Policy and scholarly debate devote much attention to the relationship between environmental protection and human rights, suggesting diverse approaches to explore their synergies and solve their conflict. One is an open discussion on a very preliminary issue, which is whether environmental protection should be functional, or the natural milieu wherein individuals live and interact, or whether the health of the environment should be protected as such, irrespective of its function in sustaining human life. A less polarizing approach suggests that human rights and environmental protection share some common goals. Consequently, the debate is centered on the contribution that international environmental law could make in achieving higher standards of human rights protection and, vice versa, on the impact that a proper implementation of international human rights instruments could have on the fight against environmental degradation. Potential conflicts between the two regimes are not overlooked; rather, their solution is sought by trying to establish criteria by which to balance competing interests.

On the basis of this third approach, the purpose of the present contribution is to assess to what extent the integration of environmental considerations into human rights litigation may affect policies addressing disaster risk reduction and response. It is beyond any doubt that disasters may be due to environmental degradation, and that a disaster scenario, the effective enjoyment of human rights is at risk. Accordingly, the adoption of environmental policies could complement measures by which to counter or alleviate the detrimental impact of natural or human-made hazards, as they would indirectly reduce exposure and vulnerability to disasters and disaster risk, while at the same time addressing major threats to human rights in a post-disaster situation. However, the issue could also be considered from a reverse perspective: a proper protection of certain human rights may be deemed to contribute to establishing, maintaining, or improving environmental safety, thus avoiding disasters or reducing their magnitude.

The conceptual assumption behind the idea that environmental degradation triggers disasters (and vice versa) and that it consequently impacts negatively on human rights, is that a safe environment is a sine qua non for an effective enjoyment of human rights. This connection was first proclaimed in the 1972 Stockholm Declaration on the Human Environment, affirming that [f]or the fundamental right to freedom, equality, and adequate conditions of life in an environment that respects the integrity of nature, human survival and human development are necessary conditions. This twofold right to a healthy environment, which is enshrined in various international and regional environmental agreements, is further reinforced by the recognition of the right to a healthy environment in some national constitutions and by recent developments in human rights law.
environment of a quality that permits a life of dignity and well-being. In quite similar terms, the International Court of Justice (ICJ) held in 1996 that the environment is not as abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. This anthropocentric perspective has encouraged the recognition of a right to a healthy environment within the scope of international human rights law. Under positive law, this evolution has shaped the regime established under the 1969 American Convention on Human Rights, as well as the 1981 African Charter on Human and Peoples’ Rights. The second section of this contribution introduces an analysis of the (limited) case law developed under these two treaties, with the purpose of assessing the extent to which it may influence national policies, and in particular the design and implementation of disaster adaptation measures. The third section tackles those international human rights regimes that do not expressly recognize environmental rights. This lacuna has not prevented relevant treaty bodies from acknowledging an environmental dimension of general human rights whose scope does not extend to the protection of the environment but which in certain circumstances may call for the adoption of environmental measures. In the regard, some of the main decisions concern human rights violations that have taken place in a disaster situation, and they give evidence of the indirect influence that the enforcement of human rights regimes has on national strategies aimed at improving resilience in the face of disasters. A brief overview of the pertinent case law will reveal that both the normative content of the right to a healthy environment and the environmental interpretation of general human rights have been framed in view of other branches of international law, in particular international environmental law and, most importantly, major instruments of disaster risk reduction (such as the Hyogo Framework for Action approved in 2005 or the 2015 Sendai Framework). The contribution concludes with an analysis of the human rights approach to climate change, so as to assess whether its implementation would strengthens the degree of protection of the human rights of individuals living in areas prone to weather-related disasters.

The bearing of the right to a healthy environment on disaster policies

The adoption of the 1972 Stockholm Declaration on the Human Environment has resulted in the progressive opening of human rights catalogues to environmental rights. At the national level, most constitutions endow individuals with a right to a healthy environment or provide for environmental responsibilities of public authorities. At the same time, in some international human rights instruments, an obligation has been included to secure a right to a healthy environment. More to the point, in 1988, the parties to the American Convention on Human Rights approved the San Salvador Additional Protocol, which Article 11.1 declares that '[e]veryone shall have the right to live in a healthy environment'. This right that each individual considered in isolation has to environmental protection is recognized, but its effective enforcement suffers from the exclusion of the Protocol from the jurisdiction of the Inter-American Commission and the Inter-American Court on Human Rights. In this regard, the American Convention deviates from the 1981 African Charter on Human and Peoples’ Rights, whose Article 24 affirms the collective right of ‘[a]ll peoples . . . to a general satisfactory environment favourable to their development’. Indeed, the implementation of this provision was originally placed under the control of the African Commission on Human Rights, and was further strengthened in 2005, when the Court of Justice of the Economic Community of West African States (ECOWAS) assumed jurisdiction over ‘cases of violation of human rights that occur in any Member State.’ Given both the nature of ECOWAS as...
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An organization for economic integration and the absence of a prescribed catalogue of human rights to be enforced by it, the Court has extensively interpreted its jurisdiction as covering the human rights instruments binding upon all ECOWAS member states, including the 1981 African Charter.17

