

REAPING WHAT YOU SOW: HOLDING DUTY-BEARING STATES
ACCOUNTABLE FOR THE DISASTROUS EFFECTS OF THE FAST
FASHION INDUSTRY

*Jillian Houle**

Fast fashion is a bloated manifestation of modern consumerism. It poisons earth's oceans, the air, and our bodies. It operates on the backs of and at the expense of some of the most vulnerable among us. It is unruly, unacceptable and has gone unchecked for far too long. This piece argues that it has been and remains the responsibility of States to prevent and protect citizens from human rights and environmental harms of the sort that the fast fashion industry breeds. States, however, have not lived up to their obligations. Thus, to hold States accountable for their passivity, this piece advocates that the human right to a clean, healthy, and sustainable environment can be used in conjunction with widely adopted constitutional law concepts to enforce such accountability on the international stage.

INTRODUCTION

This article seeks to explore a way for litigants on the international stage to address the harms that are caused both by the fast fashion industry and passively permitted by States.¹ The scope of the piece is narrowed to State obligations, rather than industry and corporate obligations, although this author would like to make clear at the outset that all of these players have a heavy hand in the ruin that unchecked textile production spawns, and all of these players owe protective duties to non-players.

First, this article will explain the basics of the fast fashion industry: what it is, theories behind its existence and perpetuation, and the paradoxes it bears. It will stress that many of the subsequently explored environmental

* The Elisabeth Haub School of Law at Pace University Class of 2024. She would like to thank Dr. Maria Antonia Tigre for inspiring her to think and write creatively and for imparting an endless store of knowledge and experience. She would also like to thank Ms. Isabel Morgan Perez for encouraging her to critically probe the issue of fast fashion.

¹ A "State" is an entity with sovereignty over people and territories. *Nations, States and Nation-States*, UTAH S. UNIV., <https://chass.usu.edu/international-studies/aggies-go/nation-states#:~:text=States%20are%20defined%20by%20sovereignty,are%20all%20examples%20of%20states> (last visited Apr. 12, 2024) [<https://perma.cc/9TX4-AUY4>]. Plainly, a State is another word for "country." *See id.*; COLIN FLINT, INTRODUCTION TO GEOPOLITICS 36 (3d. ed. 2017).

and human rights problems are simply problems of the fashion and textile industries themselves, but that fast fashion, by virtue of its business model from cradle to grave, exacerbates these problems. Next, this article will discuss the environmental harms occasioned by the fast fashion industry, beginning with the industry's water consumption and pollution, moving towards microplastics concerns, and concluding with energy, greenhouse gas, and climate implications. Then, this piece will examine the human rights concerns that flow from the fast fashion industry, specifically the rights to water, sanitation, and life, rights concerning worker and labor conditions, and the disproportionate impact of all these plights on vulnerable women and children from the Global South.

Finally, this article will propose a way for litigants to address all of these harms through the lens of the human right to a clean, healthy, and sustainable environment. The proposal acknowledges the shortcomings and criticisms waged against the right and seeks to address them by incorporating a sort of "partner" approach, where the constitutional right to a healthy environment is brought into the picture. As accountability is at the forefront of this proposal, this author aims to demonstrate the severity of the issue, what parties are responsible, and how existing mechanisms are not properly followed or utilized. In that regard, the piece shifts the focus away from rights-holders and towards duty-bearers.

I. FAST FASHION: THE BASICS

Fast fashion was born as a concept in the 1990s after the now-coveted retail giant Zara entered the Big Apple.² The basic elements of fast fashion? It is cheap, quick, trendy, and mass-produced.³ Good On You, an organization that rates brand sustainability, defines fast fashion as "cheap, trendy clothing that samples ideas from the catwalk or celebrity culture and turns them into garments at breakneck speed to meet consumer demand."⁴ Earth.org, a global environmental think tank that advocates for sustainable economic policies and governance defines it as "a large sector of the fashion industry whose business model relies on cheap and speedy production of low quality clothing, which gets pumped quickly through stores in order to meet the latest and newest trends."⁵ The advocacy group, Action for the Climate

² Olivia Lai, *What is Fast Fashion?*, EARTH.ORG (Nov. 10, 2021), <https://earth.org/what-is-fast-fashion/> [https://perma.cc/27VP-SHWZ].

³ *The Ultimate Guide to Fast Fashion in 2022*, COMMONWEALTH HUMAN ECOLOGY COUNCIL (Feb. 4, 2022), <https://www.checinternational.org/news/the-ultimate-guide-to-fast-fashion-in-2022> [https://perma.cc/6XCX-KMFP].

⁴ Solene Rauturier, *What Is Fast Fashion and Why Is It So Bad?*, GOOD ON YOU (Apr. 1, 2021), <https://goodonyou.eco/what-is-fast-fashion/> [https://perma.cc/75R9-RFCC].

⁵ Lai, *supra* note 2.

Emergency, defines fast fashion as “a term to describe the profitable and exploitative business model that emphasizes replicating and reproducing ‘high fashion’ trends and designs on a mass scale for cheap.”⁶ The Guardian has succinctly defined the term as “cheap clothes bought and cast aside in rapid succession as trends change.”⁷

Fast fashion is a global scourge that grips consumers in its unforgiving clutches.⁸ Retail conglomerates meet rapid changes in trend-related demands by shaving off weeks in the production-to-shelving process,⁹ generating profits and satisfying millions worldwide.¹⁰ These trend-related demands are a product of varying root causes ranging from social media influencing to the interwoven,¹¹ historical connection between fashion and capitalism.¹² The former cause suggests that “the desire to be in fashion”¹³ as a result of consumerist influencing is responsible for perpetuating the growth of this

⁶ Victoria Whalen, *Fast Fashion and Climate Change 101*, ACTION FOR THE CLIMATE EMERGENCY (June 17, 2022), <https://acespace.org/2022/06/17/fast-fashion-101/> [https://perma.cc/22EU-CR5W].

⁷ Nicola Davis, *Fast Fashion Speeding Toward Environmental Disaster, Report Warns*, THE GUARDIAN (Apr. 7, 2020), <https://www.theguardian.com/fashion/2020/apr/07/fast-fashion-speeding-toward-environmental-disaster-report-warns> [https://perma.cc/854C-2K3V].

⁸ See Audrey Lin, *Driven to Shop: The Psychology of Fast Fashion*, EARTH.ORG (Aug. 5, 2022), <https://www.earthday.org/driven-to-shop-the-psychology-of-fast-fashion/> (discussing the addictive cycle of fast fashion shopping and the “fear of missing out” component, both of which lure consumers blindly to stores and websites to “feed this loop”) [https://perma.cc/WVL3-4VP6].

⁹ Renee Cho, *Why Fashion Needs to Be More Sustainable*, COLUM. CLIMATE SCHOOL (June 10, 2021), <https://news.climate.columbia.edu/2021/06/10/why-fashion-needs-to-be-more-sustainable/>; SVEN HERRMANN ET AL., A NEW TEXTILES ECONOMY: REDESIGNING FASHION’S FUTURE 38 (Ellen MacArthur Found., 2017), <https://ellenmacarthurfoundation.org/a-new-textiles-economy> [https://perma.cc/Y4QA-PX4F]; Deborah Drew & Genevieve Yehounme, *The Apparel Industry’s Environmental Impact in 6 Graphics*, WORLD RES. INST. (July 5, 2017), <https://www.wri.org/insights/apparel-industrys-environmental-impact-6-graphics> [https://perma.cc/WXT6-RKA7].

¹⁰ P. Smith, *Fast Fashion Market Value Forecast Worldwide from 2022 to 2027*, STATISTA (May 3, 2023), <https://www.statista.com/statistics/1008241/fast-fashion-market-value-forecast-worldwide/> (detailing that the forecasted worldwide fast fashion market value for 2023 is 106.86 billion USD) [https://perma.cc/2AVV-MFD5]; see generally Lai, *supra* note 2.

¹¹ Lin, *supra* note 8.

¹² Kathleen Horton & Alice Payne, *Imagination Wove This Flesh Garment: Fashion, Critique, and Capitalism*, in UNDESIGN: CRITICAL PRAC. AT THE INTERSECTION OF ART AND DESIGN 186, 187 (2018), https://www.researchgate.net/profile/Alice-Payne-3/publication/330160967_Imagination_wove_this_flesh_garment_Fashion_critique_and_capitalism/links/5c7bb8df458515831f7e93a3/Imagination-wove-this-flesh-garment-Fashion-critique-and-capitalism.pdf.

¹³ *Id.* at 188.

industry,¹⁴ while the latter posits that the systemic, economic structure of capitalism and its global reach are to blame for creating an atmosphere where media platforms are *able* to prey on largely innocent consumers.¹⁵ Moreover, the advent of online shopping brought with it a mechanism for these manufactured desires to be *immediately* acted on.¹⁶

Regardless of *where* this demand originated, the fast fashion industry nonetheless persists. To keep up with demands, retailers pump out and mass produce “trendy” items with unimaginable speed.¹⁷ For example, even though the average lead time is about sixty to ninety days,¹⁸ in as early as 2012, Zara figured out a way to cut the entire process from design to delivery down to just two weeks.¹⁹ These companies generate clothing and accessories that reproduce “high fashion” wares;²⁰ however, the items they create are of incredibly poor quality.²¹ This paradox can be explained quite simply, though: the garments need not be of choice quality if the consumer will only wear them until the next trend comes along. Indeed, studies estimate that a typical article of clothing is thrown away after being worn merely ten times.²² Across the globe, consumers today purchase *more* clothing items and wear them for *less* time than ever before, “discarding garments as fast as trends shift.”²³ Notably, this behavior is not monetarily costless. Over 500 billion

¹⁴ Lin, *supra* note 8.

¹⁵ Horton & Payne, *supra* note 12, at 3.

¹⁶ Cho, *supra* note 9.

¹⁷ Alexa Maratos, Note, *The Fast Fashion Industry: Formulating the Future of Environmental Change*, 40 PACE ENV'T L. REV. 391, 394 (2023).

¹⁸ Rashmila Maiti, *Fast Fashion and Its Environmental Impact*, EARTH.ORG (Dec. 1, 2022) (a lead time is “the time it takes for a product to go through the supply chain, from design to purchase.”), <https://earth.org/fast-fashion-detrimental-effect-on-the-environment/> [https://perma.cc/B8QG-NPB2]; Fabricio Miranda, *It’s Time to Stop Guessing and Get Control of Long Lead Times in the Apparel Industry*, FLIEBER (Oct. 8, 2021), <https://www.flieber.com/blog/get-control-of-long-lead-times#:~:text=Depending%20on%20your%20category%2C%20lead,30%20to%2090%20day%20mark> [https://perma.cc/T9NQ-F39J].

¹⁹ Maiti, *supra* note 18.

²⁰ Whalen, *supra* note 6.

²¹ Maya Cheav, *Fast Fashion and Outsourcing*, CHAPMAN UNIV. (Feb. 26, 2020), <https://blogs.chapman.edu/sustainability/2020/02/26/fast-fashion-and-outsourcing/> [https://perma.cc/X3LE-JQWU].

²² *Cleaning Up Couture: What’s in Your Jeans?*, U.N. ENV’T PROGRAMME (Dec. 14, 2018), <https://www.unep.org/news-and-stories/story/cleaning-couture-whats-your-jeans> [https://perma.cc/X75Y-PL7G].

²³ *The Environmental Costs of Fast Fashion*, U.N. ENV’T PROGRAMME (Nov. 24, 2022), <https://www.unep.org/news-and-stories/story/environmental-costs-fast-fashion> [https://perma.cc/KH5K-5ERX]; see also *How Much Do Our Wardrobes Cost to the Environment?*, THE WORLD BANK (Sept. 23, 2019),

USD of value is lost every year due in large part to clothing underutilization.²⁴ Figure 1 demonstrates how drastically fast fashion trend cycles outpace traditional “slow fashion” models.²⁵

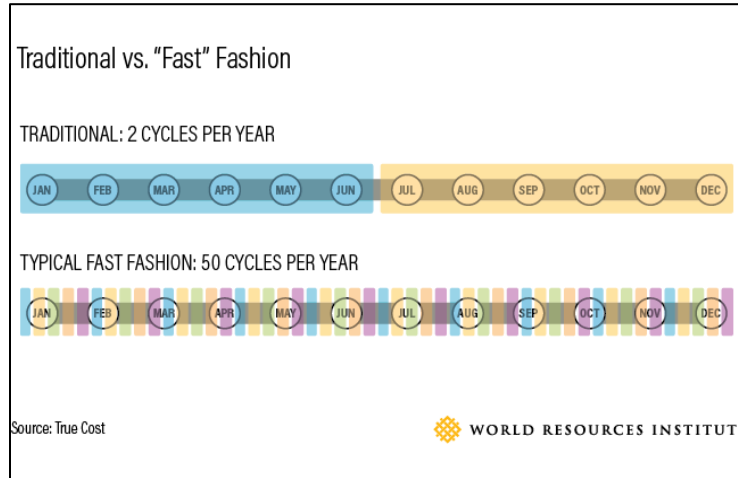


Figure 1²⁶

Since the early 2000s, consumers have purchased over eighty billion new pieces of clothing every year, which is 400% more than the average consumption *prior* to twenty years ago.²⁷ Of this sum, up to eighty-five percent of all textiles go to the dump each year.²⁸ In the United States alone, this means that about thirty-four billion pounds of used textiles are thrown away *every year*.²⁹ Even if a consumer wants to ‘go green’ and recycle their

<https://www.worldbank.org/en/news/feature/2019/09/23/costo-moda-medio-ambiente> [<https://perma.cc/QGA5-BK7E>].

