

# The Case for Enhancing Climate Change Negotiations with a Labor Rights Perspective

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## INTRODUCTION

The underlying principles of sustainable development and equitable treatment in the international climate change framework are being furthered by a nascent inclusion of a human rights perspective into ongoing climate change negotiations. While this is an improvement that will likely enhance the framework's attention to the plight of marginalized individuals expected to be most affected by climate change, inclusion of the human rights perspective alone is an insufficient expansion of the conceptual approach to the negotiations. This Note argues that the addition of a labor rights perspective to climate change negotiations would strengthen the outcome as a consequence of the dual nature of labor rights—they further human rights while serving as an economic development tool. A climate change framework informed by the lens of labor rights could include both the moral elements of the individual rights of the laborer and the economic focus of traditional climate change agreements, creating a comprehensive document broad enough in scope to confront foreseeable effects of climate change.

Negotiations for a post-2012 climate change agreement moved an additional step forward in December 2009 at the Fifteenth Conference of the Parties (“COP-15”) of the United Nations Framework Convention on Climate Change (“UNFCCC” or “the Convention”) in Copenhagen, Denmark, but failed to achieve a final agreement.<sup>1</sup> The negotiations thus far have followed the framework of the Bali Action Plan, which stresses mitigation efforts, adaptation efforts, and sustainable development, while respecting the “common but differentiated responsibilities” established by the UNFCCC.<sup>2</sup> In Article 3, the Convention accounts for the historical contributions of developed countries (referred to as Annex I

1. For information on COP-15, see Official Website of the U.N. Climate Change Conference in Copenhagen COP 15/CMP 5, 7 to 18 December 2009, [http://unfccc.int/meetings/cop\\_15/items/5257.php](http://unfccc.int/meetings/cop_15/items/5257.php) (last visited Jan. 24, 2010). The Copenhagen Accord, which provides a framework for developed countries to establish emissions targets and for developing countries to implement mitigation actions, was drafted. Copenhagen Accord, Decision -/CP.15 (Dec. 18, 2009), available at [http://unfccc.int/files/meetings/cop\\_15/application/pdf/cop15\\_cph\\_auv.pdf](http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf). There was, however, no final agreement.

2. See *infra* notes 35–44 and accompanying text for discussion on the Bali Action Plan. See *infra* notes 21–25 and accompanying text for discussion on “common but differentiated responsibilities.”

countries) to the current greenhouse gas (“GHG”) levels in the atmosphere: “[T]he developed country Parties should take the lead in combating climate change” and the needs and special circumstances of “developing country Parties [referred to as non-Annex I countries], that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.”<sup>3</sup> The guiding principle of sustainable economic growth and development also under Article 3 states that the “Parties should cooperate to promote a supportive and open international economic system that would lead to [sustainable development] . . . thus enabling them better to address the problems of climate change.”<sup>4</sup> Operating within this framework, the purpose of the ongoing climate change negotiations is to craft an agreement that meets the objective of the UNFCCC,<sup>5</sup> namely, to stabilize GHG concentrations while promoting sustainable economic development.<sup>6</sup>

What the climate change negotiations are not doing, however, is incorporating a human rights perspective or a labor rights perspective in a meaningful manner. Human rights advocates have developed a robust terminology and framework to describe how human rights can be included in climate change negotiations. This Note uses the term “human rights perspective” to encapsulate “a set of background ethical assumptions that, for example, everyone has an equal entitlement to ‘fair treatment’ in a ‘just’ climate change regime, particularly in the context of mitigation options.”<sup>7</sup> Human rights advocates argue for the inclusion of a human rights perspective into the climate change negotiations for two reasons: (1) to ensure that the expected short- and long-term impacts<sup>8</sup> on human rights, such as rights to food, life, and water,<sup>9</sup> are considered during the formation of the next climate change agreement; and (2) to draw attention to the plight of the marginalized individual in a world suffering from the consequences

3. United Nations Framework Convention on Climate Change, U.N. Doc. A/AC.237/18 (1992), *reprinted in* 31 I.L.M. 849 (1992), at art. 3, ¶¶ 1 & 2 [hereinafter UNFCCC].

4. *Id.* at art. 3, ¶ 5.

5. *Id.* at art. 2.

6. *Id.*

7. INT’L COUNCIL ON HUMAN RIGHTS POLICY, CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE 9 (2008) [hereinafter ICHRP], *available at* [http://www.ichrp.org/files/reports/45/136\\_report.pdf](http://www.ichrp.org/files/reports/45/136_report.pdf).

8. *Id.*

9. *See infra* Part I.A.3.

of climate change.<sup>10</sup> The difficulties encountered and the benefits in incorporating a human rights perspective into the global climate change regime serve as an analogy for the more specific question of how to accommodate a labor rights perspective.

Climate change has significant implications for the international labor force. Climate change will negatively impact certain economic sectors, such as tourism and agriculture,<sup>11</sup> while creating jobs in industries that manufacture components of climate change mitigation technologies such as solar and wind power generation.<sup>12</sup> As new job sources are created and old ones destroyed as a consequence of climate change, the international labor force will be thrown into flux. As a result, the international labor market will have to adjust to a new economic environment in which carbon-intensive industries will be replaced by GHG emissions-reducing technology. Climate change negotiations that do not consider labor rights risk further exclusion of many segments of the international labor force that are already disenfranchised by current development trends. Since more attention has been given to the incorporation of a human rights perspective into climate change negotiations than has been given to the potential for the incorporation of a labor rights perspective, human rights advocates' efforts to apply the human rights perspective can inform a similar effort involving a labor rights perspective.

This Note argues that to ensure an equitable and sustainable solution to climate change a labor rights perspective must be incorporated into the climate change debates. Part I summarizes the current international legal framework for climate change and outlines the analogy between a human rights perspective and a labor rights perspective. It also summarizes the international framework for labor rights and its current limitations as an enforcement tool. Part II provides a brief overview of the role of labor rights in a globalized economy, and argues that because of this role, the international dimensions of climate change, and the similarities between a human rights-based perspective and a labor rights-based perspective, a natural nexus exists between labor rights and climate change. It then explores current domestic efforts to link labor rights and the environment and examines the recent

10. *Id.*

11. *See infra* notes 147–55 and accompanying text.

12. *See infra* notes 182–85 and accompanying text.

growth in green jobs. Part III outlines ways in which labor rights through the International Labor Organization (“ILO”), in spite of the limitations of the international legal framework, can be used practically to help address the expected negative consequences of climate change for those marginalized sectors of the labor workforce.

## I. THE CURRENT INTERNATIONAL CLIMATE CHANGE AND LABOR RIGHTS FRAMEWORKS

### A. The International Legal Framework for Climate Change

#### 1. United Nations Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change was developed during the United Nations Conference on Environment and Development in Rio de Janeiro in 1992.<sup>13</sup> It creates no concrete obligations for its signatories, but functions as a flexible foundation for all future binding treaty obligations relating to climate change.<sup>14</sup> Instead of mandating reductions, the UNFCCC merely urges Annex I countries to reduce emissions of GHGs to 1990 levels.<sup>15</sup> Not surprisingly, few countries have succeeded in meeting the objectives of the UNFCCC—for example, in the United States, carbon dioxide emissions had surpassed targets for the year 2000 by the end of 1994.<sup>16</sup> The International Energy Agency predicts that not one of the industrialized countries that make up the agency are likely to achieve their historical 1990 levels by the year 2010 and, instead, expects an increase of eleven

13. Michael B. Gerrard, *Introduction and Overview*, in GLOBAL CLIMATE CHANGE AND U.S. LAW 17 (Michael B. Gerrard ed., 2008). The Convention entered into force on March 21, 1994 and has been ratified by 194 parties. United Nations Framework Convention on Climate Change, Status of Ratification, [http://unfccc.int/essential\\_background/convention/status\\_of\\_ratification/items/2631.txt.php](http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.txt.php) (last visited Jan. 24, 2010); William C. Burns, *Global Warming—The United Nations Framework Convention on Climate Change and the Future of Small Island States*, 6 DICK. J. ENVTL. L. & POL’Y 147, 173 (1997).

14. Ruth Gordon, *Climate Change and the Poorest Nations: Further Reflections on Global Inequality*, 78 U. COLO. L. REV. 1559, 1583 (2007).

15. Anita M. Halvorsen, *UNFCCC, the Kyoto Protocol, and the WTO—Brewing Conflicts or Are They Mutually Supportive?*, 36 DENV. J. INT’L L. & POL’Y 369, 372 (2008).

16. Burns, *supra* note 13, at 176–77.

to twenty-four percent in emissions over the next fifteen years.<sup>17</sup>

Despite the failure of the UNFCCC to achieve these quantitative goals, the Convention has succeeded in creating a strong foundation for future international binding agreements to address climate change. The objective of the UNFCCC and any subsequent legal documents adopted by the Conference of the Parties to the Convention is:

to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.<sup>18</sup>

The UNFCCC also created a number of institutions to aid in the implementation of the objectives of the Convention. Prominent amongst these institutions is the Conference of the Parties (“COP”) where representatives of the Parties to the Convention meet to address implementation issues, including oversight of the information submitted by the Parties and the consideration of “the need for new measures or commitments,” such as amendments or new protocols to the UNFCCC.<sup>19</sup> The UNFCCC also established the Global Environment Facility, which is jointly run by the United Nations Environment Program, the United Nations Development Program, and the World Bank to facilitate the “transfer of financial resources from developed to developing countries.”<sup>20</sup>

A pervasive theme throughout the UNFCCC is the notion of “common but differentiated responsibilities and respective capabilities.”<sup>21</sup> The preamble to the Convention acknowledges the historically higher GHG emissions of the developed countries, and also anticipates the growth in GHG emissions from developing countries as they continue to “grow to meet their social and development needs.”<sup>22</sup> The Convention therefore states that “the

17. *Id.* at 178.