The decisions adopted in the well-known Ogoni case18 (concerning the heavy environmental disaster caused by oil activities carried out by the Nigerian government and foreign oil companies in the region of the Niger River delta) offer some useful guidance as to the approach to be followed in interpreting a broad provision such as the one enshrined in Article 24. In Ogoni, both the African Commission and the ECOWAS Court ruled in favour of the claimants. In particular, in 2001, delivering a decision taking into account the right to health as set forth in Article 16 of the African Charter, the Commission found that Article 24 requires states to “take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation and to ensure an ecologically sustainable development and use of natural resources.” 19 Furthermore, they must not carry out, sponsor, or tolerate “any practice, policy, or legal measure violating the integrity of the individual.” 20 According to the Commission, these substantive obligations of States are accompanied by procedural obligations to carry out environmental impact studies, monitor environments threatened by industrial activities, and provide the communities exposed to hazardous activities with appropriate information and meaningful opportunities to be heard.

In a slightly different vein, a few years later the ECOWAS Court judged exclusively on the basis of Article 24. Even though the claimants had also alleged the violation of other “general” human rights, the Court considered it had to shape out the dispute along its essential lines and to focus on the violation which constituted the core of the grievance brought before it, 21 that is, Article 24. The autonomy of the right to a healthy environment from other human rights has been acknowledged, and its violation has been ascertained without assessing whether poor environmental quality had undermined human health or life. The behaviour required under Article 24 was subsequently determined in light of the opening clause of the African Charter, which states Article 1 binds States “to adopt legislative or other measures to give effect to the rights enshrined in the Charter itself.” Accordingly, Article 24 has been understood to have two prongs to it, on the one hand requiring States to “take every measure to maintain the quality of the environment” 22 while at the same time requiring effective enforcement of all applicable laws and regulations 23:

The adoption of the legislation, no matter how advanced it may be, . . . may still fall short of compliance with international obligations or measures of environmental protection if it is not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or restoring accountability, with the effective reparation of the environmental damage suffered. 24

There are some general considerations that can be extracted from the Ogoni ruling, also as concerns the way its express recognition of human environmental rights can impact policies aimed at addressing disaster situations.

One of the main difficulties of expressly recognizing a right to a healthy environment lies in the vagueness of its contours, leaving to the interpreter the onus of determining its normative content. This job may prove complex, as it may require gathering scientific evidence. At the same time, arriving at a normative choice by interpreting a vague provision implies making value judgments that may not be in the states’ interest, particularly when they seek to achieve a balance between competing societal interests such as environmental protection and economic development.25
development). This consideration weakens the guiding influence of a provision like Article 24 of the African Charter on States’ policies aimed at addressing disaster risk reduction. However, in the Ogoni case, compelling evidence was presented showing that the environmental impact of oil activities carried out in the Niger region was severe, and since Nigeria had not challenged this evidence, there was no need to establish general criteria on whose basis to ascertain whether the claimants were actually living in a ‘generally unsatisfactory’ environment. In other less clear circumstances, human rights bodies may be required to determine preliminarily the elements of a suitable environment in abstract terms. In these cases, it may prove appropriate to refer to applicable international standards.

The decisions by the African Commission and the ECOWAS Court also provide some guidance on what states are required to do to ensure the right to an environment of a given quality. Article 24 of the African Charter has been interpreted as enshrining both substantive and procedural environmental rights—interpretations that find support not only in the practice of other human rights bodies but also in international environmental law. Implicit reference is made to the principle of prevention as stated in the final documents of both the 1972 Stockholm Conference on the Human Environment and the 1992 Rio de Janeiro Conference on Environment and Development. On its basis, the African Commission and the ECOWAS Court have inferred from Article 24 an obligation of states to adopt all suitable measures necessary to maintain the quality of the environment, to prevent pollution and degradation, and to regulate hazardous activities. Furthermore, the ECOWAS Court has clarified that these measures need to be effective and accompanied by implementing regulations in that the same measures do not ‘remain on paper’. It follows that a legislative framework addressing environmental and disaster risk cannot stand in isolation: it must be integrated by proper regulatory, administrative, and judicial actions aiming at making it effective. Due weight is given to judicial measures, for it is not ruled out that environmental accidents will take place or that they will have a greater magnitude than expected; in that case, the effective implementation of Article 24 will require fulfilling a further obligation of result, meaning that the damage incurred will have to be redressed.