²⁴ HERRMANN ET AL., *supra* note 9, at 3.

²⁵ Francine Vito, *What is Slow Fashion and How Can You Join the Movement?*, EARTH.ORG (July 27, 2022), <https://earth.org/what-is-slow-fashion/#:~:text=Slow%20fashion%20is%20a%20movement,the%20%E2%80%9Cslow%20food%E2%80%9D%20movement> [<https://perma.cc/NEA2-RKXD>].

²⁶ Drew & Yehounme, *supra* note 9.

²⁷ *Global Fashion Industry Statistics*, FASHION UNITED, <https://fashionunited.com/global-fashion-industry-statistics> (last visited May 16, 2024) [<https://perma.cc/7ZUA-H997>]; Maiti, *supra* note 18. In the United States alone, individuals in the mid-2010s purchased “an average of 64 items and more than seven pairs of shoes yearly,” which is double the annual purchase rate in the 1990s. Elizabeth Cline, *The Power of Buying Less by Buying Better*, THE ATLANTIC (Feb. 16, 2016), <https://www.theatlantic.com/business/archive/2016/02/buying-less-by-buying-better/462639/> [<https://perma.cc/KJ5Z-9CYK>].

²⁸ *Fashion and the SDGs: What Role for the UN?*, U.N. ECON. COMM’N EUR. 1 (Mar. 1, 2018).

²⁹ Dielle Lundberg & Julia Devoy, *The Aftermath of Fast Fashion: How Discarded Clothes Impact Public Health and the Environment*, B.U. SCH. OF PUB. HEALTH (Sept. 22, 2022),

used clothing in lieu of sending it along to the landfill, the reality is that not even one percent is actually recycled into new clothing.³⁰ This is because even minimal wearing and washing weaken the polymers that hold articles of clothing together, “so by the time a garment is discarded, the polymers are too short to turn into a strong new fabric.”³¹

Finally, with increased demand and corresponding increased production, there comes a third increase: an increase in the workforce. While sources conflict as to the precise values, at least seventy-five million people worldwide are employed by the textile fashion industries at some point in the value chain.³² The higher end of the estimate range posits that some 300 million people are employed by these industries.³³ Either way, a clear “benefit” of these industries is that they provide work to swaths of people.³⁴

In sum, the fast fashion industry (1) takes advantage of consumerism; (2) exploits the psychological components of capitalism and modern media; (3) produces tawdry clothes; and (4) contributes immensely to the overconsumption-to-garment-discarding pipeline. Further, the global costs of fast fashion trample its comparatively meager benefits of job security, addictive relief,³⁵ “democratization of stylish clothing,”³⁶ and affordable clothing options for an ever-widening middle class.³⁷ In more ways than one,

<https://www.bu.edu/sph/news/articles/2022/the-aftermath-of-fast-fashion-how-discarded-clothes-impact-public-health-and-the-environment/> [https://perma.cc/882C-4ELK].

³⁰ Kiran Pandey, *Fashion Industry May Use Quarter Of World’s Carbon Budget By 2050*, THE WEATHER CHANNEL (July 19, 2018), <https://weather.com/en-IN/india/news/news/2018-07-19-fashion-world-carbon-budget-2050> [https://perma.cc/NR8P-BCT9]; Cho, *supra* note 9.

³¹ Cho, *supra* note 9.

³² *How Much Do Our Wardrobes Cost to the Environment?*, *supra* note 23; *UN Alliance Aims to Put Fashion on Path to Sustainability*, U.N. ECON. COMM’N EUR. (July 12, 2018) <https://unece.org/forestry/press/un-alliance-aims-put-fashion-path-sustainability> [https://perma.cc/ET3Q-KY6Y].

³³ *Cleaning Up Couture: What’s in Your Jeans?*, *supra* note 22.

³⁴ *But see infra* Section III. The Human Rights Impacts of the Fast Fashion Industry and Related Legal Implications for an examination of the human rights concerns that render this “benefit” of job opportunity not a benefit at all.

³⁵ Lin, *supra* note 8.

³⁶ *The True Cost of Fast Fashion?*, The Evans Group (June 13, 2023), <https://tegmade.com/the-true-cost-of-fast-fashion/> [https://perma.cc/2TEF-3S95].

³⁷ Omri Wallach, *The World’s Growing Middle Class (2020-2030)*, ELEMENTS (Feb. 3, 2022), <https://elements.visualcapitalist.com/the-worlds-growing-middle-class-2020-2030/> [https://perma.cc/J7TU-G45P]; Drew & Yehounme, *supra* note 9.

fast fashion and its insidious younger brother, *ultra* fast fashion,³⁸ have engendered a global race to the bottom.³⁹

The fashion industry has no reason *not* to continue along its current path. In 2022 alone, the revenue generated by the global apparel market was 1.53 trillion USD.⁴⁰ Their current practices reward them handsomely, and it would arguably be unsound business practice to forego such impressive revenues. This begs the question of how on earth one can hope to influence businesses to alter their practices without presenting alternatives with figures demonstrating a space for profit.

II. THE ENVIRONMENTAL IMPACTS OF THE FAST FASHION INDUSTRY AND RELATED LEGAL IMPLICATIONS

There are virtually no areas of the environment left unscathed by the lethality of the fashion and textile industries.⁴¹ These impacts are compounded by mass, largely unregulated production—by fast fashion.⁴² This paper will discuss three of those areas: water, microplastics, and the confluence of energy, waste, and climate change. Of note, many of the harms detailed in the present section and sections to come are ills of the fashion industry itself. This author’s argument is simple: the industry’s established problems are *exacerbated tenfold* by fast fashion.⁴³ In other words, the fashion industry is riddled with issues, but the *fast* fashion industry carries those same issues, albeit on an unacceptably bloated scale.

³⁸ JD Shadel, *What is Ultra Fast Fashion? Investigating Why It’s Ultra Bad*, GOOD ON YOU (Feb. 25, 2022), <https://goodonyou.eco/ultra-fast-fashion/> [https://perma.cc/SH9Z-5SDN]; Alexia Kahn, *Even Worse Than Fast Fashion, Meet Ultra-Fast Fashion*, MY GREEN CLOSET (Mar. 20, 2023), <https://mygreencloset.com/ultra-fast-fashion/> [https://perma.cc/J8HK-TBUJ].

³⁹ See, e.g., Kevin Trung Le, *The Truth Behind Fast Fashion: A Solution to the Issue*, BARD COLL. SENIOR PROJECTS SPRING 2023, 1, 28-32 (2023).

⁴⁰ P. Smith, *Global Apparel Market – Statistics and Facts*, STATISTA (Feb. 15, 2024) <https://www.statista.com/topics/5091/apparel-market-worldwide/#topicOverview> [https://perma.cc/383X-D8XB].

⁴¹ For example, wood pulp is a central ingredient in many different fabrics used to make clothing. Cho, *supra* note 9. To keep up with the fashion industry’s demand—and the *fast* fashion industry’s heightened demand—“70 million tons of trees are cut down each year,” with that number expected to double by the year 2034. *Id.*

⁴² See *How Much Do Our Wardrobes Cost to the Environment?*, *supra* note 23.

⁴³ *Id.*

A. Water

1. Consumption

From running textile factories to cleaning machinery therein, the fashion industry consumes some ninety-three billion cubic meters (or twenty-one trillion gallons) of water every year.⁴⁴ This sum accounts for 1.3 trillion gallons used annually for fabric dyeing alone.⁴⁵ It comes as no surprise, then, that the fashion industry is the world’s second-largest consumer of water,⁴⁶ behind only the agriculture sector (particularly fruit and vegetable farming).⁴⁷

A key reason why the fashion industry consumes so much water is that the industry utilizes cotton as the DNA for nearly half of all textiles⁴⁸ For example, cotton is typically a main ingredient in the production of jeans.⁴⁹ According to the UN Environment Programme (UNEP), “[i]fecycle assessments show—taking cotton production, manufacture, transport and washing into account—it takes 3,781 [liters] of water to make one pair of jeans.”⁵⁰ Now, take your average cotton tee. Approximately 2,700 liters of water are required to produce that one tee.⁵¹ This is roughly the amount of

⁴⁴ *Id.*; Helen Regan, *Asian Rivers are Turning Black. And Our Colorful Closets are to Blame*, CNN STYLE (Sept. 28, 2020), <https://www.cnn.com/style/article/dyeing-pollution-fashion-intl-hnk-dst-sept/index.html#:~:text=The%20fashion%20industry%20uses%20around,to%20the%20Ellen%20MacArthur%20Foundation> [https://perma.cc/H6ZT-PVW7]. As a frame of reference, it takes roughly 2,500 m³ to fill a single Olympic-size swimming pool. Eric Herman, *An Olympic-Size Metaphor*, AQUA (Apr. 5, 2016), <https://www.aquamagazine.com/retail/article/15120202/an-olympic-size-metaphor#:~:text=Here's%20how%20it%20breaks%20down,or%20660%2C430%20gallon%20of%20water> [https://perma.cc/C92X-4CNU].

⁴⁵ Drew & Yehounme, *supra* note 9. As another frame of reference, this process “uses enough water to fill 2 million Olympic-sized swimming pools each year.” Morgan McFall-Johnsen, *The Fashion Industry Emits More Carbon Than International Flights and Maritime Shipping Combined. Here are the Biggest Ways it Impacts the Planet*, INSIDER (Oct. 21, 2019), <https://www.businessinsider.com/fast-fashion-environmental-impact-pollution-emissions-waste-water-2019-10> [https://perma.cc/QC3U-D282].

⁴⁶ *Fashion and the SDGs: What Role for the UN?*, *supra* note 28, at 1.

⁴⁷ Shea Karssing, *Top 5 Industries With the Highest Water Consumption*, SMARTER BUS. (Jan. 13, 2020), <https://smarterbusiness.co.uk/blogs/the-top-5-industries-that-consume-the-most-water/> [https://perma.cc/8YB2-9S6A].

⁴⁸ *Cotton*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/industries/cotton> (last visited May 16, 2024) [https://perma.cc/VN6M-HQ7X].

⁴⁹ Isobella Wolfe, *Material Guide: How Ethical and Sustainable is Denim?*, GOOD ON YOU (Aug. 12, 2022), <https://goodonyou.eco/material-guide-ethical-denim/> [https://perma.cc/QY86-PQGS].

⁵⁰ *Cleaning Up Couture: What’s in Your Jeans?*, *supra* note 22.

⁵¹ Whalen, *supra* note 6.

water one person drinks in two and a half years.⁵² Moreover, the Quantis International 2018 report stated that fiber production is one of the three main drivers of the fashion industry's global pollution impact.⁵³ The cotton cultivation portion of fiber production, the report suggests, particularly impacts freshwater withdrawal.⁵⁴

Excessive water consumption by the fashion industry necessarily contributes to the 2.7 billion people facing water scarcity every year.⁵⁵ The industry steals water just to produce clothes designed to be thrown away within weeks. This backwards behavior could be addressed by the 2019 UN Economic and Social Council's report of the Secretary-General concerning progress towards the Sustainable Development Goals (SDGs). In discussing Goal 6 ("Ensure availability and sustainable management of water and sanitation for all"), the Secretary-General directs that "[m]ore efficient use and management of water are critical to addressing the growing demand for water, threats to water security[,] and the increasing frequency and severity of droughts and floods resulting from climate change."⁵⁶ The report makes note of serious State shortcomings inhibiting the actualization of Goal 6 by 2030.⁵⁷ At base, smart water use and management are necessary and must precipitate from a sense of State obligation to serve citizenry. If States continue to condone fashion industry behaviors, Goal 6 will *never* be met.

As of April 2024, one can purchase a cotton t-shirt for \$6.49 on SHEIN.⁵⁸ Parents can also purchase a cotton "Ruffle Hem Cami Top" for their children for a mere \$2.25.⁵⁹ This up-front cost is incredibly enticing, but one must not

⁵² *Id.*

⁵³ PAULINE CHROBOT ET AL., MEASURING FASHION: ENVIRONMENTAL IMPACT OF THE GLOBAL APPAREL AND FOOTWEAR INDUSTRIES STUDY 19 (Quantis, 2018).

