’ in a broad sense, interchangeably with ‘dignity’ as a constitutional ‘right’ and a constitutional ‘value’, and with terms like ‘dignity interests’.<sup>65</sup> Different terminology is used fluidly, which arguably undermines the complexity of the idea and precision in debate about its meaning. Daly has articulated three aspects of ‘dignity’ that are seen in comparative constitutional case-law, relating to individual ‘agency’, material living conditions, and treatment ‘with dignity’.<sup>66</sup> This is grounded in existing examples of case-law, which is a convincing starting point.<sup>67</sup> But the question is then how to move from this and from general claims about the dignity idea’s meaning ([...] every human being has worth that must be respected in equal measure by all’)<sup>68</sup> to a less abstract articulation of meaning that could guide decisions—including by non-legal practitioners in environmental sectors at earlier stages in implementation than the stage of access to justice and remedies. If we rely solely on *courts* to provide an indirect understanding of ‘dignity’ via the facts and outcomes of claims that happen to be brought before them, being able to articulate a useable meaning of ‘dignity’ may be of less concern. But if we are interested in a meaning that a wider range of stakeholders can engage with, at earlier stages of policy, law- and decision-making, a useable articulation of meaning that is able to guide a wider range of decisions becomes of greater concern. This seems critical to support the implementation of the international and EU environmental law

---

<sup>62</sup> Dina L Townsend, *Human Dignity and the Adjudication of Environmental Rights* (Edward Elgar Publishing, 2020) at 2.

<sup>63</sup> Erin Daly and James R May, ‘Exploring Environmental Justice through the Lens of Human Dignity’ (2019) 25(2) *Widener Law Review* 177.

<sup>64</sup> *Ibid* 180.

<sup>65</sup> *Ibid*.

<sup>66</sup> Summarised in Daly and May (n 63) at 180-181; see more generally Erin Daly, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (University of Pennsylvania Press, 2012).

<sup>67</sup> Webster (n 55).

<sup>68</sup> Daly and May (n 63) at 181.

principles of prevention and precaution,<sup>69</sup> and the idea of everyday accountability enshrined in Scotland's approach to human rights leadership.<sup>70</sup>

A further question is to what extent we should draw insights from Daly and May's analysis, which is based to a significant extent on domestic *constitutional* law where the presence of 'dignity' has been most 'dramatic',<sup>71</sup> for understanding the dignity-environment connection in *international human rights* law? This is an important question since, currently, the richest source of judicial development of the meaning of dignity in the environmental context can be drawn from an extensive body of constitutional, not international human rights, law. If we do look to constitutional law insights, we should also remain aware of the need for precision in the use of dignity language. The nature of the links in constitutional case law between a right to a healthy environment and the idea of human dignity is wide-ranging. This is partly due to the variety of ways in which constitutional texts and national courts arrive at a 'right' to a healthy environment (via the right to life, right to health, right to respect for private and family life etc.). It is also partly due to differences in how national texts and judicial bodies perceive the nature of the idea of dignity—as a *value* underpinning existing rights and/or as a *qualified or absolute right* in itself.<sup>72</sup> There are thereby a number of preliminary questions to address in relation to Daly and May's substantive understanding of the dignity-environment link, but a major contribution of their work is to reject any sense that 'dignity' as a value does not fit with legal standards related to the environment.

Townsend explores the approaches of courts to understand ways in which 'dignity' is invoked in judicial interpretation and, more specifically, in environmental-related litigation. A greater focus on human rights courts (albeit regional rather than UN-level bodies) provides a more direct international human rights law perspective, although Townsend includes in her analysis case-law of constitutional courts based on what she

---

<sup>69</sup> Note that continued engagement with EU environmental law principles is considered essential for Scotland to keep pace with EU environmental law after Brexit: *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*, Chapter 1.

<sup>70</sup> *National Taskforce for Human Rights: Leadership Report* (n 8).

<sup>71</sup> James R May and Erin Daly 'The Role of Human Dignity in Achieving the UN Sustainable Development Goals' in Tuul Honkonen and Seita Romppanen (eds) *International Environmental Lawmaking and Diplomacy Review 2019* (University of Eastern Finland – UNEP Course Series 19, 2020) 15.

