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## PhD Exposé

# Human rights monitoring institutions and the protection of the environment

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Human rights jurisprudence on environmental  
impairment, potentials, challenges and limits

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## 1. Presentation of the topic

In recent years, the interrelation between human rights and the environment as well as awareness that environmental degradation negatively impacts human dignity, has found increased recognition in international law and policy. One early recognition that environmental harm threatens the full enjoyment of human rights dates from 1968, when the General Assembly of the United Nations decided to convene the United Nations Conference on the Human Environment and noted its concern about the effects of “the continuing and accelerating impairment of the quality of the human environment [...] on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries”.<sup>1</sup> More recently, the Office of the United Nations High Commissioner for Human Rights (OHCHR) highlighted in a report on the relationship between human rights and the environment from December 2011, that exacerbated atmospheric emissions, along with landbased environmental threats, the degradation of water quality, stress in oceans, hazardous waste, chemical contamination, the release of pollution and chemicals into the environment, the loss of biodiversity as well as natural disasters aggravated by human activity, constitute major environmental threats to human rights.<sup>2</sup>

Yet recognition of the linkages between human rights and the environment is a rather new subject of interest in international law and policy. It was only in the second half of the 20<sup>th</sup> century, when increasing levels of pollution and environmental damage led to the further emergence of international environmental law, that the interrelation of human rights and the environment rapidly developed in the international law making process. Thereby between the 1972 United Nations Conference on the Human Environment and the 2012 United Nations Conference on Sustainable Development, various approaches to this relationship have been developed: The environmental focused approach incorporates selected human – especially procedural – rights, such as the right to information about potential threats to the environment, in international environmental agreements in order to contribute to the protection of the environment. Another purely anthropocentric approach is the so called “greening” of human rights, where environmental damages and threats are considered as an impairment of human rights, like the right to life, the right to health or the right to a private life. Finally, another approach aims to include the environmental agenda in human rights law by proclaiming the existence of the right to a safe and healthy environment as an independent substantive human right.<sup>3</sup>

As part of this process, a growing number of victims of human rights as related to environmental degradation as well as groups from civil society have turned to human rights courts and bodies for remediation from environmental damages and risks. From this a rich jurisprudence is developed in which human rights monitoring institutions considered environmental issues, such as excessive noise levels generated from airports, toxic emissions from factories, nuclear weapon testing programs or the negative effects

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<sup>1</sup> *Problems of the human environment*, UNGA resolution 2398 (XXIII), UN Doc. A/RES/2398 (XXIII) (3 December 1968).

<sup>2</sup> OHCHR, *Analytical study on the relationship between human rights and the environment*, para. 15–22, UN Doc. A/HRC/19/34 (16 December 2011).

<sup>3</sup> Dinah Shelton, *Environmental Rights*, in Philip Alston, *People's Rights*, 187 (Oxford University Press, 2001).

of climate change, from the perspective of human rights law. This jurisprudence contributed substantially to environmental protection and the acceptance of the linkages between human rights and the environment. In this context, several academic authors have focused their research on the various aspects of the interrelation of human rights and the environment in general or on the possible need to incorporate the right to a healthy environment in international human rights law.<sup>4</sup> Other authors again have concentrated their research on the contribution of single human rights monitoring institutions, like the European Court of Human Rights (ECtHR) or the Inter-American Commission on Human Rights (IACoHR), to the protection of the environment.<sup>5</sup> Until now, however, relatively little *comparative* research can be found in academic literature on the jurisprudence of the different human rights monitoring institutions with regard to environmental impairment and the possible potentials and limits when challenging environmental damages and risks within these protection systems.

The aim of this PhD project is therefore first to analyse and compare, on the basis of the relevant jurisprudence, which environmental threats and damages have been considered threats to the full realization of human rights, such as the right to life or to privacy in the work of different international human rights monitoring institutions. Further, this PhD project aims to research if there are unused potentials of treaty based human rights protection systems with regard to environmental impairment and if so, to present these potentials. In this context, this PhD finally aims to present the limits of challenging environmental degradation and risks before human rights monitoring bodies.