As concerns the procedural component of the right to a healthy environment, the decisions by the African Commission and the ECOWAS Court are implicitly underpinned by the 1992 Rio de Janeiro Declaration and the multilateral environmental agreements recognizing procedural environmental rights. In the 2010 decision about the admissibility of the Ogoni claim, the ECOWAS Court did not ignore the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, yet it was expressed that the Court itself, and the African Commission, encountered similar situations. A final consideration pertains to the justiciability of the right to a healthy environment. The ECOWAS Court rejected Nigeria’s argument that the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) whose violation was also alleged by the plaintiff, was not justiciable, since its obligations depend upon the resources available to states. According to the Court, Nigeria’s assertion had to be considered on a case-by-case basis, and it could not be ruled out that, in some situations, the implementation of economic and social rights may require states to enforce the law they have already adopted and to prevent wrongful acts from preventing the most vulnerable from enjoying the right granted to them. This line of reasoning has been informed the judgment over the justiciability of the right to a satisfactory environment, whose core content lies in the adoption and implementation of appropriate and effective legislation and regulations, which states must uphold in all circumstances.
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"Indirect" environmental rights: the environmental dimension of "general" human rights

The approach adopted by the African human rights bodies has also been endorsed in other contexts, even though the human rights treaties in question do not separately recognize a freestanding right to a safe environment. As mentioned, according to relevant case law, national environmental policies are deemed to fall within the scope of "general" human rights, whose violation has been also alleged in the aftermath of disasters (both natural and human-made).

The UN approach

The UN system fully supports the idea that "the protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a core one (i.e. for numerous human rights such as the right to health and the right to life), and that damage to the environment can impair and undermine all the rights spoken of in the Universal Declaration of Human Rights and other human rights instruments." 34 In 1994, the then Special Rapporteur on Human Rights and the Environment proposed the adoption of a set of draft principles on the environmental content of human rights. 35 Significantly departing from the 1972 Stockholm Declaration, the document in its opening paragraphs acknowledged that "[a]ll persons have the right to a secure, healthy and ecologically sound environment": 36 this right was unequivocally affirmed, and everyone ("all persons") was recognized as a right-holder in that regard. However, the proposal failed to secure the backing of states. As a result, UN human rights bodies took the different approach of "greening general rights", interpreted as prescribing the adoption of measures also aimed at protecting the environment.

The Committee on Economic, Social and Cultural Rights has repeatedly stated that a genuine enjoyment of some social rights may require measures for improving the quality and safety of the environment in which individuals live and work. The Committee has determined that the core content of the right to adequate food, as set forth in Article 11 ICESCR, also entails the "availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances": 37 its implementation is made conditional on the adoption of protective means "to prevent contamination of foodstuff": 38 along the same lines, the right to health enshrined in Article 12 ICESCR has been interpreted as entailing the right to enjoy conditions "necessary for the realization of the highest attainable standard of health", 39 including "healthy environmental conditions": 40 more in detail, states are placed under an obligation to adopt measures for the prevention and reduction of the population's exposure to . . . detrimental environmental conditions that directly or indirectly impact upon human health": 41

A similar approach has also been taken by the Human Rights Committee in its interpretation of Article 27 of the 1966 International Covenant on Civil and Political Rights (ICCPR), 42 acknowledging the right of persons belonging to ethnic, religious, or linguistic minorities to enjoy the culture, including the right to a particular way of life associated with the use of land resources. For instance, as has been held in the Jemez Pueblo case, Article 27 obliges states to adopt "positive legal measures of protection and measures to ensure the effective participation of minority communities in decisions which affect them": 43 Therefore, a measure designed to promote national economic development (at issue in Jemez Pueblo was a project to divert the course of a mountain river to provide water to coastal cities) will be found to be illegitimate if it has "substantial negative impacts on the enjoyment of minority's right" (in the case at hand, this was due to the environmental damage caused by diverting indigenous lands of water).

In its more recent resolutions on the relationship between human rights and the environment, the Human Rights Council has not distanced itself from the approach followed by the UN treaty
bodies. On the basis of the reports submitted by the independent expert and the then Special Rapporteur on human rights obligations relating to the enjoyment of a healthy environment, in a 2016 resolution, the Council does not recognize any right to an environment of a given quality. Rather, it calls upon states to respect, protect and fulfill human rights, including in actions relating to environmental challenges and to adopt an effective normative framework for the enjoyment of a safe, clean, healthy and sustainable environment. Environmental rights are expressly taken into account, but only as procedural rights. On a substantive level, the prevailing trend amounts that a proper implementation of international human rights instruments and national legislation is adequate for protecting individuals from any threat due to unsafe environmental conditions.

**The regional context: the case law of the European Court of Human Rights**

The foregoing developments under the UN system run parallel to those in regional contexts where the protection of the environment has been clearly advocated as a component of policies aimed at achieving social and human rights. In this regard, reference can be made to the 2004 Arab Charter on Human Rights and to the 2012 Arab Human Rights Declaration. Both documents recognize the right to a healthy environment as part of the right to an adequate standard of living.

In general terms, the practice under the European Charter of Human Rights is perfectly aligned with the UN approach. The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not include a right to a healthy environment, nor is any reference to it made in the protocols to the European Social Charter. Some proposals have been put forward by the Parliamentary Assembly of the Council of Europe, recommending that an additional protocol to the ECHR on environmental rights be drafted. But the Committee of Ministers did not deem it crucial. In fact, the Committee held that environmental protection is already secured under the case law the European Court of Human Rights (ECtHR) has issued on 'general' rights.

