

Using a Framework of Human Rights and Transitional Justice for Post-Conflict Environmental Protection and Remediation

*Karen Hulme**

5.1 Introduction

According to the United Nations Environment Programme ('UNEP') in its 2002 post-conflict report on Afghanistan, 'Nearly 25 years of armed conflict, and four years of extreme drought, have created widespread human suffering and environmental devastation across the country.'¹ Similarly, recent conflicts in Gaza, Lebanon, Iraq, Somalia, DRC, and Colombia, to name but a few, have left clear scars on the affected societies and their environments. As UNEP's post-conflict country reports frequently demonstrate, including the report on Afghanistan, armed conflict often entails extensive damage to key natural resources needed for human survival, such as drinking water installations and agricultural lands, crops, and other food sources. Frequently, however, exacerbating the environmental damage caused during armed conflict are structural inequalities in land tenure and long-term socio-economic injustices, including in accessing healthy natural resources. These historic grievances often provide key causal factors in sparking conflict and in perpetuating the cycle of conflict.

That there is a clear synergy between environmental protection and human rights, particularly economic, social, and cultural rights, is well established.² In 2009 the Office of the High Commissioner on Human Rights stated that 'while the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.'³ Yet, the relationship between human rights and environmental protection is an unexplored dimension for achieving post-conflict environmental protection and remediation. This contribution, therefore, is novel in framing post-conflict environmental remediation in terms of using human rights laws

* Professor, School of Law at the University of Essex, England.

¹ UNEP, *Afghanistan: Post-Conflict Environmental Assessment* (UNEP, 2003), 14.

² General Assembly Resolution 45/94, 'Need to Ensure a Healthy Environment for the Well-being of Individuals', 14 December 1990. There is a burgeoning literature discussing the field of environmental human rights, see Anna Grear and Louis Kotze (eds.), *Research Handbook on Human Rights and the Environment* (Edward Elgar, Cheltenham 2015).

³ UNHRC, Report of the OHCHR on the Relationship Between Climate Change and Human Rights, UN Doc. A/HRC/10/61, 15 January 2009, para. 18.

and enforcement mechanisms, including to some degree the mechanisms of transitional justice. The undeniable value of human rights as a body of law in this context is that it affords a comprehensive set of binding, universal obligations with a generally well-developed system of international mechanisms for redress and as a check on state compliance. Environmental law, on the other hand, does not afford such methods of redress, remedy, or reparation.

The focus of this chapter, therefore, will be to test the value of a human rights framework as a tool for addressing environmental damage in the post-conflict context. Particular emphasis will be placed on survival rights, such as the rights to water, food, and health found within economic, social, and cultural rights ('ESC rights'), via the 1966 International Covenant on Economic, Social and Cultural Rights ('ICESCR'),⁴ and the emerging right to a healthy environment. A focus on post-conflict human rights mechanisms also has implications for the discipline of transitional justice, among others. While the chapter will focus largely on human rights mechanisms, there is also scope for enhanced consideration of environmental remediation and reparation within transitional justice approaches. Such transitional justice mechanisms have often struggled with the issue of incorporating ESC rights, particularly as regards historical environmental injustices and inequalities, including when these inequalities have been a causal factor in sparking the conflict. Nevertheless, it also has to be recognized that both human rights and transitional justice now function within a much broader post-conflict legal and political landscape, which includes peacebuilding and, arguably, the emerging field of *jus post bellum*. Section 5.2, therefore, will briefly analyse this landscape, situating the human rights framework within it and suggesting what values it might promote. Section 5.3 will analyse how human rights law already embraces protection for the environment via ESC rights and the right to a healthy environment. Finally, discussion of the value of the human rights framework for post-conflict environmental remediation will be situated in Section 5.4, identifying key issues for analysis throughout the section.

5.2 Post-Conflict Legal Frameworks

Human rights law sits among myriad other frameworks or mechanisms in the post-conflict domain, such as those of transitional justice, international criminal justice, and peacebuilding, as well as those centred on the liberal democratization agenda, and now the emerging notion of *jus post bellum*.⁵ International criminal law ('ICL') remains principally a criminal accountability tool for top-tier perpetrators of gross human rights violations or grave breaches of humanitarian law, while transitional justice is often able to achieve a measure of both accountability and reparation for a broader range of violations. This section will demonstrate where human rights fit within these various post-conflict mechanisms.

⁴ (1976) 993 UNTS 3.

⁵ See generally Carsten Stahn, 'Jus Post Bellum: Mapping the Discipline(s)' in Carsten Stahn and Jann K. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace* (The Hague: T.M.C. Asser Press, 2008).

Annan defined transitional justice as comprising ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.’⁶ Transitional justice has, therefore, moved beyond its original conception of confronting the ‘wrongdoings of repressive predecessor regimes,’⁷ including breaches of human rights and humanitarian law, to advancing nation-building via an alternative source of rule of law and the goal of preserving peace.⁸ Hannum suggests that the only component of transitional justice which is still truly ‘transitional’ relates to the fact that a transitional government is often in power.⁹ Otherwise states are merely protecting and enforcing human rights and instituting punishment for war crimes. Once one moves to the third component that he identifies, namely ensuring the rule of law, it is no longer only about human rights, he argues, but the creation of functioning and effective state bodies and legal system.¹⁰ Teitel refers to the growth of truth commissions, suggesting these to be the product of the broadening of the aims of transitional justice to include reconciliation and, again, the promotion of peace.¹¹ Others accuse proponents of this aspect of transitional justice of playing the role of ‘handmaiden’¹² to liberal peacebuilding, whereby transitions to Western-style market democracies are predicated on the over-simplistic basis that democracies are less likely to go to war.¹³ Emerging in this already busy field is the modern concept of *jus post bellum*, where there also appears to be a similar focus, at least by some, on the notion of achieving a sustainable and just peace.¹⁴ Yet, while the contemporary *jus post bellum* concept remains to be fully defined and its scope identified,¹⁵ Wählisch argues for a central role for human rights. Human rights, he proposes, ‘play a critical role as an indicator for *jus post bellum*,’¹⁶ suggesting that ‘their respect is essential for the completion of peacebuilding.’¹⁷ To this basis others add the key peacebuilding attributes of reparation, reconciliation, justice (transitional justice and ICL mechanisms), and, ultimately, and somewhat controversially, democracy.¹⁸ On the other hand, a narrower approach to the *jus post bellum* concept, however, refers more simply to the *jus post bellum* as offering merely a valuable ‘framework’¹⁹ for post-conflict reconstruction.²⁰ Clearly, whether a

⁶ Report of the Secretary-General, ‘The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies’, S/2004/616, 23 August 2004, para. 8.

⁷ Ruti G. Teitel, ‘Transitional Justice Genealogy’ (2003) 16 Harvard Human Rights Journal 69, 69.

⁸ *ibid.* 76.

⁹ Hurst Hannum, ‘Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacemaking and Peacebuilding’ (2006) 28 Human Rights Quarterly 1, 36.

¹⁰ *ibid.* 37. ¹¹ Teitel (n 7) 81.

¹² Lars Waldorf, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21 Social & Legal Studies 171, 173.

¹³ *ibid.*

¹⁴ Larry May, ‘Jus Post Bellum, Grotius and Meionexia’ in Carsten Stahn, Jennifer S. Easterday, and Jens Iverson (eds.), *Jus Post Bellum: Mapping the Normative Foundations* (Oxford: Oxford University Press, 2014), 25.

¹⁵ See generally Stahn (n 5).

¹⁶ Martin Wählisch, ‘Conflict Termination from a Human Rights Perspective: State Transitions, Power-Sharing, and the Definition of the ‘Post’ in Stahn *et al.* (n 14) 321.

¹⁷ *ibid.* ¹⁸ May (n 14). ¹⁹ Stahn (n 5) 105.

²⁰ *ibid.* Indeed, Stahn suggests that humanitarian lawyers view *jus post bellum* primarily as a mechanism for post-conflict reconstruction.

narrow approach or a more comprehensive definition is ultimately adopted for the *jus post bellum* concept, both approaches or frameworks could include human rights (and, therefore, the remediation of environmental damage via reparation for human rights violations) at the core.

Arguably, all of the international mechanisms, processes, and frameworks for dealing with post-conflict societies place human rights at their core, whether they seek criminal accountability for violations of human rights, the creation of a lasting rule of law, or sustainable and just peace. However, as with the general bifurcation of human rights into civil and political rights²¹ on the one hand and economic, social, and cultural rights on the other, these post-conflict processes, mechanisms, and frameworks have also tended to emphasize one set of rights over the other, namely civil and political rights. Indeed, a major criticism of transitional justice in recent years has been due to its clear inattention to ESC rights.²² Laplante and Arbour, in particular, deplore the way in which socio-economic injustices are frequently ignored or are omitted from any resulting recommendations.²³ Sharp blames this omission on the tendency to focus only on the means of transitioning to a Western-style democracy rather than a transition to ‘positive peace.’²⁴ As distinguished from ‘negative peace’ or simply the absence of armed conflict, the notion of positive peace would, he suggests, require the ‘inclusion of mechanisms to specifically address all forms of ‘structural violence,’ including poverty, radical economic, social, civil, and political inequalities, and other forms of social injustice’²⁵—thus, arguably, including environmental inequalities and access to resources.