<sup>72</sup> See Barak, who unpacks all these dimensions and the differing implications thereof for constitutional interpretation; Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press, 2015).

sees as a similar foundational role of 'dignity'.<sup>73</sup> While Townsend considers a 'dignity approach to environmental adjudication'<sup>74</sup> via the lens of other human rights, as opposed to an articulated right to a healthy environment, this work is important in that it interrogates in depth what a substantive link between 'dignity' and a healthy environment might look like. Her starting point is that we must delve beneath the surface of assumptions and 'classic' accounts of the dignity idea's meaning in order for it to be seen in a useful and evolving light in the environmental context.<sup>75</sup> It is a very significant step towards an understanding of how 'dignity' might inform the substance of a right to healthy environment.

A further step would be to explore how to integrate human rights case-law findings into a meaning of 'dignity' that is of the appropriate depth to guide decisions about environmental practices, including decisions made by non-legal practitioners (and by national courts, including lower-tier courts). Like the present discussion, Townsend also addresses challenges of the dignity idea's meaning: the 'trouble with dignity in legal adjudication', as she describes it.<sup>76</sup> One such challenge is that 'dignity' could weigh against environmental protection in a legal claim.<sup>77</sup> Such acknowledgements are positive and, we agree with her, not fatal. Townsend's optimistic yet limited ambition for the contribution that the dignity idea can make<sup>78</sup> fits with the approach that we advocate of pursuing this path whilst paying close attention to the challenges of invoking dignity language. The challenges that we have identified here are preliminary conceptual ones because we are concerned less with judicial use and more with prospective engagement by practitioners in a way that might facilitate effective practical implementation at all stages (in line with the environmental principles of prevention and precaution, as well as the idea of everyday accountability with human rights).

### *C Understanding 'Dignity' as Part of Mutual Learning and Alliance Building*

Although 'dignity' as an underpinning value might be seen as conceptually abstract, our

---

<sup>73</sup> Dina L Townsend 'Taking dignity seriously? A dignity approach to environmental disputes before human rights courts' (2015) 6(2) *Journal of Human Rights and the Environment* 204 at 208; Townsend (n 62) at 25-28.

<sup>74</sup> *Ibid* 205.

<sup>75</sup> Townsend (n 62) at 3 and for in-depth discussion see Chapter 4.

<sup>76</sup> *Ibid* 222.

<sup>77</sup> *Ibid* 222-25.

<sup>78</sup> *Ibid* 10-11, 38.

intuitive knowledge of ‘dignity’ and ‘indignity’<sup>79</sup> is not abstract—it is experientially known and identifiable. Conceptual debate about an idea like ‘dignity’ might seem to detach it from practical experience, but vast debate exists only because ‘dignity’ is such a present and impactful value in peoples’ lives and in the organisation of societies. The task is to learn from both developments in conceptual understandings *and* in legal, public, and civil society practice. If we recognise the complexities of trying to understand and make claims about the substance of a human right to a healthy environment with reference to ‘dignity’, this need not be a barrier. Conversely, engagement with the challenges becomes part of the capacity building process and a reflection of shared human rights leadership in practice.

Therefore, we suggest that an interesting avenue for exploration is to consider whether this kind of approach to capacity building has potential to increase the effectiveness of a right to a healthy environment. This would involve exploring the extent to which national-level recognition of the human right to a healthy environment can be filled with content by enabling stakeholders to engage with international legal materials on the substance of the right. In the case of Scotland, the Taskforce’s report singled out specifically the UN Framework Principles on Human Rights and the Environment, the Aarhus Convention, and UN Special Rapporteur Boyd’s definition of the substantive content of the right to a healthy environment<sup>80</sup> as a minimum floor. On that basis, the capacity-building programme can both support mutual learning about embedding relevant international standards and shared leadership through further developing the substance of the right to a healthy environment within the local context on the basis of experientially known and identifiable understandings of ‘dignity’, particularly foregrounding the experiences of rightsholders and duty-bearers.

