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„Human Rights and Transitional Mechanisms for Environmental Justice: Case Study of Brumadinho Dam Disaster in Brazil (2019)“

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With a heart full of gratitude,
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LIST OF ACRONYMS AND ABBREVIATIONS

ACHR	American Convention on Human Rights
ANM	Brazilian National Mining Agency
CBD	Convention on Biological Diversity
CDM	Clean Development Mechanisms
CNBM	Brazilian National Register of Dams
ECCC	Extraordinary Chambers in the Courts of Cambodia
IAComHR	Inter-American Commission on Human Rights
IACtHR.	Inter-American Court of Human Rights
IBGE	Brazilian Institute of Geography and Statistics
IBRAM	Brazilian Mining Institute
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICL	International Criminal Law
ICRC	International Committee of the Red Cross's
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDNDR	International Decade for Natural Disaster Reduction
IHL	International Humanitarian Law
IHT	Iraqi Higher Tribunal
IJRC	International Justice Resource Center
IMT	International Military Tribunal
ISDR	International Strategy for Disaster Reduction
MDGs	Millennium Development Goals
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner
PAE	Dam Safety Emergency Plan
PNSB	National Dam Safety Policy in Brazil
SCSL	Special Court for Sierra Leone
SDGs	Sustainable Development Goals
SIGBM	Mining Dam Safety Management System
SNISB	National Information System on Dam Safety
SNUC	National System of Protected Areas Management
STL	Special Tribunal for Lebanon
UDHR	United Nations Declaration of Human Rights
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCHR	Commission on Human Rights
UNFCCC	United Nations Climate Change Conference
UNFCCC	United Nations Framework Convention on Climate Change
WHO	World Health Organization

1. INTRODUCTION

1.1. Research Issue

In the history of violent conflicts, crises, dictatorial regimes, and massive human rights violations, transitional justice has acquired global prominence as an inclusive concept approach to deal with the past. Since the concept was first coined in the early 1990s, it has been portrayed by a range of mechanisms, such as organisations, tribunals, courts, truth commissions, remembrance initiatives, remedies, aiming to legitimise and provide restitution for the dignity of victims.

According to Buckley-Zistel; Beck; Braun; Mieth[1], the concept was shaped for traumatic experiences, essentially, the trials in Nuremberg and Tokyo, transitions from dictatorship to democracy in South American countries, the tribunals in former Yugoslavia and Rwanda, and the Commission in South Africa. The authors affirm, although the heterogeneous debate on transitional justice in social sciences, there is a relative lack of diversified theoretical frameworks, but this does not mean that the concept cannot be amplified in its application.

In the social sciences, research on transitional justice has become one of the most complex paradigms. Hansen[2] expounds on how the field has developed exponentially over the years, transitional justice is no longer solely disputed as to whether the State should employ lawful measures to deal with massive human rights violations. Instead, Hansen says, 'transitional justice now takes place in contexts where there has been no regime change, or the transition is not from dictatorship to democracy'[3].

As such, within this extensive field of transitional justice, assumptions and application meets in order to acknowledge the emergence of the concept of transitional justice from an environmental perspective, investigating the already existing analytical framework of

[1] S. Buckley-Zistel, T. Beck, C. Braun et al., *Transitional Justice Theories*, Abingdon, Routledge, 2014, p. 226.
[2] T. Hansen, 'Transitional Justice: Toward a Differentiated Theory*'*, *Oregon Review of International Law*, vol. 13, no. 1, 2011, pp 1-46. (accessed 05 February 2021).
[3] Ibid, p. 31.

transitional justice and human rights, and problematising the applicability of these concepts to contexts that are often not seen as typical of them, but in this research are shown to be crucial to the development of justice.

The empirical gaze at channelling transitional justice to environmental experiences and challenges suggests that, whilst also transitional justice has been applied to cases of human rights violations throughout history, the possibility of applying transitional justice to environmental protection increase the understanding on how human rights intersect with the environment and *vice- versa*.

In fact, today's challenges are diverse and often non-state centric. Human rights are increasingly moving towards a broad and comprehensive dialogue of rights, including environmental rights. Specifically, human rights mechanisms are powerful instruments for environmental protection in the direction of a positive future for anthropogenic disasters.

1.2. Research Question

Hence, transitional justice has the potential to broaden the horizons of rights protection, encompassing diverse challenges, actors, and events, moving them towards a systemic dialogue of justice in response to environmental abuses. In addition, its full range of procedures and mechanisms can be used to guarantee ecological accountability.

Therefore, the current study aims to explore the following inquiry**:** How can human rights and transitional justice framework contribute to addressing anthropogenic environmental damages?

It is presumed from this analysis that the human rights structure could optimise the existing level of environmental justice. The enlargement of transitional justice to include an environmental perspective could provide a solid legal obligation to repair anthropogenic environmental disasters. Accordingly, the hypothesis implies that combining human rights and transitional justice mechanisms can improve the effectiveness of dealing with anthropogenic environmental damage in disaster situations

However, to cover the complexity of the research question, it is essential to explore the relationship between transitional justice and ecological disasters, applying it to a real case. Relevant examples are the Brumadinho dam disaster in Brazil (2019), which cost hundreds of lives and continues under inefficient reparations management, domestically and internationally

Dam disasters with devastating effects from tailings are nothing uncommon. Nevertheless, the impact of the international legal system in repairing, remedying, and reducing the underlying vulnerabilities of such events is not yet commonly established. In the mitigation of traumatic events, human rights can play a critical role.

Strictly speaking, disasters such as Brumadinho are the result of social vulnerability in the face of environmental unaccountability. A sub-question narrower than the main research question and which refers to the case study is, why do the case studies of Brumadinho (2019) challenge the anthropogenic context of transitional justice and international criminal law?

Summarily, human rights and transitional justice mechanisms are key elements in building constructive accountability after a mass atrocity and strengthening the rule of law. For this reason, security, conflict, and peace, some of the classic concepts of state coexistence, might be recognised through an eco-systemic spectrum.

1.3. Description of the Methodology

Social science research design has a methodological variety regarding academic research productions. Foremost, the methodological design, in pursuit of answering the research question, revolves around in what manner human rights and transitional justice mechanisms can act in the context of anthropogenic environmental disasters, considering the case study of Brumadinho dam disasters in Brazil (2019).

Consequently, the impetus of the research is to incorporate human rights studies, particularly in the frame of transitional justice and environmental justice, as an effort to engage a debate between social sciences and natural sciences to establish a social-environmental approach for human caused disasters.

The theoretical framework is corresponding to the fields of Human Rights, International Humanitarian Law, International Criminal Law, International Climate Policy, Environmental Governance, Political Science, International Relations, Sociology, and Anthropology. Further, the research endeavours to understand the exchanges through the Green Theory viewpoint, and the environmental dimensions on human rights. Green State thinkers want to reform the state and refocus its decision to base on the ecological welfare of humans and non-humans, as Eckersley[4] points out.

The study focuses on a unique phenomenon, indivisible from its context. For understanding of the research proposal in its condition and meaning, Qualitative Research is the guiding method. Among the designs available for the operationalisation of qualitative research, the Case Study is the one that meets the objectives of the investigation. Likewise, aiming an in-depth investigation about the events of Brumadinho (2019) provides a critically observing and meaning interpretation of empirical experience.

Furthermore, the forms of research broadly involve Secondary Sources, such as articles, document analysis, reviews, and journal articles. Along these lines, bibliographic research is the main source of research and collect necessary information. Nevertheless, to understand the experience of the case study, Primary Sources such as books, reports, official documents, court records, and legal texts complements it. Similarly, it was possible to reach out to a focal working group on environmental recovery of the Brazilian Government, which cooperated with the research, providing necessary and official data of Brumadinho. The purpose of different data evaluation is to raise the prime critical factors linked to the role of human rights and transitional justice, applied to the case.

Briefly, the methodology adopted for the study is qualitative of the case study type. The nature of this research is interpretive, of critical case classification. It aims to extend and enhance awareness on the research problem, enabling to understand circumstances in which

[4] R. Eckersley, *The Green State: Rethinking Democracy and Sovereignty*; Cambridge, the MIT Press, 2004, p. 53.

the hypothesis implies that combining human rights and transitional justice mechanisms can improve the effectiveness of dealing with anthropogenic environmental damage in disaster situations. In that context, it is guided by human rights parameters and implementing some mechanisms such as investigations, finding initiatives, material and moral reconciliation, and institutional reforms.

The philosopher Cornelius Castorialis once said, 'there are moments in history in which all that is feasible, in the immediate term, is a long and slow work of preparation'[5]. Some modern challenges of environmental configuration, that impact on the lives of thousands of people daily, are poorly addressed by international human rights mechanisms. Therefore, this academic effort represents an opportunity to continuously expand the environmental dimension in the field of human rights studies, by recognizing that environmental violations are a source of violation of human dignity and must be addressed as such.

In short, at the conclusion of this research study, the knowledge that is sought to emerge is that the reader will awaken the awareness of a 'green' thinking in the most different arenas of social sciences knowledge, as well as in the sphere of transitional justice. That is because human rights analysis is above all grounded on constant dialogue with practice and change. The importance of this academic effort implies that rights, and human rights, are not granted but are conquered by the force of action and constant critical analysis of the empiric experiences.

[5] C. Castoriadis, *The Imaginary Institution of Society*, Blamey, Cambridge Polity, 1987, p.7.

2. HUMAN RIGHTS AND TRANSITIONAL JUSTICE MECHANISMS

The traumatic experiences of previous centuries have marked the contemporary coexistence of States and non-state entities. The *modus operandi* of today's world is a product of experiences, and human rights are undoubtedly one of the greatest achievements in response to violations in the last century. The comprehensiveness of the following chapter on human rights and transitional justice attempts to understand how one may shape the future by reviewing the past.

2.1. Concept and Discourse of International Human Rights Over the Years

Human Rights, *Direitos Humanos, Menschenrechte,* मानवाधिकार, *Droits de l'homme, Derechos Humanos,* حقوق الإنسان, *Menseregte,* 人權, *Haki Za Binadamu*- or simply the rights of human beings, are the acknowledgement of the inherent dignity of 'all members of the human family'[6] translated into rights, as stated in the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR established fundamental human rights to be universally protected for the first time, and it has been translated into over 500 languages.[7]

Words and language create meaning within discourses, and discourses directly correlate with power.[8] Language not only communicates but also creates identities.[9] Hence, the linguistic description above exemplifies the magnitude of human rights progress in recent years towards universality. As Michael Freeman points out, 'human rights are, by definition, universal'[10] because in principle, all human beings have all human rights. Whereas human rights have been declared universal several times in international law and politics, and seem

[6] United National General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble.
[7] OHCHR, 'The Universal Declaration of Human Rights is the Most Universal Document in the World', World Record, Geneva, November 2016, https://www.ohchr.org/EN/UDHR/Pages/WorldRecord.aspx (accessed 15 March 2021).
[8] See D. Evans, 'Language and identity: Discourse in the world', Bloomsbury Academic in Language in Society, volume I, 2016, pp. 233.
[9] See e.g., Bakhtin, Vygotsky, Gumperz, Foucault.
[10] M. Freeman. *Human rights: An Interdisciplinary Approach*, Malden, Polity Press, 2017, p. 161.

to be established, to fully understand the concept and discourse of human rights, it is indispensable to consider the multidimensional nuances the definition has encompassed over time.

Therefore, although the existence of human rights is incontestable, several observational spectrums can be used to comprehend the essence of the origins of the human rights; Legal, philosophical, sociological, and historical perspectives are among the observations that can help unravel this complex concept. Human rights are an inherently interdisciplinary concept and understanding the background and comprehending wisely the diversity of those debates help shed light on the present level of human rights extent.

Whilst the human rights framework is relatively recent, some scholars agree that the postulation of human rights dates to some of the earliest civilisations. Hannah Arendt makes a great contribution by suggesting that 'as soon as man had emerged as a completely emancipated and isolated being, who carried in himself his dignity […] he was diluted as a member of the people'.[11] Thus, this identifies how the codification of moral behaviours (or the recognition of its dignity) into patterns of rule setting (human rights) is a human social outcome, which evolutes by the process of human adaptation as evoked by Max Weber.[12]

Human societies' natural propensity to implement and follow certain rules, defined as natural law by some classical thinkers, such as Suárez, Hooker, Hobbes, Hugo Grotius, Jean-Jacques Rousseau, and John Locke, may be attributed to the roots of human rights. Locke who is widely acknowledged as being the founder of empiricism – a doctrine according to which all knowledge derives from experience–[13] will develop in the above work what Bobbio considers the first and most complete formulation of the liberal state, which also constitutes the *ex post facto* justification of the Glorious Revolution in England.[14]

[11] H. Arendt, *The Origins of Totalitarianism*, San Diego/ New York/ London, Harcourt, Inc., 1951, p. 60.
[12] M. Weber, *Max Weber: essays in sociology*. Routledge, 2009, pp. 363-442.
[13] See J. Locke, *An essay concerning human understanding*, Dent, London, 1947.
[14] N. Bobbio, *Locke e il Diritto Naturale*, Torino, Giappichelli, 1963, p.172.

The assumption that people have natural rights, regardless of the state's approval, is at the heart of Locke's theory. These natural rights existed prior to the creation of any democratic community and imply the protection of 'the life, the liberty, health, limb, or goods of another'.[15] Thus, natural rights, according to Locke, originate from natural law. Similarly, Immanuel Kant is often mentioned in international human rights literature; even though Kant was not a human rights theorist, his contributions with 'Perpetual Peace' are notorious, especially 'where a violation of rights in one part of the world is felt everywhere'[16]. Although Kant truly believed that rights should be protected within the state context, this idea influenced the contemporary sense of perceptiveness in rights violations.