18. UNFCCC, *supra* note 3, at art. 2.

19. Kyle W. Danish, *The International Regime*, in *GLOBAL CLIMATE CHANGE AND U.S. LAW*, *supra* note 13, at 31, 35.

20. *Id.* at 35–36.

21. UNFCCC, *supra* note 3, at preamble, ¶ 6.

22. *Id.* at preamble, ¶ 3; José D.G. Miguez, *Equity, Responsibility and Climate Change*, in *ETHICS, EQUITY AND INTERNATIONAL NEGOTIATIONS ON CLIMATE CHANGE* 7, 17 (Luiz Pinguelli-Rosa & Mohan Munasinghe eds., 2002).

developed country Parties should take the lead in combating climate change and the adverse effects thereof,” and that “[t]he specific needs and special circumstances of developing country Parties . . . should be given full consideration.”<sup>23</sup> Because the Convention recognizes that the success of developing countries in their response to climate change is dependent on assistance from developed countries, it requires those parties to transfer funds and technology to the developing countries.<sup>24</sup> Thus, under the UNFCCC framework, Annex I countries bear additional commitments, including the provision of financial resources and mitigation technology to non-Annex I countries.<sup>25</sup> Through its recognition of the economic development needs of less-developed countries and its aim of “enabl[ing] economic development . . . in a sustainable manner,” the Convention envisions a role for sustainable development in an international solution to climate change.<sup>26</sup> Despite its focus on the inequitable history of GHG contributions and on the need for sustainable economic growth in developing countries, the UNFCCC does not expressly consider the human or labor rights implications of climate change. This absence has continued through negotiations for the Kyoto Protocol and the current negotiations for a post-2012 agreement.<sup>27</sup>

## 2. The Kyoto Protocol and a Post-2012 Climate Change Agreement

The UNFCCC anticipates that additional legally binding agreements among its signatories are necessary to create an international solution to climate change. At COP-1 in 1995, the parties developed the “Berlin Mandate,” which envisioned a legal instrument for developed countries that set emissions caps and reductions for the years 2005, 2010, and 2020.<sup>28</sup> In Kyoto, at COP-3, the Annex I countries developed the Kyoto Protocol, which

23. Danish, *supra* note 19, at 34; UNFCCC, *supra* note 3, at art. 3, ¶¶ 1, 2; Miguez, *supra* note 22, at 17.

24. Danish, *supra* note 19, at 35; UNFCCC, *supra* note 3, at art. 4, ¶¶ 3–10.

25. Danish, *supra* note 19, at 34–35.

26. UNFCCC, *supra* note 3, at preamble, art. 2.

27. See *infra* Part I.A.3 for discussion on human rights and climate change.

28. Conference of the Parties to the United Nations Framework Convention on Climate Change, The Berlin Mandate: Review of the Adequacy of Article 4, Paragraph 2(a) and (b), of the Convention, Including Proposals Related to a Protocol and Decisions on Follow-Up, in *Report of the Conference of the Parties on its First Session, Held at Berlin from 28 March to 7 April 1995*, ¶ 2(a), FCCC/CP/1995/7/Add.1 (June 6, 1995); Danish, *supra* note 19, at 36.

established differing binding reduction targets for national emissions, with an overall global reduction of 5.2% from 1990 levels by the end of the 2008–2012 agreement period (known as the “first commitment period”).<sup>29</sup>

The Kyoto Protocol is known for its “flexible mechanisms”—market-based approaches—and for allowing parties to determine how to achieve their obligations.<sup>30</sup> These market mechanisms, such as the Clean Development Mechanism (“CDM”)<sup>31</sup> and Joint Implementation (“JI”),<sup>32</sup> aim not only to reduce global emission levels, but also to facilitate the transfer of funds and technology to developing countries. Like its predecessor, the UNFCCC, the Protocol imposes heavier obligations on developed countries. By contrast, developing countries are not required to meet reduction targets.<sup>33</sup> The Kyoto Protocol therefore fulfills the “common but differentiated responsibilities” language of the UNFCCC by recognizing the inequitable GHG contributions of developed countries. Although its recognition of the inequity between developed and developing countries may be interpreted as accommodating human rights concerns, the Protocol fails to acknowledge directly the human dimension of climate change.<sup>34</sup>

In December 2007, at COP-13 in Bali, parties to the UNFCCC agreed to aim to conclude negotiations for a post-2012 agreement at COP-15 in Copenhagen, Denmark in December 2009.<sup>35</sup> The Conference of the Parties adopted the Bali Action Plan (“BAP” or “the action plan”) as a framework for negotiations leading to the adoption of a post-Kyoto agreement at COP-15.<sup>36</sup> The BAP reiterates the UNFCCC’s principles of “common but differentiated responsibilities and respective capabilities,” the need to “tak[e] into account social and economic conditions and other relevant

29. Halvorsen *supra* note 15, at 373; Danish, *supra* note 19, at 36, 38.

30. Danish, *supra* note 19, at 37.

31. Kyoto Protocol to the United Nations Framework Convention on Climate Change, art. 12, Dec. 10, 1997, 37 I.L.M. 22 (1998) (entered into force Feb. 15, 2005).

32. *Id.* at art. 6.

33. Danish, *supra* note 19, at 36–37.

34. *See infra* Part I.A.3.

35. UNFCCC Conference of the Parties, Bali, Indon., Dec. 3–15, 2007, *Decision 1/CP.13: Bali Action Plan*, in *Report on Conference of the Parties on its Thirteenth Session: Addendum*, U.N. Doc. FCCC/CP/2007/6/Add.1\* (Mar. 14, 2008) [hereinafter Bali Action Plan], available at <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3>. As mentioned above, Copenhagen did not lead to a binding agreement. *See supra* note 1.

36. Bali Action Plan, *supra* note 35, ¶ 1.

factors,”<sup>37</sup> and the emphasis on sustainable development efforts.<sup>38</sup> The road map emphasizes mitigation<sup>39</sup> and adaptation efforts, encouraging mitigation and adaptation technology development and transfer<sup>40</sup> and focusing on the needs of the “least developed countries and small island developing States, and . . . countries in Africa affected by drought, desertification and floods.”<sup>41</sup> The BAP also urges an increase in “the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation.”<sup>42</sup> Thus, like the UNFCCC and the Kyoto Protocol, the BAP aims to address the unequal circumstances between developing and developed countries and the vulnerability of least developed countries and regions, such as the Small Island Developing States (“SIDS”), to climate change impacts.<sup>43</sup> Still, the action plan, like the UNFCCC and the Kyoto Protocol before it, fails to account directly for the “human dimension of climate change.”<sup>44</sup>

### 3. Human Rights and Climate Change: The Analogy to Labor Rights

The current international legal order views human rights and labor rights issues as addenda to other implications of climate change, such as the expected decrease in agricultural output and other anticipated economic consequences.<sup>45</sup> The implication is that addressing these other consequences is of greater importance, and, by attending to them, issues such as human rights and labor rights will be taken care of indirectly. This presumption does a disservice to the concerns that immediately implicate the security and ease with which individuals can adjust to climate change.

37. *Id.* ¶ 1(a).

38. *Id.* ¶¶ 1(b)(ii), 1(e)(iv).

39. *Id.* ¶¶ 1(b), 1(d), 1(e).

40. *Id.* ¶¶ 1(d); *see also id.* ¶ (c)(ii).

41. *Id.* ¶ 1(c)(i); *see also id.* ¶¶ 1(d), 1(e).

42. *Id.* ¶ 1(e).

43. Office of the United Nations High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, ¶ 11, delivered to the Human Rights Council, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009) [hereinafter OHCHR Report].

44. Edward Cameron, *The Human Dimension of Global Climate Change*, 15 HASTINGS W.-NW. J. ENVTL. L. & POL’Y 1, 9–10 (2009).

45. Burns, *supra* note 13, at 148–49; Alexander Gillespie, *Small Island States in the Fact of Climatic Change: The End of the Line in International Environmental Responsibility*, 22 UCLA J. ENVTL. L. & POL’Y 107, 111–12 (2004).

The direct relationship between climate change and human rights is increasingly recognized. For instance, the Human Rights Council (“HRC”) submitted a report on the issue for consideration at COP-15 based on an analysis by the Office of the United Nations High Commissioner for Human Rights (“OHCHR”).<sup>46</sup> The report notes that “[c]limate change debates have traditionally focused on scientific, environmental and economic aspects,” but that the debate is broadening in scope with “increase[d] attention being given to human and social dimensions of climate change.”<sup>47</sup> A labor rights perspective, however, has not been granted similar attention. Labor rights have a dual nature—they further human rights while simultaneously serving as an alternative tool for economic development.<sup>48</sup> Because of the expected consequences of climate change for economic development and human rights, this dual perspective would aid in broadening the scope of the debate by drawing attention to the specific ramifications for those individuals dependent on industries and livelihoods expected to be most negatively affected by climate change.