The ECtHR's case law on the environment has been mainly based on the right to life and to private and family life, respectively set forth in Articles 2 and 8 ECHR. In that regard, alleged victims have also brought complaints relating to disaster situations, where the respondent state has been found in violation of 'general' rights for having neglected to adopt disaster risk reduction measures that could have avoided a catastrophe. Human-made or natural disasters that could have mitigated its devastating consequences.

It is the settled jurisprudence of the Court that Article 2 ECHR sets forth a positive obligation of states to take appropriate action to protect the life of individuals within their jurisdiction. In what concerns hazardous industrial activities, states are obligated to regulate these activities bearing in mind the risk they pose to human lives and to give their licensing, setting up, operation, security and supervision, while at the same time making it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the industrial risks. While it is recognized that the choice of means in principle falls within the parties' margin of appreciation, and that considerations such as to grant to the state's prerogatives and resources, the Court has nonetheless acknowledged that preventive measures are definitely required under Article 2 when the competent public authorities have full knowledge of the risks individuals are exposed to and have all the necessary powers and resources to reduce disaster vulnerability.

The Court also evaluated the impact of severe and toxic industrial disasters. In these cases, however, the Court is prone to grant states a wider margin of discretion than in the event of disasters cited in dangerous human activity taken into account that several hazards are beyond...
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human control. Nevertheless, in view of the origin of the threat, the proneness of a given area to a recurring identifiable natural hazard, and the potential effectiveness of adaptation measures designed to lessen its devastating consequences, the Court has held that Article 2 entails a duty of states to take preventive measures. Article 2 was found to have been violated in Budayeva, as Russia had failed to adopt traditional measures under disaster risk reduction policies (it had failed to properly construct and maintain engineering facilities), even though the national authorities were fully aware of the risk of mudslides in the affected region. At the same time, the establishment of effective monitoring posts and of early warning systems to collect information and make it available to the population was also considered to fall within the scope of the positive obligations under Article 2 to adopt appropriate steps to safeguard the life of individuals in exercising their discretion as to the choice of measures required to comply with their positive obligations, the authorities ending up by taking no measures at all up to the day of the disaster.

In less serious cases, where the deprivation of life is not at issue, the Court’s environmental case law is grounded on the right to private and family life under Article 8 ECHR. In fact, in the very first environmental cases brought before the Court, it was this Article 8 whose violation was being alleged, and the Court gave the opportunity to take its first steps toward interpreting the Convention in light of environmental issues, almost exclusively with respect to harmful human activities. Since Lopez Ostra v. Spain, the Court has consistently recognized that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. Therefore, positive obligations are also inferred from Article 8, calling for the adoption of measures commensurate with the risks posed to the enjoyment of the right to private and family life owing to hazardous activities occurring within the jurisdiction of the state parties. In this regard, the language used by the Court closely resembles the judgments under Article 2, showing that there is much overlap between the two provisions when it comes to the scope of the positive obligations that result in connection with dangerous activities.

Apart from substantive obligations, the Court’s case law has also highlighted that an effective enjoyment of both the right to life and the right to private and family life implies procedural aspects. Indeed, the ECtHR has aligned itself even with states that have not adhered to the 1998 Aarhus Convention even with respect to states that have not adhered to it. It has consistently held that, under Articles 2 and 8, states are required to take effective measures by which to provide potential victims of environmental disasters with reliable information about those risks, as well as to promote the participation of the public in the framing of policies and measures having a direct or indirect impact on the environment, and, finally, to provide access to justice. In this regard, the Court has endorsed two different standards of protection. The first one pertains to the right of individuals to access proper judicial procedures for lodging claims alleging a violation of their right to environmental information and participation in decision-making. This practice is in line with the aforementioned 1998 Aarhus Convention. A further strand is focused on the right to an effective judicial system guaranteeing that any breach of substantive rights will be prosecuted and punished through the criminal, civil, administrative, or disciplinary remedies made available to victims.

The human rights approach to climate change and its impact in a disaster scenario

Scientific evidence underlines the existence of a causal relationship between climate change and natural disasters. Relevant data point to a steady increase in greenhouse gas (GHG) emissions since the pre-industrial era, its effect on global warming, and, in sequence, on natural and human
Climate change is considered to be a dominant cause of natural disasters, as evidenced by the increase in the number of weather-related events and, indirectly, by its more general effect on environmental degradation. The detrimental consequences of climate change on living conditions may affect the enjoyment of human rights. Therefore, any progress in international climate change law may have a positive impact for potential or actual victims of global warming, bearing in mind the differences in national circumstances, the need to prevent climate-related disasters and, as a consequence, their impact on human rights. Addressing climate change directly通过 mitigation measures reducing GHG emissions could lessen the probability of climate change-related disasters and, as a consequence, their impact on human rights. For our purposes, addressing climate change indirectly through adaptation measures reducing climate change or its effects on human or natural systems. These proper implementations are implicitly beneficial to the fullest realization of human rights, whether by strengthening their protection, limiting their violation, or providing proper redress in cases of infringement.