For all of the post-conflict, justice, and peacebuilding frameworks there remains the key question of when they start and when they end. Often such processes will have no clear starting point and an even less clear end point. Some post-conflict processes may have to be specifically negotiated, set up, and adapted for particular situations and states. This observation is especially pertinent for transitional justice mechanisms, which often take many years to negotiate and establish.²⁶ Human rights mechanisms, on the other hand, are different, as these should already have some measure of acceptability and presence within most states—and thus there is a clear advantage in using

²¹ Note the 1966 International Covenant on Civil and Political Rights (1976) 999 UNTS 171 (‘ICCPR’).

²² Shedrack C. Agbakwa, ‘A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peacebuilding in Africa’ (2003) 47 *Journal of African Law* 38, 40.

²³ Lisa J. Laplante, ‘Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’ (2008) 2(3) *International Journal of Transitional Justice* 331, 333; Louise Arbour, ‘Economic and Social Justice for Societies in Transition’ (2007–2008) 40 *NYU Journal of International Law & Policy* 1, 4; but now see the inclusion of land redistribution in the 2016 Colombian Peace Agreement, in Nicole Summers, ‘Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?’ (2012) 25 *Harvard Human Rights Journal* 219.

²⁴ Dustin N. Sharp, ‘Addressing Economic Violence in Times of Transition: Toward A Positive-Peace Paradigm For Transitional Justice’ (2012) 35 *Fordham International Law Journal* 780; Johan Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6(3) *Journal of Peace Research* 167.

²⁵ Sharp (n 24) 807; see also Geoff Harris ‘The Costs of Armed Conflict in Developing Countries’ in Geoff Harris (ed.), *Recovery from Armed Conflict in Developing Countries: An Economic and Political Analysis* (London: Routledge, 1999), 23.

²⁶ Clara Sandoval, ‘Transitional Justice and Social Change’ (2014) 20 *SUR International Journal on Human Rights* 181.

human rights mechanisms, in principle, for post-conflict redress—but we must also recognize, of course, that these mechanisms may have been ineffective before the conflict.²⁷

There is a final point to note as regards human rights obligations and, what Orend terms, the ‘termination’ phase of conflict.²⁸ There is often no clear moment when an armed conflict ends. And, since it is clear that human rights obligations (including ESC rights) continue to remain applicable during armed conflict,²⁹ as well as during times of occupation,³⁰ human rights and its mechanisms, therefore, may have enhanced value during such a ‘legally-messy’ time. This aspect is especially pertinent as it could be argued that the continuing applicability of human rights during armed conflict aids in bridging the termination phase between conflict and peace. Consequently, human rights law undoubtedly provides a very valuable, if not unique, legal discipline for framing the current analysis.

5.3 Environmental Damage as a Human Rights Issue

It is clear that environmental damage is a human rights issue. It has long been recognized that environmental damage can have both direct and indirect impacts on the enjoyment of a wide range of human rights and, in some circumstances, damage to the environment can be a violation of human rights laws.

Since all human rights are universal, indivisible, interdependent, and interrelated,³¹ a healthy, functioning environment, therefore, is a necessary basis from which most other human rights are possible, including the human rights to development,³² food,³³

²⁷ Note the work of the UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Pablo de Greiff, ‘Human Rights and Transitional Justice’, A/HRC/RES/33/19, 5 October 2016, at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/225/83/PDF/G1622583.pdf?OpenElement>> accessed 1 June 2017.

²⁸ Brian Orend, ‘Jus Post Bellum: A Just War Theory Perspective’ in Stahn and Kleffner (n 5) 34.

²⁹ General Assembly Resolution 2675 (XXV), Basic Principles for the Protection of Civilian Populations in Armed Conflict, 9 December 1970; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, Judgment of 8 July 1996, ICJ Reports 226, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports 136, para. 106; *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)*, Judgment of 19 December 2005, ICJ Reports 168, para. 216. On the issue of extra-territoriality of human rights obligations see Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the [International] Covenant [on Civil and Political Rights], UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 10; CESCR, Concluding Observations, Israel, UN Doc. E/C.12/1/Add.90, 23 May 2003, para. 31; *Al-Skeini and Others v. the United Kingdom* App no 55721/07, (ECtHR, 7 July 2011), paras. 147–9; *Hassan v. the United Kingdom* App no 29750/09, (ECtHR, 16 September 2014), paras. 76 and 104. See Noam Lubell, ‘Human Rights Obligations in Military Occupation’ (2012) 94(885) *International Review of the Red Cross* 317, 322.

³⁰ ICJ, *Wall Opinion* (n 29) paras. 107–13; ICJ, *Armed Activities Case* (n 29) paras. 216–20.

³¹ 1993 Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights, Vienna, 1993, 1993 32 ILM 1661, para. 5.

³² United Nations Declaration on the Right to Development, General Assembly Resolution 41/128, UN Doc. A/RES/41/128, 4 December 1986.

³³ Art. 11(1) ICESCR ‘right of everyone to an adequate standard of living ... including adequate food’; Art. 11(2) ICESCR ‘fundamental right of everyone to be free from hunger’.

water,³⁴ health,³⁵ and even the right to life³⁶ itself.³⁷ For example, in 2000, the Committee on Economic, Social and Cultural Rights ('CESCR') issued General Comment 14 on implementation of the right to health, recognizing that 'the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinates of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.'³⁸ Focusing more specifically on the relationship with a healthy environment, the Committee reiterated that 'The improvement of all aspects of environmental and industrial hygiene (art. 12.2 (b)) comprises, inter alia, ... the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.'³⁹ And, of course, the European Court of Human Rights, the African Commission on Human Rights, and the Inter-American Court of Human Rights have all declared that the right to life includes the notion of a healthy environment.⁴⁰ Domestic case law around the world is also adding to the burgeoning jurisprudence in this area.

Thus, key human rights, such as the rights to water, food, health, and life cannot be ensured in an environmental vacuum; these rights cannot be delivered without the protection of the quality of the soils and waters of this world or even the protection of biodiversity to ensure viable and healthy ecosystems. Notably, in its 2011 Discussion Paper entitled *Our Planet, Our Health, Our Future: Human Health and the Rio Conventions: Biological Diversity, Climate Change and Desertification*,⁴¹ the World Health Organization ('WHO') acknowledged the central role of biodiversity as the 'foundation for human health',⁴² commenting that 'biodiversity underpins the functioning of the ecosystems on which we depend for our food and fresh water; aids in regulating climate, floods and diseases; and provides recreational benefits and offers aesthetic and spiritual enrichment'.⁴³ The WHO Discussion Paper specifically references the

³⁴ Art. 11(1) ICESCR the right to water is generally read into the 'right of everyone to an adequate standard of living'.

³⁵ Art. 12 ICESCR 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.

³⁶ Art. 6 ICCPR.

³⁷ See both para. 1 and Principle 1 of the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm) (1972) 26 YUN 319.

³⁸ Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights notably on the implementation of the right to health (Art 12), UN Doc. E/C.12/2000/4, 11 August 2000, para. 4.

³⁹ *ibid.* para. 15.

⁴⁰ *Oneryildiz v. Turkey* App no 48939/99 (ECtHR, 30 November 2004); Communication 155/96, *The Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria* (AHRLR 60, 27 October 2001); *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan* (AHRLR 153, 27 March 2009); *Case of the Yakye Axa Indigenous Community v. Paraguay* (Series C no. 125) (IACHR, 17 June 2005).

⁴¹ World Health Organization ('WHO') 2011, at <http://www.who.int/globalchange/publications/reports/health_riocventions.pdf> accessed 1 June 2017.

⁴² *ibid.* 2.