Within the roundtables, there was evidence of integration of experiential perspectives, local priorities, and international legal materials in a process of mutual learning, which

---

<sup>79</sup> Kaufman, Paulus et al, ‘Human Dignity Violated: A Negative Approach – Introduction’ in Paulus Kaufman et al (eds), *Humiliation, Degradation, Dehumanization: Human Dignity Violated* (Volume 24 of Library of Ethics and Applied Philosophy) (Dordrecht: Springer, 2010) 1-5.

<sup>80</sup> This includes ‘clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems’: United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN DOC A/HRC/43/5 (30 December 2019).



has already been of added value. During the second of three roundtables on the right to a healthy environment, two duty-bearers presented case studies on the ecological and social rehabilitation of derelict land in Scotland through bringing together public bodies, businesses, and community representatives who want to make a positive difference to place and in engaging with those who would/could not normally access consultation processes. These case studies were significant in showing the pre-existence of good practices leading to multiple benefits (for health, education, minimising anti-social behaviour, economic prospects, reducing isolation, natural flood management, accessibility for persons with disabilities, biodiversity) arising from relying on existing natural features of the area. They provided a reference point for other duty bearers and rightsholders to articulate their understandings and expectations of what the right to a healthy environment could deliver in Scotland. It was also interesting that the presenters of the case studies were able to speculate that these practices could have gathered faster support if a healthy environment was already recognised as a 'must have' in human rights terms. They also underscored that the success of the case studies depended on trust built by delivering on smaller, short-term projects, which contributed to building capacity.<sup>81</sup>

Similar experiences were shared at the second roundtable by the Scottish Land Commission, which indicated that the recognition of the right to a healthy environment creates a new opportunity to look at 'responsible access to the countryside' from a more holistic environmental and public benefit perspective. To that end, it was noted that the capacity building programme on human rights leadership could provide the avenue for learning from the Land Commission's experience of working simultaneously with state and non-state actors (all types of landowners and local communities) to progress the human rights dimensions of land reform in policy and practice.

The capacity building programme was also seen as an avenue to develop a multi-stakeholder implementation approach to Scotland's net-zero-emission action plan, as well as capitalising on the work already done on climate justice and a just transition.<sup>82</sup> In effect, there is great scope to explore in Scotland the interface between 'dignity' and

---

<sup>81</sup> National Taskforce for Human Rights Leadership, *Minutes of the Second Roundtable on the Right to a Healthy Environment* (Unpublished Meeting Notes, August 2020) (Copy on file with author).

<sup>82</sup> Scottish Parliament Environment, Climate Change and Land Reform Committee (n 32) at the evidence session minutes.

environmental justice through capacity building. We refer here to a pluralist notion of justice<sup>83</sup> that can support different duty bearers and rights holders to understand the interactions and trade-offs between distributive justice, recognition, procedural justice, corrective justice and capabilities<sup>84</sup> in a specific context.<sup>85</sup> The capacity-building process can thus be at the same time a supportive space for dialogue and mutual learning to recognise which actors have benefitted from environmental goods and services, which actors have suffered injustices from past environmental management choices, and what kind of remedies may be identified through a human rights lens,<sup>86</sup> and to better equip duty bearers and rights holders to discuss the existing and alternative distribution of opportunities for individuals and groups' wellbeing arising from a healthy environment<sup>87</sup> within local power dynamics and different cultural perspectives.<sup>88</sup>

Another area for capacity building that emerged concerned access to justice and effective remedies, where long-standing issues have been identified by environmental NGOs with regard to Scotland's compliance with the Aarhus Convention<sup>89</sup>, due to the high associated costs and low success rates. Opportunities for mutual learning were recognised in relation to similar barriers to justice for cases concerning the Convention on the Elimination of All Discrimination Against Women and the Convention on the Rights of Persons with Disabilities.

---

<sup>83</sup> See, e.g., David Schlosberg, *Defining Environmental Justice: Theories, Movements and Nature* (Oxford: Oxford University Press, 2017); Melanie McDermott, Sango Mahanty and Kate Schreckenber, 'Examining Equity: A Multidimensional Framework for Assessing Equity in Payments for Ecosystem Services' (2013) 33 *Environmental Science and Policy* 416; and Unai Pascual et al, 'Social Equity Matters in Payments for Ecosystem Services' (2014) 64(11) *Bioscience* 1027.