The understanding that 'all men are created equal' is present in the development of substantial instruments in history, such as the Magna Carta signed in 1225, the English Bill of Rights signed in 1689, the American Declaration of Independence proclaimed in 1776 and the Declaration of the Rights of man and of the citizen adopted in 1789.[17] Furthermore, with these contributions, the term natural rights was adopted as a synonym for the freedoms that are guaranteed to the species of Homo sapiens. Randy Barnett, summarizes the specificities between natural law and natural rights, by suggesting that:

> In short, *natural-law ethics instructs* us on how to exercise the liberty that is defined and protected by natural rights. Whereas natural-law ethics provides guidance for our actions, natural rights define a moral space or liberty, as opposed to license, in which we may act free from the interference of other persons.[18]

However, it was only in the aftermath of the 20th century that human society was encouraged by the reaffirmation of faith in humanity through what is known as human rights. Human rights promotion and security became a priority in the international community of the post

[15] J. Locke, *Second treatise of government and a letter concerning toleration*, Oxford, Oxford University Press, 1690, Sec. 6.
[16] H. Reiss, *Kant:Political Writings*, Cambridge, Cambridge University Press, 1991, pp.107-108.
[17] See e.g., Drew, Katherine Fischer. *Magna Carta*. Greenwood Publishing Group, 2004/ Maer, Lucinda, and Oonagh Gay. *The Bill of Rights 1689*. House of Commons Library, 2009. / Jefferson, T. (1776). American declaration of independence. / McPhee, Peter. *The French Revolution, 1789-1799*. OUP Oxford, 2001.
[18] R. Barnett, *A Law Professor's Guide to Natural Law and Natural Rights*, Georgetown, Georgetown University Law Center, 1997, p. 680.

war period, World War I and World War II, because of the horrifying occurrences that accompanied the conflicts.[19]

Despite, the debate surrounding natural rights, natural law, and the origins of human rights as fertile ground for discussion, one must also analyse, following Bobbio's statement, that it is not a question of determining whether and 'how many of those rights there are, what their nature is, and on what foundation they are based, whether natural or historical, absolute or relative'[20] Instead, it is a matter of determining the most consistent 'method of guaranteeing rights and preventing their continuous violation'.[21]

Moreover, while acknowledging the roots of modern human rights is essential, understanding the mechanisms and procedures of protecting human beings is paramount for this research. Modern human rights are not restricted to the textual abstractions of legal concepts expressed in various international documents, the comprehensive understanding is beyond human rights law; legal sources do not exhaust the human rights field, and other areas are crucial. Nevertheless, it can be considered that the legal understanding enlightens the recent and institutionalised international human rights mechanisms, and it is a solid starting point for this research journey.

Thereby, according to Steiner, Alston; and Goodman[22], the birth of the international human rights concept, as known, is based on the United Nations Charter, Universal Declaration of Human Rights, the Covenants, and its Protocols. The UN Charter of 1945, still according to the authors, took the centre stage until 1948 due to the UN General Assembly approving the Universal Declaration of Human Rights, and it would remain in the centre stage for the next 28 years, until the introduction of the Covenants and their Protocols. Some human rights scholars defend the relevance of the UDHR, arguing that even though it was not legally

[19] See F. Viljon, *International Human Rights Law: A Short History*, in UN Chronicle, 2008. Available: https://www.un.org/en/chronicle/article/international-human-rights-law-short-history. (Accessed 16 March 2021)
[20] N. Bobbio, *The Age of Rights*, Trans. Allan Cameron, Cambridge, Polity Press, 1996, p.12.
[21] Ibid, p.12.
[22] Steiner, Henry J., Philip Alston, and Ryan Goodman, *International human rights in context: law, politics, morals: text and materials*, Oxford University Press, USA, 2008, pp. 3-17.

binding, the Declaration provided the impetus for the implementation of other legally binding treaties and conventions.

Therefore, the Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the two Fundamental Human Rights Covenants, and together Universal Declaration, Covenants, and Protocols constitute the International Bill of Human Rights, which to has been the key elements of the Global Human Rights Structure.

From the time of the UDHR's adoption and the establishment of international Bill of Human Rights until 1990, the debate on human rights at the United Nations had been marked by ideological conflict. Hernandez identifies how the discussions on human rights at the international level are a supposed hierarchy of generations of human rights ideas, as well as the affirmation of national security doctrines, which reaffirmed state sovereignty.[23] The author reiterates this notion by implying that the meeting was pivotal for the strengthening of human rights agenda in the international system. In addition, to disseminating the theme among various countries around the globe, it also contributed to the inclusion of new actors in international discussions.

It was only with the fall of the Berlin Wall, and due to the renewed optimism of the international community in regard to strengthening cooperative ties that human rights were finally consolidated as a global issue. The World Conference on Human Rights, commonly known as the Vienna Conference (1993), was a historic and majestic event that brought together 171 national delegations and 2,000 non-governmental organizations (NGOs), which resulted in approximately 10,000 participants, as reported by the UN General Assembly. [24] The document that resulted from the conference, establishes eighteen effective Universal Human Rights. According to Manfred Nowak, the Declaration brought several achievements,

[23] M. Hernandez, Os Direitos Humanos como Temática Global e a Soberania no Sistema Internacional Pós-Guerra Fria. Master Thesis, UNESP, 2010, p. 62, https://www.marilia.unesp.br/Home/Pos-Graduacao/CienciasSociais/Dissertacoes/hernandez_mc_me_mar.pdf, (accessed 17 March 2021).
[24] United Nations, 'Outcomes on Human Rights', World Conference on Human Rights, https://www.un.org/en/development/devagenda/humanrights.shtml (accessed 17 March 2021).

one of them being the recognition towards 'a common understanding of all human rights for all'[25]. This is explicitly stated in Article 5 of the Declaration and Programme of Action[26], which highlights the universality of all Human Rights.

The authors Pellet; Eisemann; Ascensio; and Decaux reinforce the idea that human rights are no longer only a matter of domestic domain since from the moment they have international instruments and their implementation mechanisms[27]. In addition, whilst discussing the status of rights that human beings have in terms of international law, the Brazilian professor Piovesan, argues 'The recognition that human beings have rights under international law implies the notion that the denial of those same rights imposes, as a response, international accountability on the violating state'[28]. This accountability, in turn, identifies the limitations of the traditional notion of state sovereignty. In addition to this idea, Keck ME and Sikkink K state that:

> The doctrine of internationally protected human rights offers a powerful critique of traditional notions of sovereignty, and current legal and foreign policy practices regarding human rights show how understandings of the scope of sovereignty have shifted. As sovereignty is one of the central organizing principles of the international system, transnational advocacy networks that contribute to transforming sovereignty will be a significant source of change in international politics.[29]

The history of human rights is characterised by plurality and transition. The concept has long been associated with emancipation, independence, and anti-injustice movements, which has contributed to the emergence of a wide range of social contexts and, as a result, these concepts have taken on a range of meanings throughout history. However, the essence of human rights

[25] M. Nowak, *Introduction to Human Rights Theory in All Human Rights for All:* Vienna Manual on Human Rights, Vienna, Intersentia, 2012, p. 270.
[26] Vienna Declaration and Programme of Action (adopted 12 July 1993) Doc A/CONF.157/23. Article l.
[27] P. Eisemann, H. Ascensio, E. Decaux et al., *Annuaire Français de Droit International*, Droit international pénal, 2e éd. révisée, Paris, Pedone, 2012, p. 972.
[28] F. Piovesan, *Direitos humanos e o direito constitucional internacional*, São Paulo, Ed. Max Limonad,1996, p. 34
[29] M. Keck and K. Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics*, Ithaca, Cornell University Press, 2014, p. 411.

allows parallels in freedom movements ranging from classical Greece to today's political revolutions.

It is accurate to assume that the definition is nuanced and that necessitates close examination and interpretation. Despite the challenges, one must acknowledge that since 1945, great progress has been made not only in standard setting and institutional building but also in the rights and well-being establishment of many people across the world. The fusion of civil and political rights, economic, social, cultural, and collective or solidarity rights - the three generation of human rights - enshrined liberty, equality, and respect for human dignity into local and global apparatus.

To summarise, the concept of human rights poses additional issues since it extends well beyond instances of severe violence and injustice. Certain opponents say that human rights are utopian and illusory; on the contrary, human rights exist in numerous treaties, agreements, claims, entitlements, and obviously in the values shared by many, if not all, human beings which derive from moral and/or legal principles. In addition, Freeman argued 'it is not superstitious to think that human beings ought to have a certain kind of respect'[30], this highlights how the connection between justice and rights was created with the desire to establish valid standards that support equality and dignity.

2.2. The Global System: Human Rights Protection Mechanisms

The process of universalising human rights has allowed, amongst other things, the formation of an international normative system for the protection of such rights. Therefore, following the adoption of the International Bill of Human Rights and the modern definition of human rights, the adoption of several international treaties, designed to protect fundamental rights, has contributed to the expansion of international human rights law.

Within the United Nations skeleton, a global normative system for the safeguard of human beings has been established. This normative system is composed of general instruments, such

[30] Freeman, p. 12

as the International Covenants, and allows specific instruments to respond to certain human rights violations, such as torture, discrimination, women, children, migrants, persons with disabilities and enforced disappearances.

The coexistence of general or special human rights arrangements as complementary defence mechanisms is confirmed within the context of the global system. The special protection mechanisms highlight how the subject is described thoroughly and resolute. The general is viewed in their abstraction and generality with the fundamental scheme of defence. The authors Walter Kälin and Jörg Künzli summarizes soundly the international implementation of human rights mechanisms have been enlarged 'since the end of the Second World War by centralized monitoring and implementation mechanisms by bodies situated at the supranational level'.[31]

2.2.1. The UN Main Human Rights Mechanisms

The United Nations has adopted several conventions as well as and other human rights apparatus that are actively involved in monitoring the implementation of the standards enshrined in these instruments, which include the establishment of a board committee of experts and other bodies that periodically address and follow-up on human rights issues. Inside the UN framework, there are different sorts of human rights organisations: charter bodies and treaty bodies.

Firstly, the Charter- Based System, which is as term defined as those who provide for the United Nations Charter or established following its provisions, functioning without reference to a specific treaty. The Charter-based institutions have jurisdiction over all UN Member States. Examples of this type of charter-based bodies are General Assembly (GA), and under it the Human Rights Council, the Subcommittee.

The Economic and Social Council (ECOSOC) comprises Programmes and Funds, Agencies, Functional and Regional Commissions, and Standing Committee. Additionally, the Secretary

[31] W. Kälin and J. Künzli, *The law of international human rights protection*, Oxford, Oxford University Press, 2019, p.191.

General (SG), and its Department of Economic and Social Affairs (DESA), Office of the United Nations High Commissioner (OHCHR), and Department of Public Information (DPI).[32] Also, regarding the mechanisms provided by the Charter, notable emphasis should be placed on the International Court of Justice. The Court's function is to address legal issues presented by nations, as well as to provide legal advice on institutional issues of the UN.[33]

Secondly, the Treaty-Based System embrace the core International Treaties, their Instruments and Monitoring bodies. Each one of the nine international human rights instruments have specific burden, and some of the concerns are on Racial Discrimination (ICERD), Discrimination against Women (CEDAW), Against Torture (CAT), Rights of the Children (CRC), Migrant Workers (ICMW), Enforced Disappearance (ICPPED), Rights of Persons with Disabilities (ICRPD), as well as the ICCPR and ICESCR and a handful other optional protocols.[34] Worth mentioning that the high number of State parties that are contemplated in each treaty symbolises the magnitude of international consensus on key human rights issues. An example can be seen on the CRC, the treaty has the most extensive membership between the core treaties, 196 States Parties.[35]

Furthermore, Independent Experts who are commissioned by each of the nine UN human rights core treaties help monitor the implementation of the provisions of those treaties by their respective States Parties, certainly they have no jurisdiction over States as this is not included in the treaty they monitor. Also, other entities, not belonging to the UN structure, but due to the special relations they maintain with the UN, integrate the protection system. These include the International Criminal Court (ICC), International Tribunals, International Courts, International Conferences, Specialised Agencies.

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[32] See UN, Charter- based Bodies in Documentation: Human Rights, 2021, https://research.un.org/en/docs/humanrights/charter.
[33] International Court of Justice, The Court, https://www.icj-cij.org/en, (accessed 15 April 2021)
[34] See OHCHR, Jurisprudence, 2021, https://juris.ohchr.org/about/abbreviations, (accessed 10 April 2021)
[35] UN, Treaty Series, Convention on the Rights of the Child. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en; and UNICEF, *Convention on the Rights of the Child*, http://www.unicef.org/crc/, (accessed 10 April 2021)

Under the Charter and the treaties of the UN, states have made a commitment to act in accordance with their principles to promote and respect human rights. What is understood, therefore, is that in all the cases described here, global human rights system establishes legitimate international obligations. The framework of international obligations, furthermore, inspires how other issues may be aggregated to such obligations and duties for the protection of dignity. In this context, the conventional mechanisms for the protection of human rights are truly collective mechanisms for determining international responsibility and serve in this study as an inspiration for the accountability of human rights violations.

2.3. Regional Protection Systems and Institutions

The internationalisation of protection, however, did not only occur at a global level. Many national and sub-regional organisations have sprung up as a result of the human rights and UN systems. These organisations have chosen to adopt a normative structure that includes legal, political, economic, social, cultural, collective human rights and specific groups such as women, children, people with disabilities, minorities, indigenous peoples, prisoners, and migrants.

Together with the UN protection system, regional systems for protecting human rights were developed in African, European, and American continents. Therefore, there are currently five human rights mechanisms, that include those already mentioned, together with the Arab Human Rights Committee and the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights. Therefore, according to the European Report on the Role of Regional Human Rights Mechanics[36] regional human rights systems may be differentiated, as they range from a relatively sophisticated human rights protection framework to an evolving one.

[36] European Parliament, 'The Role of Regional Human Rights Mechanisms in Directorate- General for External Policies', 2010, https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf. (accessed 30 March 2021).

The International Justice Resource Center (IJRC) exposes that each regional system was established under an intergovernmental organisation's auspices[37]. For instance, the three organisations with broader mandates are the African Union (AU), the Council of Europe (CoE) and the Organisation of American States (OAS). Nonetheless, the IJRC notes that while the systems hold states accountable for human rights infringements, the complaints process where people can request reparations is a key aspect of these systems. Likewise, regarding individual complaints, are not meant to replace national courts, but they are an important source of justice when national solutions are ineffective.