⁴³ *ibid.*

conclusion of the *2010 Global Biodiversity Outlook 3*,⁴⁴ that since the rate of biodiversity loss is not slowing down but is actually intensifying in some cases that this is ‘bringing us closer to a number of potential tipping points that would catastrophically reduce the capacity of ecosystems to provide these essential services.’⁴⁵ The WHO consequently endorsed the Aichi Biodiversity Targets⁴⁶ adopted under the Convention on Biological Diversity, especially Target 14, which refers to ecosystem services to human health and well-being with the objectives of promoting the integration of ecosystem management considerations into health policy and promoting ecosystem integrity in order to secure water and food security and protection from diseases.⁴⁷

While the environment has been recognized to form a central component of most, if not all, human rights, this notion of ‘greening’ or expanding existing human rights is only the starting point. There are two further strands to the notion of ‘environmental’ human rights, namely, procedural rights and the substantive right to a healthy environment recognized in certain regional human rights treaties. Procedural ‘environmental rights’ have developed to guarantee the three-fold aspects of (1) public participation in environmental decision-making, (2) the right of appropriate means of seeking redress, and (3) the right to environmental information. Like environmental protection regimes, procedural environmental rights also seek to ensure that through active and fair public participation in the decision-making process people can work towards a better quality of environment. The European Court of Human Rights has undertaken such an expansive reading of Article 8 cases involving environmental pollution.⁴⁸

Finally, there is the notion of a stand-alone human right to a healthy environment. Both the 1981 African Charter on Human and Peoples Rights⁴⁹ and the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights⁵⁰ (Inter-American Convention regime) contain a provision protecting the right to environment,⁵¹ as do three-quarters of states via a constitutional right or duty to the environment.⁵² In the *Social and Economic Rights Action Centre (SERAC) v. Nigeria*⁵³ case in 2002 the African Commission delivered what is probably the best elucidation of what the right to environment entails, including for the state to take reasonable measures ‘to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources.’⁵⁴ Reminding states of the centrality of the right to a healthy environment to all ESC rights and referencing the importance of procedural rights, such as

⁴⁴ Global Biodiversity Outlook 3, Montreal, Secretariat of the Convention on Biological Diversity, 2010, at <<https://www.cbd.int/gbo3/>> accessed 1 June 2017.

⁴⁵ *ibid.* 5, 71–81. See also Global Environment Outlook (GEO-5) (UNEP, 2012), 134–66.

⁴⁶ COP 10 Decision X/2, X/2. Strategic Plan for Biodiversity 2011–2020, at <<http://www.cbd.int/sp/targets/>> accessed 1 June 2017.

⁴⁷ WHO (n 41) 20.

⁴⁸ See *Guerra and Others v. Italy* App no. 116/1996/735/932 (ECtHR, 19 February 1998); Kate Cook, ‘Environmental Rights as Human Rights’ (2002) 2 European Human Rights Law Review 196.

⁴⁹ <<http://www.achpr.org/instruments/achpr/>> accessed 1 June 2017.

⁵⁰ <<https://www.cidh.oas.org/Basicos/English/basic5.Prot.Sn%20Salv.htm>> accessed 1 June 2017.

⁵¹ Art. 24 1981 African Charter, Art. 11 of the 1988 Protocol to the American Convention.

⁵² David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (Vancouver: UBC Press, 2012), 47.

⁵³ Communication 155/96 (n 40). ⁵⁴ *ibid.* para. 52.

environmental impact assessments for development projects, the Commission called for the comprehensive clean-up of lands and rivers damaged by Shell's oil operations in the Niger Delta.⁵⁵

Thus, states from all over the globe, the UN, and all the major regional human rights systems have recognized that ESC rights, in particular, but also the right to life, cannot be protected without a healthy environment. What states have produced, therefore, is a rich basis of environmental protection via human rights. It remains to be seen, however, what value such rights can offer in the post-conflict setting to help remediate war-time damage.

5.4 Environmental Damage as a Post-Conflict Human Rights Issue

In the context of armed conflict, and the aftermath of conflict, the link between environment and human rights is more pertinent than ever. Clearly, a community's normal food and water supplies might be cut off or damaged by the impact of warfare, livelihoods might be impeded by the military presence, and health may be affected by pollution from toxic substances released in a military attack or via weapons debris. There are many examples of drinking wells being deliberately poisoned during armed conflict, food crops systematically destroyed, livestock deliberately slaughtered, and villages razed to the ground in an effort to terrorize or displace the population.⁵⁶ For example, during the 2008 conflict in Gaza, Israel bombed water wells,⁵⁷ used armoured bulldozers to systematically destroy agricultural land, crops, and approximately 100,000 chickens,⁵⁸ and bombed a sewage plant causing the inundation of neighbouring farmland with approximately 200,000 cubic metres of raw sewage.⁵⁹ Oil pollution is also a common wartime occurrence. In Hussein's environmental assault in 1991, for example, 650 oil-wells were destroyed and the oil set alight causing thick plumes of oily black smoke to engulf the region.⁶⁰ In the 2006 conflict between Israel and Lebanon the bombing of the Jiyeh power plant and fuel storage tanks caused an oily slick in the Mediterranean Sea, choking marine life and destroying fishing resources as it stretched all along the 225 km Lebanese coastline, including the Palm Islands Nature Reserve

⁵⁵ Commission Findings, *ibid.*

⁵⁶ Initial prosecution submissions in the case of *Prosecutor v. Omar Hassan Ahmad Al Bashir* ('Omar Al Bashir') reference repeated destruction, polluting, and poisoning of communal wells by the Janjaweed and the Armed Forces 'so as to deprive the villagers of water needed for survival', see (International Criminal Court Pre-Trial Chamber I, *Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir*) (ICC-02/05-01/09, 4 March 2009); The Commission for Reception, Truth and Reconciliation in Timor-Leste found violations of the right to food in the systematic destruction of food crops, gardens and fields, and livestock by Indonesian armed forces during the armed conflict, see The Commission for Reception, Truth and Reconciliation in Timor-Leste, *Chega*, The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR), (Commission for Reception, Truth and Reconciliation 31 October 2005), Part 7, Chapter 7.3: Forced Displacement and Famine, at <<http://www.cavr-timorleste.org/en/cheгаReport.htm>> accessed 1 June 2017, para. 506.2.

⁵⁷ Report of the United Nations Fact-Finding Mission on the Gaza Conflict ('Goldstone Report'), Human Rights Council, UN Doc. A/HRC/12/48, 25 September 2009, paras. 987–9.

⁵⁸ *ibid.* para. 943. ⁵⁹ *ibid.* paras. 962–74.

⁶⁰ Philip Elmer-Dewitt, 'A Man-Made Hell on Earth' *Time Magazine* (18 March 1992) 22, at 23.

and the cultural heritage site of Byblos.⁶¹ Yet, the impacts on the environment and the consequent impacts on human rights are far too numerous to catalogue.⁶² And, clearly, the environmental impacts of war are only one dimension to the bigger, on-going environmental assault taking place in many states, including the environmental neglect that often accompanies poverty and decades of environmental resource over-exploitation, pollution, and disease.

There are, therefore, likely to be a number of key environment-related issues facing the population in the final phases of conflict and in the immediate aftermath of armed conflict. These might be categorized as follows: (1) degraded or contaminated environmental resources, including pollution of waters for drinking water, bathing, and fishing; destruction of crops and pollution of agricultural areas, (2) depleted environmental resources, including number of livestock for farming, loss of timber for rebuilding and shelter; deforestation impacting on food sources or livelihoods, and, often, (3) poverty and other social inequalities, including access to land (some of these may be historical or resulting from the conflict), disease, and displacement. As regards the environment, the post-conflict period, therefore, can simply be summed up as one of clean-up, remediation, and restoration. Yet, the warring state(s) will frequently have many competing priorities and few resources with which to rebuild. How might a human rights framework, therefore, aid in the speedy realization of a healthier post-conflict environment?

The analysis, therefore, will focus on utilizing the human rights framework to address three key issues that cut across the range of environmental harms caused by warfare; namely (1) clean-up and environmental restoration, including explosive and toxic remnants of war, (2) depletion of natural resources, and (3) poverty and historical inequalities. First, however, we need to briefly map the human rights legal landscape, including the nature of human rights obligations under the ICESCR, to establish which of these mechanisms might be of more value in remediating environmental damage.

5.4.1 Addressing post-conflict environmental harm through human rights law

A. Human rights mechanisms

The issue of human rights obligations in times of crisis (including the post-conflict phase) has been the subject of focus throughout the full range of human rights mechanisms, including those created by the UN Charter and through multilateral treaties. Clearly, the simpler and quicker complaint process via domestic legal systems is often unavailable in the immediate aftermath of armed conflict, as governments are often faced with a period of instability and confusion and public bodies are, therefore, often slow to recover the intellectual and technical capacity to address violations. For many states there may even be international intervention to set the peacebuilding agenda, possibly including a formal criminal tribunal process or transitional justice mechanism.

⁶¹ UNEP, *Lebanon: Post-Conflict Environmental Assessment* (UNEP, 2007), 132–43.

⁶² Note the efforts of UNEP in its post-conflict assessments. There are more than twenty reports to date relating to post-conflict assessments.