<sup>84</sup> Melanie McDermott, Sango Mahanty and Kate Schreckenber, 'Examining Equity: A Multidimensional Framework for Assessing Equity in Payments for Ecosystem Services' (2013) 33 *Environmental Science and Policy* 416 at 419.

<sup>85</sup> As synthesised in McDermott et al (n 83) at 419, 424; see also discussion of reflexivity and engagement in David Schlosberg (n 83) 187-212.

<sup>86</sup> Ernest J Weinrib, 'Corrective Justice in a Nutshell' (2002) 52(4) *University of Toronto Law Journal* 349.

<sup>87</sup> This refers to the debate around Martha C Nussbaum and Amartya Sen, *The Quality of Life* (Oxford: Oxford University Press, 1993); see discussion in David Schlosberg (n 83) 29-34.

<sup>88</sup> Saskia Vermeylen and Gordon Walker, 'Environmental Justice, Values and Biological Diversity: The San and Hoodia Benefit-Sharing Agreement' in JoAnn Carmin and Julian Agyeman (eds) *Environmental Inequalities Beyond Borders: Local Perspectives on Global Injustices* (Cambridge: Cambridge University Press, 2011) 105 at 109, 122.

<sup>89</sup> E.g., Second progress review of the implementation of decision V/9n on compliance by the United Kingdom with its obligations under the Convention (Aarhus Compliance Committee, 2017), § 117; First progress review of the implementation of decision VI/8k on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention (Aarhus Compliance Committee, 2019), § 132.

The opportunity to co-develop guidance for planners, as part of a capacity building process, was also seen as opening the door to data sharing among public authorities (for instance, medical data relating to the environment and different impacts on adults and children) and ways in which more proactive and integrated decisions can be taken with regards to the environment so as to benefit a variety of other human rights. This would allow for a pragmatic approach to balancing exercises between environmental and other public policy objectives over a long-term perspective that allows for protecting children's rights to development. In addition, capacity building was seen as an opportunity to support the separate process of incorporation of the Convention on the Rights of the Child, while developing children-friendly mechanisms for their participation in decision-making and monitoring, as well as access to remedies, in environmental matters.<sup>90</sup>

On the whole, the roundtables indicated that the future capacity building programme was seen as an opportunity to *embed* the recognition of the right to a healthy environment in Scotland: on the one hand, by supporting further mutual learning and alliance-building among stakeholders and public bodies that are not yet collaborating, thereby missing opportunities for co-delivery on multiple human rights and SDGs; and on the other hand, in terms of a process to clarify the right's content in a context-specific way. Mutual learning and alliance building can be seen as practical corollaries of the principle of shared leadership and this ethos can promote integration of multiple local experiences alongside international legal perspectives.

While benefits of this approach have already been seen, there is a need to go further if Scotland is to achieve long-term transformative change. This is why we suggest that one way of supporting deeper integration of experiential perspectives and local ownership over the developing understanding of the right would be to explicitly include shared reflection on the idea of dignity in relation to the human right to a healthy environment within capacity building programmes. Doing so has potential to deepen shared leadership around a right to a healthy environment, and it has the further advantage of simultaneously creating space for conversations that could deepen shared leadership around human rights in a more holistic way (across siloes, by other actors that can

---

<sup>90</sup> National Taskforce for Human Rights Leadership, *Minutes of the Third Roundtable on the Right to a Healthy Environment* (Unpublished Meeting Notes, January 2021) (Copy on file with author).

contribute to everyday accountability, prevention, and precaution).

#### IV CONCLUSION

In this exploratory article, we have begun to consider whether and in which sense focusing on the nature of capacity building processes has potential to create space—between academic conceptual critique and procedural legal discourses—for local, substantive discussions about a human rights perspective on the importance of the environment for the way that we live as individuals and as communities. Although motivated by policy opportunities in Scotland, the broader significance of this exploration is its relevance in any context for thinking about how to improve implementation by harnessing positive dimensions of international human rights frameworks in a collaborative, critical, reflexive and locally embedded way.