⁵⁴ Maiti, *supra* note 18 (defining freshwater withdrawal as "water is diverted or withdrawn from a surface or groundwater source").

⁵⁵ See *Water Scarcity*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/threats/water-scarcity> (last visited May 16, 2024) [<https://perma.cc/GH92-K89Q>].

⁵⁶ U.N. Secretary-General, *Special Edition: Progress Towards the Sustainable Development Goals*, ¶ 27, U.N. Doc. E/2019/68 (May 8, 2019).

⁵⁷ *Id.*

⁵⁸ SHEIN, *DAZY Solid Round Neck Tee*, https://us.shein.com/DAZY-Solid-Round-Neck-Tee-p-13793505-cat-1738.html?src_identificer=st%3D4%60sc%3DWomen%20Cotton%20T%20Shirts%60sr%3D0%60ps%3D8&src_module=search&src_tab_page_id=page_home1680292414330&attr_ids=160_212&mallCode=1 (last visited Mar. 7, 2024) [<https://perma.cc/9MMB-USB8>].

⁵⁹ SHEIN, *SHEIN Toddler Girls Solid Ruffle Hem Cami Top*, https://us.shein.com/SHEIN-Toddler-Girls-Solid-Ruffle-Hem-Cami-Top-p-13231518-cat-2835.html?src_identificer=st%3D4%60sc%3DKids%20Cotton%20Tshirt%60sr%3D0%60ps%3D7&src_module=search&src_tab_page_id=page_home1680292268866&attr_ids=160_212&mallCode=1 (last visited Mar. 7, 2024) [<https://perma.cc/7MAJ-23VT>].

forget the shadow costs. In the case of our checkout cart, which comes to a grand total of \$8.74, 5,400 liters of water are consumed, five years of drinking water for one person are stolen, and natural water bodies are dripped dry.

2. Pollution

Color is arguably the first thing sighted people notice about an article of clothing before they even touch it, try it on, or run a sustainability check on it.⁶⁰ To reiterate, 1.3 trillion gallons of water are used annually for the process of fabric dyeing.⁶¹ On average, around seventy-two toxic chemicals are floating around inside those gallons during the dyeing process.⁶² Water-dye by-products might prove to be an environmental non-issue if they are contained in a controlled environment and disposed of safely and reasonably. However, an industry that answers to the beck and call of capitalism and social media influencers does not have time for reason or regulation.⁶³ Dye houses simply dump this “thick, ink-like ... toxic soup”⁶⁴ into local streams and rivers,⁶⁵ often “through pipes untraceable back to source,” meaning factories can anonymously contaminate with impunity.⁶⁶

When businesses are not prevented from engaging in such dumping by State action, the States in question effectively fail to live up to their obligations under, if not national constitutions, international substantive obligations in the human rights sphere. It comes down to holding wrongdoers accountable and deterring their malfeasance and nonfeasance by assuring them that their improper behaviors will not go unpunished. For example, in the 2022 Report of Special Rapporteur David R. Boyd⁶⁷ on the SDGs, Boyd implores States to achieve zero pollution in part by obliging them to enable

⁶⁰ See Beth Ranson, *The True Cost of Colour: The Impact of Textile Dyes on Water Systems*, FASHION REVOLUTION (2020) <https://www.fashionrevolution.org/the-true-cost-of-colour-the-impact-of-textile-dyes-on-water-systems/> [<https://perma.cc/A9BW-JMVQ>].

⁶¹ Drew & Yehounme, *supra* note 9.

⁶² Cho, *supra* note 9.

⁶³ See Ranson, *supra* note 60 (“Wastewater disposal is seldom regulated, adhered to or policed, meaning big brands, and the factory owners themselves are left unaccountable.”).

⁶⁴ *Id.*

⁶⁵ Leon Kaye, *Clothing to Dye for: The Textile Sector Must Confront Water Risks*, THE GUARDIAN (Aug. 12, 2013) <https://www.theguardian.com/sustainable-business/dyeing-textile-sector-water-risks-adidas> [<https://perma.cc/66M7-9GRD>].

⁶⁶ Ranson, *supra* note 60.

⁶⁷ *Special Rapporteur on Human Rights and the Environment*, U.N. HUMAN RTS. SPECIAL PROCS., [https://www.ohchr.org/en/special-procedures/sr-environment#:~:text=David.,\(resolution%2046%2F7\)](https://www.ohchr.org/en/special-procedures/sr-environment#:~:text=David.,(resolution%2046%2F7)) (last visited May 16, 2024) (describing the role of Special Rapporteur, explaining his mandate, and detailing that his new title as of April 2024 is “Special Rapporteur on the human right to a clean, healthy and sustainable environment.”) [<https://perma.cc/HFU9-YB2A>].

access to justice and effective remedies for all in order to hold States and businesses accountable to meet their obligations to respect, protect, and fulfill the right to a clean, healthy, and sustainable environment.⁶⁸ If a State's failure to regulate pollutive action renders it difficult to learn exactly who is polluting certain water bodies, thereby allowing polluters to get off scot-free and hamstringing any efforts at accessing justice and remedies, then said States are not living up to their obligations. In essence, at least in the pollution context, to hold polluters accountable, we must first hold States accountable for failure to regulate effectively.

Figure 2 shows the now-bright pink Tullahan River in the Philippines, which is located downstream from various industries, including both textile and dye factories.⁶⁹ Figure 2 additionally provides a snapshot into the fashion industry's twenty percent contribution to global wastewater.⁷⁰ It also illustrates a difficult legal conundrum: without accountability measures in place, how are we to know *which* factories are to blame for *what* percentage of this hot pink predicament?



Figure 2⁷¹

What is the actual effect of this pollution? Because it takes a considerable amount of time to restore river ecology when industry-caused water pollution has occurred, “generations could be affected by the pollution,” meaning today’s textile dye dump could be the problem of the unborn.⁷² This effect

⁶⁸ U.N. Secretary-General, *The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals*, ¶¶ 37-38, 41, U.N. Doc. A/77/284 (Aug. 10, 2022).

⁶⁹ *The Ultimate Guide to Fast Fashion in 2022*, *supra* note 3.

⁷⁰ *Fashion and the SDGs: What Role for the UN?*, *supra* note 28.

⁷¹ *The Ultimate Guide to Fast Fashion in 2022*, *supra* note 3.

⁷² Kait Bolongaro & Hangwei Li in Guilin, *A River of Rubbish: The Ugly Secret Threatening China's Most Beautiful City*, THE GUARDIAN (Mar. 24, 2017), <https://www.theguardian.com/cities/2017/mar/24/river-rubbish-ugly-secret-china-beautiful-guilin> [<https://perma.cc/4BEL-GJ7Q>].

naturally implicates the general obligation of States to respect, protect and fulfill children’s rights and the rights of future generations as suggested in the Committee on the Rights of the Child (CRC) General comment No. 26.⁷³ The Committee maintains that States have a “due diligence obligation to take appropriate measures to protect children against reasonably foreseeable environmental harm and violations of their rights.”⁷⁴ Surely, while *specific* long-lasting effects of water pollution are uncertain in terms of precise impact, effects in some capacity are nonetheless foreseeable.⁷⁵

In addition to the intergenerational equity issue, as recently as 2020, many of China’s 1.4 billion population were unable to access uncontaminated water.⁷⁶ It is not a stretch to assert that a substantial factor causing this mass-scale contamination is, indeed, the second largest water pollutant in the world—dyes from textile dyeing factories.⁷⁷ Access to safe water and adequate sanitation are indispensable human rights, as evidenced by the existence and persistence of the 2010 United Nations General Assembly (UNGA) resolution recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”⁷⁸ Every time a factory is permitted with impunity to dump toxic sludge into water bodies, globally recognized human environmental rights are violated.

On another note, aquatic life and flora cannot hope to survive toxic chemical pollution either.⁷⁹ UNEP has highlighted human rights obligations and responsibilities regarding biodiversity-related agreements, strategies, actions, and policies in its “Key Messages” report.⁸⁰ UNEP first highlights the duty of States to take “meaningful, effective, and urgent action to

⁷³ U.N. Comm. on the Rights of a Child, Gen. Comm. No. 26 on Children’s rights and the environment with a special focus on climate change, (Aug. 22, 2023), <https://www.ohchr.org/en/calls-for-input/2023/call-comments-draft-general-comment-childrens-rights-and-environment-special> [<https://perma.cc/CB5L-RWPN>].

⁷⁴ *Id.*

⁷⁵ See, e.g., Lellis et al., *Effects of Textile Dyes on Health and the Environment and Bioremediation Potential of Living Organisms*, 3 BIOTECHNOLOGY RSCH. AND INNOVATION 275, 277 (2019) <https://www.sciencedirect.com/science/article/pii/S2452072119300413> (“The genotoxicity of textile dyes is the greatest potential long-term hazard to human health.”) [<https://perma.cc/8FBK-74F4>].

⁷⁶ Ranson, *supra* note 60.

⁷⁷ *Putting the Brakes on Fast Fashion*, UN ENV’T PROGRAMME (Nov. 12, 2018), <https://www.unep.org/news-and-stories/story/putting-brakes-fast-fashion> [<https://perma.cc/J5BX-YJ5T>].

⁷⁸ G.A. Res. 64/292 at 2 (Aug. 3, 2010).

⁷⁹ Ranson, *supra* note 60; Lellis et al., *supra* note 75.

⁸⁰ See *Human Rights and Biodiversity: Key Messages*, U.N. ENV’T PROGRAMME (July 19, 2021), <https://www.unep.org/resources/report/human-rights-and-biodiversity-key-messages> [<https://perma.cc/F69F-BFNT>].

transform humanity's relationship with nature and address the direct drivers of biodiversity loss."⁸¹ When States fail to so act, they breach their obligations.⁸² Moreover, businesses themselves carry obligations concerning human rights harms from biodiversity loss.⁸³ Thus, when "two-thirds of polled fashion executives" fail to make "environmental and social factors guiding principles for their companies' strategy," they edge closer towards breaching their duties.⁸⁴ With every dump, States and businesses violate their obligations to correlatively prevent biodiversity loss and promote human rights. This paper focuses on the responsibilities of the former, but do not be fooled: corporations bear just as heavy, albeit a more recently conceived of, burden to uphold and ensure the protection of people and the environment.

It is not only the dyes, however, that wreak water-pollutive havoc. Fiber production of cotton and similar materials is a cause for concern, simply because such "materials" are plants.⁸⁵ To protect these crops, farmers use excessive amounts of herbicides and pesticides, which end up leaching into surrounding soil and groundwater.⁸⁶ At various other stages of fiber and clothing production, toxic chemicals are used and often find their way outside of factories and into soil and local water sources.⁸⁷

3. An Illustration: The Aral Sea

In the abstract, the values, data points, and statistics mentioned above are disconcerting. In reality, the impacts of the fashion and textile industry's overconsumption and contamination of water are exceedingly dire with regard to the earth, biodiversity, and humanity. Take the plight of the Aral Sea as an example.

In the deserts of Kazakhstan, Uzbekistan, and Turkmenistan, the Soviet Union in the 1960s decided to divert the Syr Darya and the Amu Darya rivers

⁸¹ *Id.* at 2.

⁸² *Id.*

⁸³ *Id.* at 6 ("To meet their responsibility to respect human rights, businesses are expected (i) to adopt a policy commitment to respect human rights; (ii) to conduct human rights due diligence in order to identify, prevent, mitigate and account for how they address human rights harms resulting from biodiversity loss, including by engaging with affected communities; and (iii) to have processes in place to enable the remediation of those harms they cause or to which they contribute.").

⁸⁴ *2017 Pulse Report*, GLOB. FASHION AGENDA (Spring 2017), https://www2.globalfashionagenda.com/wp-content/uploads/2017/05/Pulse-of-the-Fashion-Industry_2017.pdf.

⁸⁵ See *Cotton Plant*, COTTON ACRES, <https://www.cottonacres.com/cotton-plant/> (last visited Mar. 7, 2024) [<https://perma.cc/YB7S-HC9Q>].

⁸⁶ Whalen, *supra* note 6.