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<sup>4</sup> See eg. Dinah Shelton, *Human Rights and Environment: Past, Present and Future Linkages and the Value of a Declaration*, UNEP-OHCHR, High-Level Expert Meeting on the New Future of Human Rights and the Environment: Moving the Global Agenda Forward, Nairobi (30 November – 1 December 2009); Alan Boyle, *Human Rights and the Environment: Where Next?*, 23 no. 3 EJIL, 613 (2012); Erin Eacott, *A Clean & Healthy Environment: The Barriers & Limitations of This Emerging Human Right*, 10 Dalhousie J. Legal Stud., 74 (2001); Sueli Giorgetta, *The Right to a Healthy Environment*, in *International Law and Sustainable Development: Principles and practice* 379, (Nico Schrijver & Friedl Weiss eds., 2004).

<sup>5</sup> See eg. Svitlana Kravchenko and John Bonine, *Interpretation of human rights for the protection of the environment in the European Court of Human Rights*, McGeorge Global Bus. & Dev. L.J., 25 Nr. 1, 2012, 245; Loukis Loucaides, *Environmental Protection through the Jurisprudence of the European Convention on Human Rights*, 75 British YB Int'l L. 249 (2004); Travis Thompson, *Getting over the Hump: Establishing A Right to Environmental Protection for Indigenous Peoples in the Inter-American Human Rights System*, 19 J Transnat'l L. & Pol'y 179 (2009).

## 2. Scope of the work

The field of analysis within this work will concentrate inside the framework of the United Nations (UN), the Council of Europe, the European Union (EU), the Organization of American States (OAS), the African Union (AU), and its predecessor, the Organization of African Unity (OAU).

Thereby the analysis will focus at a universal level on the question of which environmental threats and damages have been or could potentially be considered as infringements of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the jurisprudence of the respective international treaty monitoring institutions.<sup>6</sup>

On the regional level, the analysis will concentrate on the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the European Social Charter (ESC), the American Convention on Human Rights (ACHR), the American Declaration on the rights and duties of man (ADHR), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (*San Salvador Protocol*), the African Charter on Human and Peoples' Rights (*Banjul Charter*) and the relevant jurisprudence of the treaty monitoring bodies.<sup>7</sup>

Even though it is not a classic treaty monitoring body, special attention will be given to consideration of environmental issues in the work of the charter based special procedures of the UN Human Rights Council and the former Commission on Human Rights (CHR).

Most of the treaties, declarations, decisions of monitoring bodies and courts as well as other legal documents referred to throughout this work do not further define what "the environment" means. One of the few international conventions defining this term is the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (*Lugano Convention*) adopted under the framework of the Council of Europe. In order to set the scope, the "environment" is therefore going to be generally understood in this work as defined in article 2 (10) of the *Lugano Convention*. Following this definition, "environment" includes the following:

- *natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors;*
- *property which forms part of the cultural heritage; and*
- *the characteristic aspects of the landscape.*

Possible deviations from this definition will be pointed out throughout this work.

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<sup>6</sup> The respective monitoring bodies are the Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR).

<sup>7</sup> The respective monitoring bodies are the European Court of Human Rights (ECtHR), the former European Commission of Human Rights (EComHR) the European Committee of Social rights (ECSR), the Inter-American Commission on Human Rights (IACoHR), the Inter-American Court of Human Rights (IACtHR), African Commission on Human and Peoples' Rights (ACoHPR), and the African Court on Human and Peoples' Rights (ACtHPR).

### 3. Research questions

The overall research question will therefore be as follows:

Which environmental risks and damages have been considered as threats to the full realization of human rights in the jurisprudence of international human rights monitoring institutions and what are the unused potentials and limits of treaty based human rights protection systems with regard to environmental impairment?