2.3.1. Inter-American System

As previously seen, the consolidation of international human rights was the fruit of vigorous resistance against rights violations. To complement the establishment of rights in the international legal order the regional instances emerged. The Inter-American Human Rights System[38] was created with the purpose to allow individuals seeking those rights that were not guaranteed to them at some instance in the national processes.

The states of the American continent came together to create, for the first time, a shared system of norms and an institutional framework in 1889, with the holding of the International Conference, in Washington D.C.[39] As a result of the Conference, the eighteen participating countries decided to create the International Union of American Republics, which would afterwards be denominated the Pan-American Union.[40] Initially, the main objective of the Union was to improve their communications and economic relations. These bases served as the foundation for what would later become the postulation of Organization of the American

[37] International Justice Resource Center, 'Courts & Monitoring Bodies', https://ijrcenter.org/courts-monitoring-bodies/, (accessed 31 March 2021)

[38] As a disclaimer, the highlight of this specific research choice on the Inter-American System, it is based on the future application within the case study context, because, once it is inserted in the Brazilian reality and corresponds to the performance of the Inter-American system. Assuredly the protective systems are all equally significant and need consideration, but for the sake of the feasibility in this study, it sought to emphasis one specific system.

[39] See M. Elguera, Reminiscences of the First International Conference of American States. Bull. Pan Am. Union, v. 74, 1940, p. 263.

[40] Organization of American States (OAS), 'Our History', 2021, http://www.oas.org/en/about/our_history.asp (accessed 2 April 2021).

States (OAS) embedded on the purpose of an Inter-American System to inspire peace in the American continent.

The documents that marked the birth of the OAS are the 'Charter of the Organization of American States, the American Treaty on Pacific Settlement, and the American Declaration on the Rights and Duties of Man'.[41] They were all adopted at the 1948 International Conference of American States held in Bogotá, Colombia.[42]

Within the OAS, the American Declaration of the Rights and Duties of Man and the United Nations Declaration on the Rights and Duties of Man, both approved in 1948, have a great in common. As in its preamble, the American Declaration states that 'All human beings are born free and equal, in dignity and rights, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another'.[43] Accordingly, duties and rights are combined to support civil, political, economic, social, and cultural rights.

Complementary, an important human rights mechanism created at the regional level is the 1969 American Convention on Human Rights (ACHR), popularly known as the Pact of San José.[44] Later complemented by the 1988 additional Protocol[45] that conveys an inclusive social, economic, and cultural rights, and 1990 Protocol to Abolish the Death Penalty[46] in the American continent. By ratifying the American Convention and the Declaration, States committed themselves to complying with the provisions and arrangements of the System.

The Inter-American Human Rights structure is biphasic and has two different bodies, which comprises in the Inter-American Commission on Human Rights (IAComHR) and the Inter-American Court of Human Rights (IACtHR). The Commission has a jurisdiction over the 35

[41] ibid.
[42] See Charter of the Organization of America States, (Apr.30, 1948, 2 U.S.T. 2394, as amended Feb. 27, 1970) 21, UST. 607.
[43] Inter-American Commission on Human Rights (IACHR), 'American Declaration of the Rights and Duties of Man', Bogotá, 1948, https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm (Accessed 2 April 2021).
[44] American Convention on Human Rights, Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, *Refugee Survey Quarterly*, Volume 24, Issue 2, 2005, pp. 158-160.
[45] See Organization of the American States, Additional Protocol: Protocol of San Salvador, 1988.
[46] See Organization of the American States, Protocol to Abolish the Death Penalty, 1990.

members of the OAS, subsequently conveys why the Commission is the representative body of the member states; it is composed of seven independent members, experts in human rights.

The members do not represent countries and are elected by a General Assembly promoted by the OAS. This body has the task of receiving individual petitions from those who allege the violation of a right and then decide who should be sent to Court for judgment. In addition, it is responsible for issuing reports to the States and also for monitoring the necessary measures that need to be taken by the State in each case. Moreover, the Commission issues emergency security requests, conducts country visits, and publishes reports on human rights situations.

The Court is a jurisdictional organ that can only judge cases from member States that have expressly recognised its competence to do so. The American Convention emphasises that states, current twenty, that have signed the American Convention and acknowledged the Inter-American Court's authority are entitled to have their cases heard by the Court.[47] However, it is necessary to acknowledge that the case will only be taken to the Court after all domestic means of resolving the conflict have been exhausted in the domestic domain. Furthermore, it should be noted that the Court has no jurisdiction in ensuring the execution of the measures imposed on it for the inspection.

The Inter-American Commission and the Inter-American Court of Human Rights have frequently rejected proposals that aim to usurp States internal authority, which prevents the matter from being resolved through domestic legislation. Since the first case submitted to its jurisdiction, the emblematic case of Velásquez Rodríguez Vs. Honduras[48], the Court has stated that the norm of previous exhaustion of domestic procedures enable the State to try to response the problem in accordance with its domestic legal apparatus before being confronted

[47] American Convention on Human Rights, 2005, p. 159.
[48] Inter-American Court of Human Rights, *Velásquez Rodríguez Vs. Honduras*, Merits, Series C, No. 4, 29 July 1988, para. 61.

by regional or international proceedings, and this is particularly the case in the international human law, as this is 'adjunctive or complementary' to domestic jurisdiction.[49]

In this manner, we can say that the national system, the Commission, and the Court work to promote and enforce human rights. But after all, how do these two bodies work? According to the understanding of the Inter-American System, a state can become accountable for the non-observance of rights in three ways:

> Action: as a consequence of an act of the State; Omission: as a consequence, or result of a fact or when its agents failed to act when they agents failed to act when they should have acted; Acquiescence: as a consequence of the tacit consent of the state or its agents about a fact.[50]

This suggests that a citizen who may feel that his/her rights have been violated (the mere nonconformity of the party is not sufficient reason, there must be a violation of a right set forth in a treaty ratified by the State) may send a complaint to the Commission so that it can be analysed. It is important to note that the complaint cannot be sent directly to the Court, petitions can be sent through the OAS' own portal.[51]

Throughout the history of the OAS, the American continent had to deal with massive human rights violations, and to surpass these infringements in the direction of restoration of peace several instruments had to be implemented, namely mechanisms of transition that will take place in this discussion in the upcoming. Nonetheless, it is decisive under those circumstances to underline the IACtHR jurisprudence to cope with massive human rights violations.

The InterAmerican Jurisdiction predicts the right to access justice and the jurisdictional protection of the victims, for instance in the article 1.1. of the ACHR guarantees the conduct of inquiry, adjudication, and penalisation for those responsible, with the purpose to bring

[49]American Convention on Human Rights 'Pact of San Jose, Costa Rica' (adopted 22 November 1969, entered into force 18 July 1978) OAS, Treaty Series, N° 36, 27 August 1979, N° 17955.
[50] OAS, 'Human Rights in the Inter-American System', https://www.oas.org/ipsp/images/English%20FAQs.pdf, (accessed 20 April 2021), point 5.
[51] See IACHR, Individual Petition System Portal.

forth suppression for impunity. Likewise, the IACtHR has strengthen its responsibility to achieve liability, 'as impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims'.[52]

Accordingly, the Court execute standards for justice and its access, as specified by Binder, the IACtHR capacity to guide compensations through 'telling States in detail how to implement its judgment, including through monetary compensation, the release of prisoners, psychological aid to torture victims or the delimitations of indigenous territories'.[53] Moreover, because its relevance on justice procedures, the Court has pronounced its concerns on amnesty jurisdictions in the course of transitional undertaking in several countries, for instance Brasil, Chile, El Salvador, Guatemala, Peru, and El Salvador.

The IACtHR settled its ordinance with Barrios Altos v. Peru, judged in 2001. It has been determined that the '*leyes de autoamnistía'*, passed during the Fujimore administration, were ratified for the president's own interest, therefore, violated the rights of the victims. In this case, the Court prohibited the self-amenities laws, by considering 'incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue'.[54] Declaring that the incompatibility of such law, the Court specified the cases of massive human rights violations, torture, arbitrary detentions e forced disappearances.

La Cantuta v. Peru, judged in 2006, establishes 'since the legal system does not ensure the nullity and ineffectiveness of amnesty laws, the State is liable for the failure to comply'[55]. In addition, case Almonacid v. Chile[56], judged in 2006, similarly concerned about the self-

[52] Inter-American Court of Human Rights, *Anzualdo Castro v. Perú*, Merits, Reparations and Costs, Series C, No. 202, 22 September 2009, para.179.
[53] C. Binder, *The Inter-American Human Rights System: in International and Regional Human Rights Mechanisms, in All Human Rights for All: Vienna Manual on Human Rights*, Vienna, Intersentia, 2012, p. 244.
[54] Inter-American Court of Human Rights, *Barrios Altos v. Peru*, Merits, Reparations and Costs, Series C, No. 75, 14 March 2001, para. 44.
[55] Inter-American Court of Human Rights, *La Cantuta v. Peru*, Merits, Reparations and Costs, Series C, No. 162, 29 November 2006, para. 162.
[56] Inter-American Court of Human Rights, *Almonacid y otros v. Chile*, Preliminary Objections, Merits, Reparations and Costs, Series C, No. 154, September 2006, para. 99.

amnesty decreed by Pinochet regime, the Court considered that the mere existence of the law was a human rights violation, in this case, specific, the Court referred for a systemic human rights violation, and the correspondently the crimes against humanity.

Hence, as claimed by Binder 'when affirming that national laws are without effects, the IACtHR thus attributes supranational force to its determinations and acts like a domestic constitutional court'.[57] With these precedents, the IACtHR made it clear that the amnesties for crimes against humanities, as well as massive and systemic human rights violations contexts are incompatible with the American Declaration on Human Right and, for that reason, must be addressed accordingly.

Therefore, to protect democratic values and the plurality of our rights, the limits imposed throughout history by political and economic liberalism proposals facilitate a general reformulation that brings them closer to global problems in modern times. The enforcement of human rights has gained new means since the establishment of the Global Human Rights Protection Framework. The mechanisms foreseen at the global level would not be sufficient to deal with all the nations in the world simultaneously. Regional Systems of Human Rights protection are configured, acting under the tutelage of the UN system.

2.4. The Interaction between Human Rights, Humanitarian Law and Criminal Law

From a natural law perspective some scholars see the construction of a legal system as essential to the survival of mankind and consequently the evolution of law and legal systems. These systems help reveal how societies share common values articulated in the form of norms, which are then converted into codes and contribute to the creation and consolidation of a legal system. As a result of the preceding, the law incorporates social values, and by observing, studying, and qualifying them and is therefore easy to see that these values have a fundamental feature.

[57] C. Binder, 'The prohibition of amnesties by the Inter-American Court', in *German Law*, vol. 12, no. 5, 2011, p. 1212.

Human rights often promote peace, but they are not just for times of peace and stability; they need much greater enforcement during times of conflict. Alexander Breitegger argues that when conflicts erupt human lives and livelihoods suffer the most[58]. It is during these times that the need to preserve civilisation is quite compelling and therefore allows International Humanitarian Law (IHL) to fulfil this primary objective.

International protection of the human beings during conflictions arrangement has been present at various times throughout history, but not in a normative manner as we know it today. The protection is a product of the progressive affirmation of individuality and appears for the first time as a claim during the 18th century. Therefore, the history of IHL is related to Henry Dunant, a Swiss who after a journey where he witnessed the horrors of the Italian war of unification decided to propose in his book that inspired the discussion on the international protection of persons.[59]

Dunant's inspiration gave impetus to a new humanitarian structure, with the aim of being a neutral institution that help the war wounded and as a result the Red Cross was born[60]. Since 1863, the organization has been fostering the development of IHL. The International Committee of the Red Cross defines International Humanitarian Law as:

> International humanitarian law is based on a large number of treaties, in particular the Geneva Conventions of 1949 and their Additional Protocols, and a series of other conventions and protocols covering specific aspects of the law of armed conflict. There is also a substantial body of customary law that is binding on all States and parties to a conflict. [...] IHL covers two main areas, the protection of persons who are not, or no longer taking part in fighting and restrictions on the means and methods of warfare such as weapons and tactics.[61]

[58] A. Breitegger, *Cluster munitions and international law: disarmament with a human face*, London ; New York, Routledge, 2012, p. 15.
[59] See H. Dunant, *Un souvenir de Solférino*. Collection XIX, 2016.
[60] International Federation of Red Cross, 'History', https://www.ifrc.org/en/who-we-are/history/ (accessed 21 April 2021).
[61] International Committee of the Red Cross, 'Treaties and Customary Law', 29 October 2010, https://www.icrc.org/en/document/treaties-and-customary-law, (accessed 21 April 2021).

As international society has advanced recognition in *Jus ad bellum,* that according to Red Cross 'refers to the conditions under which states may resort to war or the use of armed force in general*'* which is the regulation of the conduct in the conflict between parties.[62] The Geneva Law, formed by the four Conventions of 1949[63] and its two additional Protocols of 1977, are the main rules of protection of the human person in case of conflict.

Furthermore, Gutteridge adds that the first Convention safeguards sick and wounded soldiers on the field. The second Convention safeguards military personal who are injured, ill, or shipwrecked overseas. The third Convention safeguards the war prisoners. The fourth Convention ensured the safety civilians, including those in occupied territory.[64] In addition, the three protocols adopted, refer specifically to (1) international conflict (2) non-international conflicts (3) additional distinctive emblem of Red Cross.[65]

Whilst Geneva law protects the victims of war, Hague law based on the 1899 Hague Conventions, seeks to regulate the use of force in armed conflict. In recent years, individuals have played an integral role international law and the competence of international courts to judge them has been significantly improved. From the contributions of Humanitarian Law, it is understood that the State has custody of the perpetrator and can be judged as well.

Hence the evolution of understanding on how to achieve justice in hostile times, initially for state perpetrators but later time for individuals, has led to the expansion of the categories protected by domestic law. Because of this development, it has also become more institutionalised, the introduction of institutions such as the International Criminal Court (ICC). This, therefore, identifies a new approach towards what is conceived as International

[62] ICRC, 'What are jus ad bellum and jus is bello?', 22 January 2015, https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0 (accessed 21 April 2021)
[63] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 287.
[64] J. Gutteridge, 'The Geneva Conventions of 1949', *Brit. YB Int'l L.*, vol. 26, 1949, p. 294.
[65] ICRC, 'The Geneva Conventions of 1949 and their Additional Protocols', 29 October 2010, https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm, (accessed 21 April 2021).