⁸⁷ *Id.*

away from their natural basin, the Aral Sea, in order to irrigate farms primarily for cotton as well as some other crops.⁸⁸ Prior to this diversion, the sea was entirely potable.⁸⁹ The human interference essentially caused the sea to be cut off from about ninety percent of its life source (the two Darya rivers),⁹⁰ which both prevented it from being filled to its capacity and inhibited the constant ebb and flow of partially salinated water in and out of the seabed.⁹¹ The diversion caused reduced replenishment of the sea and rendered the sea water and nearby groundwater unsafe to drink by World Health Organization standards due to a “tenfold” increase in salt concentration.⁹² Moreover, due to this reduction in water generally and the influx of contamination in what water is left, fecal-oral transmission of disease in Aral Sea area households is the norm.⁹³ “Inadequate sanitation and water access represent a considerable risk for diarrhoeal disease, one of the main global contributors to child mortality, causing one in ten child deaths.”⁹⁴

Today, Uzbekistan is the sixth largest cotton producer in the world.⁹⁵ It requires and uses exorbitant amounts of water. The Aral sea, once the fourth largest inland sea in the world, has largely vanished.⁹⁶ Entire lobes of the sea have disappeared, and seasonal snowmelt seems to be all that keeps it alive.⁹⁷ Children in the area are dying of diseases born directly out of the impacts of diversion.⁹⁸ Adults suffer from various forms of cancer, skin lesions, and heart and kidney diseases.⁹⁹ Pregnant people have fertility struggles.¹⁰⁰ “In the late 1990s infant mortality was between 60 – 110/1000.”¹⁰¹ The list goes

⁸⁸ *World of Change: Shrinking Aral Sea*, NASA EARTH OBSERVATORY, <https://earthobservatory.nasa.gov/world-of-change/AralSea> (last visited Mar. 7, 2024) [<https://perma.cc/EG8C-PUT3>].

⁸⁹ DIANE HART, *Chapter 26: The Aral Sea: Central Asia’s Shrinking Water Source*, in GEOGRAPHY ALIVE!: REGIONS AND PEOPLE 379, 380 (2006).

⁹⁰ *Id.* at 382.

⁹¹ *See generally id.* for a lengthy but incredibly helpful explanation of precisely how the Aral Sea became undrinkable.

⁹² Turid Austin Wæhler et al., *The Vanishing Aral Sea: Health Consequences of an Environmental Disaster*, TIDSSKRIFTET (Oct. 3, 2017), <https://tidsskriftet.no/en/2017/10/global-helse/vanishing-aral-sea-health-consequences-environmental-disaster> [<https://perma.cc/4FBJ-MU2E>].

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Cotton Production by Country 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/cotton-production-by-country> (last visited Mar. 24, 2024) [<https://perma.cc/U658-DK49>].

⁹⁶ Wæhler et al., *supra* note 92.

⁹⁷ *World of Change: Shrinking Aral Sea*, *supra* note 88.

⁹⁸ Wæhler et al., *supra* note 92.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

on. The human rights slaughter goes on. A large amount of the blame can be squarely placed on the fashion and textile industries and unbothered States.

B. Microplastics

Cotton is not the only villain in this story. Polyester, its man-made cousin, is the darling in the fast fashion industry's nursery.¹⁰² It is "cheap, strong, and durable."¹⁰³ That stretchy, breathable outfit you enjoy jogging in or sporting as "athleisure" consists of synthetic plastic fibers like polyester.¹⁰⁴ Unfortunately, the process of washing clothes, even partially composed of polyester or similar plastic synthetic, sheds microplastics into the resulting wastewater.¹⁰⁵ This contributes significantly to the some 500,000 tons of microplastics released into the ocean each year, which is "the equivalent of 50 billion plastic bottles."¹⁰⁶ In a 2017 International Union for Conservation of Nature report, it was estimated that those 500,000 tons emanating from the laundering of synthetic textiles like polyester accounted for thirty-five percent of all microplastics in the ocean.¹⁰⁷ Importantly, these figures represent the implications of entirely normal laundering practices.

When mass production of plastic products first began over fifty years ago, scientists started to find tiny bits of plastic scattered around the environment, specifically in the ocean.¹⁰⁸ It was not until the mid-2000s that the term "microplastic" was actually coined to "describe tiny particles of plastic up to five millimeters in diameter."¹⁰⁹ Because plastics cannot break down the way organic and natural materials do, they instead enter a degrading process

¹⁰² Jaye Wilson, *Sustainable Fashion: A Closer Look Into the Material Drivers of the Clothing Industry*, EARTHDAY.ORG (July 28, 2022), <https://www.earthday.org/a-closer-look-into-the-material-drivers-of-the-clothing-industry/#:~:text=In%20the%20apparel%20industry%2C%20petroleum,used%20fiber%20in%20the%20world> [<https://perma.cc/CQV2-498V>] ("Polyester is the most widely used fiber in the world.").

¹⁰³ Charlotte Pointing, *Recycled Polyester Doesn't Fix Fast Fashion's Over-Production Problems*, GOOD ON YOU (Jan. 19, 2023), <https://goodonyou.eco/recycled-polyester-fast-fashion/#:~:text=Fast%20fashion's%20plastic%20problem%20keeps%20growing&text=Polyester%20is%20so%20pervasive%20that,cheap%2C%20strong%2C%20and%20durable> [<https://perma.cc/JA8K-MFR4>].

¹⁰⁴ Cho, *supra* note 9.

¹⁰⁵ *See id.*

¹⁰⁶ McFall-Johnsen, *supra* note 45.

¹⁰⁷ Julien Boucher & Damien Friot, *Primary Microplastics in the Oceans*, INT'L UNION FOR CONSERVATION OF NATURE at 21, Figure 4 (2017), <https://portals.iucn.org/library/node/46622> [<https://perma.cc/F5DJ-ADZV>].

¹⁰⁸ Martina Inga, *Are Microplastics Harmful and How Can We Avoid Them?*, EARTH.ORG (Apr. 21, 2022), <https://earth.org/are-microplastics-harmful/> [<https://perma.cc/XZQ9-YXU4>].

¹⁰⁹ *Id.*

characterized by “weathering and exposure to wave action, wind abrasion, and ultraviolet radiation from sunlight,” which eventually turns one piece of plastic into innumerable plastic fragments the size of a single sesame seed.¹¹⁰

While it is true that some microplastic do get filtered out at treatment plants, they are filtered out alongside human waste.¹¹¹ This results in a “sludge” that is frequently used as fertilizer.¹¹² Perhaps the presence of microplastics in fertilizer sludge explains why microplastics are found in fruits, vegetables, and human placenta.¹¹³

It has been argued that “production of polyester is the main reason why there is a large surge of microplastics in the oceans.”¹¹⁴ Because the most common use of polyester is, indeed, fabric to produce clothing, it follows that the fashion industry is sufficiently to blame for the surge.¹¹⁵ There should be room for hope, though.

In March 2022, UNEP adopted the resolution, “End plastic pollution: towards an international legally binding instrument,” wherein the body decided that the intergovernmental negotiating committee was to “develop an international legally binding instrument on plastic pollution.”¹¹⁶ Importantly, the resolution directs the committee to take account of the principles of the Rio Declaration on Environment and Development (Rio Declaration) and “national circumstances and capabilities.”¹¹⁷ The Rio Declaration in its very first principle places human beings at the center of sustainable development concerns, and posits that humans “are entitled to a healthy and productive life in harmony with nature.”¹¹⁸ The phrase “national circumstances and capabilities” also hearkens back to the Rio Declaration. Specifically, Principle 7 states, “[i]n view of the different contributions to global environmental degradation, States have common but differentiated responsibilities.”¹¹⁹ The common but differentiated responsibilities (CBDR)

¹¹⁰ *See id.*

¹¹¹ Cho, *supra* note 9.

¹¹² *Id.*

¹¹³ Inga, *supra* note 108.

¹¹⁴ Whalen, *supra* note 6.

¹¹⁵ *9 Uses of Polyester and Their Differences*, XOMETRY (Aug. 8, 2022), <https://www.xometry.com/resources//uses-of-polyester/#:~:text=Polyester%20finds%20the%20most%20use,the%20total%20fiber%20usmateriase%20globally> [<https://perma.cc/THQ8-QX5S>].

¹¹⁶ Environment Assembly of the U.N. Environment Programme Draft Res. UNEP/EA.5/L.23/Rev.1 at 2 (Mar. 2, 2022).

¹¹⁷ *Id.* at 3-4.

¹¹⁸ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. 1), Principle 1 (Aug. 12, 1992).

¹¹⁹ *Id.* at Principle 7.

principle necessarily carries human rights components, because it draws attention to “the most vulnerable countries from climate change, and it seeks to improve their resilience, adaptive capacity and mitigation ambition” through recognition of the precarious financial and environmental positions in low- or middle-income countries.¹²⁰ The forthcoming plastics treaty *should* be well equipped to address, through a human rights lens, the environmental issues of microplastics pollution wrought at the hands of private businesses and apathetically permitted by States.¹²¹ However, given that the many other legal authorities implicated by fast fashion have not been used to combat fast fashion’s harms,¹²² it certainly remains to be seen whether a plastics treaty would be used to counter those harms.

C. Climate Impacts: Energy, Greenhouse Gasses, and Waste

The science, data, and anecdotal evidence concerning the implications of the fashion industry on water consumption, water pollution, and microplastics are unsettling and certainly deserving of ample dissection. The buck does not stop here, though.

Recall the amount of water it takes to produce a single pair of jeans: 3,781 liters.¹²³ This total accounts for the lifecycle of every component that goes into creating a pair of jeans, from cotton production to denim manufacturing, transportation costs and washing.¹²⁴ The harmful effects of jean production, however, do not stop with water consumption. Indeed, that same 3,781 liter the process exacts a carbon cost, as well. Taking our single pair of jeans as an illustration, around 33.4 kilograms (or about 73.6 pounds) of carbon are emitted throughout the aforementioned lifecycle process.¹²⁵ Driving 111

¹²⁰ Pedro Cisterna Gaete, *COP26: Climate Finance and Human Rights – A Story of Insufficient Ambition*, THE GLOB. NETWORK FOR HUM. RTS. AND THE ENV’T (Dec. 22, 2021), <https://gnhre.org/2021/12/cop26-climate-finance-and-human-rights-a-story-of-insufficient-ambition/> [<https://perma.cc/S2Q2-YWXS>]. This author wants to point out that the term “developing countries” is no longer universally acceptable as the phrase with which to refer to countries that are low- or middle-income, in part because the term “developing” connotes unwarranted paternalism. See Daniel Gerszon Mahler et. al, *Time to Stop Referring to the “Developing World”*, WORLD BANK BLOGS (Jan. 23, 2024), <https://blogs.worldbank.org/en/opendata/time-stop-referring-developing-world> [<https://perma.cc/6JFT-MU76>].

¹²¹ See Environment Assembly of the U.N. Environment Programme Draft Res., *supra* note 116, at 4.

¹²² See *supra* Section II.A; *infra* Sections II.C & Section III.

¹²³ See p. 37 and note 22.

¹²⁴ *Cleaning Up Couture: What’s in Your Jeans?*, *supra* note 22.

¹²⁵ *Id.*

kilometers (or about sixty-nine miles) in the average gas-guzzling automobile produces the same carbon footprint.¹²⁶

If cotton production was not harmful enough, polyester production releases roughly three times more carbon emissions than cotton production does because of the added plastics manufacturing and petroleum components.¹²⁷ Annually, the production of plastic fibers like polyester and spandex for textile use requires some 342 million barrels of oil.¹²⁸ This is unsurprising when one considers that polyester is derived from a chemical reaction involving air, water, certain chemical compounds, and *petroleum*.¹²⁹ Petroleum, or crude oil,¹³⁰ is a nonrenewable fossil fuel whose extraction is precarious,¹³¹ and whose burning releases greenhouse gases (GHGs) and exacts an enormous carbon toll.¹³²

The fashion and textile industries pump 1.2 billion tons of CO₂ into the atmosphere yearly,¹³³ which accounts for about eight percent of humanity's annual GHG emissions.¹³⁴ This percentage exceeds the percentages of carbon

¹²⁶ *Id.*

¹²⁷ MADELEINE COBBING & YANNICK VICAIRE, TIMEOUT FOR FAST FASHION 4 (Greenpeace, 2018). In 2015, GHG emissions from textile polyester production totaled 282 billion kilograms, whereas GHG emissions for cotton production came to 98 billion kilograms. *Id.*

¹²⁸ HERRMANN ET AL., *supra* note 9, at 38.

¹²⁹ See *Know Your Fibers: The Difference Between Cotton and Polyester*, BARNHARDT PURIFIED COTTON (July 20, 2019), [https://barnhardtcotton.net/blog/know-fibers-difference-between-polyester-and-](https://barnhardtcotton.net/blog/know-fibers-difference-between-polyester-and-cotton/#:~:text=Polyester%20(polyethylene%20terephthalate)%20is%20derived,can%20be%20melted%20and%20reformed)

[cotton/#:~:text=Polyester%20\(polyethylene%20terephthalate\)%20is%20derived,can%20be%20melted%20and%20reformed](https://perma.cc/LE6R-8BYM) [https://perma.cc/LE6R-8BYM].