While climate change “will potentially have implications for the full range of human rights,”<sup>49</sup> the OHCHR report identifies certain rights that seem likely to be directly connected to climate change: the right to life,<sup>50</sup> the right to adequate food,<sup>51</sup> the right to water,<sup>52</sup> the right to health,<sup>53</sup> the right to adequate housing,<sup>54</sup> and the right

46. Human Rights Council, *Resolution 7/23, Human rights and climate change*, ¶¶ 1, 3 (Mar. 28, 2008).

47. OHCHR Report, *supra* note 43, ¶ 3. For other examples of the widening debate, see, for example, *id.* ¶ 4, nn.2–4.

48. See *infra* notes 136–37 and accompanying text.

49. OHCHR Report, *supra* note 43, ¶ 20. The idea of qualifying the impacts on human rights as human rights violations for liability purposes is a subject of much discussion, but is beyond the scope of this paper. See, e.g., Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, Submitted by Sheila Watt-Cloutier, with the Support of the Inuit Circumpolar Conference, on Behalf of All Inuit of the Arctic Regions of the United States and Canada, Dec. 7, 2005; OHCHR Report, *supra* note 43, ¶¶ 70, 72; Eric A. Posner, *Climate Change and International Human Rights Litigation: A Critical Appraisal*, 155 U. PA. L. REV. 1925 (2007); ICHRP, *supra* note 7, at 3–5, ch. III.

50. OHCHR Report, *supra* note 43, ¶¶ 21–24.

51. *Id.* ¶¶ 25–27. The UN Special Rapporteur on the Right to Food has announced that as part of his mandate he will address climate change and the right to food. See Special Rapporteur on the Right to Food, <http://www2.ohchr.org/english/issues/food/issues.htm> (last visited Jan. 30, 2010).

52. OHCHR Report, *supra* note 43, ¶¶ 28–30.

53. *Id.* ¶¶ 31–34.

54. *Id.* ¶¶ 35–38. The UN Special Rapporteur on the Right to Adequate Housing has

to self-determination.<sup>55</sup> Further, climate change has direct implications for vulnerable groups that are protected by international treaties, including women, children, indigenous peoples, migrants, and internally displaced persons.<sup>56</sup> Because so many human rights are implicated in the expected impacts of climate change, the mitigation and adaptation efforts adopted have a direct bearing on the protection of human rights in the future.<sup>57</sup> For instance, the success of long-term global mitigation strategies will dictate the availability of basic goods to millions of people, while short-term decisions, such as locations of biofuel production, will impact access to food and water and the health and livelihoods of many people.<sup>58</sup>

Several human rights-focused organizations have identified ways a human rights perspective can aid in designing an approach to climate change: (1) human rights prioritize harms to individual persons, and therefore this perspective focuses on the most vulnerable; (2) human rights place ethical imperatives within a legal framework; (3) human rights are focused on accountability, which can aid in underpinning the emphasized “collaborative” international environmental treaties; (4) human rights law contains “doctrines of procedural or process rights”; (5) “human rights help to anchor international policy making in the most widely shared set of international norms”; and (6) “only a rights-centered approach

addressed the issue of climate change. *See, e.g.*, Raquel Rolnik, United Nations Human Rights Council’s Special Rapporteur on Adequate Housing, *Press Release: Lessons of the Post Tsunami Reconstruction in Maldives are Crucial to Design International Strategies for Climate Change Adaptation* (Feb. 26, 2009), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/E4E1B0832D3EC025C1257569005189C7?opendocument>. *See generally* Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on a right to non-discrimination in this context, <http://www2.ohchr.org/english/issues/housing/index.htm> (last visited Jan. 30, 2010).

55. OHCHR Report, *supra* note 43, ¶¶ 39–41. Changes in climate, the expected sea level rise, and an increase in extreme weather events resulting from climate change threaten “the territorial existence of a number of low-lying island States” and threaten “to deprive indigenous peoples of their traditional territories and sources of livelihood.” *Id.* ¶ 40. If a State’s territory is lost, the status of its inhabitants under international law would give rise to a range of legal questions and thus pose a threat to the right of people to self-determination. *Id.* ¶ 41. Further, a key aspect of the right to self-determination is the right to individuals’ own means of subsistence, which is directly threatened by changes in climate. *Id.* ¶ 39.

56. OHCHR Report, *supra* note 43, ¶¶ 42–60.

57. *Id.* ¶¶ 65–68 (including agro-fuel production, implications for the right to food, biofuels, and encroachment on the rights of indigenous peoples). *See also* ICHRP, *supra* note 7, at ch. II.

58. ICHRP, *supra* note 7, at 1–2.

captures the magnitude of injustice brought about by climate change, and acts as a moral spur to action.”<sup>59</sup> Thus, human rights, as an embodiment of legally defined minimum thresholds with widespread support, can contribute to climate change discussions and negotiations.<sup>60</sup>

These same concerns implicate labor rights. Incorporating a focus on development and human rights concerns into the negotiations will help ensure that global climate policy equitably distributes the burdens of adapting to climate change, reflecting UNFCCC’s Article 3 principles.<sup>61</sup> For instance, the OHCHR Report states:

Human rights standards and principles are consistent with and further emphasize “the principle of common but differentiated responsibilities” contained in the United Nations Framework Convention on Climate Change . . . . The human rights framework complements the Convention by underlining that “the human person is the central subject of development”, and that international cooperation is not merely a matter of the obligations of a State towards other States, but also of the obligations towards individuals . . . . Human rights standards and principles, underpinned by universally recognized moral values, can usefully inform debates on equity and fair distribution of mitigation and adaptation burdens. Above all, human rights principles and standards focus attention on how a given distribution of burden affects the enjoyment of human rights.<sup>62</sup>

Labor rights play a similar role. Through their dual nature, labor rights even more dramatically “underlin[e] that ‘the human person is the central subject of development.’”<sup>63</sup> Labor rights form an essential component to a climate-change solution because of the need to evolve a fair approach which balances the differentiated responsibilities of the developed and developing world while ensuring sustainable and equitable progress for individuals at the national level. Labor rights can serve as a social floor, providing a safety net against the fluctuations and possible negative social ramifications of climate change on the labor market.<sup>64</sup> These

59. See, e.g., *id.* at 6–8; KATE RAWORTH ET AL., OXFAM INT’L BRIEFING PAPER 117, CLIMATE WRONGS AND HUMAN RIGHTS: PUTTING PEOPLE AT THE HEART OF CLIMATE-CHANGE POLICY 8 (2008).

60. ICHRP, *supra* note 7, at 6, 8–9.

61. *Id.* at vi; UNFCCC, *supra* note 3, at art. 3.

62. OHCHR Report, *supra* note 43, ¶¶ 87–88; see also ICHRP, *supra* note 7, at 6–8.

63. OHCHR Report, *supra* note 43, ¶ 87.

64. See *infra* notes 127–35 and accompanying text.

benefits and certain related challenges within the context of a labor rights perspective will be discussed in the remainder of this Note.

## B. The International Framework for Labor Rights

Climate change is expected to alter the environment on a large scale,<sup>65</sup> which will stress current international and domestic governance structures. For instance, some areas of the world will become unlivable, triggering human migration.<sup>66</sup> In conjunction with other environmental events, such as natural disasters, possibly as many as 150 million people could be environmentally-displaced by 2050.<sup>67</sup> A major impetus for environmentally-induced migration is lack of economic growth and poverty stemming from environmental degradation.<sup>68</sup> In Haiti, for example, population growth and a weak governance structure led to deforestation and soil erosion, which adversely affected the health of the economy, leading to emigration.<sup>69</sup> Tuvalu, a SIDS particularly vulnerable to rising sea level,<sup>70</sup> is expected to disappear within fifty years. Its people are already seeking resettlement agreements with countries like Australia and New Zealand.<sup>71</sup> The provision of an international social floor in the form of a labor rights framework would go far to create a safety net for those individuals in the workforce whose livelihoods are expected to be in flux as a result of climate change. As this section will detail, however, the international labor rights

65. The expected impacts of climate change include rising sea levels, loss of coastline, an increase in tropical cyclones, storms, and tornadoes, a loss in biodiversity and overall ecosystem health, an increase in severe drought conditions, a decrease in overall availability of fresh water, an increase in incidence of diseases such as malaria and yellow fever, an alteration in food production in terms of output and location, and an increase in heat waves. See, e.g., Stephen Tully, *The Contribution of Human Rights as an Additional Perspective on Climate Change Impacts within the Pacific*, 5 N.Z. J. PUB. & INT'L L. 169, 171–72 (2007); Burns, *supra* note 13, at 148–49, 169–71; Gillespie, *supra* note 45, at 111–12, 114; INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT: SYNTHESIS FOR POLICYMAKERS 9 (Nov. 17, 2007) [hereinafter IPCC, 2007 SYNTHESIS].

66. Aurelie Lopez, *The Protection of Environmentally-Displaced Persons in International Law*, 37 ENVTL. L. 365, 369, 371–72 (2007).

67. Tracey King, *Environmental Displacement: Coordinating Efforts to Find Solutions*, 18 GEO. INT'L ENVTL. L. REV. 543, 544 (2006). The Stern Report, widely cited, has estimated 200 million will be displaced by 2050. STERN REVIEW: THE ECONOMICS OF CLIMATE CHANGE xxvi (2006), available at [http://www.hm-treasury.gov.uk/sternreview\\_index.htm](http://www.hm-treasury.gov.uk/sternreview_index.htm).

68. King, *supra* note 67, at 546.

69. *Id.*

70. Gordon, *supra* note 14, at 1595.

71. Sara C. Aminzadeh, *A Moral Imperative: The Human Rights Implications of Climate Change*, 30 HASTINGS INT'L & COMP. L. REV. 231, 244–45 (2007).

regime does not have significant enforcement power, and therefore the direct impact of labor rights may be limited.