Of the international mechanisms, probably the most obvious for seeking redress and reparation for violations are those of the specialized regional human rights treaty systems (such as the Inter-American, European, and African systems)—although, of course, not every state is covered by a regional treaty system, and these mechanisms can be both slow and expensive. Here adjudication can be legally binding through the formally constituted courts, and in each of these systems there is an expanding jurisprudence governing the human rights obligations of states related to armed conflict.⁶³

The monitoring bodies established under the two international covenants (the Human Rights Committee for the International Covenant on Civil and Political Rights and the CESCR for the covenant of the same name), although not able to render legally binding judgments, have created an invaluable, weighty body of jurisprudence of their own,⁶⁴ clearly with greater reach than the regional mechanisms. The Human Rights Committee ('HRC') has considered many communications stretching over decades involving violations taking place during conflict as well as in the aftermath of conflict, but, lamentably, its environmental jurisprudence remains extremely limited. With the very recent adoption of the individual communications procedure under the Optional Protocol to the ICESCR there is, as yet, no jurisprudence on matters related to conflict or post-conflict violations before the CESCR, but its clearer ESC rights focus may hold greater promise for environment-related complaints. The HRC and CESCR have certainly both been especially influential, however, through the two pivotal dimensions of issuing General Comments and Concluding Observations on state reports.

Through the reporting process the state party is required to explain to the monitoring bodies the measures being taken to comply with its human rights obligations. This process is generally much more rigorous than that which occurs under environmental treaties. Clearly, for a state emerging from armed conflict immediate compliance with its full range of human rights obligations might be problematic. Sudan, for example, following decades of conflict, reported to the CESCR in 2013 that it was severely hampered in meeting its human rights obligations under the covenant by a lack of financial resources and capacity.⁶⁵ Such situations are, clearly, most acute for poverty-stricken states caught in protracted armed conflict. While human rights bodies have certainly had to recognize the impact of such difficulties encountered by states, particularly in the achievement of ESC rights in the post-conflict phase, what they have absolutely not allowed is the complete avoidance of commitments. For example, in the Concluding Observations of the Committee on the Rights of the Child ('CRC') regarding Sri Lanka, the Committee recognized that the armed conflict and the challenges of reconstruction 'pose difficulties' to the full implementation of Convention obligations,⁶⁶ but nevertheless required that Sri Lanka take immediate action to ensure the state meets its minimum core obligations, notably that the state

⁶³ See *Hassan v. the United Kingdom* (n 29).

⁶⁴ See the view of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, 19 June 2012, ICJ Reports 639, para. 66.

⁶⁵ Second periodic report of Sudan to the CESCR, submitted 27 July 2012, UN Doc. E/C.12/SDN/2, 18 September 2013, para. 275.

⁶⁶ Committee on the Rights of the Child, Concluding Observations: Sri Lanka, UN Doc. CRC/C/15/Add.207, 2 July 2003, para. 5.

prioritize the provision of drinking water and sanitation services in reconstruction activities,⁶⁷ and ‘*strengthen* ongoing efforts to prevent malnutrition, malaria and other mosquito-borne diseases.’⁶⁸ Similarly, in its Concluding Observations on the report by Guatemala in 2003, the CESCR recognized that the ‘consequences of the armed conflict have seriously affected the full enjoyment of economic, social and cultural rights,’⁶⁹ but did not fail to say that it remained concerned by the insufficient progress as regards the effective implementation of the Peace Agreements of 1996 (including the Global Agreement on Human Rights, the Agreement on Social and Economic Aspects and the Agrarian Situation between the Presidential Peace Commission of the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca),⁷⁰ which the CESCR believed had led to persistent serious problems, including a lack of agrarian reforms.⁷¹ And in the context of decades-long internal conflict, the Committee, in its Concluding Observations on the report by Colombia in 2010, reminded the state that it is ‘precisely in situations of crisis, that the Covenant requires the protection and promotion of all economic, social and cultural rights, in particular of the most marginalized and disadvantaged groups of the society, to the best of its ability under the prevailing adverse conditions.’⁷²

Redress for violations of rights or action to simply highlight a particular problem of human rights compliance can also be channelled through the UN Charter body mechanisms, with individual communications possible under the Special Procedures of the Human Rights Council, by writing directly to one of the thematic Special Rapporteurs, such as the Special Rapporteur on the Right to Food, or Water and Sanitation. Undoubtedly, the expertise of the Special Rapporteurs has greatly advanced the practical application of human rights, and the wealth of statements presented to the Human Rights Council and General Assembly at the global level have created a rich underpinning of the Charter provisions.

Undoubtedly, an invaluable mechanism in the context of environmental protection will be the Special Rapporteur on the issue of human rights obligations *related to* the enjoyment of a safe, clean, healthy, and sustainable environment,⁷³ created by the Human Rights Council in 2012 in recognition of the importance of the environment to human rights.⁷⁴ A final, noteworthy mechanism for possible environmental redress is that of the fact-finding missions of the Human Rights Council, which have so far investigated alleged human rights violations during the armed conflicts in Syria and Gaza, albeit not without controversy.⁷⁵

⁶⁷ *ibid.* para. 39.b (emphasis added).

⁶⁸ *ibid.* para. 39.c (emphasis added).

⁶⁹ CESCR, Concluding Observations: Guatemala, UN Doc. E/C.12/1/Add.93, 12 December 2003, para. 9.

⁷⁰ < <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/guat6.pdf> > accessed 1 June 2017.

⁷¹ *ibid.* para. 10.

⁷² CESCR, Concluding Observations: Colombia, UN Doc. E/C.12/COL/CO/5, 7 June 2010, para. 7.

⁷³ Human Rights and the Environment, UN Doc. A/HRC/RES/19/10, 19 April 2012, para. 2 (emphasis added).

⁷⁴ *ibid.* Preamble.

⁷⁵ Report of the Commission of Inquiry on the Gaza Conflict, UN Doc. A/HRC/29/52, 24 June 2015.

B. ESC rights and progressive realization

Before moving to consideration of how human rights obligations might be utilized in remedying post-conflict environmental damage, it is necessary to examine the key facets of the ESC rights most relevant for this purpose, notably the notions of ‘progressive realization’, minimum core obligations, and ‘maximum available resources’ (‘MAR’)—because these notions could serve to limit achievement of ESC rights in the post-conflict phase.

Economic, social, and cultural rights, such as the rights to water, food, health, and livelihood (via Art. 11, the right to an adequate standard of living) require full realization of the right by states but allow that realization to be achieved ‘progressively’, taking into account the financial and other resources available to states in that endeavour.⁷⁶ Clearly, this allowance for a progressive achievement of rights cannot be an excuse for complete non-compliance by states, but this notion has certainly led to foot-dragging by states over the years in achieving ESC rights. Consequently, the CESCR has been required to assume the role of judging whether state actions are ‘reasonable’ and, thus, in compliance.⁷⁷

Importantly, to temper the weak obligation of progressive realization of rights, the CESCR has also mandated ‘minimum core obligations’ for each ESC right, which are of immediate effect. For example, such immediate obligations include to accord the achievement of the right the highest priority⁷⁸ and to adopt and implement a national strategy and plan of action addressing the whole population.⁷⁹ Clearly, where the state fails to meet the minimum essential levels of the right the state will, *prima facie*, be in breach of human rights law, bearing the burden of proof that it lacks the capacity and resources to comply.⁸⁰ Here the state ‘must demonstrate that every effort has been made to use the ‘maximum available resources’, including via international assistance, that are at its disposal in an effort to satisfy, as a matter of priority, the minimum obligations.⁸¹ And the obligation is imposed regardless of the level of economic development⁸² and ‘even in times of severe resources constraints.’⁸³

The issue of resource constraints impacts on the fulfilment of ESC human rights obligations even in peacetime, thus what does MAR mean in the post-conflict phase?

⁷⁶ Art. 2(1) ICESCR. See generally Magdalena Sepulveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Oxford: Intersentia, 2003).

⁷⁷ Art. 8(4) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UN Doc. A/63/435, 28 November 2008; C.N.869.2009; CESCR, An Evaluation of the Obligation to Take Steps to the ‘Maximum of Available Resources’ Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1, 21 September 2007, para. 8; see also Constitutional Court, South Africa, *Government of the Republic of South Africa and Others v. Grootboom and Others*, 2000 (11) BCLR 1169 (CC).

⁷⁸ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, ‘Common Violations of the Human Rights to Water and Sanitation’, UN Doc. A/HRC/27/55, 30 June 2014, paras. 49–53; see also Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), 131.

⁷⁹ ECOSOC, General Comment No.15, ‘The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)’ (2002), UN Doc. E/C.12/2002/11, 20 January 2003, para. 37(f).

⁸⁰ de Albuquerque (n 78) para. 49.

⁸¹ General Comment No.3, ‘The Nature of States Parties’ Obligations (art. 2, para. 1, of the Covenant)’; 1 January 1991, UN Doc. E/1991/23 (SUPP), para. 10; Principle 26, Limburg Principles on the Implementation of Economic, Social and Cultural Rights (1987) 9 Human Rights Quarterly 124.

⁸² Principle 25, Limburg Principles (n 81).

⁸³ General Comment No. 3 (n 81) para. 12.