Criminal Law (ICL). The Italian professor Cassese, and former judge President of the ICTY, considers that:

> International criminal law is a body of international rules designed both to proscribe international crimes and to impose upon States the obligation to prosecute and punish at least some of those crimes. It also regulates international proceedings for prosecuting and trying persons accused of such crimes.[66]

Historically, the criminal process and the protection of the human being in conflictual times was linked to individual states and subject to sovereignty. Although in the 19th century some authors, such as Grotius[67] claim that there was some recognition, it was at the beginning of the 20th century that states could consider diplomatic political crimes. Since early of human society, criminal law has always been present in human life, and the clear proof of its presence is evidenced through the multiple body testimonies that have been able to be preserved over the years.

International Criminal Law, on the other hand, has more recent origins after the war processes of the 20th century, and an effective institutionalisation from the 1990s onwards. It was necessary to integrate elements of criminal law into international law, including the concept of *crimes actus reus mens rea*[68]. Wherefore, the International Criminal Law (ICL) is a set of rules that define international crimes, that is because following the collapse of a civilization because of a war or conflict, nations are confronted with the arduous task of enhancing human rights and combating impunity.

Additionally, according to French scholar Ascensio, the norms of International Criminal Law were originally designed to regulate 'horizontal' collaboration between states: the goal was to incorporate them into national law so they could simplify prosecution by domestic laws[69]. As per Ascensio, the evolution of International Criminal Law during the Cold War went in

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[66] A. Cassese, *International Criminal Law*, Oxford, Oxford University Press, 2003, p. 15.
[67] J. Geddert, 'Beyond Strict Justice: Hugo Grotius on Punishment and Natural Right', *The Review of Politics*, vol.75, no.4, 2014, pp. 559-588.
[68] See definition 'there can be no crime without a guilty mind', according to Sai Hasita and Ayush Jain
[69] H. Ascensio, 'The Rules of Procedure and Evidence of the ICTY', Leiden Journal of International Law, vol. 9, 1996, p. 467.

the opposite direction by adopting a 'verticalization', which developed not between states but between persons inside states and international society as evidenced by the normative framework.[70]

As a result, the London Agreement of 1945 created the International Military Tribunal (IMT) of Nuremberg,[71] which prosecuted three types of war crimes: war, against peace and against humanity crimes. In subsequent years both IHL and ICL have developed and added knowledge and definitions to each other, as Ferencz recalls.[72] It is valuable to acknowledge that Genocide was defined as a separate crime under the Convention on the Punishment of Genocide of 1948.[73] However, it was only with the Rome Statute, article 5, that became attainable to identify serious international crimes as 'the crime of genocide, crimes against humanity, war crimes, the crime of aggression'.[74]

Some international mechanisms are a landmark of the international presence of both concepts, IHL and ICL [which will later be understood in the domain of transitional justice]. The most characteristic manifestation was the creation of international jurisdiction on the implementation of International Tribunals. Hence, the development of International Criminal Law can be partially credited to the Nuremberg Tribunal and Tokyo Trials, but they are not only.

Other examples of this expansion include the International Criminal Tribunal for the former for the former Yugoslavia (ICTY)[75], Special Tribunal for Lebanon (STL)[76], the International Criminal Tribunal for Rwanda (ICTR)[77], Special Court for Sierra Leone (SCSL)[78],

[70] ibid.
[71] See International Military Tribunal, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers, 1945.
[72] B. Ferencz, International Criminal Courts: The Legacy of Nuremberg, *The Pace International Law Review* vol. 10:203, 1997, pp. 204- 233.
[73] International Convention on the Prevention and Punishment of the Crime of Genocide, (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, Article 5.
[74] Rome Statute of International Criminal Court (adopted 17 July 1998, entered into force 01 July 2002) I.L.M. 999 UN. Doc. A/COF.183/9, 37.
[75] *UNSC Res 808, 22 February1993 and UNSC Res 827, 26 May 1993.*
[76] UNSC *Res 1664 (2006), 29 March 2006.*
[77] UNSC *Res 955 (1994), 8 November 1994.*
[78] UNSC *Res 1315 (2000), 14 August 2000.*

Extraordinary Chambers in the Courts of Cambodia (ECCC)[79], the hybrid panels experiences of East Timor, Kosovo, African Chamber, and more recently the International Criminal Court (ICC), with the aim of establishing a continuous universal enforcement mechanism.
Individuals and state accountability have been established a relatedness in the international context. The human rights system is strengthened and enhanced by international humanitarian and criminal law. Civilians are protected before, throughout and after conflicts which help prevent human rights violations and ensure that human rights infringements are not undertaken with impunity. These processes are designed to help people overcome pain and traumatic events in their lives.

Ergo, by analysing International Humanitarian and Criminal Law grounds, this research will gain more valid and meaningful results to acknowledge the premises of the transitional justice. It is not the intention of this paper to generalise the concepts but instead is to understand that although they are distinct processes, the concept of protection of human life in extreme situations is connected. The consolidation of human rights during disharmonious experiences amalgamates these concepts and contributed to the birth of the next abstraction, transitional Justice.

2.5. Transitional Justice: An Overview

The interconnectivity and indivisibility of all human rights is a pillar of international human rights law as demonstrated by UN mechanisms, institutions, and treaties. However, the background of impunity among all individuals is one of cowardice, not only on the part of those who produced it, but also on the part of those who agreed and consented to it.

Despite the establishment of several mechanisms for the protection of human rights the scenario of violations, and especially impunity of massive past abuses, required additional efforts in response to the mechanisms already in operation. This is why understanding the

[79] UNGA *Res* 57/228 B (2003), 22 May 2003.

transitional justice traditional conceptual framework emerges as an effort to manage the current transitional processes over the world.

With regards to analysing relevant linkages of the issue, it is useful to mention that the concept of Transitional Justice does not express a definitive and concluded analytical category but a reference to the study, which perhaps seeks to conceive and contribute to the construction and advancement of the field. Furthermore, as Kieran McEvoy mentions 'transitional justice is a field on an upward trajectory'[80].

The definition, therefore, refers to a historical and contingent process that throughout its development order sought to amalgamate the search for justice to adverse conditions which also involve and amalgamate legal and social strategies. This concept offers a straightforward and operative response to a traumatic and post-conflict legacy guided by primary objectives of promoting and protecting violated human rights, as well as strengthening the healing of wounds towards justice. The International Center for Transitional Justice (ICTJ) completes by saying:

> Transitional justice is rooted in accountability and redress for victims. It recognizes their dignity as citizens and as human beings. Ignoring massive abuses is an easy way out but it destroys the values on which any decent society can be built. Transitional justice asks the most difficult questions imaginable about law and politics. By putting victims and their dignity first, it signals the way forward for a renewed commitment to make sure ordinary citizens are safe in their own countries – safe from the abuses of their own authorities and effectively protected from violations by others.[81]

The core component of this assessment is to reflect upon how different actors enhance or undermine transitional justice. Some authors and experts on the field built a multi-level structure to investigate how international and domestic players perform across local, national,

[80] K. McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice', *Journal of Law and Society*, vol. 34(4), 2007, pp. 411- 440.
[81] ICTJ, 'Sustainable Peace After Mass Atrocities: The Case for Transitional Justice', 21 January 2019, https://www.ictj.org/news/sustainable-peace-after-mass-atrocities-case-transitional-justice, (accessed 30 April 2021).

and transnational contexts. So, the next objective is to determine how the idea has evolved, roots, trunks and the evolution still needed to bear further produce.

2.5.1. Transitional Justice and International Human Rights Law

Nowadays there is a comprehensible discern that the human rights violations occurring in the immediate past demand an affirmative acknowledgment. Given the history of human rights violations throughout the decades, the international community has designated institutions to fulfil rights obligations if the state is is impotent or reluctant to provide victims with the effective remedy that international law requires.

New leaders around the globe have been confronted with the challenges of democratic transition following inter-ethnic conflicts, war, dictatorial rule, or other regimes that have violated human rights. Rebuilding the economy and political institutions, as well as restoring the rule of law and achieving social reconciliation are all necessary components of national reconstruction. The most successful response to human rights abuses is justice which acts as a link between past violence and potential democratic prospects.

During the last five decades, overcoming the past, critically confronting the grave human rights violations committed by past abuses and seeking policies that ensure peace and social stability after the democratic transition have guided major efforts in the international arena. The basic and crucial question at the end of these periods of abuse is: how to meet the demands of the victims of violence? And also, what should be done about those who are guilty of human rights violations? In short there are several conflicting positions on how these questions should be addressed.

Transitional justice proponents have reflected on the contributions and limits of justice measures to the promotion of democratization and peace processes; McAdams, Teitel, Minow, Rosenblum, Mihai are just a few of the authors that supports this concept. Similarly, some case studies address the effectiveness of the different aspects of transitional justice arrangements and how the globalized template of this justice model must adapt to each national and local context.

McEvoy and Mc Gregor argue that transitional justice has recently established itself as a crucial subject of research. The significance has been verified by a process of institutionalisation mechanisms towards the international criminal law structure. This can be seen through the various international tribunals, trials, and other procedures, such ICTY, ICTR, SCSL, IHT, and ICC provisions.

> From vaguely exotic origins on the outer edges of political science, the study of 'justice' in times of transition has emerged as a central concern of scholarship and practical policy-making. A process of institutionalisation has confirmed this importance. The ICTY, the ICTR, the ICC, hybrid tribunals in Sierra Leone and East Timor and 'local' processes such as the Iraqi Higher Tribunal (IHT) have energised international law and international criminal justice scholarship. The South African TRC was for a time lauded as the model for dealing with the past and remains one of the most researched institutions in the world. It is one of approximately two dozen such institutions established in different transitional contexts over the past twenty years to assist conflicted societies to come to terms with a violent past. At the national level, international donors contribute huge sums of money to 'Rule of Law' programmes designed to transform national justice systems.[82]

The concept of transitional justice has broadened over the last two decennium, from the viewpoint of various actors. The definition of transitional justice has a variety of meanings and understandings, due to its complexities. Transitional Justice refers to a set of judicial and non-judicial initiatives undertaken to address the legacies of massive human rights violations. Important to mention that the term 'transitional justice' was coined by the UN Secretary-General Report.

Kofi Annan[83] delineated transitional justice coordination as 'processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses.'[84] Within such mechanisms, Annan affirms 'with differing levels of international

[82] K. McEvoy and L. McGregor, *Transitional justice from below: Grassroots activism and the struggle for change*, Bloomsbury Publishing, 2008, p. 06.
[83] Through the Report on Rule of Law and Transitional Justice in Conflict and Post-conflict societies.
[84] UN Security Council, Report of the Secretary- General, The rule of law and transitional justice in conflict and post-conflict societies, UN Report S/2004/616, 23 August 2004, p. 04.

involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.'[85]

A brief history behind transitional justice is crucial in acknowledging the dimensions of it. Within the United Nations structure, on 31 August 1989, the Commission on Human Rights was commissioned by Theo van Boven to conduct a study concerning the right to justice and reparations mechanisms of victims that suffered from gross human rights violations. Van Boven proposed a series of principles which after many years of discussion within the UN were finally approved on 20 April 2005 during the 61st Session of the Commission on Human Rights (OHCHR). As can be seen in the quotation from the Van Boven document, and the UN Commission on Human Rights:

> The Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted in 1989, by its resolution 1989/13 of 31 August 1989, a Special Rapporteur with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms with a view to exploring the possibility of developing basic principles and guidelines on the issue. The study originated at a time of political change on various continents with prospects of a higher degree of human rights advancement. It was also a time of the creation of transitional justice mechanisms in a series of countries. Restoring justice implied an increased focus on the criminal responsibility of perpetrators of gross human rights abuses and their accomplices. It also opened up the exposure of many wrongs inflicted on the victims of these abuses with a view to rendering retributive justice and reparative justice. It was fitting in the search for transitional justice, and it responded to a climate of improved human rights awareness that the Sub-Commission embarked, under the auspices of its parent body the United Nations Commission on Human Rights, on the undertaking of studies aimed respectively at combating impunity and strengthening victims' rights to redress and reparation.[86]

> The impunity issue and the reparations issue are undoubtedly interrelated, certainly from the perspective of transitional justice in societies emerging from dark episodes of violence, persecution and repression. The work on both projects was only

[85] ibid., para. 8, p. 04.
[86]T. Van Boven, 'Basis Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', New York, 16 December 2005, https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html, (accessed 30 April 2021).

> completed after some fifteen years of consultations and negotiations. The United Nations General Assembly adopted in 2005 by consensus the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[87]

According to Van Boven, victims have the right to obtain justice (principles 12–14), redress (principles 15–20), and non-repetition assurances.[88]. The survivors and victims are at the heart of transitional justice postulation. Throughout transitional justice history some authors tried to define the concept. It is noteworthy that the concept of transitional justice offers an important theoretical framework for understanding the legal, social and political practices that involve memory work, political and historical justice.