### 1. International Labor Organization

The World Trade Organization (“WTO”),<sup>72</sup> in its recognition of international labor standards, stated that “[t]he International Labor Organization is the competent body to set and deal with these standards and we affirm our support for its work in promoting them.”<sup>73</sup> Formed in 1919, the ILO<sup>74</sup> is unique among international organizations in that it has a tripartite governance structure—unions, employers, and member states all have voting rights at Governing Body meetings and at the International Labor Conference, where the ILO’s policies are made.<sup>75</sup> The ILO creates international labor standards—the baseline of the basic human rights workers should enjoy—through Conventions and Recommendations,<sup>76</sup> which member states can then choose to ratify.<sup>77</sup> The representatives of the unions, the employers, and the governments negotiate these standards as well as their oversight and enforcement mechanisms.<sup>78</sup> The ILO oversees the compliance of member countries through the processes of periodic reporting, international review, and complaint procedures.<sup>79</sup>

Labor standards are most often referred to in the context of the four core labor standards that the ILO established through its Declaration on Fundamental Principles and Rights at Work

72. For a discussion on the relationship between the World Trade Organization and international labor rights, see, for example, Chantal Thomas, *Should the World Trade Organization Incorporate Labor and Environmental Standards?*, 61 WASH. & LEE L. REV. 347 (2004); Larry A. DiMatteo et al., *The Doha Declaration and Beyond: Giving a Voice to Non-Trade Concerns Within the WTO Trade Regime*, 36 VAND. J. TRANSNAT’L L. 95 (2003); Gregory Shaffer, *WTO Blue-Green Blues: The Impact of U.S. Domestic Policies on Trade-Labor, Trade-Environment Linkages for the WTO’s Future*, 24 FORDHAM INT’L L.J. 608 (2000).

73. World Trade Organization, Singapore Ministerial Communiqué of 18 December 1996, WT/MIN(96)/DEC, available at [http://www.wto.org/english/news\\_e/pres96\\_e/wtodec.htm](http://www.wto.org/english/news_e/pres96_e/wtodec.htm).

74. Matthew E. Johnson, Note, *CAFTA and International Human Rights in El Salvador: Is the United States Acquiescing to Widespread Workers’ Human Rights Violations?*, 4 NW. U.J. INT’L HUM. RTS. 162, 167 (2005).

75. KIMBERLY ANN ELLIOTT & RICHARD B. FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? 93 (2003).

76. Johnson, *supra* note 74, at 167.

77. ELLIOTT & FREEMAN, *supra* note 75, at 93–94.

78. Shaffer, *supra* note 72, at 640–41.

79. *Id.* at 641.

approved in 1998:<sup>80</sup> (1) the freedom of association and the effective right of collective bargaining, (2) the prohibition of forced or compulsory labor, (3) the abolition of child labor, and (4) the elimination of discrimination in regard to employment or occupation.<sup>81</sup> As members of the ILO, countries must adhere to the Declaration, which specifies the obligation to respect the principles underlying eight Fundamental Labor Conventions that embody these four core labor standards.<sup>82</sup> The concentration of labor rights into four core standards has the benefit of increasing the efficacy of oversight and enforcement, but there are still recognized limitations to the core standards.<sup>83</sup> First, they encompass only eight of the already broadly-accepted ILO Conventions,<sup>84</sup> leaving out critical rights such as “workplace safety, limits on the hours of work and rights to periods of rest, . . . freedom from workplace abuse,” and a fair or living wage.<sup>85</sup> Further, the creation of the four core labor standards switches the focus from rights to “generally formulated ‘principles.’”<sup>86</sup> Rather than creating clear standards that are easily enforceable, the core labor standards promote generalized principles that are not easily definable, thus watering down the ILO’s enforcement mechanisms.<sup>87</sup>

In addition to the limits of the Declaration as an enforcement tool, the broad rights outlined in the numerous conventions of the ILO are rarely enforced, and then only with difficulty.<sup>88</sup> Not all

80. ELLIOTT & FREEMAN, *supra* note 75, at 95.

81. DiMatteo, *supra* note 72, at 123.

82. *Id.* The eight Fundamental Labor Conventions are: (1) Freedom of Association and Protection of the Right to Organise Convention (No. 87), adopted July 9, 1948, 68 U.N.T.S. 18; (2) Right to Organise and Collective Bargaining Convention (No. 98), adopted July 1, 1949, 96 U.N.T.S. 257; (3) Forced Labour Convention (No. 29), adopted June 28, 1930, 39 U.N.T.S. 55; (4) Abolition of Forced Labour Convention (No. 105), adopted June 25, 1957, 320 U.N.T.S. 291; (5) Discrimination (Employment and Occupation) Convention (No. 111), adopted June 25, 1958, 362 U.N.T.S. 31; (6) Equal Remuneration Convention (No. 100), adopted June 29, 1951, 165 U.N.T.S. 303; (7) Minimum Age Convention (No. 138), adopted June 26, 1973, 1015 U.N.T.S. 297; and (8) Worst Forms of Child Labour Convention (No. 182), adopted June 17, 1999, 2133 U.N.T.S. 161. Johnson, *supra* note 74, at 167.

83. See, e.g., Philip Alston, ‘Core Labour Standards’ and the Transformation of the International Labour Rights Regime, 15 EUR. J. INT’L L. 457 (2004); Brian A. Langille, *Core Labour Rights—The True Story (Reply to Alston)*, 16 EUR. J. INT’L L. 409 (2005).

84. DiMatteo, *supra* note 72, at 124.

85. *Id.*

86. Alston, *supra* note 83, at 458.

87. *Id.*

88. Thomas, *supra* note 72, at 350–51.

members ratify all the conventions, “creating a patchwork of inconsistent legal obligations . . . .”<sup>89</sup> Moreover, the ILO has historically focused more on its enforcement mechanisms of fact-finding and reporting, rather than using the stronger tool of sanctions, which it did not apply until the year 2000, against Myanmar.<sup>90</sup> The ILO constitution contains only vague language allowing for sanctions in the event of noncompliance: “In the event of any Member failing to carry out within the time specified the recommendations . . . any other Member may take against that Member the measures of an economic character indicated . . . as appropriate to the case.”<sup>91</sup> Therefore, in general, ILO Conventions are effectuated by “national government legislation and enforcement of labor market legislation.”<sup>92</sup>

Nonetheless, the ILO does have some tools at its disposal to enforce labor standards. Using the information gathered through its fact-finding and reporting requirements, the ILO is able to shame violators through the publication of labor rights violations, and can provide technical assistance to government agencies, unions, and employers to improve labor standards.<sup>93</sup> Technical assistance is critical for less-developed countries, as their bureaucracies often lack resources and are too weak to enforce labor standards. Such technical assistance is dependent, however, on the amount of funding provided by member countries; thus the capabilities of the ILO are subject to the domestic politics of its member countries.<sup>94</sup> In addition, the ILO can take action against noncompliance through the grant of broad authority under Article 33 of the Constitution.<sup>95</sup> Two circumstances can lead to Article 33 sanctions: (1) Article 24 provides any worker or employer organization the right to file a complaint against an alleged noncompliant member government for a violation under a convention it has ratified; and (2) if the action under Article 24 fails to address the problem, Article 26 allows official delegates to

89. *Id.*

90. Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VAND. L. REV. 649, 712–13 (2006).

91. Thomas, *supra* note 72, at 350–51 (citing Constitution of the International Labour Organization, Treaty of Versailles, art. 419, June 28, 1919, 49 Stat. 2729).

92. UNITED NATIONS ENVIRONMENT PROGRAMME ET AL., GREEN JOBS: TOWARDS DECENT WORK IN A SUSTAINABLE, LOW-CARBON WORLD 278 (Sept. 2008) [hereinafter GREEN JOBS].

93. ELLIOTT & FREEMAN, *supra* note 75, at 96.

94. *Id.* at 100.

95. *Id.* at 102.

file a complaint, although governments can only raise complaints against another country under the conventions they themselves have ratified.<sup>96</sup> While that limiting factor is fair, it constrains the number of governments that can file complaints. For instance, the United States has ratified only thirteen conventions and two core conventions—Conventions 105 on the abolition of forced labor and 182 on the worst forms of child labor.<sup>97</sup> The ILO will, however, take complaints against a country for violation of workers' freedom of association, even if the country has not ratified relevant Conventions.<sup>98</sup>

The ILO's perspectives and processes are not always adaptable to the modern globalized economy. Thus, while the ILO aims to promote and protect the social welfare and rights of workers, it does not always have the capacity to do so.<sup>99</sup> For instance, the tripartite structure of the ILO has had difficulty adapting to the new workforce. This structure worked well when the majority of workers were organized through unions, but the advent of information technology and "decentralized, network-based forms of work organization," rendered obsolete the strict division between employer and worker that was reflected in the tripartite structure of the ILO.<sup>100</sup> Yet, the organization continues to attempt to adapt to modern issues, as seen in its Green Jobs Initiative, discussed below in Section III(A).

## 2. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights ("ICESCR" or "the Covenant") establishes international socioeconomic human rights, some of which protect the rights of workers.<sup>101</sup> The Covenant entered into force on January 3, 1976.<sup>102</sup> Part III of the Covenant, specifically Articles 7 and 8, are directly relevant to labor rights.<sup>103</sup>

96. *Id.*

97. *Id.*

98. *Id.*

99. Sean Cooney, *Testing Times for the ILO: Institutional Reform for the New International Political Economy*, 20(3) COMP. LAB. L. & POL'Y J. 365, 367 (1999).

100. *Id.* at 370–71.

101. Johnson, *supra* note 74, at 165–67.

102. *Id.* at 165–66.

103. *Id.* at 166.