However, the response under international environmental law has come up against a number of hurdles. Therefore, scholars of international law have started to debate a human rights approach to climate change that would place additional pressure on states to design effective environmental policies. Political action would not be the only form of debate: litigation would raise public concern and give victims a voice. Furthermore, in line with an evolutionary approach to the interpretation of human rights treaties (regarded as ‘living instruments’), courts and other relevant bodies would be called on to enforce such treaties by also taking into account the threats to the effective enjoyment of human rights engendering from one of the main challenges states have to cope with in the modern era.

Within this framework, this section seeks to ascertain whether the adoption of a human rights approach to climate change could strengthen the enjoyment of human rights of people living in areas prone to weather-related disasters. Any analysis has to start from the peculiarities of climate change as an environmental issue. It is beyond any doubt that states are legally responsible for dealing with environmental degradation happening within their borders and affecting their population. As discussed, participation in human rights regimes requires states to duly consider infringements resulting from possible environmental disasters. In the case of transboundary environmental damage, the protection granted by human rights treaties to people living in third countries may be disputed, as doubts arise about whether a state has any jurisdiction or effective control over individuals living in neighboring countries where it has failed to adequately address environmental harm (or any related disaster) within its territory. The complexity increases with respect to environmental issues like climate change, considered by the international community to be a ‘common concern of mankind’, in which the right to a healthy environment can be acknowledged and enforced in such contexts.

One of the arguments that has been raised as an overall criticism of a human rights approach to climate change points out the limited potential of international tribunals, which lack the power to bind states to their rulings. Then, too, the availability of human rights litigation needs to...
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... also reckon with the nature of the applicable treaty regime. First, it has been observed in the legal literature, human rights law primarily imposes vertical duties, that is, duties owed by a State to those primarily within its jurisdiction. Extending those duties diagonally to those outside the State’s jurisdiction may seem necessary in order to apply human rights law to the global aspects of climate change, but such an extension faces serious obstacles, both legal and practical. Furthermore, as the following analysis will illustrate, international human rights law follows a so-called ‘personal injury approach’ to litigation: it starts to the extent that applicants prove that a state’s action or inaction has infringed a protected human right of one or more victims. Therefore, strict limits are imposed on litigation for a public and collective interest in environmental protection as such.

Most human rights treaties are premised by a jurisdiction clause under which parties are obligated to secure the protected rights for anyone living under their jurisdiction or control. As is well known, Article 1 of the European Convention has been interpreted quite narrowly as the ECtHR has acknowledged in constitutional applications only in exceptional circumstances (when the respondent state exerts public powers ‘through effective control of the relevant territory’ and its inhabitants derive as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory) to do otherwise would be tantamount to arguing that anyone adversely affected by an act imputable to a Contracting State, wherever in the world that act may have been committed or its consequences felt, is thereby brought within the jurisdiction of that State. To do otherwise, the Court has acknowledged, would be ‘tantamount to arguing that anyone adversely affected by an act imputable to a Contracting State, wherever in the world that act may have been committed or its consequences felt, is thereby brought within the jurisdiction of that State’. A similar approach has also prevailed with the Human Rights Committee in its interpretation of Article 2.1 ICCPR: the Committee acknowledges that the protected rights are owed by states to anyone within their (or their agents’) power or effective control, even if such persons are not situated in their territory. The case law has not yet tackled the issue of the reach of human rights obligations in cases involving transboundary or global environmental harms. However, the practice hardly supports the idea that individuals living in countries suffering the impact of climate change are under the control of states implementing inappropriate mitigation policies.

A second obstacle stems from the rules on standing before human rights bodies. Under Article 34 ECHR, a complainant has to qualify as a ‘victim’ of a violation of a protected right. Article 44 of the 1969 American Convention provides that a claim may not concern abstract victims but has to concern one or more identifiable individuals or groups having a protected right that has been infringed. In its practice, the Inter-American Commission has repeatedly affirmed that claims may not concern abstract victims but have to concern one or more identifiable individuals or a group having a protected right that has been infringed. In its practice, the Inter-American Commission has repeatedly affirmed that claims may not concern abstract victims but have to concern one or more identifiable individuals or a group having a protected right that has been infringed.
(who may be different from the applicants themselves). In the case of the ECOWAS Court, the rule on the admissibility of claims seems to be far more restrictive, as it refers to ‘individuals’ recognized as having the right to initiate litigation for a violation of ‘their’ human rights. However, a broad interpretation of this provision has prevailed in the practice, an interpretation based on the collective nature of the right to a healthy environment as enshrined in the African Charter, as well as on the 1998 Aarhus Convention. The latter has been considered ‘persuasive evidence’ that the international community generally favours the legal standing of NGOs in that concerns the protection of human rights related to the environment, enabling NGOs to appear before the ECOWAS Court to represent the interests of groups.