Teitel, in reference to the processes of political and legal transformation in the contexts of transitions to 'new democracies' Eastern Europe and Latin America proposes an inductive, constructivist, and contextualized approach to transitional justice.[89] For Teitel, the rule of law acquires exceptional characteristics in formative moments such as those of 'transitions', law is both constitutive of the politics of transition as well as being constituted by this politics. [90] In moments of transition, different branches of law contribute to radical transformations of the political community and therefore law is oriented toward a new paradigm: the 'jurisprudence of transition'. [91]

Finally, Teitel distinguishes three different stages in the evolution of transitional justice: the first which was marked by the Nuremberg and Tokyo Trials, established significant legal precedents but was unique. From the 1980s onwards, the second period applies to the

[87] UN Commission on Human Rights, 'Report of the independent expert to update the Set of principles to combat impunity', 8 February 2005, E/CN.4/2005/102/Add.1, https://www.refworld.org/docid/42d66e780.html, (accessed 01 May 2021).
[88] T. Van Boven, 'Victims' rights to a remedy and reparation: the new United Nations principles and guidelines', in C, Ferstman, M. Goetz and A. Stephens (eds.), *Reparations for victims of genocide, war crimes and crimes against humanity*, Leiden, Brill Nijhoff, 2009, pp. 17-40.
[89] R. Teitel, 'Transitional justice genealogy', in R. Jamieson (ed.), *The Criminology of War*, London, Routledge, 2017. pp. 489-514.
[90] R. Teitel, 'Transitional Jurisprudence: The Role of Law in Political Transformation', *in The Yale Law Journal*, No. 106(7), 1997, p. 2035.
[91] R. Teitel, *Transitional justice*, Oxford, Oxford University Press, 2000, p. 215.

transitions to democracy in Latin America and the collapse of communism in the Soviet Union. This period was marked by democratization, as well as some transformative steps and the privatization of the state which subsequently left the economy in an individual initiative. The transitional justice model is normalizing and globalizing in the third and current process with a consensus on the need to deal with the past by a combination of mechanisms.

Similarly, Lisa Stadlmayr argues that the evolution of transitional justice can be framed in waves. The first wave was dominated mostly by the struggle to hold perpetrators accountable which included the mechanisms instituted for war crime trials before the International Military Tribunals in Nuremberg, Tokyo, and Germany. The second wave can be traced back to the 1980s with the mechanisms of criminal prosecutions, restorative mechanisms, and reparations measures being regarded as key components of a transformative strategy to achieve justice. Finally, the third wave which is still ongoing brought a diverse scope of judicial and non-judicial mechanisms[92].

On that account, there is consensus in the field of transitional justice that there are three stages of development, and this third wave development, in particular, is in line with the knowledge and objective that this research sought to advance. The adoption of various judicial and non-judicial mechanisms is a rich source of justice that will be addressed later in this study; therefore, it is also important not to lose sight of this understanding of the mechanisms' enlargement which occurred during the third wave.

Furthermore, the ICTJ clarifies that the objective of transitional justice will differ relying on the background, but the essence of transitional justice will remain the same. It calls for the preservation of individuals' integrity, the redress and awareness of abuses, the establishment of transparency for institutions, and the restoration of trust.[93] According to ICTJ, the following efforts need to be made to reach this aim: making access to justice a reality,

[92] L. Stadlmayr, *What is Transitional Justice and why do we need it? in Introduction to Human Rights Theory in All Human Rights for All: Vienna Manual on Human Rights*, Vienna, Intersentia, 2012, p. 521.
[93]International Center for Transitional Justice (ICTJ), 'What is Transitional Justice?', https://www.ictj.org/about/transitional-justice, (accessed 3 May 2021).

ensuring vulnerable groups are included, acquiesce for the rule of law, promoting the peace process, creating a groundwork to resolve the root causes, and advancing reconciliation.

2.5.2. Transitional Justice and Democracy

The conceptions of transition and democratization present in the dominant approach to transitional justice also deserve to be questioned. Obviously, it is difficult to determine strictly the beginning and the end of a period of transition, but this is not the main problem. Even if the literature on transitional justice views 'transition' from a broader and more malleable temporal frame, this literature tends to conceive the democratization processes in a linear manner. Assessing as a new political phase that corresponds more to a rupture than to historical continuities, it is almost as if the new political and legal order were constituted only by new actors, by a new elite, detached from the past, free from power relations[94].

Lisa Stadlmayr adds that transitional justice mechanisms are generally based on state obligations under international human rights law, humanitarian law and criminal law. Indeed, the state scope is the ground for the development of transitional justice but there are also other factors[95]. The democratic process includes a diversity of actors.

As McEvoy and McGregor suggest, the state and national and international institutional are not the only actors performing the work of transitional justice, memory, and the recovery of history. In several cases, victim and family organizations, NGOs, and community groups participate in transitional justice processes. Human rights are called in from a pluralistic perspective and a more contextualized practice of memory justice work.[96]

2.5.3. The Main Axes of Transitional Justice Mechanisms

Transitional justice is based on victim accountability and redress but what does transitional justice look like? When evaluating what transitional justice looks like, one should bear in mind that it can take on a variety of forms and accordingly its mechanisms can assume a

[94] K. McEvoy and L. McGregor, 2007, p. 10.
[95] Stadlmayr, p. 522.
[96] K, McEvoy and L. McGregor, 2007, p.10.

range of shapes as well. However, some similarities can be mapped out to form complete picture.

Teitel's work tackles several legal sources, as well as the complementation of various representations besides the legal manifestations. As stated by the author these examples would be deemed as 'punishment, historical investigation, purges, and the development of the new constitution' they had become into truth- memory, justice, reparation, and institutional reform, which are otherwise as the sources of the Rule of Law. In addition, Teitel's approach has been placed on these four dimensions of transitional justice which is framed under four pillars of transitional justice.

The ICTJ highlights that the four pillars are composed in essence by, Criminal Prosecutions, Truth-seeking, Reparations, and Reforms[97]. Furthermore, through the Guidance of the Secretary General on the UN Approach to Transitional Justice[98] the UN endorses those various instruments enshrine rights during the transitional process, amongst them the Right to Justice[99], the Right to Truth[100], the Right to Reparations[101], and the Guarantee of Non-recurrence[102]

Similarly, Méndez,[103] former director of Americas Human Rights points out four main areas of action for this model of justice. First, the author mentions justice, in a narrow sense, referring primarily to criminal prosecutions strive for criminal liability of those responsible rights non-observance. Second, the right to truth and information, which can be exercised through the establishment of truth, justice, and/or reconciliation commissions. Third, compensation achieved administratively through the payment or through symbolic political measures, such as pardons. Fourth, administration in which state officials or representatives

[97] ICTJ, 'What is Transitional Justice?', https://www.ictj.org/about/transitional-justice, (accessed 01 May 2021).
[98] UN, 'Guidance Note of the Secretary General: United Nations Approach to Transitional Justice', March 2010, https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf, (accessed 01 May 2021).
[99] See ICCPR, article 2.
[100] See ICPPED, article 24.
[101] See UDHR, article 8.
[102] See CAT, article 2.
[103] J. Mendez, 'Accountability for Past Abuses', Human Rights Quarterly, vol.19, no.2 1997, p. 261.

of the state who have committed severe violations must be restrained from continuing to exercise public functions.

Indeed, the transitional justice framework assembles a constellation key axis of action. The axes have been a feature that encompasses the complexity of transitional justice essence, but in order to approach the mechanics domain the initial understanding will revolve around the concepts of (1) Justice (2) Symbolic and financial reparations; (3) The right to memory and truth; and (4) Institutional reforms.

1. Justice

Justice is one of the broadest forms of reparations, the various references to frame justice can be found in the human rights legal apparatus and each one can be different, for instance on Article 8 of the UDHR, Article 10 of the American Convention, Article 63, Article 68 and Article 9 of the ICCPR, Article 14 of CAT and Article 50 of the European Convention, all these documents make provisions for justice arrangements.

Justice or prosecutions became deemed to provide a provisional healing for human losses. This indicates that the investigation of the facts and the legal responsibility, whether civil, criminal, or administrative, of the violating agents is composed of a series of assessment, investigation, prosecution, and accountability tasks, especially for public agents, along with penal sanctions.

In the words of Teitel, the normative linkage between justice and transition or transposition of a system can be provided through a 'poetic relation between the knowledge of the country's repressive past and its future. Through the historical accountings, what is being propounded is a sense of poetic justice'.[104] Therefore, the right to justice symbolizes consolidation not only in a lawful perception, but also in a broader sense of interpreting the transition, which tries to convert the narrative of past violations towards an optimistic future.

2. Symbolic and Financial Reparations

[104] R. Teitel, From dictatorship to democracy: the role of transitional justice, In: KOH, Harold; SLYE, Ronald (Ed) Deliberative democracy and human rights, New Haven: Yale University, 1999, p. 287.

In general, reparation for damages is conducted through material and symbolic sacrifices to victims and their families or by collective reparations to society as a whole. To design a reparation in order to prevent the perception of hush money, reparation can be restorative or regenerative in purpose and it should be supported by some type of responsibility for the perpetrators.

Pablo de Greiff mentions Symbolic and Financial Reparations as restitution, referring to those measures that strive 'to re-establish the victim's status quo ante'[105]. The actions might derivate out of the restitution of powers and freedoms to the resumption of subsistence activities and assistance, de Greiff states:

> In this context the two fundamental distinctions are between material and symbolic reparations, and between the individual and the collective distribution of either kind. Material and symbolic reparations can take different forms. Material reparations may assume the form of compensation, that is, of payments in either cash or negotiable instruments, or of service packages, which may in turn include provisions for education, health, and housing. Symbolic reparations may include, for instance, official apologies, rehabilitation, the change of names of public spaces, the establishment of days of commemoration, the creation of museums and parks dedicated to the memory of victims, etc.[106]

The ICTJ adds that the acts used by reparations programs to achieve this fairly significant goal, range from symbolic to largely material measures. Such measures could include anything from a public statement of regret, naming of an avenue in honour of a victim, dignified burial sites, the establishment of reintegration and community centres, the release of lending reservoirs, the direct funding of the community reparations project activities, or the payment of compensation or pension benefits.

In summary, the reparation mechanism is integral in the symbolic reparations, but the economic reparations are part of the process and are equally relevant to the restoration process. Magarrel, from ICTJ, also mentions 'all reparations have an important symbolic role

[105] P. De Greiff, *The handbook of reparations*, Oxford, Oxford University Press, 2008, p. 452.
[106] ibid., 2008, p. 453.

in the process of building public trust and integrating victims into society. The material component of a reparation policy cannot, however, be underestimated'[107].

To be rich and meaningful, material measurements must be accompanied with symbolic elements. These initiatives must not be limited to only simply giving one sort of benefit, such as financial aid; as Hamber points out, reparations might be perceived as 'blood money' or as a sort of government giveaway.[108] Therefore, restitution may include major symbolic actions that are not materially substantial.

3. The Right to Memory and Truth

Irrespective of whether or not trials are held, truth commissions to uncover previous crimes are frequently constituted in post-conflict settings to investigate injustice. Lisa Stadlmayr recalls that by truth commission, commissions inquiry or fact-finding mechanisms 'they are non-judicial, investigative bodies with the task of mapping past violence and unravelling its causes and consequences'.[109] The first forms were established in Argentina, Chile, and South Africa, and the recent experience of Liberia, but also took part in El Salvador, Ghana, Guatemala, Morocco, Panama, Peru, Philippines, Sierra Leone, South Korea, and East Timor. The ICTJ report mentions the example of Peru on how 'truth' measures can be adopted:

> In Peru, for example, these classes of victims included, among others: family members of individuals killed or 'disappeared', torture victims, the forcibly displaced (some within their original communities as well as those who were moved to resettlements or urban areas), victims of rape, child abductees into militias, and children born of rape. When implemented well, such programs can have a much broader reach than court-ordered redress, both in terms of the numbers who find some reparation and also in terms of the holistic nature of the measures undertaken.[110]

[107] L. Magarrell, 'ICTJ Reparations in Theory and Practice', *Reparative Justice Series*, New York, 2007, p. 4
[108] B. Hamber and R. Wilson, 'Symbolic closure through memory, reparation and revenge in post-conflict societies', *Journal of Human Rights* 1.1, 2002, pp. 35-53.
[109] Stadlmayr, p. 521.
[110] ICTJ, 'Truth and Memory', https://www.ictj.org/our-work/transitional-justice-issues/truth-and-memory, (accessed 3 May 2021).

The understanding is also supported by ICTJ that truth-seeking contributes to the building of a historical narrative is resilient to such distortion. By uncovering the facts of the events that occurred, such as the unfortune of forcefully disappearances or the reason individuals were targeted for harm guide the scenario for the reconstruction of trust, that is because truth can help victims achieve healing. Furthermore, understanding the truth about previous events allows for proper grieving customs, which are important in most cultures and promote both individual and social recovery[111].

Anja Seibert-Fohr adds that truth commissions are a crucial element of restorative justice because truth commissions can identify the core reasons of a conflict and track characteristics of previous violence to prevent repetition 'especially in cases of enforced disappearances it is necessary to establish the fate of the victims in order to help the next of kin to come to terms'[112]. Truth commissions have a variety of tasks in addition to investigations. In some instance, truth commissions provide information to investigations.

Complementarily, truth commissions can help with individual healing and reconciliation across social divisions, Scholars like Minow have suggested that it would be even better if they veered 'even more than they generally do from prosecutions'[113] and provided 'more extensive therapeutic assistance and relief from threats of prosecution'.[114]

Elster, Offe and Preuss examine the concept of memory through the purpose of addressing the infractions of the previous regime, for the author the memory mechanism mainly produces effects that might be the answer to why this mechanism is now use, as the author remarks 'their memories of their own and other people's past actions […] all of which can now be employed in the struggle for social power'.[115]

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[111] ibid.
[112] A. Seibert-Fohr and M. Villiger. *Judgments of the European Court of Human Rights-effects and implementation*, London, Routledge, 2017, p. 05.
[113] M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston, Beacon, 1998, p. 50.
[114] ibid.
[115] J. Elster, C. Offe, and U. Preuss, *Institutional design in post-communist societies: Rebuilding the ship at sea*, Cambridge, Cambridge University Press, 1998, p. 26.

Whence, for this instance, the prosecutions have taken place in the context of a series of fact-finding commissions known as truth commissions. These were tasked with hearing victims' testimonies, compiling a historical record and formulating suggestions to the new administration on how to avoid a repeat of the horrific episodes.