Under Article 7, all Parties to the Covenant recognize the right to “just and favourable conditions of work,” which include: fair wages; equal remuneration between sexes; a decent living; safe and healthy working conditions; equal opportunity for promotion; and rest, reasonable working hours, and holidays with pay, including for public holidays.<sup>104</sup> Under Article 8, Parties ensure the right to unionize and the right to strike, subject to the confines of domestic labor laws “necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.”<sup>105</sup> Each nation that has ratified the Covenant must protect and fulfill the rights stipulated in the treaty for the individuals under its jurisdiction.<sup>106</sup> The Committee on Social, Economic and Cultural Rights, the United Nations (“U.N.”) body that oversees compliance with the convention, requires states to report on their compliance with the Covenant on a regular basis, and provides recommendations on how to improve compliance.<sup>107</sup> As part of its work to ensure implementation of the Covenant, the Committee has, for example, recommended that States party to the Covenant should adopt comprehensive strategies to protect against threats to the right to water from, *inter alia*, climate change,<sup>108</sup> thus recognizing the interrelationship between socioeconomic rights and the environment.

## II. THE ROLE OF LABOR RIGHTS IN A SUSTAINABLE SOLUTION TO CLIMATE CHANGE

A labor rights perspective can inform the climate change negotiations in a similar manner to the human rights perspective. Human rights provide a background ethical and legal framework that helps to inform and evaluate how climate change and efforts to address it will impact the rights of individuals. Analogously, a labor rights perspective will help elucidate the impacts of climate

104. International Covenant on Economic, Social and Cultural Rights, Part III, art. 7, G.A. Res. 2200A (XXI), 21 U.N.GAOR Supp., U.N. Doc. A/6316 (Dec. 16, 1966) (entered into force Jan. 3, 1976).

105. *Id.* at Part III, art. 8.

106. ICHRP, *supra* note 7, at 13.

107. *Id.*

108. U.N. Econ. & Soc. Council, Comm. On Econ., Soc. & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 28, E/C.12/2002/11 (Nov. 26, 2002).

change and the impacts of the mitigation and adaptation efforts on the global workforce. This section outlines the nexus between labor rights and climate change and why, as a result, a labor rights perspective ought to be included in the climate change debate.

#### A. Labor Rights in a Global Economy

Labor rights are no longer a solely domestic issue.<sup>109</sup> With the globalization of the economy, issues that impact the labor force of one country may also affect the labor force in another country. Domestic industries compete against industries abroad in both the capital and product markets and through global production and distribution chains; some employees, while working domestically, are employed by multinational companies.<sup>110</sup>

As the scope of labor markets widens through globalization, the lack of a strong international governance system “is leading to the marginalization, abuse and impoverishment of a significant proportion of the world’s workers.”<sup>111</sup> Thus, domestic labor laws are no longer sufficient to address the rights of workers. A global approach is needed to evaluate the relationships between domestic legal systems, international organizations, multinational treaties and agreements, and private actors, both in civil movements and in the corporate realm.<sup>112</sup> As the economy has globalized, so have various formal and informal labor governance mechanisms, from the WTO and the ILO to corporate codes of conduct.<sup>113</sup> Yet, the international labor standards have been poorly enforced.<sup>114</sup> The ability to implement and enforce international labor standards in a meaningful way is dependent on coordinating these different instruments into a dynamic international governance structure that will mold the “changed world of work,”<sup>115</sup> something that has had limited success so far.

109. WILLIAM GREIDER, ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM 333–34 (1998).

110. Cooney, *supra* note 99, at 366.

111. *Id.*

112. *Id.*

113. *Id.* Many mechanisms and policies influence the international labor market such as domestic policies, the World Trade Organization, and corporate codes of conduct. However, these are beyond the scope of this Note, which will focus on those standards established by the International Labor Organization and the International Covenant on Economic, Social and Cultural Rights.

114. *See supra* notes 83–92 and accompanying text.

115. Cooney, *supra* note 99, at 366–67.

Part of this world of work is the phenomenon known as the “race to the bottom,”<sup>116</sup> which has parallels to the climate change regime. Climate change has been described as a global market failure.<sup>117</sup> Regardless of where a GHG is emitted, it is completely mixed in the atmosphere within approximately two weeks, thereby affecting every country.<sup>118</sup> Developed countries, such as the United States, have benefited from unfettered development, releasing carbon dioxide and certain other GHGs without regulation and without having to pay for the burden their development has imposed internationally. These developed countries are historically responsible for contributing most of the GHGs presently in the atmosphere.<sup>119</sup> The global market has failed to correct this negative externality, which results in spreading the costs of this environmental damage over all users of the atmosphere, thereby allowing GHG emitters to avoid the full cost of the damage created.<sup>120</sup> In a parallel to labor rights, inconsistent national environmental policies can undermine a successful multinational solution, as domestic efforts to reduce carbon emissions could be negatively offset by growth in GHG emissions in countries without similar emissions reduction efforts.<sup>121</sup> Thus, developed countries may fear that their more stringent environmental standards will weaken their competitiveness in the production of carbon-intensive products, because industries will relocate to countries with less strict emissions regulations, thereby hindering domestic regulatory efforts.<sup>122</sup>

A similar dilemma exists with enforceable labor standards. Domestic efforts to provide a social floor for the domestic workforce by enforcing labor rights are hindered by the “race to the bottom,” where less stringent standards are enacted to preserve lower labor costs and to prevent industry and business from “leaking” to a country with laxer standards. Without an

116. Helfer, *supra* note 90, at 673–74.

117. Halvorsen, *supra* note 15, at 371.

118. Miguez, *supra* note 22, at 17.

119. Arjun Ponnambalam, Note, *U.S. Climate Change Legislation and the Use of GATT Article XX to Justify a “Competitiveness Provision” in the Wake of Brazil-Tyres*, 40 *GEO. J. INT’L L.* 261, 287 (2008).

120. Roberta Mann, *Waiting to Exhale?: Global Warming and Tax Policy*, 51 *AM. U.L. REV.* 1135, 1207 (2002).

121. Andrew Greene, *Carbon Intensity Standards: A Distraction and a Danger to Real Action on Climate Change*, 15 *HASTINGS W.-N.W.J. ENVTL. L. & POL’Y* 91, 96 (2009).

122. Ponnambalam, *supra* note 119, at 264.

internationally enforced baseline of labor standards, a country with abundant cheap labor can lower its labor standards to attract foreign investment or factory operations within its borders,<sup>123</sup> fueling the “downward pull of competition.”<sup>124</sup> Countries with lower costs of business—including lower wages, a large underemployed labor force, and weak legal protections for labor rights, such as the rights to assemble, to unionize, and to strike—are attractive to industries seeking to minimize labor costs. Thus, as with carbon leakage, the race to the bottom creates an externality—if even one country operates below international labor standards, then the risk of a free-rider problem exists.<sup>125</sup> The resulting system exploits marginalized workers in two complementary ways: industrial wages are often too low to provide sufficient resources for a minimal livelihood and the state actively prevents workers from asserting their rights.<sup>126</sup>

This dilemma is compounded by the weak enforcement powers available within the international labor rights framework. A social floor of basic labor standards and other social protections against the market’s social consequences would weaken the race to the bottom by equalizing competition amongst industries.<sup>127</sup> For instance, without enforcement of international labor standards, “wage inequality between developing and developed countries has been steadily increasing over the past twenty years.”<sup>128</sup> Only if labor rights are more equally enforced among developed and developing countries could the wage divide lessen.<sup>129</sup> Furthermore, a social floor would create the space for less-developed countries “to improve conditions and stabilize their own social development.”<sup>130</sup> As advocated by the ILO, among others, a floor of social protections will “allow[] workers and communities to shift into new forms of sustainable economic activity without the fear of falling into extreme poverty.”<sup>131</sup> This ability to transition smoothly into sustainable activities is critically important to the creation of a

123. *Id.*

124. GREIDER, *supra* note 109, at 358.

125. Helfer, *supra* note 90, at 674.

126. GREIDER, *supra* note 109, at 388.

127. *Id.* at 358.

128. Kamil Ahmed, *International Labor Rights a Categorical Imperative?*, 35 REVUE DE DROIT UNIVERSITE DE SHERBROOKE 145, 154 (2004).

129. *Id.*

130. GREIDER, *supra* note 109, at 358.

131. GREEN JOBS, *supra* note 92, at 279.

green economy, which will be dependent on technological advances and innovative entrepreneurial efforts to create a GHG emissions-free economy.<sup>132</sup> Without a social floor, the risk of novel and entrepreneurial work will be higher as there will be no protection from failure or from falling into poverty.<sup>133</sup> Labor advocates have called for a “fair and just transition” to a low-carbon economy. This transition includes more than just a social floor to encourage innovative work—it also demands the active provision of assistance for those workers whose jobs will be lost in the shift to the new economy or whose jobs will suffer from the environmental consequences of climate change.<sup>134</sup> As part of the “just transition,” a framework by the ILO has been promoted that emphasizes, *inter alia*, workers’ rights.<sup>135</sup>

If the institutions that establish and enforce global standards can eliminate or at least substantially weaken the race to the bottom, then a sustainable method of industry that ensures labor rights, including living wages and the freedoms of assembly and expression, could be created. Labor rights can thus be thought of as both human rights and the foundation of an alternative economic strategy to free market development. Because the labor rights perspective focuses on the rights of the individual worker, the right to free speech and assembly, and its “implicit statement of moral values,” labor rights are a part of the larger human rights movement.<sup>136</sup> Further, through its focus on livable wages and the economic prosperity of workers, a labor rights perspective indirectly leads to an increase in consumer purchasing power that may “revers[e] or at least ameliorat[e] the downward pressures on wages at the top [e.g., by government policy].”<sup>137</sup> This demonstrates how the dual nature of labor rights improves the rights of workers while also serving as a tool for economic development.

A way to include labor rights in the consideration of governance mechanisms of the global economy is to evaluate each approach by whether “it improves the level of advantage of less advantaged

132. *Id.*

133. *Id.*

134. *Id.* at 277.

135. *Id.* at 278–80. This framework will be discussed in more detail in Part III of this Note.