Skogly criticizes the overly narrow approach of many in viewing the ‘resources’ as largely financial or budgetary.⁸⁴ She argues for a more diverse, holistic approach including using natural environmental resources available in society, including both public and private resources. Clearly, however, the inclusion of natural resources within the concept could exacerbate and prolong environmental damage caused in conflict. In similar vein, Robertson recognized that the state must not diminish the natural resources available to people who depend on such resources to feed themselves.⁸⁵ There is, consequently, a clear argument to use the environment as a resource for rebuilding society and for development, in the implementation of ESC rights post-conflict, but this must be achieved in an environmentally sustainable way. Causing further damage to, and depletion of, natural resources in the aftermath of conflict may only serve to exacerbate any existing inequalities and slow down environmental recovery. Thus, in using a state’s natural resources, human rights and environmental protection in the post-conflict stage need to go hand-in-hand.

Thus, in sum, the state must take steps to achieve these rights, and such steps must be ‘deliberate, concrete, and targeted’⁸⁶ to meeting the obligations required by the right. We can use these human rights obligations requiring immediate effect, therefore, in the post-conflict phase to provide protection for the environment. Immediate obligations, therefore, could include the requirement that the state adopt a strategy for the realization of environmental rights,⁸⁷ which will necessitate a post-conflict environmental assessment to inform the state’s human rights obligations. Arguably, the minimum core obligations could be used to help states to prioritize among remediation and recovery programmes, as well as to leverage international assistance to help the state to meet its human rights obligations.

The following section will now analyse the value of using a human rights framework to address the range of environmental harms caused by warfare.

5.4.2 Clean-up and environmental restoration

Even beyond the most protracted, war-ravaged, battle-scarred states it is not difficult to see why populations surviving armed conflict struggle with basic survival needs. Examples of the destruction of water wells in the Occupied Palestinian Territories as well as the destruction of 100,000 chickens and the bull-dozing of olive groves, the use of chemical weapons in Syria, the cutting of pistachio trees in Afghanistan and forests in the DRC demonstrate that the impacts of conflict on the environment, and, consequently, on human sustenance and survival needs, is immense and exceedingly common during armed conflict.

There are, thus, likely to be significant impacts in the aftermath of conflict on the environment, and, therefore, on the enjoyment of ESC rights, through degradation to

⁸⁴ Sigrun Skogly, ‘The Requirement of Using the “Maximum of Available Resources” for Human Rights Realisation: A Question of Quality as Well as Quantity’ (2012) 12(3) Human Rights Law Review 393.

⁸⁵ Robert E. Robertson, ‘Measuring State Compliance with the Obligation to Devote the “Maximum Available Resources” to Realizing Economic, Social, and Cultural Rights’ (1994) 16 Human Rights Quarterly 693, 708.

⁸⁶ General Comment No. 3 (n 81) para. 2.

⁸⁷ de Albuquerque (n 78) para. 37.

ecosystem services (so-called ‘natural capital’) either caused directly as bomb damage, or as a side effect by contamination from damaged infrastructure, or explosive or toxic remnants of war. Some environmental damage will, clearly, be more urgent than others in terms of clean-up and restoration, such as explosive remnants of war impeding access to agricultural lands for vital food resources, or environmental contamination of drinking water wells or rivers which seriously endangers life and health. Consequently, this section will analyse examples of wartime environmental damage and suggest how we can use human rights legal mechanisms to provide vital assistance in their remedy.

A. Water sources

The CRC observed in war-ravaged Afghanistan in 2011 the ‘absolute poverty’ that one third of families and children were living in, with less than one quarter of families having access to safe drinking water, and less than one third access to sanitation facilities.⁸⁸ The Special Rapporteur on the Right to Food, Jean Ziegler, reported in 2002 that twenty-one groundwater wells and sixty-four irrigation networks were destroyed or blocked up by Israeli operations in the Occupied Palestinian Territories.⁸⁹ And in Afghanistan the water supplies were overwhelmed by wastewater infiltration and were heavily contaminated with *E. coli* and coliforms,⁹⁰ representing ‘a severe threat to public health.’⁹¹ Clearly, polluted wells, lakes, and rivers are both an environmental and a human rights concern. And, therefore, in using human rights advocacy and mechanisms we may achieve speedier post-conflict environmental clean-up by focusing on the impact of such degraded environments to human survival.

As the South African High Court case of *Mazibuko and Other v. City of Johannesburg and Others* recognized, the right to water is of paramount importance to fulfilling the right to life itself, stating simply that, ‘Water is life. Life without water is not life. One cannot speak of a dignified human existence if one is denied access to water. The right to water is the bedrock of most of the rights contained in the Bill of Rights.’⁹² This point was reiterated by the United Nations General Assembly in 2010 when states formally recognized a human right to water and sanitation by adopting Resolution 64/292, which states that water and sanitation are ‘essential for the full enjoyment of life and all human rights.’⁹³

In the context of the right to water, therefore, the minimum core obligations of immediate effect require the state to provide access to an essential level of safe, acceptable, physically accessible, and affordable water without discrimination.⁹⁴ Furthermore,

⁸⁸ UN Doc. CRC/C/AFG/CO/1, 8 April 2011, para. 57.

⁸⁹ Report by the Special Rapporteur on the right to food, UN Doc. E/CN.4/2002/58, 10 January 2002, para. 103

⁹⁰ UNEP, Afghanistan (n 1) 34. ⁹¹ *ibid.*

⁹² (06/13865) 30 April 2008, ZAGPHC 491, para. 124.

⁹³ General Assembly Resolution 64/292, The Human Right to Water and Sanitation, A/RES/64/292, 3 August 2010. Previously the right to water had been read into the right to an adequate standard of living, Art. 11 ICESCR.

⁹⁴ General Comment No.15 (n 79) 37(a–c). See generally Mara Tignino, ‘The Right to Water and Sanitation in Post-Conflict Legal Mechanisms: An Emerging Regime?’ in Erika Weinthal, Jessica Troell, and Mikiyasu Nakayama, *Water and Post-Conflict Peacebuilding* (Abingdon: Earthscan, 2014).

states must immediately respect the right to water by not engaging in discriminatory actions in the provision of access to water. Clearly, this latter aspect of the obligation to *respect* is also often a causal factor for conflict itself, and so in ensuring non-discrimination in water resource (re)distribution in the post-conflict phase states can alleviate future issues of contestation, and so avoid the cycle of conflict. Within the state's obligation to *respect* we can also require that the state refrain from actions that further damage water resources, such as causing further pollution (for example by dumping toxic waste into water resources), diversion or depletion of water resources.⁹⁵ Clearly, in order to ensure the minimum essential level of water supply for its people the state may also need to redistribute resources, being careful not to interfere with the rights of other users or states, including in the use of transboundary waters and aquifers. This dimension will be especially important to get right in regions experiencing water scarcity. Similarly, we can advocate that in ensuring minimum essential levels states should fix damaged or destroyed drinking water wells and pipes, such as those destroyed by Iraq in the 1991 Gulf Conflict,⁹⁶ and decontaminate polluted water resources, such as the rivers polluted in the 1999 Kosovo conflict.⁹⁷ In addition, it is recognized that the right to water may also be fulfilled by states allowing non-governmental organizations, inter-governmental organizations, and other states to help to repair or rebuild facilities—and in a post-conflict situation such assistance could clearly be built into the peacebuilding process.

In *fulfilling* the right to water, states are required to take immediate measures to prevent, treat, and control diseases linked to water.⁹⁸ And part of the right to water is the right to adequate sanitation, because inadequate sanitation is the primary cause of waterborne contamination and diseases.⁹⁹ In relation to the environment, therefore, the vital recognition that water must also be free from microorganisms, chemical substances, and radiological hazards that constitute health risks will again be a useful advocacy tool.¹⁰⁰ In post-conflict DRC, for example, spot checks on drinking water points by UNEP found that 92 per cent were contaminated with faecal-related bacteria, with the consequence that 'as little as three percent of the population' had access to safe water in some rural zones.¹⁰¹

As regards emergency situations, such as the onset of armed conflict, states are obliged to have plans already in place to ensure a rights-compliant response, including ensuring that the state can respond promptly, and as the highest priority, to continue to provide essential services to affected populations.¹⁰² It is imperative that environmental protection considerations are, thus, built into such plans to ensure that, 'Water and sanitation [are] provided in a way that respects the natural environment; finite resources [are] protected and overexploitation cannot occur.'¹⁰³ Ensuring environmental hygiene,

⁹⁵ de Albuquerque (n 78) para. 17.

⁹⁶ UNEP, *Desk Study on the Environment in Iraq* (UNEP, 2003), 28.

⁹⁷ CESCR, Concluding Observations: Afghanistan, UN Doc. E/C.12/AFG/CO/2-4, 7 June 2010, para. 35.

⁹⁸ General Comment No.15 (n 79) para. 37(i).

⁹⁹ *ibid.* para. 1; WHO, *The Global Water Supply and Sanitation Assessment 2000* (WHO, 2000), 1.

¹⁰⁰ General Comment No.15 (n 79) para. 12(b).

¹⁰¹ UNEP, *The Democratic Republic of the Congo: Post-Conflict Environmental Assessment, Synthesis for Policy Makers* (UNEP, 2011), 41.