On closer scrutiny, the relevant case law reveals a further feature of environmental case law, particularly in the European and American contexts. The ECtHR has made it clear that no right to nature preservation as such is secured under the ECHR or its Protocols and that claims under Article 8 must point to ‘severe’ environmental degradation having a ‘direct’ link to the alleged infringement and significantly impairing the enjoyment of a human right above a certain minimum level (to be ascertained on a case-by-case basis). In Kyrtatos, for instance, the Court excluded violation of Article 8, as complainants had not brought sufficient evidence that the alleged environmental harm (to a wetland owing to an urban development project) was of such a nature as to ‘directly’ affect these rights had they been living close to the area in question, a direct effect on their well-being would have been easier to ascertain. In similar terms, the case law under the American Convention acknowledges that a mere situation of environmental degradation is not sufficient to support claims for the violation of the Convention, unless it impairs the ability of identifiable individuals to enjoy a protected right.

The African regime, by contrast, has undergone a significant evolution with the Ogoni case. In the African Commission’s decision, the encroachment of the right to a satisfactory environment was considered in conjunction with the violation of the right to health. A few years later, the ECOWAS Court accepted the idea that circumstances of environmental degradation may well support the analysis of the merits of the case exclusively on the basis of Article 24, maintaining the autonomy of the right to a healthy environment from other protected rights.

The combination of jurisdiction clauses with the limitations imposed on how claims before human rights treaty bodies seem to seriously hamper the influence of a human rights approach to climate change on national disaster policies. It is very unlikely that the States’ inadequate design of mitigation measures, considered to be the main culprit of GHG emissions, may be the basis for a claim of human rights violations by people residing in third countries and hit by weather-related disasters. The next jurisdiction issue concerns the polluting state’s exercise of jurisdiction over such people and the existence of a link between high emissions recorded in that state, global warming, a consequent weather-related disaster, and the serious impairment of a protected human right. Would it be possible, in the aftermath of a weather-related event, to substantiate the claim that inhabitants of State A, due to the emissions of State B, may be victims of a violation of a protected human right? While it would be possible, the question is that the emissions of State A, in the absence of any mention of human rights by State B, may be those responsible for the violation of human rights by State A, in the absence of any mention of human rights by State B and do not adopt appropriate mitigation measures by which to reduce its GHG emissions within its territory.

As for adaptation measures, they are by definition local. Under human rights case law, access to litigation may not be precluded irrespective of any State’s contribution to global warming. Every State is bound to secure protected rights for any individual living under its jurisdiction and to design and implement all necessary policies and measures to which to reduce the magnitude of weather-related disasters. There is, furthermore, the prohibition on...
discriminating against individuals in their enjoyment of protected rights. 104 From which it follows that, in crafting and applying adaptation measures, states may not differentiate their potential beneficiaries on any ground. On a positive reading of the prohibition, states are also obligated to take into special consideration the positions of more vulnerable groups and individuals, so that they will not suffer de jure discrimination owing to such vulnerability.

Conclusion

The adoption of the Hyogo and Sendai Frameworks on disaster risk reduction has been one of the main outcomes of intergovernmental negotiations on disaster law. Both documents direct attention to the design and implementation of measures aimed at improving states’ preparedness and resilience in responding to disasters, both natural and human-made. The 2015 Sendai Framework acknowledges that these policies may well contribute to higher standards of protection of human rights within disaster-prone communities. 105

In view of the impact that climate change can have on the effective enjoyment of human rights, a further improvement could come from strategies for disaster risk reduction that integrate measures on adaptation to climate change, as provided for under international environmental law. 106

The overlap between adaptation and risk reduction also emerges in international human rights case law. Human rights courts and bodies have identified two components that the environmental policies of states need to take into account with a view to strengthening the protection of human rights in a disaster context. On a substantive level, the case law adds attention to the duty to implement preventive measures aimed at avoiding disasters or at reducing the harm they can cause. The normative content of this duty is (or may be) determined by reference to the following: the adoption of legislation and regulations on human hazardous activities and of procedures for authorizing, licensing, and monitoring those activities, coupled with technical safety standards; the obligation to carry out environmental impact assessments to weigh in advance the effects that planned activities may have on the natural systems and communities which the same activities put at risk; the establishment of early warning systems to monitor industrial activities or natural events, or to inform individuals of the dangers that are exposed by the planning of disaster response strategies to provide the population with prompt relief in the event of a disaster; the prohibition on discriminating among affected individuals on any ground; and the duty to implement special measures supporting most vulnerable people. If disaster policies are absent or if they prove to be incommensurate with the above-mentioned requirements, or if the competent state is aware that a given community is exposed to a natural hazard or is aware of the intrinsic dangers of hazardous human activities, then a claim can be brought to court alleging the violation of human rights in a disaster scenario.

Human rights environmental litigation highlights a second component of human rights protection in a disaster context: States are understood to be under an obligation to guarantee procedural environmental rights consistently with the 1998 Aarhus Convention: these include the right to be informed about the environmental risk deriving from potential and actual disaster events; the right to participate in the decision-making process by different means of involvement, so as to give voice to potential victims; and the right to have access to justice, both when procedural environmental rights are infringed and when failure by the state to comply with positive environmental obligations triggers a violation of substantive rights (such as the right to life, to private and family life, or to a healthy environment or the right to live according to one’s own culture and tradition).
The approach is very similar, irrespective of whether rulings and decisions foster a ‘green’ interpretation of ‘general’ human rights or uphold an expressly recognized right to a healthy environment, as under the 1981 African Charter. However, in the second case, human rights bodies are called on to determine the legal standards according to which the activities may be considered safe for human life and dignity. In order to tackle this issue, scientific evidence much to be coupled with value judgments, and these may not necessarily correspond to the states’ interests.