We have explored how recourse to the fundamental human rights value of ‘dignity’ within capacity building processes might help to understand how local stakeholders relate to human rights and environmental protection. We have started from the idea that human rights values are a potentially useful resource for increasing a sense of local-level ownership over human rights law. There is still much to explore in terms of the meaning of ‘dignity’ and the implications of that meaning in contexts of practical application of a right to a healthy environment. We have outlined conceptual issues and starting points, and we have suggested that it is necessary for stakeholders to engage with nuances in the language of ‘dignity’ as part of a process of connecting intuitive understandings to a healthy environment through an international human rights lens. Whilst many questions remain unanswered, this is not unique to the environmental governance context as there is still much to explore about the relationship between ‘dignity’ and the interpretation of most human rights in their contexts of practical application, and about the role of values in promoting local realisation of international human rights. In this sense, there is an opportunity to develop wider insights for the growing body of work on the substantive relationship between dignity and an environmental human right, and on processes of human rights localisation.

There are several potential avenues for further research. Additional empirical research would be valuable to evidence the extent to which different stakeholders respond to

different forms of knowledge, which factors influence their engagement, and the nature of differences between sectors, organisations and individuals. It would be interesting to explore how up-to-date scientific knowledge is integrated within capacity building processes relating to environmental protection, and how this can fit with a collaborative and reflexive approach to capacity building. Integrating insights from environmental science in a way that is accessible to community-based discussions about the importance of environmental protection in people's everyday lives could mirror the approach to engagement with human rights law referred to above. In addition, it would be interesting to reflect, not only on the integration of 'hard' science, but on the role of social science insights. Here, it would be fruitful to further explore the link between capacity building, 'dignity' and environmental justice research, which captures interactions in local contexts because of environmental degradation, and as such can inform substantive understandings.

Sustained local-level engagement with the substantive importance, and urgency, of environmental protection is key. This article, by exploring the link between new articulations of a right to a healthy environment and the underpinning human rights value of 'dignity', has aimed to highlight one promising way of facilitating this: a focus on approaches to capacity building as a means of creating transformative change in implementation through shared understanding by rightsholders and duty-bearers that can contribute to everyday accountability, prevention, and precaution.

REFERENCE LIST

*A Articles/Books/Reports*

Barak, Aharon, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press, 2015)

Beitz, Charles R., 'Human Dignity in the Theory of Human Rights: Nothing but a Phrase?' (2013) 41(3) *Philosophy and Public Affairs* 259-290

Boer, Ben, 'Environmental principles and the right to a quality environment', *Elgar Encyclopaedia of Environmental Law* (Edward Elgar Publishing, 2018)

Daly, Erin and James R May, 'Exploring Environmental Justice through the Lens of Human Dignity ' (2019) 25(2) *Widener Law Review* 177-193

Daly, Erin and James R May, 'The Role of Human Dignity in Achieving the UN Sustainable Development Goals' in Tuul Honkonen and Seita Romppanen (eds) *International Environmental Lawmaking and Diplomacy Review 2019* (University of Eastern Finland – UNEP Course Series 19, 2020)

Daly, Erin, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (University of Pennsylvania Press, 2012)

Eduardo S Brondizio et al (eds), *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES secretariat: Bonn, 2019)

Environmental Rights Centre for Scotland, *The Case for a Substantive Right to a Healthy Environment: Prepared by the Environmental Rights Centre for Scotland for Case Study to the National Taskforce for Human Rights* (Peport, November 2020) <<https://www.ercs.scot/wp/wp-content/uploads/2020/11/The-case-for-a-substantive-right-to-a-healthy-environment-November-2020.pdf>>.