In order to be able to identify answers to this question, the following sub-questions will be developed:

- Which general approaches of the linkages of human rights and the environment have been developed in the framework of the UN, the Council of Europe, the EU, the OAS, and the AU and the former OAU?
- Which obligations towards the protection of the environment can be deduced from specific human rights, such as the right to life or the right to private and family life?
- What is the scope of application of human rights treaties and protection mechanisms with regard to environmental impairment?
- Are there unused potentials of treaty based human rights protection systems with regard to environmental impairment and what do these potentials look like?
- What are the limits when challenging environmental degradation and risks before human rights monitoring institutions?
- Is there a need to incorporate a right to a healthy environment in human rights treaties in order to tackle environmental issues in the work of human rights monitoring institutions?

## 4. Proposed outline

The proposed doctoral thesis will be divided into five chapters. These which will cover the following main points:

### **Chapter I: Introduction to the international legislative and policy work with regard to the interrelation of human rights and the environment**

This chapter will present and compare the various approaches in the legislative and policy work of the UN, the Council of Europe, the EU, the OAS and the AU with regard to the interrelation of human rights and the environment. Thereby a historic overview of the establishment of the linkages between human rights and the environment in international *soft law* and the integration of environmental rights in legally binding human rights documents within the realm of these Intergovernmental Organisations (IOs) will be given. As an excursus, special focus will be placed on the work of the so-called “charter based Special Procedures” of the UN Human Rights Council and the former CHR with regard to environmental risks and damages.

### **Chapter II: Applicability of human rights treaties and protection mechanisms to environmental threats and damages**

In general, human rights conventions employ varying language to define the scope of their application. Further, the monitoring and complaint mechanisms controlling the implementation of these conventions tend to differ. The overarching clauses in human rights conventions such as article 1 ECHR or article 2 ICESCR determine to what extent environmental damages and risks may interfere in human rights set forth in these conventions. Similarly, the rules governing the functioning of the different monitoring and complaint mechanisms settle the extent to which environmental damages and risks might be considered as human rights interferences by the monitoring bodies and courts. This chapter will therefore present and compare the extent to which environmental damages and threats can lead to interferences or violations of the rights set forth in the ICCPR, the ICESCR, the ECHR, the ESC, the ACHR, the ADHR, the *San Salvador Protocol* and the *Banjul Charter*, and under what circumstances the respective monitoring and complaint mechanisms can handle these types of human rights interferences and violations. Thereby, the challenges as well as the limits for challenging environmental impairment within these protection systems will be identified. For this, an overview of the scope of application of the relevant human rights conventions as well as their monitoring mechanisms with regard to the environment will be given.

### **Chapter III: Human rights jurisprudence on environmental impairment**

The examined human rights conventions and documents, in general, do not recognize environmental rights. Nevertheless, human rights monitoring bodies and courts developed a rich jurisprudence in which they considered situations of environmental harm as human rights interferences and derived obligations towards the protection of the environment from other rights that the conventions do protect: For example, in the *SERAC* case,<sup>8</sup> the AComHPR found that Nigeria violated various human rights, including

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<sup>8</sup> *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, AComHPR, Comm. No. 155/96 (2001).

the right to life and the right to property, by allowing oil companies to pollute and degrade the environment in the traditional Ogoniland. Thereby the AComHPR emphasized that Nigeria has not only the duty to refrain from violating rights, but also to protect its citizens from damaging oil extraction activities that may be perpetrated by private parties. Another example is the *Taskin* case<sup>9</sup> in which the ECtHR stated, with regard to the licensing of an environmentally harmful mine, that the right to private and family life under article 8 ECHR includes a duty to investigate potential environmental impacts and implies that participation in the decision-making process by those affected by environmental harm can be a prerequisite for compliance with Article 8 ECHR. This chapter will study and compare which environmental threats and damages have been considered as violations of the rights set forth in the ICCPR, the ICESCR, the ECHR, the ESC, the ACHR, the ADHR, the *San Salvador Protocol* and the *Banjul Charter* and which substantial and procedural obligations towards the protection of the environment might be deduced from these rights. Such rights to be examined include inter alia the right to life and privacy, the right to self-determination and property, the right to health, adequate food, water, safe and healthy working conditions, the right to free disposal of wealth and natural resources or the right to a general satisfactory environment. For this a right-by-right analysis of the jurisprudence of the human rights monitoring bodies and courts will be undertaken. The environment related jurisprudence of human rights monitoring institutions is generally limited to specific human rights and does not consider other rights such as the prohibition of inhuman and degrading treatment which could potentially be violated though environmental impairment. It will therefore also be further analysed in this chapter which yet unused human rights could potentially be considered by human rights monitoring institutions as to be infringed through environmental impairment.