¹⁰² de Albuquerque (n 78) para. 53.

¹⁰³ General Comment No. 15 (n 79) para. 28.

recognized as an aspect of the right to health under Article 12(2)(b) ICESCR, will also be valuable in requiring states to prevent threats to health from unsafe and toxic water conditions,¹⁰⁴ including from landmines and other weapons debris.¹⁰⁵

Water resources may also be a source of food and, thus, livelihood. Three hundred tons of fish, for example, were killed in a military strike on a fish farm in Lebanon¹⁰⁶ and the fishing industry, including artisanal fishermen, and other species are damaged every time a military attack causes an oil spill or chemical contamination of the marine environment. In advocating for compliance with the right to an adequate standard of living, therefore, we could require states in the aftermath of conflict to clean up and decontaminate polluted waters, thus helping local livelihoods and the environment to recover.

B. *Agriculture/food sources and land*

In this section we will see how in using the right to food, and health to some degree, we can aid agricultural areas in their post-conflict recovery, as well as reduce air, soil, and water pollution more generally.

In 2002, the Special Rapporteur on the right to food highlighted reports of the destruction of environmental resources, namely crops, agricultural land, rooftop water tanks, groundwater wells, irrigation networks, and livestock, by the military forces of Myanmar.¹⁰⁷ Restrictions on movement also served to deny access to food and water.¹⁰⁸ Such destructive actions increase the strain on already depleted and damaged environmental resources. Indeed, common post-conflict threats to agriculture and land used for food production are generally from bomb damage, chemical contamination, soil compaction, clearing land for 'security purposes', and plant/tree damage due to the presence of heavy vehicles and toxic and explosive remnants of war. In Lebanon and the Occupied Palestinian Territories, for example, recent conflicts have caused the destruction of hundreds of thousands of olive trees and thousands of acres of arable land¹⁰⁹—undoubtedly leading to reverberating impacts in the food web and agrobiodiversity loss. With approximately 90 per cent of the South Lebanese's population being reliant on agriculture for their livelihood,¹¹⁰ the presence of unexploded cluster bombs in agricultural areas is both a human rights and environmental issue.¹¹¹ Further ecological damage by heavy metal contamination may have been caused in the burning of olive trees—a staple crop in Lebanon—with white phosphorus.¹¹² Thus, emphasizing

¹⁰⁴ *ibid.* para. 8.

¹⁰⁵ CESCR, Concluding Observations: Bosnia and Herzegovina, UN Doc. E/C.12/BIH/CO/2, 16 December 2013, Committee recommendation at para. 30; CESCR, Concluding Observations: Angola, UN Doc. E/C.12/AGO/CO/3, 1 December 2008, para. 33.

¹⁰⁶ UNEP, *Lebanon* (n 61) 123.

¹⁰⁷ The Right to Food, Report submitted by the Special Rapporteur on the right to food, Jean Ziegler, UN Doc. E/CN.4/2003/54, 10 January 2003, para. 55.

¹⁰⁸ *ibid.* para. 56.

¹⁰⁹ Report by the Special Rapporteur on the right to food, UN Doc. E/CN.4/2002/58, 10 January 2002, para. 103; UNEP, *Desk Study on the Environment in the Occupied Palestinian Territories* (UNEP, 2003) 103.

¹¹⁰ UNEP, *Lebanon* (n 61) 155.

¹¹¹ Landmine Action, *Foreseeable Harm, the Use and Impact of Cluster Munitions in Lebanon: 2006* (Landmine Action, 2006) 26; UNEP, *Lebanon* (n 61) 149.

¹¹² UNEP, *Lebanon* (n 61) 153–4.

the human rights of farmers to their livelihoods will help recognize and remedy these environmental harms and will help provide for a speedier remediation of the environmental damage.

The African Commission stated that the right to food is 'inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education ...'¹¹³ The right guarantees the availability of food in a 'quantity and quality sufficient to satisfy the dietary needs of individuals, *free from adverse substances*, and acceptable within a given culture'.¹¹⁴ Thus, similarly to the right to water, it guarantees access to food resources that are of sufficient quantity and quality. The minimum core obligations of the right to food require, first, that the state should not *destroy or contaminate* food sources, and by extension agricultural areas for growing food crops and water sources carrying fish stocks. Clearly, this is a common, albeit illegal, conflict tactic, but what is probably more likely to occur in the post-conflict phase, however, is the destruction or contamination of food sources by private companies, as much needed investment in post-conflict states often leads to an influx of companies undertaking natural resource extraction or assisting in large development projects. Emphasizing the state's obligation to *respect* and *protect* the rights to water, health, and food, therefore, human rights can be used to aid environmental protection in the post-conflict phase by requiring that such private parties do not contaminate or destroy access to food sources.¹¹⁵ We should also advocate that the state use such investment contracts or development permits to require companies to help it fulfil its human rights obligations, such as by attaching conditions to permits for the building of, or rehabilitation of water sources and environmental clean-up.

Similarly, in ensuring the rights to health and adequate standard of living states must take 'concrete and targeted steps' towards the full realization of the rights,¹¹⁶ which includes the adoption of legislative or other measures. Using human rights in a proactive way, one such measure could, therefore, demand the removal of environmental threats to human rights, such as requiring the prioritized clean-up of agricultural areas to ensure the health of food and farm workers, and the clean-up of rivers and lakes used for irrigation, fishing, and other aquaculture. Such an approach was adopted by the African Commission in relation to the conflict in Sudan. First, the African Commission held that the wartime destruction of livestock and farms as well as the poisoning of water sources, such as wells, exposed the victims to serious health risks, which amounted to a violation of the right to health under Article 16 of the African Charter.¹¹⁷ Secondly, the Commission made far-reaching recommendations in post-conflict Sudan, requiring the state to ensure the rehabilitation of the entire economic and social infrastructure in Darfur, including in relation to health, water, and agricultural services.¹¹⁸ Clearly, in a situation of such historic and conflict-based rights violations the state could also approach remediation through relevant post-conflict peacebuilding or transitional justice mechanisms.

¹¹³ *SERAC v. Nigeria* (n 40) para. 65.

¹¹⁴ General Comment No.12, UN Doc. E/C.12/1999/5, 12 May 1999, para. 8 (emphasis added).

¹¹⁵ See *SERAC v. Nigeria* (n 40) para. 65.

¹¹⁶ *Egyptian Initiative for Personal Rights and Interights v. Egypt II* (AHRLR 90, 1 March 2011), para. 264.

¹¹⁷ *COHRE v. Sudan* (n 40) para. 212. ¹¹⁸ *ibid.* para. 229.

C. Environmental damage more generally

Thus, the broad range of human rights, including the 'greened' human rights, could be used to require the clean-up of industrial sites where people work, agricultural land, rivers and forests where people forage or fish for food, the clean-up of water sources such as wells and monitoring of aquifers, and air pollution. The European Court of Human Rights, for example, has found violations of Article 8 regarding property rights based on the health impacts on residents from environmental pollution.¹¹⁹ Invaluably, the Court emphasized procedural rights, including requiring environmental impact assessments and information on environmental threats, which reflect core principles of environmental protection and remediation.¹²⁰ And this approach is also reflected in the Inter-American and African regional human rights systems.¹²¹ Damage to other environmental resources, such as forests and wetlands, and other areas of environmental significance might also be brought within an expanding human rights notion of right to environment—thus adding even greater scope for environmental protection. In this vein, the Special Rapporteur on the right to a healthy environment has included the protection of biodiversity and conservation within the emerging human right to environment.¹²² Fulfilment of the right to a healthy environment, or, indeed, transitional justice mechanisms, might also be used in a post-conflict setting to promote environmental justice, for example to prohibit the siting of vulnerable communities in polluted areas, to redistribute land, to remedy any existing environmental injustices and to promote peace.

D. Toxic and hazardous remnants of war

Uncleared landmines and unexploded cluster munitions are a typical hazard for post-conflict states, especially where the population is reliant on the environment for its livelihood, and, as such, these dangerous remnants are worthy of special consideration.¹²³

According to UNEP, in post-conflict Lebanon, 'the land scarcity resulting from cluster bomb contamination has the potential to generate a new socio-economic dynamic and set in train a cycle of poverty and environmental degradation'.¹²⁴ Thus, a common theme in states' reports and Concluding Observations following protracted armed conflict are the social and economic difficulties posed by the continued presence of

¹¹⁹ See *Guerra v. Italy* (n 48); *López Ostra v. Spain* App no. 16798/90 (ECtHR, 9 December 1994); *Taşkin and Others v. Turkey* App no. 46117/99 (ECtHR, 10 November 2004).

¹²⁰ Principles 10 and 17, 1992 UN Declaration on Environment and Development, UN Doc. A/CONF.151/26/REV.1; 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, ECE/CEP/43.

¹²¹ *SERAC v. Nigeria* (n 40) para. 53; *Case of the Saramaka People v. Suriname* (Series C no. 185) (IACHR, 28 November 2007), at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf> accessed 1 June 2017.