¹³⁰ *What is the Difference Between Crude Oil, Petroleum Products, and Preroleum?*, U.S. ENERGY INFO. ADMIN.,

<https://www.eia.gov/tools/faqs/faq.php?id=40&t=6#:~:text=Petroleum%20is%20a%20broad%20category.petroleum%20are%20sometimes%20used%20interchangeably> (last reviewed Dec. 1, 2023) [https://perma.cc/5R9G-3RZG].

¹³¹ Improper oil extraction and transportation practices often result in oil spills and pipeline leaks and bursts. *Water Scarcity*, *supra* note 55. This is not to mention the impacts of extraction on biodiversity, animal habitats, and migratory patterns, especially in the context of off-shore drilling. *Id.*

¹³² *Petroleum*, NAT'L GEOGRAPHIC EDUC., <https://education.nationalgeographic.org/resource/petroleum/> (last visited Mar 8, 2024) [https://perma.cc/8Q57-X7XA].

¹³³ HERRMANN ET AL., *supra* note 9, at 2.

¹³⁴ *Cleaning Up Couture: What's in Your Jeans?*, *supra* note 22; *UN Alliance Aims to Put Fashion on Path to Sustainability*, *supra* note 32. But see *UN Helps fashion Industry Shift to Low Carbon*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE (Sept. 6, 2018), <https://unfccc.int/news/un-helps-fashion-industry-shift-to-low-carbon> (“The fashion industry, including the production of all clothes which people wear, contributes to around 10% of global greenhouse gas emissions due to its long supply chains and energy intensive production.”) [https://perma.cc/W9FD-GKGP].

emissions from the aviation and shipping industries combined.¹³⁵ In 2018, the fashion and textile industries also exceeded the carbon emissions produced by France, Germany, and the UK combined.¹³⁶ At its present trajectory and pace, it is estimated that GHG emissions from the textile manufacturing process will “rise by more than 60% by 2030.”¹³⁷

One can conceive of a pro-fossil fuel argument which posits that, as long as humanity *relies* on nonrenewable resources like oil, there will always be a market to supply that need. Regardless of their finite quantities, fossil fuels are attractive because they are energy-rich, cheap to process, and they have supplied the societal cardiovascular system with its lifeblood for decades.¹³⁸ This argument is sound enough in theory, but problematic because it ignores perfectly viable often cheaper renewable options like solar and wind-based energy.¹³⁹ It is grounded in the idea of necessity.

This argument cannot logically extend to incorporate the fast fashion industry, though. The industry, as part of its business model, implicitly accepts that most of its products will end up in landfills, discarded after a handful of wears to make room for the next trend. As mentioned in Part I of this paper, most clothes today in the fast fashion-dominated world are tossed in the bin at rapid rates.¹⁴⁰ To be more precise, “[e]very second, the equivalent of one garbage truck of textiles is landfilled or burned,”¹⁴¹ and eighty-seven percent of the total fiber input used for clothing is either incinerated or disposed of at a landfill.¹⁴² Globally, this means that around

¹³⁵ *The Environmental Costs of Fast Fashion*, *supra* note 23.

¹³⁶ Cho, *supra* note 9.

¹³⁷ *Fashion Industry, UN Pursue Climate Action for Sustainable Development*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE (Jan. 22, 2018), <https://unfccc.int/news/fashion-industry-un-pursue-climate-action-for-sustainable-development> [<https://perma.cc/MKJ7-QALT>]; *Putting the Brakes on Fast Fashion*, *supra* note 77.

¹³⁸ *Nonrenewable Resources*, NAT’L GEOGRAPHIC EDUC, (May 20, 2022), <https://education.nationalgeographic.org/resource/nonrenewable-resources/> [<https://perma.cc/7575-LX4M>].

¹³⁹ Jared Wolf, *Winde & Solar is Cheaper Than Oil & Gas, Now What?*, *Sustainable Rev.* (Feb. 6, 2023), <https://sustainablereview.com/wind-solar-cheaper-than-oil-gas/#:~:text=Bottom%20line,in%20most%20of%20the%20world> [<https://perma.cc/ZDQ7-23ZC>].

¹⁴⁰ *See supra* pp. 33-35.

¹⁴¹ *Putting the Brakes on Fast Fashion*, *supra* note 77; *see also* HERRMANN ET AL., *supra* note 9, at 37 (“Overall, one garbage truck of textiles is landfilled or incinerated every second.”).

¹⁴² HERRMANN ET AL., *supra* note 9, at 36; *The Environmental Costs of Fast Fashion*, *supra* note 23.

ninety-two million tons of textile waste is produced yearly,¹⁴³ and some expect this number to soar beyond 134 million tons by 2030.¹⁴⁴ The literal weight and continued prevalence of this waste appears antithetical to any claims of necessity.¹⁴⁵ Thus, this already flimsy anti-environment argument is cut at the knees if applied to the fast fashion context.

Finally, once wasted textiles are discarded and piled to the skies at landfills, the climate impacts continue. Synthetic fibers, for example, take “200 years to break down,” and while they deteriorate, they produce methane¹⁴⁶—a GHG that is “28 times more powerful than carbon dioxide” in terms of climate impacts.¹⁴⁷ The European Union (EU) attempted to tackle the waste issue by adopting the European Parliament resolution of the New Circular Economy Action Plan in February of 2021. The focal point of the resolution is its call for the EU to demand industrial measures to “achieve a carbon-neutral, environmentally sustainable, toxic-free and fully circular economy . . . by 2050.”¹⁴⁸ One component of that call to action is the demand for product- and/or sector-specific *binding* targets for recycled content.¹⁴⁹ Importantly, the textile industry was one of the “key sectors” the EU meant to target through this resolution.¹⁵⁰

The EU has sought to implement the Action Plan as it relates to textiles through the EU Strategy for Sustainable and Circular Textiles.¹⁵¹ The Strategy is one of many efforts to replace a fast fashion economy to a circular

¹⁴³ Chiara Campione, *Copenhagen Fashion Summit: How NOT to Make the Fashion Industry More Sustainable*, GREENPEACE (May 11, 2017), <https://www.greenpeace.org/international/story/7575/copenhagen-fashion-summit-how-not-to-make-the-fashion-industry-more-sustainable/> [<https://perma.cc/M6LV-AM3V>].

¹⁴⁴ Lai, *supra* note 2.

¹⁴⁵ Cf. *Burberry Burns bags, Clothes and Perfume Worth Millions*, BBC NEWS (July 19, 2018), <https://www.bbc.com/news/business-44885983> [<https://perma.cc/YNC6-BFBR>] (discussing how “[f]ashion firms including Burberry destroy unwanted items to prevent them being stolen or sold cheaply”).

¹⁴⁶ Cho, *supra* note 9.

¹⁴⁷ Whalen, *supra* note 6.

¹⁴⁸ New Circular Economy Action Plan, 2020/2077(INI) at Q6, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0040_EN.html (last visited Mar 9, 2024) [<https://perma.cc/G34E-M5BN>].

¹⁴⁹ *Id.* at Q25.

¹⁵⁰ See Press Release, European Parliament, Circular Economy: MEPs Call for Tighter EU Consumption and Recycling Rules (Feb. 10, 2021), <https://www.europarl.europa.eu/news/en/press-room/20210204IPR97114/circular-economy-meps-call-for-tighter-eu-consumption-and-recycling-rules> [<https://perma.cc/BW77-FL44>].

¹⁵¹ *EU Strategy for Sustainable and Circular Textiles*, EUR. COMM’N, https://environment.ec.europa.eu/strategy/textiles-strategy_en#timeline (last visited May 16, 2024) [<https://perma.cc/KZP3-2FLE>].

fashion economy.¹⁵² However, such strategies and plans in the Global North appear to be mere window dressing over the *real* final destination of wasted textiles: the Global South.¹⁵³

At base, the climate emergency is aggravated by the fast fashion industry. A 2,400% increase in annual trend cycles surely and necessarily accounts for at least some felt climate impacts.¹⁵⁴

III. THE HUMAN RIGHTS IMPACTS OF THE FAST FASHION INDUSTRY AND RELATED LEGAL IMPLICATIONS

The environmental toll of fast fashion is rivaled by its human rights impacts. As mentioned in the previous section, international law already recognizes substantive environmental human rights to water and sanitation. In addition, the rights to life, favorable working conditions, fair pay, and unpunished unionizing are touched by the fast fashion industry. Workers along the supply chain in factories and fields are subject to inhumane treatment in various ways, from vocal and physical harassment to being subjected to incredibly dangerous working conditions that place their health and well-being in jeopardy. Moreover, all of these plights disproportionately impact women and children in the Global South, evidencing the discriminatory aspects of the industry which further surface human rights injustices.

A. The Rights to Water, Sanitation, and Life

The SDGs, UNGA, UNEP, and the Special Rapporteur have all addressed the rights to water and sanitation.¹⁵⁵ Water Witness International (WW), a UK-based NGO, commented on the right to water in a briefing note from 2021. Its commentary illuminates a reality not often discussed in literature on the subject. In particular, WW finds that the fashion and textile industries “compete[] with communities and nature for access to scarce water, and that in some cases, factory needs are prioritized over the human right to water.”¹⁵⁶

¹⁵² Roos Van Keulen, *5 Takeaways From the New EU Circular Fashion Strategy*, EARTH.ORG (Jan. 12, 2024), <https://earth.org/5-takeaways-from-the-new-eu-circular-fashion-strategy/> [<https://perma.cc/C4ZH-V3DG>].

¹⁵³ See discussion *infra* Section III.C.3. The Global South

¹⁵⁴ The percentage increase from two to fifty is 2400%. See *supra* Figure 1 (there traditionally were two fashion cycles every year, and today there are fifty).

¹⁵⁵ See *supra* Section II.

¹⁵⁶ Nick Hepworth et al., *How Fair is Fashion’s Water Footprint?*, WATER WITNESS at 1 (2020), https://static1.squarespace.com/static/5baa3175bfba3e44386d68a5/t/6127614887bdd506a326d3ab/1629970763690/WWI_Briefing+Note_Fashion%27s+Water+Footprint.pdf [<https://perma.cc/L5LT-GCFN>].

WW draws attention to one of the potentially blame-worthy concepts illustrated in Part I: unchecked capitalism.¹⁵⁷

Competition is one pillar of capitalism, and the way WW sheds light on the dystopian competition that has arisen between people and corporations for *water* is fairly jarring, in as much as it demonstrates how not only may capitalism be to blame for fast fashion's *existence*, but it may also be to blame for fast fashion's *persistence* in pitting people against businesses.¹⁵⁸ WW contends that "everyone has a role to play" in guaranteeing that these industries have a "fair water footprint," particularly so that workers' rights and the natural environment do not bear all of the costs while businesses and governments reap the rewards.¹⁵⁹

In Article 3 of the Universal Declaration of Human Rights (UDHR), the UNGA proclaimed that "[e]veryone has the right to life."¹⁶⁰ This right is widely considered to be the most fundamental human right,¹⁶¹ so it is unsurprising that States and regions have incorporated it into their legal frameworks. For example, the UK adopted The Human Rights Act of 1998, which incorporates the right to life as it was set out in the European Convention on Human Rights (ECHR) into domestic British law.¹⁶²

The right to life is often addressed in the context of "greening" existing rights or declaring that existing human rights are infringed upon by environmental degradation.¹⁶³ Lynda Collins, a Full Professor in the Centre for Environmental Law & Global Sustainability at the University of Ottawa Faculty Law, has elaborated on this idea of greening human rights. She posits that "it is not necessary to formulate a new 'environmental component' of the right to life in order to address lethal environmental harm ... one need only recognize that state-sponsored environmental harm may cause loss of life just

¹⁵⁷ See *supra* Section I.

¹⁵⁸ Sarwat Jahan & Ahmed Saber Mahmud, *What is Capitalism?*, INT'L MONETARY FUND <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Capitalism> (last visited Mar. 9, 2024) [<https://perma.cc/BA4H-RFKM>].

¹⁵⁹ Hepworth et al., *supra* note 156, at 12.

¹⁶⁰ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

¹⁶¹ *What are Human Rights?*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/what-are-human-rights#:~:text=These%20universal%20rights%20are%20inherent,work%2C%20health%2C%20and%20liberty> (last visited May 20, 2024) [<https://perma.cc/ZXG9-Z4AV>].

¹⁶² Human Rights Act 1988, art. 2 (UK), <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1> [<https://perma.cc/E69X-2LTK>].

¹⁶³ Special Rapporteur, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 13 U.N. Doc. A/73/188 (July 19, 2018).

as surely as other state conduct.”¹⁶⁴ Harkening back to Part II,¹⁶⁵ Collins’ contribution would likely support the argument that the residents in the Aral Sea region, for example, should seek redress for the deaths resulting from diarrhoeal and other organ diseases, as State action (water diversion) to support commercial purposes is what led to those lethal harms.