136. GREIDER, *supra* note 109, at 390.

137. *Id.*

persons in the world to a greater extent” than alternative approaches.<sup>138</sup> In the context of labor, improved working conditions and improved wages both raise the welfare of these individuals, especially when found in conjunction with increased employment.<sup>139</sup> In the context of climate change, the creation of mitigation technology will create numerous jobs in new industrial sectors, providing an opportunity for employment growth and for the reduction of poverty.<sup>140</sup> In order to maximize the creation of jobs and to ensure an equal allocation of these opportunities, energy, industrialization, and climate policies will have to “include green jobs as a goal and as a way of delivering development.”<sup>141</sup> One way to ensure this occurs is through a multipartite consensus flowing from stakeholder negotiations, including labor, employers, farmers, and national governments.<sup>142</sup>

## B. The Nexus Between Climate Change and Labor Rights

Climate change is expected to have a disproportionate impact on less-developed countries whose ‘developing’ status implies a lack of the resources needed to handle the consequences of climate change.<sup>143</sup> A nation’s ability to adapt to the expected impacts of climate change is dependent on its economic security, the strength of its social networks and institutions, the stability of its governance structure, the development of its technology, and the health of its people. Less developed countries lack these resources and face other challenges, such as poverty, unequal distribution of resources, food insecurity, conflict, and prevalence of diseases, all of which can intensify the impacts of climate change.<sup>144</sup> A lack of resources

limit[s] the capacity (of governments as well as individuals) to respond and adapt to climate change. Worse, where governments are poorly resourced, climate change harms will tend to impact populations unevenly and unequally, in ways that are *de facto*

138. Christian Barry & Sanjay G. Reddy, *International Trade and Labor Standards: A Proposal for Linkage*, 39 CORNELL INT’L L.J. 545, 548 (2006).

139. *Id.*

140. Peter Poschen, *Green Jobs: Facing Up to “An Inconvenient Truth”*, WORLD OF WORK, Aug. 2007, at 10–11.

141. *Id.* at 11.

142. *Id.*

143. Gordon, *supra* note 14, at 1590–91; ICHRP, *supra* note 7, at 4–5; OHCHR Report, *supra* note 43, ¶ 10.

144. IPCC, 2007 SYNTHESIS, *supra* note 65, at 14.

discriminatory because the private capacity of individuals to resist and adapt differs greatly.<sup>145</sup>

Because developing countries are also subject to other sustainable development issues, including “hunger and malnutrition, poverty, health and pressing local environmental issues,”<sup>146</sup> their capacities to adapt to climate change are expected to be much lower than those of developed countries. In addition, less developed countries are also more susceptible to the labor rights dilemma of the “race to the bottom.” Thus, climate change will further strain the institutional and infrastructure-related capacity of societies that may already have weaker labor standards, resulting in a deficient social safety net for workers.

In addition, climate change will profoundly alter labor markets and people’s livelihoods.<sup>147</sup> Two employment areas common in developing countries—tourism and agriculture—are expected to be hardest hit by environmental degradation caused by climate change.<sup>148</sup> Tourism is highly dependent on the weather, and as tourist areas are subject to more frequent storms, drought, or coastal submersion through sea level rise, these economies will suffer.<sup>149</sup> Agricultural output will change in quantity and location, disrupting current agriculture-based economies.<sup>150</sup> This is of particular worry for developing countries where tourism and agriculture account for a large portion of the economy, such as Uganda, where coffee is the largest export and coffee producers are among the largest employers,<sup>151</sup> and SIDS such as the Maldives, where tourism provides eighteen percent of the gross domestic product.<sup>152</sup> In Africa, climate change has decreased rainfall, which has led to a decrease in arable land.<sup>153</sup> Desertification is becoming

145. ICHRP, *supra* note 7, at 1.

146. Gillespie, *supra* note 45, at 111–12; Mohan Munasinghe, *Analysing Ethics, Equity and Climate Change in the Sustainable Trans-disciplinary Framework*, in ETHICS, EQUITY AND INTERNATIONAL NEGOTIATIONS ON CLIMATE CHANGE, *supra* note 22, at 47–48.

147. Working Party on the Social Dimension of Globalization, International Labour Office, *First Item on the Agenda: Decent Work for Sustainable Development—The Challenge of Climate Change*, ¶ 42, GB.300/WP/SDG/1 (Nov. 2007).

148. Poschen, *supra* note 140, at 7; Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 11.

149. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 21.

150. *Id.* See *supra* note 65.

151. Poschen, *supra* note 140, at 7.

152. Lene Olsen, *Talking Weather: Trade Unions and Climate Change*, WORLD OF WORK, Aug. 2007, at 12.

153. Poschen, *supra* note 140, at 2, 8, 11.

a severe problem, as are devastating floods in the already wetter parts of Africa.<sup>154</sup> The sustainability of carbon-intensive economic sectors is threatened by the anticipated shift to a low-carbon economy.<sup>155</sup> By threatening the viability of these sectors, climate change will result in a shift in the labor market, raising concerns that individuals' livelihoods will be jeopardized.

Labor rights concerns, like human rights concerns,<sup>156</sup> "are often secondary to the discussion rather than recognized as essential for sustainable development."<sup>157</sup> Human rights practitioners argue that the climate change negotiations should include a focus on the needs of the marginalized individual to adapt to the consequences of climate change, and how the mitigation and adaptation efforts will affect the rights of these individuals.<sup>158</sup> The human rights perspective is a necessary component of the climate change debate, because it prioritizes harms to individual persons, places ethical imperatives within a legal framework, focuses on accountability, and captures the injustice brought about by climate change.<sup>159</sup> Incorporating the background ethical assumptions of this perspective into climate change negotiations enables direct consideration of the repercussions of climate change and mitigation and adaptation options on the human rights of individuals.

This approach is analogous to labor rights. A labor rights perspective has similar characteristics: labor rights, like the freedom of association, are vested in the individual worker;<sup>160</sup> rights like the abolition of child labor are based on ethical imperatives;<sup>161</sup> many of the ILO's enforcement mechanisms are based on the concept of accountability;<sup>162</sup> and by drawing attention to the impacts of climate change on people's livelihoods, labor rights capture the injustice brought about by climate change. Most importantly, a labor rights perspective places the concerns of the marginalized worker within an existing legal framework that is, at a

154. Gordon, *supra* note 14, at 1590–91.

155. GREEN JOBS, *supra* note 92, at 277.

156. *See supra* Part I.A.3.

157. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 43.

158. *See supra* Part I.A.3.

159. *Id.*

160. DiMatteo, *supra* note 72, at 124.

161. Judy Fudge, *The New Discourse of Labor Rights: From Social to Fundamental Rights?*, 29 COMP. LAB. L. & POL'Y J. 29, 40 (2007).

162. *See supra* Part I.B.1.

minimum, widely accepted as having normative force. The four core labor rights are broadly accepted by member nations. The rights are not easily enforceable, do not encompass many critical rights, such as a living wage, and operate as generalized principles rather than specific standards. Nonetheless, their broad acceptance does provide a moral imperative, and thus their incorporation into the climate change debate provides a powerful way to draw attention to the needs of a previously marginalized group.

What makes labor rights different from human rights is their dual nature as individually-based rights with moral imperatives and as tools of economic development.<sup>163</sup> This dual nature creates a powerful instrument by which to advance sustainable development in a climate change solution. While a human rights perspective provides an ethical point of view, a labor rights perspective uniquely combines the ethical imperative with the practical need to promote sustainable development—only with continued economic growth will the needs of the world's labor forces be met. Therefore, the labor rights perspective dovetails with the principles of the UNFCCC, which emphasizes the need for an equitable approach to climate change while promoting sustainable growth.

As nations' adaptation capabilities are limited by lack of resources,<sup>164</sup> so are those of individuals. Currently 1.3 billion people, more than forty percent of the global workforce, and their dependants are "condemned to a life in poverty and insecurity because their earnings are too low and they are relegated to the informal economy. There are 190 million unemployed and tens of millions of young job seekers cannot find a place in society."<sup>165</sup> Without threshold labor standards, the creation of new jobs through mitigation and adaptation activities will not provide equitable benefits for all labor workers as the race to the bottom will still exist.

Two of the most fundamental standards required to ensure the creation of a sustainable economy are freedom of association and the effective right of collective bargaining, both part of the four

163. *See supra* notes 136–37 and accompanying text.

164. *See supra* notes 143–46 and accompanying text.

165. UNITED NATIONS ENVIRONMENT PROGRAMME, GREEN JOBS: TOWARDS DECENT WORK IN A SUSTAINABLE, LOW-CARBON WORLD: POLICY MESSAGES AND MAIN FINDINGS FOR DECISION MAKERS 1 (Sept. 2008) [hereinafter GREEN JOBS: POLICY MESSAGES].

core labor standards.<sup>166</sup> These two standards are necessary to cultivate the growth of strong trade unions, which will be able to represent workers in the new green job sectors by lobbying for labor protections, including fair wages, safe working conditions, and reasonable working hours, among other rights.<sup>167</sup> The creation of a labor rights floor would advance the aims of Article 3 of the UNFCCC. Under this Article, several principles are listed to guide the parties in “their actions to achieve the objective of the Convention and to implement its provisions . . . .”<sup>168</sup> The fifth principle recognizes that “sustainable economic growth and development in all Parties . . . enabl[es] them better to address the problems of climate change.”<sup>169</sup> The inclusion of a labor rights perspective in a multinational climate change solution can encourage an equitable distribution of the benefits expected to result from adaptation and mitigation efforts by removing the downward pull of the race to the bottom and ensuring a baseline of labor rights.