¹²² John H. Knox, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Preliminary Report, UN Doc. A/HRC/22/43, 24 December 2012, paras. 7–11.

¹²³ UNEP, *DRC* (n 101) 28; the use of cluster munitions in the Lebanon Conflict in 2006 was influential in their prohibition, see Handicap International, *Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities* (Handicap International, 2007).

¹²⁴ UNEP, *Lebanon* (n 61) 155.

landmines or other explosive remnants of war, and the consequent need for states to clear them.¹²⁵ A number of reports, for example, highlight the difficulties posed by landmines in post-conflict states such as Sudan,¹²⁶ Myanmar,¹²⁷ Colombia,¹²⁸ Croatia,¹²⁹ Cambodia,¹³⁰ Bosnia Herzegovina,¹³¹ and Palestine.¹³² In his report on the situation of internally displaced persons in Croatia,¹³³ Special Representative Kälın also specifically recommended the removal of landmines from agricultural areas,¹³⁴ but also highlighted that the physical environment must also be rendered free from 'environmental damage such as the release of heavy metals and poisonous materials into the environment as a direct or indirect result of the armed conflict'.¹³⁵

The long-term environmental risks from toxic weapons were clearly most apparent from the use of nuclear and chemical weapons, including the use of Agent Orange in Vietnam. More recent battlefields have seen debris from other chemically toxic weapons, such as from depleted uranium munitions, chemical weapons, white phosphorous, and tungsten,¹³⁶ as well as other abandoned, contaminated military detritus. And others in the current volume have also discussed the particular environmental problems caused by using burn pits to destroy military waste, both during conflict and in the post-conflict phase.¹³⁷ Clearly, some health and environmental impacts from such dangerous debris may be immediate, but some impacts may take decades to manifest,¹³⁸ and, as Harris suggests, as a consequence, these impacts may well be missed in post-conflict assessments and peacebuilding.¹³⁹

As regards the particular problem of explosive remnants of war ('ERW'), in 1997 states adopted the Treaty on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,¹⁴⁰ which imposes an absolute ban on the use as well as the stockpiling, production, and transfer of anti-personnel landmines.¹⁴¹ Similarly, in 2008 the Convention on Cluster Munitions¹⁴² ('CCM') imposed

¹²⁵ CESCR, *Bosnia* (n 105) Committee recommendation at para. 30; CESCR, Concluding Observations: Angola, E/C.12/AGO/CO/3, 1 December 2008, para. 33; see also Neryl Lewis, Geoff Harris, and Elisa dos Santos, 'The Demobilisation and Reintegration of Ex-Combatants' in Harris (n 25) 162.

¹²⁶ Report of the independent expert on the situation of human rights in the Sudan, Mohamed Chande Othman, UN Doc. A/HRC/18/40, 22 August 2011, para. 40.

¹²⁷ Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, UN Doc. A/HRC/19/67, 7 March 2012, para. 59.

¹²⁸ CRC, Concluding Observations: Colombia, UN Doc. CRC/C/COL/CO/3, 8 June 2006.

¹²⁹ Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälın, Mission to Croatia, UN Doc. E/CN.4/2006/71/Add.3, 29 December 2005.

¹³⁰ CRC, Concluding Observations: Cambodia, UN Doc. CRC/C/15/Add.128, 28 June 2000.

¹³¹ CESCR, Concluding Observations: Bosnia and Herzegovina, UN Doc. E/C.12/BIH/CO/1, 24 January 2006.

¹³² Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact Finding Mission on the Gaza Conflict Conclusions and recommendations, UN Doc. A/HRC/12/48 (ADVANCE 2), 24 September 2009, para. 1975.e.

¹³³ Kälın (n 129). ¹³⁴ *ibid.* para. 50.b. ¹³⁵ *ibid.* para. 36.

¹³⁶ Fact Finding Mission on the Gaza Conflict (n 132) para. 1975.e.

¹³⁷ See, for example chapter 13 in this volume.

¹³⁸ Chad Briggs and Inka Weissbecker, 'Salting the Earth: Environmental Health Challenges in Post-Conflict Reconstruction' in David Jensen and Steve Lonergan (eds.), *Assessing and Restoring Natural Resources in Post-Conflict Peacebuilding* (Abingdon: Earthscan, 2012), 112.

¹³⁹ Neryl Lewis, 'Social Recovery from Armed Conflict' in Harris (n 25) 98–101.

¹⁴⁰ (1997) 36 ILM 1507 ('APM Treaty'). ¹⁴¹ Art. 1 *ibid.*

¹⁴² <https://www.icrc.org/ihl/INTRO/620> accessed 1 June 2017.

an absolute ban on cluster munitions.¹⁴³ State parties are, furthermore, obliged to clear remnant-affected areas situated in their territory.¹⁴⁴ In the future, therefore, it is hoped that the extensive human rights problems posed by ERW in the post-conflict phase can be reduced, if not eliminated altogether. Under these treaties, mandatory and immediate obligations arise for detailed surveying, recording, and marking of cluster munition contaminated areas within a state party's jurisdiction and control.¹⁴⁵ There is also 'strong encouragement' for user states to transfer information about the type, number, and location of use of certain weapons,¹⁴⁶ as well as an obligation of international assistance (including financial) which should ease the job of weapons clearance. In Kosovo, for example, extensive information regarding location mappings, safety information, and technical assistance was provided by NATO, in part to help in the environmental clean-up,¹⁴⁷ but such information-sharing is rare.

These arms controls treaties are not, *prima facie*, human rights instruments, but the provisions for clearance obligations and victim assistance for those injured by such ERW definitely have an ESC rights dimension to them relating to social security, healthcare, gender, and disability rights. The demining and decontamination process, therefore, can arguably be used to fulfil human rights obligations and environmental protection, both directly, such as protecting the right to health, and indirectly, such as the notable example of Cambodia where the process for carrying out demining led the state to establish land titling for local populations.¹⁴⁸ Using the human rights framework we could add a more general obligation on states to routinely transfer information on the use and location of toxic and explosive remnants of war, thus, going beyond the existing limited provision for this obligation in specific treaties. And there may also be a role here for the human rights civil society to do more, particularly in terms of capacity building of local populations.

5.4.3 Natural resource depletion

In addition to the contamination of environmental resources, states are also likely to be faced with the depletion of natural resources following conflict, which will impact on livelihoods, food and water sources, health and, ultimately, on life itself. Using the human rights framework such depletion can be halted and post-conflict justice mechanisms could be used to remedy the environmental damage and compensate for any historical grievances.

The UNEP Afghanistan Report highlighted the deforestation, over decades of conflict, of pistachio trees, which had been used as a means of livelihood by much of the

¹⁴³ Note the definition of cluster munitions in Art. 2(2) CCM, *ibid*.

¹⁴⁴ Art. 10, 1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices to the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1996) 35 ILM 1206; Art. 5 APM Treaty; Art. 4 CCM.

¹⁴⁵ Art. 4(2) CCM. ¹⁴⁶ Art. 4(4) CCM.

¹⁴⁷ Andrew Osborn, 'NATO Brings Out Big Guns to Kill Off Cancer Scare' *The Guardian* (11 January 2001) 16.

¹⁴⁸ Nao Shimoyachi-Yuzawa, 'Linking Demining to Post-Conflict Peacebuilding: A Case Study of Cambodia' in Jensen and Lonergan (n 138) 188.

population.¹⁴⁹ The principal causes of this loss were the cutting and stockpiling of wood for fuel by the population, as well as by the military for fuelwood and in clearing trees to prevent ambush by enemy forces.¹⁵⁰ And whether the resources have been depleted by the state itself or by rebel groups, by companies or individuals, including those taking advantage of the rule of law vacuum, by bomb damage or by refugees seeking food and shelter for their very survival, the depletion of natural resources can leave a very lasting scar on a post-conflict society. The distribution and use of natural resources, therefore, need to form key components in the post-conflict settlement, and, clearly, this implies distribution and access to such resources in a human-rights-compatible way. Showing the value of the human rights machinery there is clear condemnation by the CESCR of the DRC's continued illicit trade in timber resources and 'abusive exploitation of the country's forests',¹⁵¹ specifically making reference to the adverse impacts of such exploitation on the ecology and biodiversity, and the human rights of the local indigenous pygmies. The CESCR went so far as to strongly criticize the impunity for human rights violations and illegal exploitation of natural resources, including by foreign companies, suggesting that these factors constituted 'major obstacles' to the enjoyment of ESC rights within the DRC.¹⁵²

Indeed, environmental damage and resource exploitation, as well as the ESC rights negatively impacted, may actually increase after the conflict due to the temporary governance vacuum within a war-ravaged state, and an increasingly desperate population. Examples also include the exploitation of fishing resources in the exclusive economic zone or exclusive fishing zone of states engaged in conflict or its aftermath. And clearly, as in Darfur, the survival needs of the population and, especially, displaced persons often lead to the breakdown of normal, peacetime food networks and the consequent exploitation of bushmeat, such as occurred in the Virunga forest in the DRC, the clearance of forests for agriculture, and other impacts on the environment, such as trade in animal products, such as ivory. And this is where human rights can undoubtedly assist in the post-conflict phase. First, the state's obligations to respect and protect the right to food, and the broader right to an adequate standard of living, require the state not to diminish further vital agricultural and other natural resources for those who are dependent upon access to such sources. Secondly, recent practice shows an emphasis in human rights machinery on fusing environmental protection and human rights in the post-conflict, arguably peacebuilding, context. For example, the CESCR required the DRC to ensure human rights compliance by requiring that future forestry projects were both 'centred on advancing the rights of forest-dependent peoples' and 'conducted only after comprehensive studies are carried out, with the participation of the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned activities'.¹⁵³

The key, again, is arguably to ensure that natural resource distribution is included within peacebuilding or transitional justice processes, and to anchor such measures in

¹⁴⁹ UNEP, *Afghanistan* (n 1) 64–6.