The right to life in the fast fashion context extends beyond lethal environmental harms as causes of death, though. Garment and textile factory workers are killed by virtue of their employment in spaces where their basic human rights are of little concern when compared to the bottom line—perhaps a more insidious example of pitting profits against people in the name of capitalism. The 2013 Rana Plaza collapse in Dhaka, Bangladesh resulted in the untimely deaths of 1,134 factory workers¹⁶⁶—most of whom were female garment workers¹⁶⁷—across five different factories all housed within the same eight-story building.¹⁶⁸ Perhaps most frustrating about this catastrophe was that it was entirely preventable, considering that “[j]ust a day before the collapse, the building was briefly evacuated when cracks appeared in the walls,” yet “workers were later allowed back in or told to return by the factory owners.”¹⁶⁹

In 2021, 131 workers were killed and 279 were injured in garment and textile factories across the globe.¹⁷⁰ In 2022, toxic inhalation, boiler explosions, and factory fires killed and injured more garment workers.¹⁷¹ It is a direct failure of States to meet their human rights obligations when factories continue to send employees home in body bags because there are either no regulations in place to protect worker safety and health, or regulations exist but are not enforced. The competition between worker and employer lives on, and there is a clear favorite.

¹⁶⁴ Lynda Collins, *The United Nations, Human Rights and the Environment*, RSCH. HANDBOOK ON HUM. RTS. AND THE ENV’T 219, 225 (A. Grear & L.J. Kotzé, Eds., 2015).

¹⁶⁵ See *supra* Section II.

¹⁶⁶ Maiti, *supra* note 18.

¹⁶⁷ *Bangladesh Factory Collapse Toll Passes 1,000*, BBC NEWS (May 10, 2013), <https://www.bbc.com/news/world-asia-22476774> [<https://perma.cc/QS2E-35PG>].

¹⁶⁸ Whalen, *supra* note 6.

¹⁶⁹ *Bangladesh Factory Collapse Toll Passes 1,000*, *supra* note 167.

¹⁷⁰ *Inhumane Working Conditions*, SUSTAIN YOUR STYLE, <https://www.sustainyourstyle.org/en/working-conditions> (last visited Mar. 9, 2024) [<https://perma.cc/E3N7-J4LG>].

¹⁷¹ *Deaths and Injuries in the Global Garment Industry*, CLEAN CLOTHES CAMPAIGN, <https://cleanclothes.org/campaigns/the-accord/deaths-and-injuries-in-the-global-garment-industry> (last visited Mar. 20, 2024) [<https://perma.cc/Z8X7-KHVD>].

*B. Just and Favorable Working Conditions, Just and Favorable
Remuneration, and Unionizing*

It is important to note at the outset that the human rights violations discussed in this section are not “environmental.” Essentially, as will be made evident, these human rights problems exist as one of the many fruits sprouting from the main poisonous tree: the fast fashion industry. The other fruits, of course, are the environmental harms already described. This author believes that, even if the ultimate proposed argument of this paper does not *directly* impact the particular plights discussed herein, *any* reform concerning how the fast fashion industry is regulated or how key players are held accountable will *necessarily have a positive impact on fast fashion employees and the many plights outlined in this section.*

As a legal framework, Article 23 of the UDHR will be used as a guide for this section. That article contains four provisions, three of which are directly pertinent here. First, it proclaims that “[e]veryone has the right to . . . just and favorable conditions of work.”¹⁷² Article 23 is violated daily in textile and garment factories in a myriad of ways. Work stations are poorly lit.¹⁷³ Factories lack proper ventilation for the toxic chemicals used in dyes and for other purposes.¹⁷⁴ The buildings housing these sweatshops are structurally inadequate¹⁷⁵ and sprawling with danger in every corner.¹⁷⁶ By virtue of the dye water pollution discussed in Part II,¹⁷⁷ no clean water is available around them while they work,¹⁷⁸ which is its own problem, but its effects are intensified due to the high temperatures in these factories.¹⁷⁹ These people work, on average, fourteen to sixteen hours per day, seven days a week,

¹⁷² G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 23 (Dec. 10, 1948).

¹⁷³ Whalen, *supra* note 6; see Pragma Agarwal, *How Does Lighting Affect Mental Health in the Workplace*, FORBES (Dec. 31, 2018), <https://www.forbes.com/sites/pragyaagarwaleurope/2018/12/31/how-does-lighting-affect-mental-health-in-the-workplace/?sh=55ee72e94ccd> (“bad lighting is associated with a range of ill-health effects, both physical and mental, such as eye strain, headaches, fatigue and also stress and anxiety in more high-pressured work environments.”) [<https://perma.cc/Z7TP-29S7>].

¹⁷⁴ Whalen, *supra* note 6; *Inhumane Working Conditions*, *supra* note 170; *The Ultimate Guide to Fast Fashion in 2022*, *supra* note 3.

¹⁷⁵ Whalen, *supra* note 6; *The Ultimate Guide to Fast Fashion in 2022*, *supra* note 3.

¹⁷⁶ See Gethin Chamberlain, *India’s Clothing Workers: “They Slap Us and Call us Dogs and Donkeys”*, THE GUARDIAN (Nov. 24, 2012), <https://www.theguardian.com/world/2012/nov/25/india-clothing-workers-slave-wages> [<https://perma.cc/6GBM-RQ77>] (“One worker said that a colleague was electrocuted by a bare wire last year in a factory.”).

¹⁷⁷ See *supra* Section II.

¹⁷⁸ *The Ultimate Guide to Fast Fashion in 2022*, *supra* note 3.

¹⁷⁹ *Id.*

oftentimes being forced to work until two to three AM to meet stringent deadlines imposed by brands that lack any sense of what is reasonable to expect of these individuals.¹⁸⁰ When workers fail to meet outrageous demands,¹⁸¹ they are subjected to verbal and physical abuse¹⁸² and denied regular, bathroom, and water breaks.¹⁸³ When the fast fashion business model is thrown into the mix, individual worker output expectations necessarily rise, and along with these, worker maltreatment.

Article 23 then declares that “[e]veryone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity.”¹⁸⁴ Put simply, employees have a human right to a fair *living*, as opposed to a minimum, wage.¹⁸⁵ This distinction is crucial in manufacturing countries like China, Bangladesh, and India, where the minimum wage is only a fraction of what a living wage is.¹⁸⁶ For example, across three key regions in India, the living monthly wage is €195.30,¹⁸⁷ while the minimum wage is €51.70.¹⁸⁸ To be a living wage, the wage must give workers enough money to fulfill their basic needs for food, rent, healthcare, and education.¹⁸⁹ It is estimated that only two percent of factory garment workers earn a living wage.¹⁹⁰ The other ninety-eight percent are forced to accept a minimum wage which covers only a fifth to half of what families require to make ends meet.¹⁹¹ In India, this means that many factory workers “earn so little that an entire month’s wages would not buy a single item they produce.”¹⁹²

One might ask why the conditions are kept so poor and pay kept so low. One answer is quite simple: “[t]o keep brands from moving to another country or region with lower costs, factories limit wages and are disinclined

¹⁸⁰ *Inhumane Working Conditions*, *supra* note 170.

¹⁸¹ *See, e.g.*, Chamberlain, *supra* note 176 (describing how a Gap supplier sets worker targets at 150 pieces per hour, which feels torturous to employees).

¹⁸² *Id.*

¹⁸³ *Inhumane Working Conditions*, *supra* note 170; *The Ultimate Guide to Fast Fashion in 2022*, *supra* note 3.

¹⁸⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 23 (Dec. 10, 1948).

¹⁸⁵ *See Inhumane Working Conditions*, *supra* note 170.

¹⁸⁶ *Id.*

¹⁸⁷ For American readers, this is equivalent to \$216.71 per month.

¹⁸⁸ For American readers, this is equivalent to \$57.37 per month.

¹⁸⁹ *Inhumane Working Conditions*, *supra* note 170.

¹⁹⁰ *State of The Industry: Lowest Wages to Living Wages*, THE LOWEST WAGE CHALLENGE, <https://www.lowestwagechallenge.com/post/state-of-the-industry> (last visited May 20, 2024) [<https://perma.cc/3YUP-SY4P>].

¹⁹¹ Lei Nguyen, *Fast Fashion: The Danger of Sweatshops*, EARTH.ORG (Oct. 10, 2022), <https://earth.org/sweatshops/>.

¹⁹² Chamberlain, *supra* note 176.

to spend money to improve working conditions.”¹⁹³ States have a responsibility to protect workers from this very type of treatment, but when it comes down to that thriving competition between business and employee, the interests of business tip the scales. Even in situations where a governmental entity specifically tells private businesses that they need to pay employees better wages, businesses continue to underpay them.¹⁹⁴

Finally, Article 23 maintains that “[e]veryone has the right to form and to join trade unions for the protection of his interests.”¹⁹⁵ In many manufacturing States, unionizing is made difficult due to strict legal regimes. In Bangladesh, for example, legal barriers to collective bargaining and effective unionizing include “[a] high minimum membership requirement of 30 percent of workers for a factory-level union; limitations on trade unions’ right to freely elect representatives; vague administrative powers to cancel union registration; and severe limitations on the right to strike.”¹⁹⁶ Because of this regime, in Bangladesh, just ten percent of the 4,500 garment factories house a registered union.¹⁹⁷

In those instances where unions *are* formed or are in the process of being formed, the workers are threatened or outright attacked for their endeavors, if not simply fired.¹⁹⁸ In many of these States, there are laws protecting people against such adverse employment actions. In keeping with Bangladesh as an example, Section 195(d) of the Bangladesh Labor Act, as amended in 2013, prohibits employers from,

dismiss[ing], discharg[ing], remov[ing] from employment or threaten[ing] to dismiss, discharge or remove from employment a worker or injure or threaten[ing] to injure him in respect of his employment by reason that the worker is or proposes to become, or

¹⁹³ Cho, *supra* note 9.

¹⁹⁴ Bangladeshi workers (who are mostly women) make about \$96 a month, despite the government’s “wage board” maintaining that garment workers require 3.5 times that amount to live a “decent life with basic facilities.” Elizabeth Reichart & Deborah Drew, *By the Numbers: The Economic, Social and Environmental Impacts of “Fast Fashion”*, WORLD RES. INST. (Jan. 10, 2019), <https://www.wri.org/insights/numbers-economic-social-and-environmental-impacts-fast-fashion> [<https://perma.cc/S32G-3Z5E>].

¹⁹⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 23 (Dec. 10, 1948).

¹⁹⁶ *Bangladesh: Garment Workers’ Union Rights Bleak*, Hum. Rts. Watch (Apr. 21, 2016), <https://www.hrw.org/news/2016/04/21/bangladesh-garment-workers-union-rights-bleak#:~:text=These%20include%20the%20high%20minimum,on%20the%20right%20to%20strike> [<https://perma.cc/YU2A-UNBE>].

¹⁹⁷ *Inhumane Working Conditions*, *supra* note 170.

¹⁹⁸ “Whoever Raises Their Head Suffers the Most”: *Worker’s Rights in Bangladesh’s Garment Factories*, HUM. RTS. WATCH (Apr. 22, 2015), <https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment> [<https://perma.cc/F9DX-PYDM>].

seeks to persuade any other person to become a member or officer of a trade union.¹⁹⁹

In order for union-related human rights violations to cease, States like Bangladesh need to begin rigorously enforcing existing laws.²⁰⁰

C. Vulnerable Populations

As previously mentioned, fast fashion has engendered a global race to the bottom.²⁰¹ In pursuit of profit, companies often seek to reduce labor costs by finding cheaper sources of labor.²⁰² This cheap labor is often found overseas in low- to middle-income countries whose governments are lenient on environmental and human rights violators.²⁰³ These countries generally welcome the textile and fashion industries, as clothing production helps spur economic growth.²⁰⁴ Welcoming these industries comes at a human cost, though, particularly in the fast fashion industry, which exploits women and children who hail from the Global South.²⁰⁵

¹⁹⁹ Bangladesh Labour Act, 2006 Chapter XIII, Section 195(d), https://mccibd.org/wp-content/uploads/2021/09/Bangladesh-Labour-Act-2006_English-Upto-2018.pdf.

²⁰⁰ In Bangalore, India, The National People's Tribunal on "Living Wage as a Fundamental Right of Indian Garment Workers" was convened in response to a petition drawn up by twenty organizations representing garment workers across India who have tirelessly defended the need to implement a living wage in the garment industry as a fundamental human right. *See generally* National People's Tribunal on Living Wage as a Fundamental Right of Indian Garment Workers, http://permanentpeopletribunal.org/wp-content/uploads/2016/02/Final_Draft_INDIA_DEFINITIVO_Jan164.pdf. Concluding that earning a living wage is a human right, the tribunal mandated that the Indian government take immediate corrective actions to ensure this right and other rights (e.g., the right to unionize) are upheld and enforced. *Id.* at 17-18. This is a great example of what using the legal system to enervate governments to protect human rights looks like.