First Minister's Advisory Group on Human Rights Leadership, *Recommendations for a new human rights framework to improve people's lives: Report to the First Minister* (Final Report, December 2018) <<https://humanrightsleadership.scot>>

Grear, Anna and Louis J Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edward Elgar Publishing, 2015)

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Initial Scoping Report for Deliverable 1 (c): A thematic assessment of the underlying causes of biodiversity loss and the determinants of transformative change and options for achieving the 2050 Vision for Biodiversity* (2021)

Kaufman, Paulus et al, 'Human Dignity Violated: A Negative Approach – Introduction' in Paulus Kaufman et al (eds), *Humiliation, Degradation, Dehumanization: Human Dignity Violated* (Volume 24 of Library of Ethics and Applied Philosophy) (Dordrecht: Springer, 2010).

Knox, John H and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018)

Knox, John H, 'Human Rights, Environmental Protection, and the Sustainable Development Goals' (2015) 24(3) *Washington International Law Journal* 517

Macrory, Richard, 'Environmental law in the United Kingdom post Brexit' (2019) 19 *ERA Forum* 643–657

McDermott, Melaine, Sango Mahanty and Kathrin Schreckenber, 'Examining Equity: A Multidimensional Framework for Assessing Equity in Payments for Ecosystem Services' (2013) 33 *Environmental Science and Policy* 416-427

Merry, Sally Engle et al, 'Law from below: Women's human rights and social movements in New York City' (2010) 44(1) *Law & Society Review* 101-128

Morgera, Elisa and Gracia Marin Duran, 'Commentary to Article 37 – Environmental Protection' in Peers, Hervey, Kenner, and Ward (eds), *Commentary on the EU Charter of Fundamental Rights* (2<sup>nd</sup> ed, Oxford: Hart Publishing, 2013)

Neal, Mary and Elaine Webster, 'Dignity as Rank: Triangulating the relationship between human rights and intrinsic worth conference presentation' (The Future of Human Dignity Conference, 11 October 2016)

Neal, Mary, 'Dignity, Law and Language-Games' (2012) 25(1) *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique* 107-122

Pascual, Unai et al, 'Social Equity Matters in Payments for Ecosystem Services' (2014) 64(11) *Bioscience* 1027-1036

Robinson, Mary, 'Climate Justice – Challenges and Opportunities' (Speech, Magnusson Lecture, Glasgow, 7 October 2011) <<https://www.scottishhumanrights.com/our-law-and-policy-work/environment-and-climate/>>

Schlosberg, David, *Defining Environmental Justice: Theories, Movements and Nature* (Oxford University Press, 2007)

Scottish Government, *National Taskforce for Human Rights: Leadership Report* (Report, March 2021) <<https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/documents/>>

Scottish Government, *National Taskforce for Human Rights Leadership: Summary of Stakeholder Engagement Events* (Report, March 2021) <<https://www.gov.scot/publications/national-taskforce-for-human-rights-leadership-summary-of-stakeholder-engagement-events/>>

Scottish Parliament Environment, Climate Change and Land Reform Committee, 'Environment, Climate Change and Land Reform Committee Agenda (ECCLR/S5/21/3/M)' (PDF, 26 January 2021) <[https://archive2021.parliament.scot/S5\\_Environment/Meeting%20Papers/ECCLR\\_2021.01.26\\_Meeting\\_papers\\_\(public\).pdf](https://archive2021.parliament.scot/S5_Environment/Meeting%20Papers/ECCLR_2021.01.26_Meeting_papers_(public).pdf)>

Shultziner, Doron, 'Human Dignity – Functions and Meanings' in Jeff Malpas and Norelle Lickiss (eds), *Perspectives on Human Dignity: A Conversation* (Dordrecht: Springer, 2007) 73-92



Scottish Human Rights Commission, 'SNAP 2: Proposal for Scotland's second National Action Plan for Human Rights', *Scotland's National Action Plan for Human Rights* (PDF, September 2019) <[http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2\\_Online.pdf](http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2_Online.pdf)>

SNIFFER (Scotland and Northern Ireland Forum for Environmental Research), 'Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation' (PDF, March 2005) <<http://eprints.staffs.ac.uk/1828/1/1828.pdf>>

Speigelberg, Herbert, 'Human Dignity: A Challenge to Contemporary Philosophy' in R Gotesky and E Laszlo (eds), *Human Dignity: This Century and the Next* (New York: Gordon and Breach, 1970)