There are limits to the reach of a labor rights perspective. Like the human rights perspective, it serves as an informative background narrative against which global climate change policy should be formed. Because the international labor rights regime is limited in terms of enforceability, incorporating a labor rights perspective into the climate change discussions does not mean that labor rights will be guaranteed. Furthermore, adopting a labor rights perspective will not necessarily lead to labor rights concerns trumping all other expected consequences stemming from climate change. As has been recognized by OHCHR, traditionally climate change discussions focus on the environmental and economic consequences, and the ongoing mitigation and adaptation efforts are expected, as an added benefit, to address the human and social dimensions. Therefore, under the traditional view, these issues detract from the larger problem of climate change.<sup>170</sup> Thus, even if a human rights perspective and labor rights perspective are

166. Freedom of Association and Protection of the Right to Organise Convention, *supra* note 82; Right to Organise and Collective Bargaining Convention, *supra* note 82. These are also included under the ICESR, art. 8. For a discussion on the core labor standards, see *supra* notes 80–87 and accompanying text.

167. Olsen, *supra* note 152, at 14. For other rights, see Articles 7 and 8 of the ICESR.

168. UNFCCC, *supra* note 3, at art. 3.

169. *Id.* at art. 3, ¶ 5.

170. See *supra* notes 45–47 and accompanying text.

successfully incorporated, this traditional view that environmental and economic concerns take precedence over human and social consequences is unlikely to disappear. Therefore, a successful incorporation of a labor rights perspective will not place labor rights at the core of the climate change negotiations, but rather, on the whole, aid in informed decision-making that encompasses an equitable sharing of the expected burdens on the international labor force resulting from climate change. Human rights advocates support a similar point of view and argue that paying “closer attention to the foreseeable human rights consequences of climate change, and of the policies to address it, will improve those policies . . . [as they] might add to the knowledge-base upon which climate change predictions rely, and so feed into appropriate policy responses.”<sup>171</sup> This same analysis applies to labor rights.

### C. The Increasing Practical Linkage of Climate Change and Labor Rights

The different sectors of the labor movement, both at the domestic and international level, have begun to recognize that connecting labor rights to climate change and sustainable development is a powerful way to raise labor issues internationally—and one which adapts the labor movement to the changing economy and circumstances of the world. Organizations like the ILO recognize that only by “decoupling” economic growth from GHG emissions can labor and development needs be met while mitigating climate change impacts.<sup>172</sup>

The labor rights-climate change nexus is gaining attention domestically. Labor rights advocates and environmentalists have joined together to promote the idea of green jobs,<sup>173</sup> and the Obama Administration has adopted the idea of green jobs as a cornerstone of its economic policy.<sup>174</sup> The Sierra Club and the United Steelworkers created the Blue-Green Alliance in 2006<sup>175</sup> in order to focus on the “pursuit of a global economy that is more just and equitable and founded on principles of environmental and economic sustainability,”<sup>176</sup> specifically within the context of climate

171. ICHRP, *supra* note 7, at 17.

172. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶¶ 17–18.

173. Jeremy Brecher et al., *Labor’s War on Global Warming*, THE NATION, Mar. 10, 2008.

174. Bryan Walsh, *Green Jobs: Still More Promise Than Reality*, TIME MAGAZINE, Mar. 7, 2009.

175. Brecher, *supra* note 173.

176. *Id.*

change.<sup>177</sup> President Obama has placed the idea of green jobs in a prominent position in his economic strategy. The American Recovery and Reinvestment Act (“ARRA”) of 2009 included more than \$80 billion targeted towards clean energy investments, including funds for a smart grid compatible with renewable energy; funds for building weatherization and energy efficiency, both in low-income communities and federal buildings; funds for green job training programs; and funds for state and local efforts towards renewable energy and energy efficiency.<sup>178</sup> For example, Colorado received \$50 million to be distributed over three years from the Department of Energy’s State Energy Program from funds distributed under ARRA.<sup>179</sup> These funds will be used for a variety of purposes, many of which will create new jobs, provide training, and disseminate information on the transition to a less carbon-intensive economy and lifestyle.<sup>180</sup>

Like the United States, China has also made strong advances in the growth of the green jobs industry. Following the recent global economic downturn, countries around the world have attempted to encourage the growth of green jobs as a way to combat climate change while also improving energy security.<sup>181</sup> China produced more new wind turbines than the United States during the first half of 2009, while also increasing its reach in the solar market.<sup>182</sup> It has implemented an interesting unofficial rule requiring that all locally installed turbines must include seventy percent local content, contributing to a falling share in the Chinese market for international companies.<sup>183</sup> Such protectionist, but innovative, local laws may, however, run into conflicts with existing international trade law under the World Trade Organization and its prohibition against discriminatory treatment of like foreign products.<sup>184</sup> Much of China’s recent green jobs growth has been funded by stimulus

177. See About Us, Blue Green Alliance, [http://www.bluegreenalliance.org/about\\_us](http://www.bluegreenalliance.org/about_us) (last visited Jan. 31, 2010).

178. The White House, Energy & Environment, [http://www.whitehouse.gov/issues/energy\\_and\\_environment/](http://www.whitehouse.gov/issues/energy_and_environment/) (last visited Jan. 30, 2010).

179. Governor of Colorado’s Energy Office, State Energy Program, <http://www.colorado.gov/energy/index.php?/policy/state-energy-program-sep/> (last visited Jan. 30, 2010).

180. *Id.*

181. Gerard Wynn, *Analysis—China Leads in Global Green Jobs Race*, REUTERS, Aug. 6, 2009.

182. *Id.*

183. *Id.*

184. Shaffer, *supra* note 72, at 613–14. A discussion of WTO law is beyond the scope of this note. For more information, see sources cited *supra* note 72.

money,<sup>185</sup> similar to the United States' efforts to drive the growth of green jobs through its own stimulus package. Government and civil society at the domestic and international level have recognized the nexus between labor rights and climate change and the potentially powerful tool of green jobs to promote economic development and create mitigation and adaptation technologies to address climate change.

### III. HOW THE ILO CAN PRACTICALLY CONTRIBUTE TO A CLIMATE CHANGE SOLUTION

Despite the limitations facing an on-the-ground effectuation of a labor rights perspective, the ILO has several roles it can play in the incorporation of labor rights into a climate change framework approach through its Green Jobs Initiative, its internal accountability tools, and its Decent Work Country Programmes.

#### A. The Green Jobs Initiative

First, the ILO has contributed to the formulation of a framework for the cultivation of green jobs and a “just transition” to a green economy. The Green Jobs Initiative (“GJI”) is a joint project between United Nations Environment Program (“UNEP”), the ILO, the International Organization of Employers (“IOE”), and the International Trade Union Confederation (“ITUC”).<sup>186</sup> The GJI was launched to “assess, analyze and promote the creation of decent jobs as a consequence of the needed environmental policies.”<sup>187</sup> It aims to further sustainable development and the creation of environmentally friendly jobs within the context of the implications of climate change.<sup>188</sup> The GJI defines green jobs as:

work in agricultural, manufacturing, research and development (R&D), administrative, and service activities that contribute substantially to preserving or restoring environmental quality. Specifically, but not exclusively, this includes jobs that help to protect ecosystems and biodiversity; reduce energy, materials, and water consumption through high-efficiency strategies; de-carbonize the economy; and minimize or altogether avoid generation of all forms of

185. Wynn, *supra* note 181.

186. GREEN JOBS, *supra* note 92, at viii.

187. International Labour Organization, Green Jobs Initiative—Themes, <http://www.ilo.org/integration/themes/greenjobs/lang-en/index.htm> (last visited Jan. 31, 2010).

188. *Id.*

waste and pollution.<sup>189</sup>

Further, the initiative states that green jobs must provide “adequate wages, safe working conditions, job security, reasonable career prospects, and worker rights.”<sup>190</sup> Thus, green jobs provide a two-fold benefit: (1) they help alleviate the potentially devastating impacts of climate change by “greening” already existing sources of work or by manufacturing mitigation-related green technology; and (2) they create decent work,<sup>191</sup> thereby providing a source of well-being and dignity for individuals worldwide, including those currently denied access to economic and social development.<sup>192</sup> Combining the notion of the negative environmental externality of GHG emissions and the negative labor rights violations externality of the race to the bottom, the report recognizes that “[a] sustainable economy can no longer externalize environmental and social costs.”<sup>193</sup>

A more sustainable economy is expected to impact employment in at least four ways: some jobs will be eliminated entirely, others will be substituted, new ones will be created, and various occupations will be transformed as their underlying tasks and methods are “greened.”<sup>194</sup> As part of promoting green jobs, the ILO has begun to articulate a framework for a just transition. The organization has identified five “foundation stones”—workers’ rights, decent work, social protections, social dialogue, and sustainable businesses—for that transition.<sup>195</sup>

Though broad and somewhat indistinct, these five bases aim to provide an equitable distribution of the burdens associated with the anticipated dramatic shift in the labor market due to climate change. Protecting the rights of workers to associate and organize voluntarily better enables them to push for improved safeguards as the labor market fluctuates under the expected changes to the

189. GREEN JOBS, *supra* note 92, at 3.

190. *Id.* at 4.

191. “Decent work is defined as opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity . . . . Decent work is central to efforts to reduce poverty, and is a means for achieving equitable, inclusive and sustainable development.” GREEN JOBS: POLICY MESSAGES, *supra* note 165, at 1, box 1.

192. *Id.* at 1.

193. *Id.* at 5.