4. Institutional Reforms

The measures involve restructuring state authorities that have committed or even contributed to past wrongdoings to ward off human rights violations from occurring again. It is vital to assess the integrity of State officials involved in previous atrocities and to prohibit them from future public service. According to Seibert-Fohr, institutional reform refers to constitutional and legal reforms as well as free elections in addition to improving the justice sector and therefore support the rule of law. Examples of this can be found at East Germany and in other Eastern-Central European countries.[116]

In essence, the implementation of institutional reforms within the structures of the State to transform it into a representative democratic body within a State governed by the rule of law are prevalent. The set of actions aims to meet, as far as possible, the expectations of non-repetition of the serious acts of in recent past as demanded by the victims and their family. Indeed, the transitional justice dynamics are more about acknowledging the capacity of different tangible and intangible mechanisms for responding past abuses violations, transitional justice is not an exact mechanism. As a result, the number of actors who may participate increases, perhaps improving the attempt to identify individual losses in ways that are deemed suitable by individuals who have suffered them.

This research displays a vision of transitional justice that postulates a hybrid model of comprehensive inspiration prevailed in which each one of the mechanisms is combined in accordance with a given reality and context. The difference in this combination of mechanisms is at the discretion of each interpretation, including the notion of environmental justice that will be further incorporated in the core of this work. According to Klinsky, transitional justice experts have called for transformative justice which can be encompass historical and

[116] Seibert-Fohr, 2017, p. 05.

structural violence. For example, slavery, colonization, environmental infringements which includes environmental disaster, forced displacement rooted on climate changes and industrial activities.[117]

> If there is one overarching lesson from transitional justice efforts, it is that successful transitions inevitably harness more than one mechanism and rely on several strategies for engagement. It is possible that a transitional justice inspired approach could provide a framework in which these existing strategies could be integrated and used to leverage each other.[118]

Certainly, transitional justice takes place at different times according to the context in which it is inserted. There is no protocol for what the appropriate moment would be to produce certain results or in what sequence measures should be adopted. What has grown in consensus is the elements (or pillars) are important and must be demanded towards effectiveness. This first undertaking, therefore, represents an effort at theoretical and conceptual construction.

The definition of concepts is a primordial basis for the analysis of the object of study. In this case, the mechanisms of human rights and transitional justice applied to anthropogenic environmental disasters. Bearing in mind both the concepts and mechanisms available in the regional protection system and in the global system, it is now possible to apply the knowledge acquired and built up by proceedings. Understanding the origins and the development of transitional justice concepts comes as guidance to what and how the theme can be expanded.

[117] S. Klinsky, 'An initial scoping of transitional justice for global climate governance', *Climate Policy*, vol.18:6, 2018, pp. 752-765.
[118] ibid, p. 754.

3. A NEW APPROACH FOR HUMAN RIGHTS: ENVIRONMENTAL PROTECTION

Human rights and environmental protection are intrinsically tied. The United Nations Environmental Rule of Law noted that approximately 176 countries have environmental legal framework, 150 countries have enshrined environmental protection into their constitutions and 165 have responsible monitoring bodies for environmental protection.[119] It is an interdependent relationship because human rights cannot be fulfilled in the absence of a just, clean and healthy environment, whereas a sustainable environment cannot be established without secure and respected human rights.

Among the various meanings and interpretations of human dignity, there is the possibility of understanding that human dignity exists and reflects the connection between humanity and nature. Therefore, to link the dignity of the human person, human rights and the environment, especially as it pertains to struggles for environmental justice, this research considers a consecration of the environment as a component of fundamental rights. Also, considering the implications arising from the guarantee of an ecologically balanced and sustainable environment for all.

The connection between human rights and human dignity is innate, and the imbalance created by anthropic activities implies situations that result in a denial of human rights in certain populations and later reflect human environmental violations in their essence. Thus, the existence of an ecologically healthy and balanced environment is a critical requirement for the generation of life and continues to be essential for its maintenance. As Rachel Carson adds[120] 'one cannot imagine a dignified life in which one breathes polluted air, consumes poisoned food, drinks contaminated water and is subjected to the action of substances that endanger life and health'.

Briefly, by considering such discourse that addresses the environment, this session attempts to advance the debate by establishing a dialogue among environmental justice, human rights

[119] UN Environment Programme, *Environmental Rule of Law First Global Report*, 2019.
[120] R. Carson, *Silent Spring*. Boston, Houghton Mifflin, 1964, p. 03.

and the environment. In consequence to of the ecological dimension of human dignity that can be reflected in the normative sphere and framework, this session will address the emergence of socio-environmental values previously envisioned in international human rights system.

3.1. Compliance Between Environmental Rights and Human Rights Framework.

Some of the earliest human tales instruct others about the sanctity of nature, the need of moderation, and the human responsibility to care for the natural environment. For instance, if one trace back religious and other ecocentric understandings such as Taoism, Saint Francis of Assisi, the Romantic Natured- Oriented countercultural movement, Zen Buddhism, as mentioned by George Sessions, demonstrates the responsibility of mankind to preserve the integrity of mother nature.[121]

The early environmental response enshrines multiple sources. In 1866, the word 'Ecology' was coined by the zoologist Ernst Haeckel and helps to define the relationships between nature, animals, and environment.[122] However, it was an unknown branch for a long time, and for this reason, the construction of scientific work appeared with amount and relevance to the late 1950's, 1960s, and 1970s.

As a result of the academic articles, the environmental movement flourished as a contentious movement. Because of such, the ecological revolution of the 1960s is often related to Rachel Carson's Silent Spring of 1962. Carson's research focuses on the obligation to endure, which means supporting life against 'all man's assault upon the environment[...] contamination of air, earth, rivers, and sea with dangerous and even lethal materials'.[123] Due to its repercussions President Kennedy, years later, banned DDT substance all over US and there were also repercussions in Europe, as recalled by Whitney C.[124].

[121] G. Sessions, *Deep Ecology for the Twenty-First Century*, London, Shambhala, 1995, p. 15.
[122] E. Haeckel, *Generelle Morphologie der Organismen*, Berlin, G. Reimer, 1866, p. 286.
[123] Carson, p. 06.
[124] C. Whitney, 'The Silent Decade: Why It Took Ten Years to Ban DDT in the United States', *The Virginia Tech Undergraduate Historical Review* 1, 2012.

Due to the movements against environmental abuse and the awareness that the issue has been further broadened with the International Conferences. The 1968 United Nations Tehran Conference on Human Rights opened the doors to discuss environmental rights, recognizing the interdependence between human rights, development, and peace.[125] From this perspective, in September 1968 UNESCO organised an Expert Conference on the Scientific Basis for Rational Use and Conservation of the Resources of the Biosphere. This in turn brought the recognition by States of the need of a Universal Declaration on the Protection and Improvement of the Human Environment.

The previous recognition initiatives aforementioned laid the groundwork for the first UN Conference on the Environment, held in Stockholm, in 1972, which stated 'Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself'.[126] It marked a very important stage in world environmental policy, and resulted in numerous issues that continue to influence and motivate the relations between international actors contribute to the remarkable evolution that took place after the Conference.

Louis Sohn adds that in many aspects the Conference was one the most outstanding international conferences held recently, it is because 'in a two-week period it adopted not only a basic Declaration and a detailed resolution on institutional and financial arrangements, but also 109 recommendations comprising an ambitious action plan'.[127] The success of the Stockholm conference was due to the complexity of its preparatory process, a series of meetings were held before the official meeting.

[125] Proclamation of Teheran, Final Act of the International Conference on Human Rights, (22 April to 13 May 1968), A/ CONF./32/41.
[126] Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF.48/14/ Rev.1 and Corr.l, Stockholm, 1972, p. 70.
[127] L. Sohn, 'The Stockholm Declaration on Human Environment', *The Harvard International Law Journal*, vol. 14, no. 3, 1973, p. 423.

The Stockholm Conference, anchored on the 26 principles of the Declaration, was a crucial beginning in establishing the regime[128], which preceded many other international treaties, conferences and organisations that came to consolidate the regime and coordinate climate change mitigation actions. Therefore, the declaration enriches 'common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment'[129]. The main issues proclaimed by virtue of the Stockholm Declaration are the following:

> Principle 1: Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting, or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.[130]
>
> Principle 2 The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate[131]
>
> Principle 3 The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.[132]

The first two questions presented in the Declaration assert that both the organic and artificial environments are indispensable for the enjoyment of both human rights and for a healthy quality of life. From this message, one can see a strong relationship of dependence between the well-being of human life and the environment condition. The item 3, in turn, illustrates the concern with environmental degradation.

[128] See International Regimes according S. Krasner, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables', in *International Regimes*, Stephen Krasner (ed.), Ithaca, Cornell University Press, 1983. p. 2.)
[129] Report of the United Nations Conference on the Human Environment, 1972, p. 70.
[130] ibid., p .70.
[131] ibid., p. 70.
[132] ibid., p. 70.

> Principle 5 The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.[133]
>
> Principle 6 The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported[134]

Meanwhile, item 4 presents the factors considered responsible for environmental damage. Next, item 5 establishes the importance of human beings and highlights the significance of this principles as they create and transform nature, and are, therefore, responsible for economic and social development. Finally, items 6 and 7 consist essentially of a survey of questions that convey the way man deals with the environment.

Professor Le Prestre[135] outlines that the decision to hold a World Conference on Environmental Protection was motivated by four major factors at the time. The factors consist of an increase in scientific cooperation in the 1960s, an increase in environmental press attention, rapid economic growth, and a set of independent problems such as acid rain, Baltic Sea pollution, heavy metal accumulation, and pesticide use. The author further argues by pursuing an effective solution to these issues, the Stockholm Conference created a new dynamic by developing 'new attitudes.' In other words, this highlights how the recognition by States of the existence of these problems and the need to act, not to mention the fact that it played a decisive role in making developing countries aware of their responsibilities in this matter.

Countries have been pursuing an extensive agenda of international environmental agreement discussions since Stockholm. Indeed, the Conference encouraged the consolidation of the most essential foundations for modern environmental policy which the vast majority of

[133] ibid., p. 70.
[134] ibid., p. 71.
[135] P. Le Prestre, *Global Politics Revisited. Towards a Complex Governance of Global Environmental Problems*, London, Routledge, 2005. p. 174-175.

countries have adopted, with varying degrees of rigor, in their respective legal systems. It is characterized by the awakening of nations' awareness of this reality and has resulted in the emergence of new ecological and preservationist movements, which, in turn, began to be reflected in the Constitutional Charters of States, this included the so-called rights to environmental protection in their texts, and this is the purpose, in this research, of understanding these instruments for the environmental and human rights protection.

By continuing this development, the release of the extensive Brundtland Report, with the suggestive title 'Our Common Future' in the 1980s was a result of the process of aligning capitalist economic interests with environmental issues. The document represents the adequacy between economy and ecology (from a conservative point of view) through the combination between the idea of sustainable development and economic neoliberalism as the hegemonic proposal in the new order.[136]

The motive behind the creation of the Our Common Future Report was to diagnose the inclusion processes of minority social groups in the socio-economic structure, although not all groups have been reached by this inclusion, as indigenous individuals and various other traditional communities have remained on the margins of the inclusive process. The perspective casts a smokescreen over contradictions and conflicts by advocating for a common future for all.

The disasters reported in the document, such as the prolonged drought in Africa, the nuclear accidents at Chernobyl, a leak at a pesticide factory in India, and products in the Rhine River - all of them of gigantic proportions and have not shaken the confidence of the sustainable development proposal, which is contained in the Brundtland Report. The Human Rights Commission of the United Nations Organization - UN which, in 1990 through the resolution Human Rights and the Environment, state that environmental degradation is the cause of

[136] World Commission on Environment and Development, *Our Common Future*, Oxford, Oxford University Press, 1987, p. 27.

irreversible alterations to the environment which threaten ecosystems that maintain human life, health and well-being.[137]

The United Nations General Assembly held a session in 1989 to examine the state of the environment two decades after the Stockholm Conference and defined the importance of establishing Rio 92. The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, as previously stated, is considered the leading standard for the celebration of sustainable development worldwide. The Conference known as the Rio 92 'Earth Summit' is represented by the vast majority of countries in the world whom signed the three accords tackling climate change, biological diversity, desertification as well as a 500-page plan for the Agenda 21.

It is vital to acknowledge that Agenda 21 is a type of program in which the 179 signatory countries[138] committed to achieving the goals outlined in the text. The major reason that could be extracted behind such an instrument's activities and planning was to promote, in a global manner, so-called development. A type of green development occurred in which environmental degradation would be addressed by affirmative actions. Agenda 21 examines the necessity for finance in order to accomplish the goals and highlights the importance keeping in mind how combating poverty is a fundamental basis for the existence of sustainable development. This is predicted in the document's prologue, which is as follows.

> The developmental and environmental objectives of Agenda 21 will require a substantial flow of new and additional financial resources to developing countries, in order to cover the incremental costs for the actions they have to undertake to deal with global environmental problems and to accelerate sustainable development. Financial resources are also required for strengthening the capacity of international institutions for the implementation of Agenda 21.[139]

[137] UN Commission on Human Rights, *Human rights and the environment.*, E/CN.4/RES/1991/44, 1991.
[138] UN Climate Change, 'What is the United Nations Framework Convention on Climate Change?', https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change, (accessed 15 May 2021).
[139] United Nations Sustainable Development, 'United Nations Conference on Environment & Development', Agenda 21, Rio de Janeiro, 1992, preamble, https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf, (accessed 15 May 2021).

The Rio Conference led to the establishment of five environment-related regulatory documents, the Climate (UNFCCC) and Biodiversity (CBD) Conventions, the Rio Declaration on Environment and Development, the statement of Forest Principles, Agenda 21, and the Convention to Combat Desertification (UNCCD) and all other instruments had a great advancement at the reunion. The Geopolitics of Sustainable Development means a diplomatic protocol. According to Viola and Leis:

> In such case, the Earth Summit was a spatial simulacrum referring to the Geopolitics of the Sustainable Development, that allows to understand this hard relationship between the Geography of the General Staffs and the implications and resilience of the place where this occurs.[140]

Most significantly, Rio represented the first formal recognition of sustainable development and the inclusion of developing as a purpose of a contemporary economy and international environmental law. It highlights environmental cooperation as a mechanism to overcome the inequalities of nations, because environmental challenges are ideally managed with the involvement of all concerned persons. Finally, it is worth mentioning principle 10 of the Rio Declaration as it emphasizes that promotion to instruction, public engagement, and adequate jurisdiction and regulatory procedures, grievance, and reparation, should all be ensured. The principle represents the chance of taking part in decision-making processes.