Townsend, Dina L, *Human Dignity and the Adjudication of Environmental Rights* (Edward Elgar Publishing, 2020)

Townsend, Dina, L, 'Taking Dignity Seriously? A Dignity Approach to Environmental Disputes before Human Rights Courts' (2015) 6(2) *Journal of Human Rights and the Environment* 204-225

United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/37/59 (24 January 2018)

United Nations Human Rights Council, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/73/188 (19 July 2018)

United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN DOC A/HRC/43/5 (30 December 2019)

United Nations General Assembly, *Setting International Standards in the Field of Human Rights*, UN Doc A/RES/41/120 (4 December 1986)

Vermeulen, Saskia and Gordon Walker, in JoAnn Carmin and Julian Agyeman (eds) *Environmental Inequalities Beyond Borders: Local Perspectives on Global Injustices* (Cambridge: Cambridge University Press, 2011) 105-128

Waldron, Jeremy, 'Is Dignity the Foundation of Human Rights?' in Rowan Cruft, S Matthew Liao and Massimo Renzo (eds), *Philosophical foundations of human rights* (Oxford University Press, 2013) 117-137

Warren, Rachel et al, 'Attitudes to Land Reform' (Research Paper, Scottish Government, March 2021)

<<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/03/attitudes-land-reform/documents/attitudes-land-reform/attitudes-land-reform/govscot%3Adocument/attitudes-land-reform.pdf>>

Webster, Elaine and Deirdre Flanigan, 'Localising human rights law: A case-study of civil society interpretation of rights in Scotland' (2018) 22(1) *International Journal of Human Rights* 22-42.

Webster, Elaine, 'Interpretation of the Prohibition of Torture: Making Sense of 'Dignity' Talk' (2016) 17(3) *Human Rights Review* 371-390

Webster, Elaine, 'Reconceptualising the Relationship between Rights, Dignity and Intrinsic Worth workshop presentation' (4th Dignity Rights Virtual Workshop Commemorating the 70th Anniversary of the Universal Declaration of Human Rights, 30 November 2018)

Webster, Elaine, 'The Underpinning Concept of Human Dignity', Academic Advisory Panel to the National Taskforce on Human Rights Briefing Paper (Briefing Paper, June 2020) <<https://www.gov.scot/publications/national-taskforce-for-human-rights-leadership-academic-advisory-panel-papers/>>

Weinrib, Ernest J, 'Corrective Justice in a Nutshell' (2002) 52(4) *University of Toronto Law Journal* 349-356

Whiteman, Gail and William H Cooper, 'Ecological Embeddedness' (2000) 43(5) *Academy of Management Journal* 1265-1282

#### B Cases

European Court of Human Rights, *Bouyid v Belgium* App. No. 23380/09 (28 September 2015)

#### C Legislation

*Climate Change (Emissions Reduction Targets) (Scotland) Act 2019*

*Climate Change (Scotland) Act 2009*

*UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*

*United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill*

#### D Treaties

United Nations, *Charter of the United Nations*, No 1 UNTS XVI (24 October 1945)

United Nations General Assembly, *Universal Declaration of Human Rights*, Resolution 217 A (III), 10 December 1948)

United Nations General Assembly, *International Covenant on Civil and Political Rights*, United Nations Treaty Series vol. 999 (16 December 1966)

United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Series, vol. 993 (16 December 1966)

United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters*, 2161 UNTS 447 (Aarhus Convention, 25 June 1998)

#### E Other

Global Pact for the Environment International Group of Experts for the Pact, *Draft Global*

*Pact for the Environment* (24 June 2017)

Environmental Rights Centre for Scotland, 'Why Scotland needs a human right to a healthy environment', *Environmental Rights Centre for Scotland Blog* (2 February 2021)

Scottish Government, *Scotland's National Performance Framework: Our Purpose, Values and National Outcomes* (2018)

Miller, Alan, 'Time for Leadership', *Strathclyde Law School Blog* (19 February 2020)

Morgera, Elisa and Alan Miller, 'COVID-19, Environmental Protection & Human Rights Leadership', *Strathclyde Law School Blog* (28 May 2020)