²⁰¹ *See* Lin, *supra* note 8.

²⁰² *Id.*

²⁰³ *See* Ngan Le, *The Impact of Fast Fashion on the Environment*, PRINCETON STUDENT CLIMATE INITIATIVE (July 20, 2020), <https://psci.princeton.edu/tips/2020/7/20/the-impact-of-fast-fashion-on-the-environment> [<https://perma.cc/G2TT-NNG9>].

²⁰⁴ *See* P. Smith, *supra* note 40; *see also* Reichart & Drew, *supra* note 194.

²⁰⁵ The phrase "Global South" is not used to refer to countries that fall below a certain latitudinal line, but to characterize countries "robed in a multitude of undesirable characteristics[, like] political, social, and economic upheaval,[] poverty, displacement and diaspora, environmental degradation, human and civil rights abuses, war, hunger and disease." Christina Ochoa & Shane Greene, *Introduction: Human Rights and Legal Systems Across the Global South Symposium*, 18 *Ind. J. of Glob. Legal Stud.* 1, 1–2 (2011) (citation omitted).

1. Women

Most garment workers—eighty percent of them—are women.²⁰⁶ There are many possible reasons for this. One school of thought is that, due to gender stereotypes, women are viewed as passive and malleable, making them more easily exploitable.²⁰⁷ Another school posits that women are sought after for these positions because they are already responsible for completing “unpaid care-work”²⁰⁸ that “dominate[s] the[ir] daily li[ves],” which makes it harder to form unions and collectively bargain outside of their already-long work days.²⁰⁹ A third school of thought attributes the reason behind women’s reliance on the textile and garment industries in the Global South to a “cycle of oppression and exploitation.”²¹⁰ This concept suggests that due to women having few other options for employment, they do not possess an adequate financial safety net that could allow them to avoid working in the textile and garment industries.²¹¹

Despite being the ideal employee for these reasons, women experience gender discrimination in these employment roles in direct contravention of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²¹² CEDAW requires State Parties to condemn discrimination against women in all forms, including by adopting legislative frameworks and avenues for judicial redress to challenge discriminatory practices within member States.²¹³ Specific to employment, CEDAW directs States to (1) ensure for women the same rights as men regarding “safety in working conditions;”²¹⁴ and (2) prevent all forms of discrimination on the basis of marital or maternity status to be enforced through sanctions.²¹⁵ Importantly, Bangladesh, India, and China are all State Parties to CEDAW.²¹⁶

²⁰⁶ Reichart & Drew, *supra* note 194.

²⁰⁷ *Gender, LABOUR BEHIND THE LABEL*, <https://labourbehindthelabel.org/our-work/gender/> (last visited Mar. 10, 2024) [<https://perma.cc/W8BA-Q354>].

²⁰⁸ Unpaid care-work is a phrase used to refer to tasks like caring for children, grocery shopping, cooking, and cleaning. Hannah Lang, *How Fast Fashion Factories Trap Women and Girls in Poverty (And How We Can Help)*, GOOD ON YOU (Sept. 17, 2021), <https://goodonyou.eco/fast-fashion-factories-trap-women/> [<https://perma.cc/57GB-E8ZZ>].

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* (“For many women living in poverty-stricken countries, a job in the textile industry is the best of a bad situation.”).

²¹² See generally G.A. Res. 34/180 (Dec. 18, 1979).

²¹³ *Id.* at part I, art. 2.

²¹⁴ *Id.* at part III, art. 11, §1(f).

²¹⁵ *Id.* part III, art. 11, §2.

²¹⁶ *View the Ratification Status by Country or by Treaty*, U.N. HUM. RTS. TREATY BODIES, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en (last visited Mar. 10, 2024) [<https://perma.cc/Y96R-ZLQC>].

Thus, when women garment workers are discriminated against as a matter of course on the basis of maternity status—often being asked in initial interviews if they have children, are pregnant, or plan to become pregnant, and then are simply denied employment on that basis or are required to sign an agreement not to have children²¹⁷—CEDAW is directly contravened.

2. Children

Children are considered vulnerable in the human rights context largely because, while they are *more* prone to experiencing harms (physical, developmental, emotional) brought about by human rights violations, they are *less* involved in the processes which seek to control and limit those violations.²¹⁸

Child labor is a key human rights violation for global youth. The UN defines child labor as “work carried out to the detriment and endangerment of a child, in violation of international law and national legislation,” and work that either “deprives children of schooling or requires them to assume the dual burden of schooling and work.”²¹⁹ In the International Labor Office report tracking child labor trends between 2000 and 2012, the office concluded that there were approximately 168 million child laborers, “accounting for almost 11 per cent of the child population” across the globe.²²⁰ India, Bangladesh, Pakistan, and Nepal house the highest rate of child laborers in the textile and garment sectors.²²¹ By virtue of living in the Global South, most of these children come from unstable financial situations, rendering it necessary for them to work for *any* salary in *any* working conditions because “it is better than nothing.”²²²

Like women, children are targeted for employment across the supply chain of the garment industry.²²³ The industry requires laborers with small

²¹⁷ See *Gender*, *supra* note 207.

²¹⁸ See generally Draft Gen. Comm. No. 26, *supra* note 73.

²¹⁹ *World Day Against Child Labour: 12 June*, United Nations, <https://www.un.org/en/observances/world-day-against-child-labour/background> (last visited Mar. 10, 2024) [<https://perma.cc/ACD9-HTNN>].

²²⁰ *Marking Progress Against Child Labour: Global Estimates and Trends 2000-2012*, INT’L LAB. OFF. (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_221513.pdf [<https://perma.cc/N847-DF52>].

²²¹ Nashat Zaman, *Child Labour in the Fashion Industry*, SOC’Y FOR HARMONY, AID, AND PROSPEROUS ECON. (July 19, 2021), <https://shapecharity.org/2021/07/19/child-labour-in-the-fashion-industry/> [<https://perma.cc/M5Q4-5NPU>]; see also Nguyen, *supra* note 191 (relaying how 60% of the employees in Indian yarn and spinning mills are under the age of 18 when they started working).

²²² Nguyen, *supra* note 191.

²²³ Industry recruiters in India, for example, convince impoverished parents to “send their daughters to spinning mills with promises of a well-paid job, comfortable accommodation,

fingers, especially for the purposes of embroidering, sequinning, sewing, and cotton harvesting.²²⁴ Children often fit that bill. Moreover, to continue to keep up with the demands of fast fashion, small fingers will continue to be required. This places the fast fashion industry directly at odds with the SDGs in yet another capacity, for SDG target 8.7 endeavors to, by 2025, “end child labor in all its forms.”²²⁵ So long as fast fashion persists, attaining this target within the next year seems unlikely.

One of the key issues that affects all of these worker human rights violations is the supposed lack of control brands and major corporations have over the practices occurring at all points along the supply chain.²²⁶ Outsourcing subcontracting work is the norm for these corporations,²²⁷ and they have a proclivity to outsource to certain countries: countries within the Global South.

3. The Global South

Outsourcing occurs when a business hires a third party to either create an entire product for them, or to create a component of a product.²²⁸ Attractive outsourcing States are characterized by lenient employment and wage laws,²²⁹ stringent union requirements,²³⁰ and a sort of institutional willful ignorance towards child labor violations.²³¹ Asian countries like China, India, Bangladesh, and Thailand usually meet these criteria.²³² So long as the global fashion industry remains the “most labor dependent industry,” outsourcing to the Global South will likely not let up, especially given the prevalence of fast fashion.²³³

Beyond these outsourcing concerns, *where* textile waste accumulates also implicates the Global South. Countries in the Global North increasingly rely on “exporting used clothing to relieve pressure on their overburdened

three nutritious meals a day and opportunities for training and schooling, as well as a lump sum payment at the end of three years.” Mark Engler, *Are Sweatshops and Child Labor Abroad Used to Make the Clothes We Wear?*, MORNINGSIDE CTR. FOR TEACHING AND SOCIAL RESPONSIBILITY (Aug. 15, 2023) (citations omitted).

²²⁴ *Id.*

²²⁵ G.A. Res. 70/1 at 20 (Oct. 21, 2015).

²²⁶ Zaman, *supra* note 221.

²²⁷ Cheav, *supra* note 21.

²²⁸ *See id.*

²²⁹ *Id.*

²³⁰ *See supra* Section III.B. (discussing strict union requirements in Bangladesh).

²³¹ *See generally* *Marking Progress Against Child Labour: Global Estimates and Trends 2000-2012*, *supra* note 220.

²³² Whalen, *supra* note 6.

²³³ Annie Radner Linden, *An Analysis of the Fast Fashion Industry*, Bard at 14 (2016), https://digitalcommons.bard.edu/senproj_f2016/30 [<https://perma.cc/G2X7-SAAB>].

systems.”²³⁴ In 2021 *alone*, upwards of 900 million items of used clothing were exported to Kenya for them to deal with, and about half of that total was sheer waste, containing articles “covered in vomit, animal hair, and stains.”²³⁵ Clearly, the Global North has a practice of failing to remove waste from their clothing shipments to the South “where it becomes someone else’s problem.”²³⁶ The Nairobi River’s banks are sprawling with old clothing that cannot be repurposed.²³⁷ The birth and death of textiles occurs in the Global South while the limited, fleeting use of clothing and fast fashion is exploited in the North.

IV. ADDRESSING FAST FASHION AND ITS IMPACTS THROUGH A DUTY-BASED APPROACH COUCHED IN THE HUMAN RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT AND CONSTITUTIONAL LAW CONCEPTS

At this point, at least three conclusions can be drawn. First, the fast fashion industry is an environmental scourge. Second, fast fashion ushers in a monsoon of human rights concerns. Third, many of these environmental harms and human rights violations are currently redressable in some capacity, be it through existing or forthcoming international law, regional approaches, or domestic legislation and constitutions. Yet, despite these largely incontrovertible conclusions, environmental degradation and human rights atrocities persist with fervor as fast fashion evolves.

Fast fashion is a prime example of how intimately intertwined environmental rights and human rights are. By way of example, as discussed previously, water pollution has dire ecological effects on biodiversity and, at the same time, prevents full realization of human rights to water and sanitation.²³⁸ The acts of textile dye dumping and use of pesticides on cotton plants will always necessarily affect both spheres—there is no causing one harm and not the other. The newly recognized “human right to a clean, healthy, and sustainable environment”²³⁹ presents an opportunity to address all of the aforementioned harms in one fell swoop. To reiterate a point made previously, even though the human rights implications concerning factory and field worker’s rights are not intimately connected with an environmental component, *any improvement to the poisonous tree (i.e., the fast fashion*

²³⁴ Changing Markets Foundation, *Trashion: The Stealth Export of Waste Plastic Clothes to Kenya*, YOUTUBE (Feb. 15, 2023), <https://www.youtube.com/watch?v=ISM0wyBdgg&t=18s> [<https://perma.cc/4JC7-4E8Q>].

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *See supra* Section II.A.

²³⁹ Human Rights Council Res., 48/13 (Oct. 13, 2021); G.A. Res. 76/300 (Aug. 1, 2022).

industry itself) will have a sprawling medicinal effect on all of its fruits—including strictly human rights violations particular to workers.

Indeed, domestic court cases regarding the human rights violations brought about by the fast fashion industry have at least drawn attention to the issues.²⁴⁰ However, this author has located not one case at any level—domestic, regional, or international—where the environmental human rights problems of fast fashion have been the focus of the litigation. Because this author finds that the existing legal frameworks at the domestic, regional, and international levels are inadequate to the task of (1) addressing the totality of harms presented by the fast fashion industry and (2) aptly holding duty bearers accountable for their misdeeds, this paper seeks to propose an alternative, utilizing the recent recognition of the human right to a healthy environment as a starting point.