In 1997, the Kyoto Protocol was signed and predominantly focused exclusively on the pollution from the industrial development of countries. For the first time the limits proposed to gas emissions by States were not limited to a certain group or State, but to all countries that presented as one of their sources of wealth towards the industrial development with creation of disposal of polluting gases into the atmosphere. In Kyoto, what had proved to be a real obstacle in Stockholm does not even compromise the project.[141]

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[140] E. Viola and H. Leis, 'A Agenda 21 diante dos desafios da Governabilidade, das Políticas Publicas e do Papel das Organizações Não Governamentais', in U. Cordani, J. Marcovitch, and E. Salati (eds.), *Rio 92 Cinco Anos Depois*, São Paulo, EDUSP, 1997, p. 15. [personal translation].
[141] Only USA and China did not ratify the convention.

This position made it clear to all conference participants that it is up to each one to rethink their way of acting and to make the necessary changes in their industries in order to reduce the amount of gas released into the ozone layer. Moreover, Pereira[142] stresses that the Protocol established an interesting tool for the actions of developed countries; Countries that have had high levels of pollution for a longer time and that having better economic conditions to make changes have goals of emission reduction, whilst developing countries do not have reduction goals but may participate in the process, through the Clean Development Mechanisms (CDM). This tool guides the countries to conduct its emissions restrictions in an equivalent manner.

The Johannesburg Summit in 2002 resulted in significant sustainable development with the adoption of real measures and the establishment of quantifiable targets for Agenda 21 to be successfully implemented. The Summit conveyed how the environment is not only the natural ecosystem but also the social and urban spheres and began to address other issues of relevant social interest that have a significant impact on individuals' well-being. Examples of this include the abolition of hunger and poverty and the creation of the Millennium Development Goals (MDGs).[143]

The Rio +20 Summit[144] was held in 2012, twenty years after the first Conference held in Brazil, Rio de Janeiro once again hosted another meeting between nations that aimed to discuss new goals for the current global financial sector. The alluded Conference, as well as previous ones, aimed at renewing the political commitment signed by its signatories with the sustainable development policy. This was done by analysing the progress achieved so far and

[142] A. Pereira, Do Fundo ao Mecanismo: Gênese, características e perspectivas para o Mecanismo de Desenvolvimento Limpo; ao encontro ou de encontro à equidade? Master Thesis, UFRJ, 2002, p. 37, http://www.ppe.ufrj.br/images/publica%C3%A7%C3%B5es/mestrado/Andr%C3%A9_Santos_Pereira.pdf, (accessed 16 May 2021). [personal translation]
[143] J. Sachs, 'Investing in development: a practical plan to achieve the Millennium Development Goals', United Nations Millennium Project, United Nations, New York, 2005, p.50.
[144] United Nations General Assembly. *The future we want – Outcome document*, A/RES/66/288, https://sustainabledevelopment.un.org/futurewewant.html, (accessed 19 May 2021).

the gaps that remained on continuing to exist when thinking about implementing the guidelines extracted from the understandings of these summits.

The Paris Agreement 2015 was marked by the fight against climate change with the purpose of maintaining the increase in the average temperature of the Earth, which was ultimately controlled through the limitation of greenhouse gases. In this Convention, the parties must comply with and report on the targets present in the Nationally Determined Contributions (NDC)[145]. Here, the tools that each State will use to reduce pre-industrial levels are foreseen. Unlike previous environmental conventions and agreements, this one established a specific reduction limit and not a strict gas reduction target. As a result, each nation will then have to adopt measures to direct actions to minimize the emission of Greenhouse Gases (GHG), in line with the local socioeconomic context. This model demonstrates the valorisation of internal policies, so that they can use occasional adjustments to minimize the emission of gases.

These Several UN-sponsored Summits have encouraged cooperation towards sustainable development. Recently in 2015, the approval of the Sustainable Development Goals (SDGs) reflects the wider reach of the human rights-based approach for environmental sustainability[146]. However, the non-binding status serves as a strategic plan for bringing the global community to objectives by 2030.[147] In short, this brief overview of the manner in which environmental rights are protected offers insight on how future understandings on human rights as an environment issue may be expanded and aggregated. The initiatives are part of a continuing endeavour to address and safeguard human and natural life, whilst also keeping in mind their synergistic connection.

The environmental issues addressed by the Conventions attempted to provide factual and empirical support to the environmental impacts on human rights, particularly in terms of

[145] See UNFCCC, The Paris Agreement and NDCs,1/CP.21, 2015, Article 4, para 2.
[146] See UN General Assembly Transforming our World: the 2030 Agenda for Sustainable Development. Seventieth session of the General, 25 September 2015.
[147] See UN Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development. Seventy-first session of the General, 6 July 2015.

public opinion. When it comes to society it is widely believed that social scientists more than anyone else are always a part of the social universe. Despite this, there is a relevant phenomenon in what social sciences and the environment dictate which is due to what factor or causes there was from the viewpoint of the late positioning of social sciences in the environment.

Even though in view that this is a theme that demands this social analysis, in fact theorists only paid attention to the topic when it began to be implemented in the agendas of states, international organizations, social movements, businesses, and the forementioned Conventions. This process of aggregation and the institutionalization of environmental within the social sciences field was not homogeneous, as it underwent the influence of historical, cultural, and political processes of the time.

Thus, the manner in which the ecological approach has influenced various social scientists and how this issue has been approached in this field is a relevant factor for the very visibility of social field. Furthermore, the theoretical contributions can be understood in the next part of this research along with the concept of Green Theory.

3.2. Theoretical Basis for Environmental Human Rights

As previously observed in this research, various theories for rights have been offered throughout history in an attempt to define what rights are. Even though much intellectual work has conceptually identified the underlying fundamental concepts that unify and connect human rights to other knowledge fields, only a few theoretical approaches relate to how human rights should work to protect the environment. Thus, to examine the theoretical basis for advancing the environmental intersection on human rights, one can assess the similarities both features possess.

Within the human rights legal framework, Bridget Lewis[148] found at least two ways to think about the environment. From one perspective, the environment is seen as a prerequisite for

[148] B. Lewis, *Environmental Rights or a Right to the Environment? Exploring The Nexus Between Human Rights And Environmental Protection Bridget Lewis*, MqJICEL, 2012, p. 37.

the respect of human rights. The environmental variables can impact or decide the level of rights' fulfilment and how environmental deterioration may be considered a violation of such rights. Alternatively, the environment may be viewed as a type of entitlement, with a human being deserving right to a safe and preserved environment.

Given that environmental issues are often limited to specific spheres under state protection, some human rights theorists argue about the difficulty in establishing and identifying the causes and victims of environmental human rights abuses. Despite this practical and theoretical difficulty, it is indispensable to adopt an approach concerned with acknowledging diverse contexts, taking particularities into account, and understanding the homogeneity of human rights and their implications to confront injustices, even if these injustices are related to the environment.

Therefore, in this consideration of how some theoretical visions are applied to the environment, human rights and all their traditional theoretical contributions are not abandoned but incorporated to farther a perceiving. Relatively comprehensive concepts of broad access to legal guarantees are then added to these previously existing theories. Moreover, it then brings together today's phenomena of challenges such as pollution, destruction of nature, global warming, and even environmental disasters, along with human rights violations.

3.2.1. Green Theory

There is a huge discussion about the necessity, justification, and form of environmental rights, as well as the theory to approach it. However, recognizing that humankind exists within nature, people's interaction with the non-human world and their dependence on the environment, emphasises how the environmental approach for human rights reflects the central eco-centric claim. Human Rights and Environment protection integrated can be used as an effective means to secure the goals that are shared by humanity and provide a practical theoretical advantage to all who wish to challenge environmentally unsustainable and disrespectful practices.

Considering the evolution of human rights and environmental thinking throughout international accords, convention and similar arrangement, it is feasible to suggest that there is an opportunity to produce a 'green' thinking approach towards theoretical aspirations. To understand what the Green Theory is, one must reflect on what the name suggests. The Green Theory focuses its discussions on the environment and is now understood as not only a means that concerns the issue of pollution from industrialization, but also as the subsistence of various factors.

Appropriately, the birth of the Green Theory and understanding its placement in the current situation is the need to ensure a balanced and healthy environment is raised in different contexts. Like the other theories that are studied in the social sciences field, the Green Theory also has a multidisciplinary character. The Green Theory critiques and reconstructs neo-Marxist international political economy, normative and cosmopolitan theories, reinterpreting central elements to the dynamics of state coexistence, such as sovereignty, security, development, and international justice. As well as human rights by developing a new discourse of environmental security, sustainable development, and reflexive modernisation.

Therefore, the first phase of the Green Theory was focused on demonstrating the irrationality of major social institutions like the market and the state, but also presented the virtues of direct democracy and sustainable communities as alternatives. Despite this, the second wave of authors, on the other hand, were more concerned with critical thinking and, in some examples with expanding the scope of political concepts and institutions with environmental problems as a guide.

Daddow, a foreign policy theorist, argues that to broach the subject of the environment, it was noted that classical theories, such as that of liberalism and realism, are 'green blind'[149] and can no longer be used by international society when facing environmental problems, as they would not be sufficient. Similarly, Hiskes[150] expresses the idea of a right to a green

[149] O. Daddow, *International Relations Theory: the essencials*. London, SAGE, 2013, p. 245
[150] R. Hiskes, 'The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice', *Human Rights Quarterly*, vol. 27(4), 2005, pp. 1346–1364.

future in regard to constitute 'environmental human rights'. The author underpins his arguments along with contributions from fellow theorists. For instance, Nickel argues that for a cross-generational 'rights to a safe environment'[151] whereas Weiss introduces the idea of 'planetary rights'[152] as environmental human rights that work to protect the future's interest.

The importance of combining concepts of human rights and justice to preserve the environmental welfare of today and future generations is predominating. According to Oksanem, Dodsworth and O'Doherty[153], environmental rights represent a concern of all humanity, rather than the political interests of a powerful minority; thus, suggesting that environmental human rights can provide common ground for the consensus between different groups and between the eco-centric and human-centric approaches. Low and Gleeson emphasise that while the international framework is still striving for an environmentally efficient model, the system needs some changing. The authors argue that:

> World government, under a constitution which embodies both human rights and the rights of the non-human world, is indispensable in providing a just framework for the flourishing of maximum local diversity of both human cultures and natural ecologies.[154]

Hayward advocates for Constitutional Environmental Rights and recognizes environmental protection as a genuine human right. Haywards remarks that human rights and environmental law have significant areas of common ground, despite having links between human rights and the environment that ware established with Stockholm and developed into the Brundtland

[151] J. Nickel, 'The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification', *Yale J. Int'l L.*, vol. 18, 1993, pp. 281-85.
[152] See E. Weiss, In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity (1989), pp. 353-363.
[153] A. Dodsworth, S. O'Doherty and M. Oksanen, *Environmental Human Rights: A Political Theory Perspective*, New York, Routledge, 2018, pp. 8-16.
[154] N. Low and B. Gleeson, *Justice, Society and Nature: An Exploration of Political Ecology*, London and New York, Routledge, 1998, p. 193.

Report and other conventions. International law is on its way to assert a recognition of a 'human rights to an adequate environment'[155], as the author suggests:

> The human rights discourse embodies just the sort of non-negotiable values which seems to be required for environmental legislation; rights mark the seriousness, the 'trumping' status, of environmental concern; they articulate this concern in an institutionalised discourse with some established mechanisms of enforcement. [156]

Barry advocates for a responsibility that transcends national authority with the understanding of environmental citizenship, which recognises the notion of citizenship with a green perspective. This is evidenced in 'stretching along a *continuum* from environmental to sustainability citizenship'.[157] For Dobson's environmental citizenship concept, it frequently relies on natural resources from beyond national borders: as do the majority of people in so-called wealthy countries, explain why their environmental duties are global, and very possibly intergenerational in origin. [158]

The conceptual aspect of the Green Theory provides new solutions and fresh insights into the other concepts. Environmental human rights' main author is Eckersley, who believes the state is necessary for achieving some 'good', especially for purposed of national and international conductions, As the author affirms:

> Now it is often possible to recast preservationist arguments in self-interested, instrumental terms, just as it is possible to recast human rights norms in instrumental terms, but this typically does violence to the arguments, identities, and intentions of the state and non-state advocacy networks and coalitions that raise and manage to more or less discursively defend such claims in multilateral negotiations. Moreover, as I argue in more detail below, the more the neoliberal notion of self-interest is redrawn to accommodate new environmental pressures and values, the more are alternative explanations squeezed out and overall explanatory power lost[159] [...] its common security and ecological problems have generated new ecological discourses

[155] T. Hayward, *Constitutional Environmental Rights: a Case for Political Analysis*, Edinburgh, University of Edinburgh, 2000, p.563.
[156] ibid., p. 560.
[157] J. Barry, 'Resistance is Fertile: From Environmental to Sustainability Citizenship', in A. Dobson and D. Bell, *Environmental Citizenship*, Cambridge, MIT Press, 2005, p. 22.
[158] A. Dobson, 'Environmental citizenship: towards sustainable development', *Sustainable Development*, vol. 15(5), 2007, p. 282.
[159] R. Eckersley, 2004, p. 32.

> about security, sustainable development (and ecological modernization) that have extended to include common environmental rights and environmental justice norms.[160]

According to Eckersley, the importance of understanding such changes lies within environmental thinking, which is mainly at the heart of exploring shared understandings and the extent of the development of greener discourses, this includes the discourse of sovereignty, for instance. In terms of further enhancements, the author understands that there is a certain potential for exploring the manner in which a new set of 'international norms may not only change the way states and other social agents are coordinated and regulated, they may also serve to reconstitute the interests and identities of social actors'.[161] This is accomplished by changing the aim of such undertaking and redefining who is a lawful individual and what constitutes genuine action in specific social settings, this understanding would pave the way for the growth of environmental efforts in the international arena.

It can be argued that these theorists reinvented old concepts under the environmental scope. Amongst them are the security, justice, development, democracy and citizenship to help describe the environmental influence in the contemporary world. The notion condemns the main ideological models that sustain the reality of the rights under only a one-sided perspective. In this sense, the plurality of ideas presented by several theorists using the Green Theory illustrates the variety of values in human coexistence.