¹⁵⁰ *ibid.*

¹⁵¹ UN Doc. E/C.12/COD/CO/4, 16 December 2009, para. 6 (emphasis added).

¹⁵² *ibid.*

¹⁵³ CESCR, Concluding Observations: Democratic Republic of the Congo, UN Doc. E/C.12/COD/CO/4, 16 December 2009, para. 14.

ESCR and environmental human rights, including in promoting better environmental education and participation in environmental decision-making through participatory rights, equity in natural resource distribution, particularly respecting the rights of indigenous peoples, and recognizing that the right to development must take place in a sustainable and fair way.

5.4.4 Poverty and historical inequalities

There is often an environmental dimension to the causal factors for conflict, as recognized by human rights organs, including by ad hoc fact-finding missions.¹⁵⁴ Common causes of conflict, in addition to poverty, gross disparities in wealth and resources of populations within a state, and unbalanced development policies,¹⁵⁵ are the factors of competition for land and water resources, desertification, and environmental degradation.¹⁵⁶ This section will, therefore, suggest how human rights can be used to address such historical inequalities and help prevent the return to conflict.

In Rwanda and Mali, as McCoy explains, ‘horizontal inequalities’ were major causal factors of conflict, particularly group inequalities in land ownership and access to resources.¹⁵⁷ Using transitional justice mechanisms, the Truth Commission in Kenya, for example, found that ‘historical grievances over land’ constituted the ‘single most important driver of conflicts and ethnic tension in Kenya’,¹⁵⁸ while ‘close to 50 percent of statements and memorandum received by the Commission related to or touched on claims over land’.¹⁵⁹ UN Secretary-General Kofi Annan has also recognized trans-boundary water resources, food insecurity, land concentration, and access to land-based resources as root causes of conflict, which are often coupled with poverty and social inequality, particularly, he says, in African and Latin American countries.¹⁶⁰ And, of course, due to future climate change impacts on natural resources it is likely that we will see greater land inequalities, water disputes, food insecurity, and resource-dependent livelihoods lost across the globe and so the resource-competition/conflict nexus is only going to increase in importance.

As stated by Secretary-General Kofi Annan, however, ‘conflict prevention and sustainable development are mutually reinforcing’.¹⁶¹ Thus, a key aspect of conflict prevention, particularly in the era of unpredictable climate change, must be in ensuring environmental human rights—including via robust and comprehensive transitional

¹⁵⁴ Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101, UN Doc. A/HRC/4/80, 9 March 2007.

¹⁵⁵ *ibid.* para. 54.

¹⁵⁶ *ibid.* para. 55. See also Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, UN Doc. A/HRC/17/49, 14 June 2011, para. 52(1)(f).

¹⁵⁷ David McCoy, ‘Rectifying Horizontal Inequalities: Lessons from African Conflict’ (2008) 8(1) African Journal on Conflict Resolution 105.

¹⁵⁸ Report of the Truth, Justice and Reconciliation Commission, Kenya, *Final Report*, Vol. 1 (2013), para. vii; Paul Gready, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8(3) International Journal of Transitional Justice 339.

¹⁵⁹ Truth Commission Report, Kenya (n 158) para. vii; Gready (n 158).

¹⁶⁰ Prevention of Armed Conflict: Report of the Secretary-General, UN Doc. A/55/985-S/2001/574 (7 June 2001), paras. 114–15.

¹⁶¹ *ibid.* para. 11.

justice mechanisms. In the post-conflict phase, therefore, rebuilding the state must first entail a thorough assessment of how the three dimensions of poverty, degraded environmental resources, and human rights violations have contributed to past tensions and abuses. Human rights can be a determinant of peace and sustainable development, and safeguarding a sustainable and just peace will necessarily involve states finding a way to ensure that human rights are factored into the peacebuilding process in a mutually supportive way with environmental protections. In this way, for example, emergency methods adopted to address environmental health problems would be connected to environmental protection and long-term development policies,¹⁶² and could help to stabilize communities through helping to mitigate any feelings of injustice related to prior unequal distribution of environmental resources.¹⁶³ And as part of this approach states should ensure that every organ created, developed, or reinstated following conflict is built on a firm recognition of human rights, including environmental rights.

While poverty is not mentioned in the ICESCR, the CESCR observes that poverty constitutes a denial of human rights,¹⁶⁴ and requires states in a position to do so to provide international assistance to others to help them to fulfil their core obligations and to ensure the eradication of poverty.¹⁶⁵ Thus, while post-conflict states may need to rebuild or remediate their entire economic and social infrastructure, including in relation to education, health, water, and agricultural services,¹⁶⁶ international assistance is an obligation under the covenant. Such funding could also, therefore, be used to provide training in environmental human rights and, thus, environmental conservation and remediation.¹⁶⁷ Peacebuilding agendas, including through transitional justice mechanisms, could include the creation (and funding) of such mechanisms, possibly at the local level, to resolve land, property, and resource disputes, and, possibly, even to provide compensation to land owners for damage caused to their lands.¹⁶⁸ In this way, states will be promoting the notion of local-based solutions, which should include and engender local support for reconstruction and clean-up efforts, including in an environmentally aware way.

5.5 Conclusions

It must be noted at the outset, of course, that there can be clear tensions and potential risks in using human rights, as suggested here, as a framework to achieve environmental protection. Specifically, human rights have previously been side-lined in the peacebuilding process, with states preferring the rule of law notion because it was seen as a less value-laden concept and, thus, less contentious.¹⁶⁹ There is also the possibility that

¹⁶² Briggs and Weissbecker (n 138) 129. ¹⁶³ *ibid.*

¹⁶⁴ CESCR, Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2001/10, 10 May 2001, para. 1.

¹⁶⁵ *ibid.* paras. 16–17. ¹⁶⁶ *COHRE v. Sudan* (n 40) para. 229.

¹⁶⁷ Second periodic report of Sudan to the CESCR, submitted 27 July 2012, UN Doc. E/C.12/SDN/2, 18 September 2013.

¹⁶⁸ See CESCR, Concluding Observations: Sri Lanka, UN Doc. E/C.12/LKA/CO/2-4, 9 December 2010, para. 29.

¹⁶⁹ Balakrishnan Rajagopal, 'Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination' (2007–2008) 49 *William & Mary Law Review* 1345, 1357.

using human rights rhetoric might over-politicize the issue of environmental remediation. And so a human rights focus might arguably constrain pure environmental protection in the post-conflict era, and risk diverting some of the effort and resources away from pure environmental protection work and monitoring. There is a further risk that all environmental damage might be shoehorned into being only human rights issues, with potential loss of focus on those aspects of environmental damage that do not easily fit into the mould—possibly causing delay in the clean-up and remediation of the environment, decreasing the environmental expertise inputting into the decision-making processes, or forcing clean-up efforts to focus on human harms from environmental damage to the detriment of purely environmental concerns.

On the other hand, as this contribution has attempted to demonstrate, using a human rights framework to greater effect in the post-conflict period could enhance the existing level of environmental protection. Such strategic use of human rights mechanisms is not occurring at present among the environmental and environmental rights movements. With the expansion of ESC rights to incorporate environmental dimensions, and even what would traditionally be seen as pure environmental concerns at times, such a framework could provide strong legal obligations on states to undertake environmental clean-up and restoration—and strong mechanisms to review state actions and ensure environmental remediation. Looking beyond clean-up, considering ‘structural violence’ issues of environmental justice in the allocation and use of natural resources, in a combined human rights and environmental approach to peacebuilding, *jus post bellum* or transitional justice could offer the potential for long-term solutions, and, potentially, an end to what is often a cycle of conflict.

And so in using human rights we must be aware of their pros and cons in factoring their use into the post-conflict processes in a way that is mutually supportive of environmental protection and rights. Such mutually supportive rights-based environmental protection is an aspect that can be built into peacebuilding and transitional justice mechanisms, of course, with the idea of fostering a stable peace.