However, as the case law relative to Article 20 of the African Charter does not depart from the rulings that other treaty bodies have issued on ‘general’ human rights, the question arises as to what the benefit is of integrating human rights treaties with a provision requiring states to guarantee an independent right to a healthy environment.

A first advantage stems from the impact of such a right on the implementation of the ‘margin of discretion’ principle. A common characteristic of human rights environmental case law is that to the extent that procedural guarantees have been secured for interested individuals, the measures being challenged are deemed to be legitimate. Unless these measures invalid or constantly impair the enjoyment of a protected right, states will retain discretion in striking a balance between environmental protection and their other interests (such as economic development or urbanization). The integration of a right to a healthy environment would set a new equilibrium, as the substantive value of environmental protection would be granted legal protection. For our purposes, disaster risk reduction policies could become an integral component of environmental policies, particularly for countries with a high level of exposure and vulnerability to disasters, either preventing the potential harm that individuals may suffer as a result of hazardous activities or disaster event or reducing the impact of such events once they happen.

Furthermore, when coupled with proper rules on standing before human rights treaty bodies, the integration of a freestanding substantive environmental right would strengthen public interest human rights litigation. In the context of the African Charter, it was by considering three elements that the ECOWAS Court of Justice recognized the justiciability of the right to a healthy environment irrespective of the impact of environmental degradation on human health or life. The first of those elements was that the Charter protected not only individual rights but also collective ones; the second one was the express recognition of the right to a satisfactory environment in Article 24; and the third was the rule on standing, broadly interpreted according to other developments in international environmental law. In a disaster scenario, the obligation to secure a healthy environment would put pressure on states to frame climate change policies aimed at improving or preserving the quality of the environment considered as a public good, thereby strengthening the ability of communities to cope with disaster events.

Selected bibliography

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Notes


8. In this expression, the attribute ‘healthy’ is considered equivalent to other terms recurring in international human rights law, such as ‘clean’, ‘safe’, and ‘satisfactory’, or their ability to comply with positive obligations under international human rights law could be jeopardized because of the lack of sufficient resources. See HRC, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, UN Doc. A/HRC/19/34 (2011) paras 7–10.


della Corte di giustizia dell'ECOWAS nel caso SERAP c. Nigeria' 8
Diritti Umani e Diritto Internazionale (2014) 103.
19  SERAC Decision (n. 18) paras 52–53.
20  Ibid.
21  SERAP Judgment (n. 18) para 93.
22  Ibid para 101.
23  Ibid para 108.
24  Ibid para 105.
26  See UN Doc. A/HRC/25/53 (n. 4) para 54.
27  1972 Stockholm Declaration (n. 6) principle 7; Report of the United Nations Conference on Environ-
28  SERAP Judgment (n. 18) para 105.
29  Convention on Access to Information, Public Participation in Decision-Making and Access to
30  See Socio-Economic Rights and Accountability Project (SERAP) v . President of the Republic of Nigeria & ORS,
ECOWAS Court of Justice doc. ECW/CCJ/JUD/18/12 (n. 18) para 24.
31  International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered
into force 3 January 1976) 993 UNTS 3.
32  ECOWAS Court of Justice doc. ECW/CCJ/JUD/18/12 (n. 18) para 32.
33  Ibid para 32.
34  Gabčíkovo-Nagymaros Project (Hungary v . Slovakia), Separate opinion of Vice-President Weeraman-
36  Ibid para 10.
37  CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health, UN Doc.
38  Ibid para 11.
39  Ibid para 15.
40  International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force
23 March 1976) 999 UNTS 171.
44  Ibid para 5.
46  Ibid para 15.
48  Ibid para 5(a).
50  The Declaration is adopted in Human Rights, on 12 November 1948, available at http://unhchr.org
51  Resolutions, art 7 of and art 30.
52  Arab Charter on Human Rights and Fundamental Freedoms (as amended) (adopted 5 November 1948, entered into force 3 September 1950) 213 UNTS 221.
The right to a healthy environment:

1. The right to a healthy environment is becoming an ever-increasing concern in the international human rights framework. In recent years, the United Nations Framework Convention on Climate Change (UNFCCC) has emphasized the importance of protecting the environment and ensuring sustainable development. The 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 2015 Paris Agreement (n. 74) have recommended, 'when taking action to address climate change' to 'respect, promote and consider their respective obligations on human rights').

2. The precautionary principle, as reflected in the UN General Assembly resolution 42/168 (1987), is a doctrine that states that in the face of uncertainty, it is preferable to err on the side of caution. This principle is also recognized in international human rights law, particularly in Article 26 of the European Convention on Human Rights (ECHR), which guarantees the right to an effective remedy.