Challengers at the international level should use the newly recognized human right to a clean, healthy, and sustainable environment as a mechanism to seek redress for fast fashion’s effects. However, challengers should not rely on a rights-holder approach and instead should seek to utilize the direct obligations of duty bearers as a framework—particularly, States as duty bearers. The unique part of the preceding analysis of all of the environmental, climate, and human rights harms flowing from the fast fashion industry is that those harms are straightforward, traceable, and tangible. In essence, an unexpected benefit of fast fashion’s well-documented harms is that direct application of duty bearers’ obligations to those harms presents an avenue for recourse. These obligations stem from human rights and, this author proposes, constitutional rights. At base, by being lax on the fast fashion industry and permitting it to commit human rights and environmental wrongs, States are effectively *not* fulfilling their duties. Complainants should use both

²⁴⁰ See, e.g., *KiK: Paying the Price for Clothing Produced in South Asia*, EUROPEAN CTR. FOR CONST. AND HUM. RTS., <https://www.ecchr.eu/en/case/kik-paying-the-price-for-clothing-production-in-south-asia/> (last visited Mar. 10, 2024) [<https://perma.cc/6TGP-CH5R>] (outlining a German court case against the KiK clothing chain where complainants sought recognition of KiK’s liability as the main client of a factory that was set ablaze but lacked any fire safety exits); see also Annie Kelly, *Top Fashion Brands Face Legal Challenge Over Garment Workers’ Rights in Asia*, THE GUARDIAN (July 9, 2021), <https://www.theguardian.com/global-development/2021/jul/09/top-fashion-brands-face-legal-challenge-over-garment-workers-rights-in-asia> [<https://perma.cc/2C8K-6DZC>]. The Asia Floor Wage Alliance (AFWA) brought COVID-19-era legal challenges concerning wage violations under national laws against global fashion brands and their domestic suppliers on the theory that they are “joint employers.” *Id.* The cases have been brought in India and Sri Lanka, with Indonesia and Pakistan to follow. *Id.* Through both joint liability and alter ego theories, the AFWA has attempted to pierce through suppliers to get at such major clothing brands as H&M, Levi Strauss, Tommy Hilfiger, and Asics. *Id.*

the newly recognized human rights duty framework and the existing constitutional duty frameworks to confront governmental breaches.

A. The Human Right to a Clean, Healthy, and Sustainable Environment: Benefits, Shortcomings, and Application to Fast Fashion's Impacts Through a Duty-Based Lens

“It is beyond debate that human beings are wholly dependent on a healthy environment in order to lead dignified, healthy and fulfilling lives.”²⁴¹ “Because the biophysical environment underlies all aspects of human existence, serious environmental degradation affects all human rights.”²⁴² “The human right to a clean, healthy, and sustainable environment” is a recent development in international law which has deep roots in domestic constitutional law as well as regional treaties.²⁴³ Its recent international inception occurred in the 2022 UNGA resolution entitled “The human right to a clean, healthy, and sustainable environment,”²⁴⁴ and the 2021 UN Human Rights Council (HRC) resolution with the same title,²⁴⁵ both of which were guided by the work of the Special Rapporteur who had, in various reports, highlighted the need for such a recognition.

As mentioned in Part III,²⁴⁶ the concept of “greening” existing human rights is usually the touted alternative to the international recognition of an independent human right to a healthy environment. “*Why create a whole new, uncertain, unclear framework when there is a viable existing one?*” the argument runs. One answer is that “the human right to a healthy environment is not an empty vessel waiting to be filled;” rather, “its content has already been exhaustively discussed, debated, defined, and clarified over the past 45 years.”²⁴⁷ In other words, the right is patently *not* new, uncertain, or unclear. Instead, its recognition is merely an amplification of “norms and jurisprudence developed over the past 45 years.”²⁴⁸ Indeed, “the interdependence,” it is said, “of human rights and the environment is an idea whose time is here.”²⁴⁹

²⁴¹ ¶ 37 U.N. Doc. A/73/188.

²⁴² Collins, *supra* note 164, at 224.

²⁴³ ¶¶ 29, 32-4 U.N. Doc. A/73/188.

²⁴⁴ G.A. Res. 76/300.

²⁴⁵ Human Rights Council Res. 48/13.

²⁴⁶ See *supra* Section III.A.

²⁴⁷ Special Rapporteur, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 38 U.N. Doc. A/73/188 (July 19, 2018).

²⁴⁸ *Id.* at ¶ 39.

²⁴⁹ Special Rapporteur, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 20, A/HRC/37/59 (Jan. 24, 2018).

The human right to a healthy environment as conceived of by the UNGA and UNHRC calls for broad protections against State action, which necessarily includes protections against State action that contributes to human rights violations and environmental degradation of the type fast fashion causes. Thus, fast fashion can be squarely addressed by the human right to a healthy environment framework. However, is this enough? Is the existence of a potential application of a newly formulated right enough? This author is not so convinced.

What is a clean, healthy, and sustainable environment? Why are those the adjectives the UN landed on? Neither resolution defines the terms nor details the reasons behind their selection. Should the three adjectives just be read broadly to fit the eye of the beholder and to avoid strict definition? If so, how broadly? If they are read too broadly, will the right become impracticable to follow? Contrarily, should we read the right like how States and regions have read it, using their interpretations as models? If so (hearkening back to the “greening” position) why even have this independent, international recognition in the first place, especially when we have seen that such internal recognition has been so beneficial in those recognizing States?²⁵⁰ Indeed, the international recognition of the human right to a clean, healthy, and sustainable environment is rife with criticisms. Perhaps it requires a partner.

The human right to a healthy environment is first and foremost a right to be held and exercised by potentially aggrieved parties. After all, it is nominally a *right*. In this way, it would be unremarkable to suggest application of this right in courts through the lens of the rights-holder. As has been illustrated throughout this paper, the real issue is not whether people *have* basic human rights to life, water, or sanitation, for example, or whether the environment is afforded protection through these and other rights. Instead, the accountability of duty-bearers is what is largely ill-addressed. For instance, while the Rio Declaration discusses CBDR, how can it be reasonably concluded that, in the fast fashion context, the principle of CBDR actually comes to fruition in terms of State behavior? The very fact that the Global South is the maternity ward and graveyard for textiles, bearing all the burdens, costs, and tolls associated with those phenomena, indicates that the doctrine of CBDR is hidden in the wings somewhere, allowing the Global North to skirt away from its responsibilities and encouraging States in the Global South to reap the fleeting economic rewards of housing textile factories at every possible human rights and environmental expense.²⁵¹ This

²⁵⁰ *Id.* at ¶ 13.

²⁵¹ See P. Smith, *supra* note 40.

author wants to pay attention to the man behind the curtain and shine the spotlight on one particular class of duty-bearer: States.

The human right to a healthy environment carries with it a duty, at least in the UNGA's resolution. There, the Assembly set forth a duty by "[c]all[ing] upon States"—not merely encouraging them—to “adopt policies ... in order to scale up efforts to ensure a clean, healthy, and sustainable environment for all.”²⁵² The 2018 Report of the Special Rapporteur on the framework principles on human rights and the environment, upon which the UNGA and UNHRC are partially based,²⁵³ lists out sixteen principles, detailing what States should do.²⁵⁴ In essence, within these resolutions and reports there is an undercurrent of accountability. In the fast fashion context, accountability is what is lacking, as seen by the utter dereliction of duty perpetuated by States in the name of mass production. It could be argued that the individual consumer is to blame for feeding into the psychology of fast fashion, but that argument inopportunately misplaces the blame on the cogs and not the machine.

B. The Human Right to a Healthy Environment as a Duty-Imposing Resolution, to Avoid Being Swallowed by Its Shortcomings, Must Be Combined with a Constitutional Duty Framework

To avoid the many criticisms of the internationally recognized human right to a healthy environment, or to at least clear up some of the confusion it causes, parties who seek to utilize this right as a legal basis to challenge State wrongdoing (and non-doing) in the fast fashion context before international tribunals ought to pull from this right *and from* constitutional law concepts. In so doing, litigants will be able to use the duty-bearer approach and focus on State accountability and institutional failure while avoiding the many criticisms of the right, which mostly amount to it being too unintelligible to apply.

Over 100 countries have incorporated the right to a healthy environment into their constitutions.²⁵⁵ In these countries, research demonstrates that stronger environmental laws and court decisions defending rights from violations flow from incorporation of the right into constitutions.²⁵⁶ Also

²⁵² G.A. Res. 76/300.

²⁵³ *Id.* at 2; Human Rights Council Res., 48/13 at 2 (Oct. 13, 2021).

²⁵⁴ *See generally* A/HRC/37/59.

²⁵⁵ Special Rapporteur, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 32 U.N. Doc. A/73/188 (July 19, 2018).

²⁵⁶ David Boyd, *Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*, THE HUM. RIGHT TO A HEALTHY ENV'T 17, 26 (J. Knox & R. Pejan, Eds., 2018).

flowing from such recognition is empirical evidence demonstrating stronger environmental performance (e.g., cleaner air, safer drinking water, and smaller footprints).²⁵⁷ Constitutional recognition of the right to a healthy environment is incredibly beneficial.

In his piece “Catalyst for Change,” David R. Boyd, the current Special Rapporteur on the human right to a clean, healthy and sustainable environment, explained that States generally have four duties pursuant to the *constitutional* right to a healthy environment:²⁵⁸ (1) to respect the right by not infringing it; (2) to protect the right from being infringed by third parties; (3) to undertake action to fulfill the right; and (4) to promote the right.²⁵⁹ Compared to the duty laid out in the UNGA “to scale up efforts,” these four rights are clear-cut and not nearly as nebulous. Similarly, the environmental and human rights issues presented by the fast fashion industry are also clear-cut and straightforward—we *know* the harm that is being done. Therefore, this author believes that approaching litigation over the harms caused by fast fashion at the international level by calling on the human right to a healthy environment would be rendered more effective if litigants address these constitutional duties along with the internationally recognized duty. Doing so would provide a more holistic picture of the issue by drawing on the strong roots constitutional law has in this context. Where the duty-bearing State being challenged lacks constitutional recognition, ushering in these considerations is a way to supplant that absence.

This author understands that the proposition put forth is unique and has yet to be explored to determine its efficacy. However, this author does believe that the argument here could serve to further the ends of accountability which colors a duty-based approach to enforcing the human right to a healthy environment. Engaging in this unique approach would be one way to enervate challengers, given that the fast fashion industry has been largely untouched by litigation.

There are two reasons why this author believes this conceived-of duty framework could work. First, David R. Boyd himself recognizes this quartet of rights as a beneficial tool.²⁶⁰ Like how the International Court of Justice’s advisory opinions are not binding but are nonetheless extremely persuasive

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 29.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

because of the body itself and the sophistication and expertise of the court,²⁶¹ the conclusions and findings of the Special Rapporteur are often afforded similar deference and respect.²⁶² Second, the human right to a healthy environment itself partially emanated from domestic constitutions and legislation. This author believes that the four constitutional duties born out of the right could also be subsumed under international law. The proposal herein is unexplored and untested, but it is not necessarily unfathomable or unattainable.

C. Application of This Duty Framework to the Fast Fashion Industry

Application of this duty-based framework to the fast fashion context is simple. The main breach of duty is State failure to regulate the fashion industry, enforce existing regulations, or adhere to existing obligations established in binding and non-binding goals, resolutions, and treaties, including newfound obligations from the human right to a healthy environment. In their breaches, the plights of fast fashion have been able to germinate and grow. By remaining lax, States from the Global North who outsource jobs and waste,²⁶³ as well as States in the Global South who allow their rivers to be polluted with toxic, hot-pink sludge have *not* (1) respected the human right to a healthy environment; (2) protected it; (3) promoted it; or (4) undertaken action to fulfill it. In failing to meet the charge of these duties, they have not “scaled up efforts to ensure a clean, healthy, and sustainable environment for all.”

²⁶¹ See Maria Antonia Tigre & Jorge Alejandro Carrillo, *The ICJ's Advisory Opinion on Climate Change: What Happens Now?*, COLUM. CLIMATE SCH. SABIN CTR. FOR CLIMATE CHANGE (Mar. 29, 2023), <https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/> [https://perma.cc/96VP-9YSM].

²⁶² See Boyd, *supra* note 256.

²⁶³ The Global North States are also generally to blame for perpetuating modern-day consumerism. See generally Cody Peluso, *Earth Overshoot Day: The Bitter Truth of Overconsumption in the Global North*, POPULATION MEDIA CTR. (Aug. 1, 2023), <https://www.populationmedia.org/the-latest/earth-overshoot-day-the-bitter-truth-of-overconsumption-in-the-global-north#:~:text=From%20excessive%20energy%20consumption%20to,%2C%20deforestation%20and%20biodiversity%20loss> (“As the economic powerhouses of the world, developed countries in the northern hemisphere drive a substantial portion of the world’s resource consumption and waste generation. Our high levels of industrialization, consumerism, and technological advancement exceed nature’s regenerative capacity.”) [https://perma.cc/U5NU-4V9Y].

CONCLUSION

Fast fashion is one of the clearest demonstrations of the hand humanity plays in the destruction of the natural environment. Those who question the “anthropogenic” part of anthropogenic climate change, need not look much further than the clothes on their back to find some answers. Fast fashion steals water and poisons it, uses and wastes unfathomable quantities of plastic, and produces a carbon footprint—from cradle to grave—beyond any acceptable level. The industry pits people against profits, clearly favoring the latter while violating the basic rights of the former. Fast fashion is the unruly toddler and States are the unengaged parents who let the toddler destroy.

The recognition of the human right to a healthy environment has opened the door for victims of the fast fashion industry to address their human rights grievances and to tackle environmental plights in one fell swoop. A duty-based approach incorporating domestic constitutional duties is a potential avenue to hold States accountable for their shortcomings in regulation and enforcement of the independent human right. When the parents get their homes in order, the child will have no choice but to behave.