194. GREEN JOBS, *supra* note 92, at 3. Among the final category, the CJI report highlights skilled trades, particularly plumbers, electricians, metal workers, and construction workers. *Id.*

195. *Id.* at 278–80.

environment and the structure of the economy.<sup>196</sup> Decent work, as defined by the ILO's Decent Work Agenda, is that which "takes place 'under conditions of freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage is provided.'"<sup>197</sup> Gender equality and the human rights of women also play important roles in the Decent Work Agenda.<sup>198</sup> Social protections involve the social floor and rights-based protections that have been discussed throughout this Note. Social protections enable individuals to shift into new economic sectors knowing that they will not be threatened with abject poverty.<sup>199</sup> Social dialogue anticipates the active involvement of all stakeholders, including employers, workers, and farmers, as well as various levels of government.<sup>200</sup> Finally, the ILO and its constituent states and organizations will continue to promote sustainable businesses, where growth occurs "in a manner that aligns enterprise growth with sustainable development objectives and the creation of productive employment and decent work."<sup>201</sup> The GJI report provides some specific examples on how to promote a just transition, but generally just provides a roadmap of what is required to ensure baseline protections for the international workforce in the face of anticipated impacts from climate change.

The generality of these suggestions and the historical difficulties associated with the global enforcement of labor rights<sup>202</sup> pose obstacles to the implementation of the ILO's framework. For instance, many of these policy suggestions require implementation resources that are not available.<sup>203</sup> In addition, not enough work is being created to provide economic opportunities for individuals entering the labor market, and the work that is being created often fails to meet the standards of the Decent Work Agenda as governments seek to maximize economic growth through labor-

196. *Id.* at 278.

197. *Id.* ILO's Decent Work Agenda is itself (somewhat redundantly) composed of four pillars: employment, social protection, rights, and social dialogue. *Id.* at 278–79.

198. *Id.* at 279.

199. GREEN JOBS, *supra* note 92, at 279.

200. *Id.* at 279–80.

201. *Id.* at 280. Other important international frameworks that enable the development of sustainable enterprises include the U.N. Global Compact, the OECD Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. *Id.*

202. *Id.* at 292.

203. *Id.*

market flexibility, rather than enforcing labor standards.<sup>204</sup> The GJI report therefore makes policy recommendations aimed at furthering sustainable development and the creation of green jobs, including, *inter alia*, closing the skills gap by training workers in sustainable work practices, creating policies to drive the private sector toward sustainable practices, and increasing investment in clean development and green jobs.<sup>205</sup>

As part of the GJI, the ILO can promote, through its unique tripartite structure, the involvement of key stakeholders in the formulation of new international standards that reflect the changes to the labor market and to the employers' businesses as result of climate change and the mitigation and adaptation efforts undertaken to address it.<sup>206</sup> For instance, the ILO has tripartite forums for the key sectors involved in the mitigation of climate change, including energy generation, construction, transport, agriculture, and energy-intensive industries.<sup>207</sup> In addition, it can identify labor markets that will likely be hard hit by climate change, continue to promote green jobs, mobilize employers and workers to green the workplace, build employment and income into adaptation to climate change, and invest in the development of workers' "green industry" skills.<sup>208</sup> For example, the GJI has been active in countries such as China through the ILO Office for China and Mongolia.<sup>209</sup> As part of its efforts the ILO has helped organize an empirical analysis of expected job losses and gains as China transitions to a low carbon economy and has organized meetings "to facilitate experience sharing and interagency consultations" to aid in the progression towards a green jobs based economy.<sup>210</sup>

204. *Id.*

205. GREEN JOBS: POLICY MESSAGES, *supra* note 165, at 19–24.

206. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 49. There have been limitations to the effectiveness of the tripartite structure, especially with the impacts of globalization on the international labor market. See Part I.B.1. If the right to freedom of association is protected, union strength may increase, improving the legitimacy and effectiveness of the tripartite structure. However, solutions for this are beyond the scope of this Note. For discussions on institutional reform of the ILO, see, for example, Cooney, *supra* note 99.

207. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 49.

208. *Id.*

209. The ILO Office for China and Mongolia, Green Jobs in China, <http://www.ilo.org/public/english/region/asro/beijing/whatwedo/greenjobs.htm> (last visited Jan. 30, 2010).

210. The ILO Office for China and Mongolia, Fact Sheet: Green Jobs in China, *available at*

## B. Accountability

The ILO can also aid in the enforcement of labor rights through its accountability mechanisms.<sup>211</sup> Accountability in a rights context is defined as the process that “requires a government to show, explain, and justify how it has discharged its obligations regarding the right,” and where a government fails to fulfill its obligations, remedies are provided to rectify the failure.<sup>212</sup> Accountability therefore involves extensive monitoring of past conduct, ongoing performance, and the resulting outcomes and remedies.<sup>213</sup> Accountability is a characteristic associated with both the human rights and labor rights international frameworks, and human rights advocates have cited it as a positive contribution that a human rights perspective can bring to the climate change discussions. In the labor rights context, the ILO is able to gather information through its fact-finding and reporting requirements and thus determine the compliance of its member countries. By incorporating these mechanisms in the climate change context, the beneficial dual nature of labor rights as a moral imperative and as an alternative economic development tool can be realized.

If labor rights are incorporated into a climate change agreement, the ILO can serve as the enforcement body by using these information-gathering tools, just as the Monitoring Bodies oversee the Human Rights Conventions at the United Nations. If labor rights are not incorporated into a climate change agreement, the ILO can still operate as a clearinghouse to determine the state of labor rights compliance worldwide as the economy transitions from a carbon-heavy economy to a GHG-reduced emissions economy. In this capacity, the ILO could provide information on which domestic labor rights-climate change policies have been successful in providing for the needs of workers as they adjust to the new economic structure. This information can be used in providing technical assistance to government agencies, unions, and employers to improve and adapt labor standards to the changed

<http://www.ilo.org/public/english/region/asro/beijing/download/factsheet/greenjobs.pdf>.

211. *See supra* Part I.B.1.

212. HELEN POTTS, HUMAN RIGHTS CENTRE, UNIVERSITY OF ESSEX, ACCOUNTABILITY AND THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH 13, *available at* [http://www.essex.ac.uk/human\\_rights\\_centre/research/rth/docs/HRC\\_Accountability\\_Mar08.pdf](http://www.essex.ac.uk/human_rights_centre/research/rth/docs/HRC_Accountability_Mar08.pdf).

213. *Id.*

economy and to the international climate change framework. Further, in case of severe noncompliance, the ILO can take action through Article 33 sanctions; however, these sanctions were not utilized before 2000, so Article 33's utilization has been a rare occurrence.<sup>214</sup>

### C. Decent Work Country Programmes

Third the ILO has identified its Decent Work Country Programmes ("DWCPs") as a tool it can use to play a role in the use of financial and technical assistance expected as part of the response to climate change.<sup>215</sup> Through the DWCPs, the ILO delivers financial and technical support to member countries. The DWCPs have two basic objectives: to promote decent work as part of national development strategies and to organize "ILO knowledge, instruments, advocacy and cooperation at the service of tripartite constituents in a results-based framework to advance the Decent Work Agenda within the fields of comparative advantage of the Organization."<sup>216</sup> A DWCP is centered on a set number of priorities and outcomes adapted to the national situations and priorities in a country. The priorities and outcomes are detailed in an implementation plan, which also provides monitoring and evaluation guidelines to ensure successful implementation.<sup>217</sup> The ILO uses the DWCPs as a framework within which the organization can cooperate with other United Nations organizations on issues specific to the country subject to the DWCP. Through this multi-agency cooperation process the ILO can promote its perspective on climate change issues.<sup>218</sup> For example, the ILO has considered entering into agreements with secretariats of public international organizations working on environmental issues, such as the secretariat of the UNFCCC.<sup>219</sup> In addition, as the DWCPs incorporate the ILO's tripartite structure, they can provide another mechanism for labor, employers, and national governments to

214. Article 33 sanctions have been used only in the 2000 Burma case. See, e.g., Michael A. Cabin, Note, *Labor Rights in the Peru Agreement: Can Vague Principles Yield Concrete Change?*, 109 COLUM. L. REV. 1047, 1067 n.135 (2009).

215. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 47.

216. ILO, Decent Work Country Programmes, <http://www.ilo.org/public/english/bureau/program/dwcp/> (last visited Jan. 30, 2010).

217. *Id.*

218. Olsen, *supra* note 152, at 15.

219. Working Party on the Social Dimension of Globalization, *supra* note 147, ¶ 47.

work together to establish a climate change framework, which addresses and incorporates the nexus between climate change and labor rights.<sup>220</sup>

#### IV. CONCLUSION

To reiterate, labor rights have a dual nature—they are part human rights and part economic tool. For this reason, their inclusion as an additional perspective in the climate change negotiations is necessary to achieve the sustainable development goals of the UNFCCC. The current international climate change framework sufficiently considers the intricacies of the equity issues between developed and developing countries, but it fails to consider the impact of climate change on human rights, on labor rights, and on the experience of the marginalized individual. The development of a post-2012 agreement cannot fulfill the sustainable development goals of the Convention or the BAP without considering how climate change and the chosen mitigation and adaptation methods to be incorporated into the agreement impact labor rights at a general level, and the marginalized worker at the individual level. Labor has already been affected by climate change, whether through climatic alterations in agriculture production or by the creation of the new industry of “green jobs.”

The nexus between labor rights and climate change is therefore unmistakable. Labor rights can be advanced by linking them to climate change initiatives, a fact that has been recognized and utilized by the GJI and the Blue-Green Alliance. The underlying principles of sustainable development and equitable treatment in the international climate change framework can gain ground through the inclusion of a labor rights perspective in the climate change discussion. It remains to be seen how the negotiations will play out, and what framework agreement for the post-Kyoto period will be formed. There is room for an expansion from the approach taken in Kyoto, and hopefully the individual-focused, sustainable development-advancing tool of labor rights will be included.

220. Olsen, *supra* note 152, at 15.