3. In Lopez Ostra v. Spain (n. 56), the European Court of Human Rights (ECtHR) held that the applicant's right to a healthy environment was breached by the defendant's failure to adequately protect the environment. The court further noted that the applicant's right to a healthy environment was a fundamental right that should be protected under the ECHR.

4. The right to a healthy environment is also recognized in the Charter of Fundamental Rights of the European Union (Charter), which guarantees the right to a good quality environment. However, the Charter is not directly enforceable at the national level, and the protection of the right to a healthy environment is primarily a matter for national legal systems.

5. In some cases, the ECtHR has applied the principle of non-refoulement to protect individuals from being returned to countries with poor environmental standards. For example, in Oneryildiz v. Turkey (n. 57) para 160, the court held that the applicant's right to a healthy environment was breached by the defendant's failure to adequately protect the environment.

6. The right to a healthy environment is also recognized in the United Nations Declaration on the Rights of Indigenous Peoples (n. 78), which guarantees the right to an environment that is free from pollution and that is free from hazardous substances. The right to a healthy environment is also recognized in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which guarantees the right to an environment that is accessible to persons with disabilities.

7. The right to a healthy environment is also recognized in the United Nations Convention on the Rights of the Child (CRC), which guarantees the right to an environment that is safe and healthy for children. The right to a healthy environment is also recognized in the United Nations Convention on the Rights of the Environment (UNCED), which guarantees the right to an environment that is free from pollution and that is free from hazardous substances.

8. The right to a healthy environment is also recognized in the United Nations Convention on the Rights of the Environment (UNCED), which guarantees the right to an environment that is free from pollution and that is free from hazardous substances. The right to a healthy environment is also recognized in the United Nations Convention on the Rights of the Environment (UNCED), which guarantees the right to an environment that is safe and healthy for children. The right to a healthy environment is also recognized in the United Nations Convention on the Rights of the Environment (UNCED), which guarantees the right to an environment that is free from pollution and that is free from hazardous substances.
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81 Posner (n. 76) 1927.


83 Dupuy and Viñuales (n. 11) 320.


85 Ibid para 75.

86 The provision requires each state party to the ICCPR 'to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant'.


88 For a more detailed analysis of the practice, see Knox (n. 82) 201.


91 Di Sarno and others v. Italy (n. 65).


93 African Charter (n. 10) art 55.

94 Protocol A/P.1/7/91 (n. 16) art 10.d.

95 See ECOWAS Court of Justice doc. ECW/CCJ/APP/07/10 (n. 30).


97 López Ostra v. Spain (n. 64), para 51; Fedayeva v. Russia, App. No. 55723/00 (ECtHR, Judgment of 30 November 2005) para 70; Grimkovskaya v. Ukraine, App. No. 38182/03 (ECtHR, Judgment of 21 July 2011) para 58.


99 Metropolitan Reserve Nature (n. 92).

100 Supra Section 2.

101 See Dupuy and Viñuales (n. 11) 327. The lack of a link to the violation of a protected right led the American Commission to dismiss one of the petitions the last filed in 2010 against the United States. According to the claim, the US had not taken concrete steps to reduce its GHG emissions and therefore failed to comply with the human rights obligations it owed to the Inuit population under the 1948 American Declaration of the Rights and Duties of Man. For the text of the petition see HRComm, General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004). A similar claim was also submitted in 2013 against Canada: for a comment, see V. de la Rosa Jaimes, 'The Arctic Athabaskan Petition: Where Accelerated Arctic Warming Meets Human Rights Conventions' 45 California Western ILJ (2015) 213. A case on mitigation policies has been settled by the Civil Section of the District Court in The Hague, which in 2015 ordered the Netherlands to reduce its GHGs more than it had committed to under international and EU law (for the English version of the ruling, see https://uitspraken.rechtspraak.nl/inziendocument?id=ecli:nl:rbdha:2015:7196, accessed on 6 June 2017). However, the Court based its ruling on the duty of care, as established under the Dutch Civil Code. It excluded that the claimant (a private foundation) could also invoke violation arts 2 and 8 ECHR, as neither its physical integrity nor its privacy as a legal person was at stake. However, it assumed that the ECtHR case law could provide adequate guidance in the interpretation of relevant national legislation. For a comment, see L. Bergkamp and J.C. Hanekamp, 'Climate Change Litigation...
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However, some authors argue that a ‘special’ responsibility may arise for states contributing the largest amount of GHG emissions, in view of art 2.1 of the 1966 ICESCR (n. 31), requiring state parties to cooperate fully to achieve progressively the full realisation of the rights set forth in the treaty. Knox (n. 82) 206.

103 Ibid 196.
104 ICCPR (n. 42) art 26; ICESCR (n. 31) art 2, para 2; ECHR (n. 51) art 14; African Charter (n. 10) art 2; American Convention (n. 9) art 1, para 1.
105 See 2015 Sendai Framework (n. 12), guiding principle III.
106 Lyster (n. 70) 156.
107 Knox (n. 82) 189.
108 Boyle (n. 25) 629 (making specific reference to the ICESCR).

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