#### **Chapter IV: Challenges and limits of the application of treaty based human rights protection mechanisms to environmental threats and damages**

On the basis of the findings of chapter II this chapter will extend the analysis of the challenges and limits of the application of treaty based human rights protection mechanisms to environmental threats and damages. Thereby the issue of extra-territorial application of existing human rights treaties to transboundary pollution and global environmental problems, like climate change or acid rains, will for example be presented. In this context, the difficulties in being able to attribute certain forms of global environmental impairments to particular states and to hold them responsible for human rights violations which have a multiplicity of causes will be further analysed. In general the examined human rights protection mechanism seem not adapted to consider potential human rights violations based on risk assessments, except such risks pose an imminent threat to the human rights of specific individuals. This chapter will therefore also discuss the introduction of an precautionary approach in human rights law and if environmental damages that might have negative long term effects on individuals, but which do not immediately influence their well-being, could be tackled under the framework of the examined human rights protection mechanism.

#### **Chapter V: Is there a need to further incorporate a right to a healthy environment in international human rights law?**

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<sup>9</sup> *Taskin v. Turkey*, 42 EHRR (2006).

Based on previous findings, the final chapter will analyse if it is advisable and necessary to additionally incorporate a right to a healthy environment in international human rights law or if the international human rights regime already offers a sufficient degree of protection in relation to environmental issues through existing well established human rights conventions and their respective monitoring bodies.



## 5. Methodology

This doctoral thesis will follow the methods of qualitative science inquiry. In chapter I, a survey of legal documents linking human rights and the environment within the UN, the Council of Europe, the EU, the OAS and the AU will be undertaken. In chapters II to IV, a detailed examination of the case law of international and regional human rights monitoring bodies will detail the contribution of human rights monitoring institutions to the protection of the environment. This is to be done by making a case by case analysis of the leading judgments by the relevant monitoring institutions, which will include a short description of the case facts as well as citations and analysis of key passages from the decisions concerned. Further, a study of relevant opinions of leading academic authors in this area including John H. Knox, Alan Boyle or Dinah Shelton, will be undertaken. The library of the Vienna University and the internet will serve as the main resources.

## 6. Research Plan

The proposed research shall progress as follows:

| Time Span            | Research Objective                                                              | Coursework                                                                                                                             |
|----------------------|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| Winterterm 2012/2013 | Composition and submission of the exposé<br>Drafting of chapter I of the thesis | VO Rechtswissenschaftliche Methodenlehre (2 SWS)                                                                                       |
| Summerterm 2013      | Drafting of chapter II of the thesis                                            | SE od. KU zur Judikatur- oder Textanalyse<br>SE im Dissertationsfach zur Vorstellung und Diskussion des Dissertationsvorhabens (2 SWS) |
| Winterterm 2013/2014 | Drafting of chapter III of the thesis                                           | 2 Seminare, davon eines verpflichtend aus dem Dissertationsfach (4 SWS)                                                                |
| Summerterm 2014      | Drafting of chapter IV of the thesis                                            | Lehrveranstaltungen aus dem Dissertationsfach oder dem Bereich der Wahlfächer (6 SWS)                                                  |
| Winterterm 2014/2015 | Drafting of chapter V of the thesis                                             |                                                                                                                                        |
| Summerterm 2015      | Revision in light of new developments and submission of the doctoral thesis     |                                                                                                                                        |

## 7. Indicative Bibliography

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