The principle of state accountability for environmental damages has shown to be both sensitive and restricted in its use. Eckersley affirms that before states claim compensation, they wait for certain measure of concrete environmental harm to occur. Examples of this would be tangible harms that are considered severe and quantifiable in monetary terms are exposed by the author 'property damage, financial loss or physical injury to citizens and does

[160] ibid., p. 48.
[161] ibid., p. 212.

not extend to psychological damage, moral concern for future generations or damage to wildlife, ecosystem integrity or aesthetic quality'.[162]

The state must demonstrate causality in a clear and compelling manner. This fact demonstrates how obsolete the environmental crimes regulation is. To quantify environmental damages in order to wait to determine whether the damage was sufficient to be classified as such is only a way to propagate biased concepts that do not respect environmental rights and even fewer human rights.

Accordingly, the author suggests this illustrates the demand for a sort of 'UN Ecological Security Council charged with the task of dealing with international ecological emergencies.'[163] Similarly, one of the possibilities seen by Eckersley is the creation of UN troops to perform during environmental crisis'; acting in terms of ecological security. The argument behind this appeal demonstrates that at the broadest magnitude of constitutional purpose, a green state is an 'outward looking'[164] state that reflects a responsibility not just to human rights, but for a nature protection as well.

Similarly, Postiglione *et al* claim for 'an International Court of the Environment is justified not only by its human rights aspect but also by the strongly felt social and ethical need for environmental justice'.[165] The fact is, these interpretations open space to think about reforming existing institutions and mechanisms to meet environmental demands.

Finally, the criticisms of the Green Theory are varied. The idea is formed by a minority still in ascension and thus the question of global governance is still a quite new issue which needs to be reformulated, in terms of the international regime; a comprehensive view of the system of rules, values and principles linked to the environmental issue. There also other nuances that permeate it, the issue of democracy for example, and transcend the notion of a mere set of soft law norms. Still, the contribution of the Green Theory is distinctive. It offers an

[162] ibid., p. 218.
[163] ibid., p. 227.
[164] ibid., p. 244.
[165] A. Postiglione, Environmental Challenges of 2000s? The Sustainability of life on earth: the contribution of the law, IVth International ICED Conference, 1994, p. 22.

alternative method of analysis, whose highest ideals and consequences surround the neglect of the environment and can no longer be ignored. Although there is no certainty about the future, the future, one can expect to be a high probability that the environment will no longer be in its usual balance due to human action.

The Environmentalist Approach of Viola and Leis assumed that in order to harmonise nature and development, a 'new international order' has to be constructed. Not a world order that establishes the rules of international coexistence according to the post-Cold War period. But instead, one that will revise relations between North and South to affect a drastic redistribution of power on a world scale based on a global greening coalition. This new international order will not be possible, in the words of the authors, 'without establishing restrictions on national sovereignties.'[166]

This is further enhanced by power structures grounded on the sovereignty of the nation-state. Viola and Leis emphasise that given the environmental crisis, radical social and political changes are needed to respond to the problems it generates. Along these lines, this analysis asserts that it is not possible to solely adapt existing institutions to deal with environmental problems, but instead, is necessary to develop new institutions and approaches.

The advancement of human rights on Green Theory may essentially be extended in the debate to develop a green branch of the normative processes, this helps provide a global environmental justice that embraces the environmental needs of future generations, and it faces the challenges such as the uneven division of natural risks among different social classes, states, and the environmental responsibility for current ecological protection. Therefore, it is evident that the concern for environmental justice bridges environmental protection arenas a human rights-oriented approach.

In addition, the Green Theory framework for human rights is based on a relational methodological approach to the environment which incorporates the many facets of the

[166] E. Viola, and H. Leis, 'Desordem Global da Biosfera e Nova Ordem Internacional: o papel organizador do ecologismo', *Lua Nova, Revista Cultura e Política, no. 20,* 1990, p. 162. [personal translation]

complexity of environmental injustice. Hence why this research emphasises how the Green Theory enables a better grasp of institutional changes towards environmental justice, through a range of mechanisms, such as transitional justice.

3.2.2. The First Insights Towards Transitional Justice and Environmental Protection

The Green Theory's discussion highlights that the purpose of a 'green' perspective on human rights has been chosen in the current research; however, its applicability in this work will surpass a theoretical understanding. Additionally, the theory supports the possibility of applying an environmental dimension to other concepts, such as transitional justice. One must consider that the contributions at the essence of the theory, as indicated by Eckersley: 'would an environmental rights discourse provide perhaps a fourth generation of human rights that might also serve to recontextualise and qualify existing human rights?'.[167]

The evolution of environmental law and especially its connection with human rights, shows the potential of an observational spectrum that encompasses both concepts. Transitional justice refers to measures that assist people in transitioning from an obscure period to an auspicious one.[168] But it is important to consider that each transitional justice experience is singular.

It is noting worthy that Transitional justice mechanisms have not always been perfectly effective, and they are reality-dependent outcomes, but surely that does not mean that transitional justice is unvaluable, on the contrary is demonstrates that transitional justice mechanisms are a valuable resource for environmental protection, if properly implemented. The environmental concerns and the conventional transitional justice setting have intrinsic parallels, suggesting that the analogy might be beneficial for environmental protection.

Klinsky conveys 'how simultaneous backwards and forward oriented claims, unavoidable interdependences, limited judicial capabilities, managing economic and profound loss, power

[167] R. Eckersley, 'Greening Liberal Democracy', in D. Pepper, F. Webster and G. Revill, *Environmentalism: Critical Concepts*, London, Routledge, 1996, p. 220.
[168] Teitel, 2000, p. 215

imbalances and political processes are some of the similarities identified'.[169] In the case of climate justice, argued by the author, the necessity to address grounded injustices while laying the groundwork for a future-oriented protection is a key dilemma in both environment and transitional justice frameworks.

To re-establish security in the underlying system and move forward efforts to admit responsibility, use of international and national legal systems, and interdependency are important. Looking backwards for environmental violation, abuses, and disasters is a crucial aspect to address justice and responsibly. The connection between previous transgressions and prospective responsibilities is a fundamental component of justice in both environmental and traditional transitional justice scenarios.

3.3 Environmental Disasters and Human Rights

Human interventions compromise the environment as a whole, opening it up to either the aggravation of risks or the unleashing of disasters themselves. The protection rights, which includes the protection of fundamental rights, is closely linked to the rational and regulated use of natural resources. Similarly, listening to the voices of the victims of a dam disaster also corresponds to a strategy which actions a practice involving human rights. However, before addressing the relationship between human rights and dam failure, it is necessary to present the technical meaning of some of the related categories.

Bosselmann underlines that an effective ecological approach demands plans for self-restriction in the use and exploitation of resources in favour of the preservation and effectiveness of human rights. In this sense, an environmental approach to human rights with interconnection legal provisions is required, as Bosselman states 'Whenever environmental harm occurs the enjoyment of human rights is potentially at risk'.[170]

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[169] S. Klinsky, 'Why Explore "transitional justice" in the Climate Context?', London, Climate Strategies, 2016, p. 3.
[170] K. Bosselmann, *The Principle Of Sustainability: Transforming Law And Governance*, *New York*, Routledge, 2010, p. 114.

The study of disasters offers an enormous range of possibilities for understanding the relationship between science and nature and how disaster is a profoundly diverse in breadth and typology. However, disasters may have been linked to a variety of factors in relation to the human being and as a result human rights. This does not mean a split between both categories previously mentioned, on the contrary, disasters are influenced by and impact humanity wholly. Bosselmann exposes that disaster situations are part of the coexistence between man and nature by saying;

> It seems evident that a disaster like a methane explosion in a nearby municipal waste dump violates rights to life, privacy or property. But less evident are cases where the impact is not so immediate and individualized, but long-term and large scale, affecting entire populations. The main example is global warming. Typically, climate change is perceived as threatening environmental health, human health and property, but only to a lesser degree as threatening human dignity and rights. Climate change litigation is happening in many countries, and it is reasonable to expect a lot more litigation in the years to come. However, the difficulties in the way of success are often insurmountable.[171]

Consequently, environmental disasters must be placed within a broader perspective in dialogue with human rights. Understanding disasters under a singular matrix means restricting disaster-preparedness planning and learning from previous disasters to establish effective response mechanisms.

3.3.1. Defining Disaster Related Concepts

The number of disasters has been increased in recent years, necessitating a greater need for researchers and practitioners around the world to prepare for such events. The recent disasters such as tsunamis, storms, and even the pandemic disease infections have prompted this. However, to grasp the ample definition, the International Federations of Red Cross defines 'disaster is a sudden calamitous event that seriously disrupts the functioning of a community or society'.[172] In addition, according to Madan Kumar Jha, disasters are unwanted and

[171] ibid., p. 115
[172] International Federations of Red Cross, 'What is a disaster?', https://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/, (accessed 20 May 2021)

frequently unexpected events that result in human, physical, financial, and natural losses that surpass the afflicted group's ability to respond.[173]

Kumar Jha suggests that natural and anthropogenic disasters are 'Caused by natural forces/processes or by human actions, negligence, or errors'.[174] The author classifies natural disasters into three major groups: geophysical, hydrometeorological and biological disasters. Anthropogenic disasters are categorised into two major groups: technological and sociological disasters. It is worth noting that in the Anthropocene, the natural disasters are aggravated by anthropogenic actions.

There are also risks that arise from both natural and anthropogenic factors, which are called hybrids, as Carvalho explains.[175] In this sense, environmental disasters, in general, are linked to multiple causes, which do not have an exact correlation between one circumstance and another. The uncertainty as to when they may occur, and their consequences determine the reasons why threats must be effectively managed through precautionary strategies to be adopted by companies.

Berwig confirms the risks created by man, highlighting how anthropogenic activity is 'generated by a conduct arising from a human activity'.[176] One of the facts that aggravate such circumstances is that, in most of these cases, human error is due to underestimation of risks, which suggests an inadequate management and assessment of disasters. In a broad sense, an environmental disaster is an incident where consequences do not end with the event itself. Its effects extend over time and branch out like a chain reaction, in addition to the reconstruction of the destroyed ecosystem.

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[173] M. Jha, *Natural and Anthropogenic Disasters*, New Delhi, Springer Dordrecht, 2010, p.1.
[174] ibid., p. 1.
[175] D. Carvalho and F. Libera. *Direito dos desastres*, Porto Alegre, Livraria do Advogado, 2013, p. 19-27. [personal translation]
[176] J. Berwig, Gestão jurídica dos desastres ambientais ocorridos na exploração *offshore* do petróleo em território nacional. Master Thesis, Universidade do Vale do Rio dos Sinos, p. 141, http://www.repositorio.jesuita.org.br/bitstream/handle/UNISINOS/4743/berwig.pdf, (accessed 21 May 2021) [personal translation]

Clearly, we can see the capacity of human decisions eliciting damaging alterations that may later result in disaster. This relationship is not always so visibly perceptible, it often occurs indirectly, but it is linked to the maximisation of profit, the ultimate goal of business. Although the term 'disaster' has no single definition, the simple fact remains that loss of life and property must be avoided or reduce. On that account by the complexity of what disasters embraces, only multidisciplinary approaches can provide the basic criteria for a disaster response.

3.3.2. Global Normative and Approaches on Disasters

The United Nations Environment Programme states that 'sustainable management of natural resources can help reduce the risk of disasters and conflicts, providing a strong platform for recovery, development and lasting peace'.[177] This means that 'degraded or poorly managed ecosystems can lead to conflicts over dwindling water, food or fuel resources'[178] growing the variabilities that lead to natural disasters.

Since its establishment in 1863, the International Committee of the Red Cross's (ICRC) scope included the relief of victims, but its operations were restricted to situations of armed conflict. According to Heath, it was at the initiative of the Italian Red Cross President, Giovanni Ciraolo in 1927 that the International Relief Union (IRU) was created, a pioneering project at the international level that helped to create an organization which documents the types of natural disasters and provides organized relief for civilian victims.[179] Twenty-four states attended the first IRU meeting, but the institution soon foundered due to a lack of funding and increasing isolationism and rearmament largely due to the repercussions of the

[177] United Nations Environment Programme, 'Disasters and Conflicts', 2015, https://wedocs.unep.org/bitstream/handle/20.500.11822/7937/Disasters_and_conflicts.pdf, (accessed 21 May 2021).
[178] ibid, p. 2.
[179] R. Heath, 'Introduction Crisis Communication: Defining the beast and de-marginalizing key publics', in W. Coombs and S. Holladay (eds.), *The handbook of crisis communication*, Malden, Wiley-Blackwell, 2010, pp. 1-13.

1930s economic depression. New initiatives at the transnational level were taken but did not develop.

The 1990s were declared by the United Nations as The International Decade for Natural Disaster Reduction (IDNDR)[180] and was dedicated to promoting solutions for reducing risk and creating and strengthening programmes for the prevention and reduction of disasters. One of the actions derived from the IDNDR was the implementation of The International Strategy for Disaster Reduction (ISDR).[181] This was aimed at promoting greater public involvement and commitment as well as the dissemination of knowledge and partnerships to implement disaster reduction measures.

The main primary worldwide instrument for emergency preparedness and impact mitigation is the Hyogo Framework for Action (HFA). Active from 2005 to 2015, its general objective was to increase the adaptability of countries to disasters by attaining a notable reduce in disaster losses. Concerning both human and environmental losses.[182] The HFA establishes commitments that the States have assumed among them, examples of this are establishing national coordination structure, performing base analyses on the capability of disaster risk reduction, disseminating and revising reports, evaluating, and summarising the application methods in the state; establishing early warning mechanisms, launching regional programmes and legal instruments, and coordinating international cooperation, support and integration.

3.3.3. The International Obligations of the State in Environmental Disasters

International law has imposed few sanctions on states in cases of environmental disasters. McClatchy, indicates that the worst environmental disasters are the Chernobyl and the Sandoz spill, both of which occurred in 1986, the states (former Soviet Union and

[180] See IDNDR, World Conference on Natural Disaster Reduction. The United Nations, Yokohama, 1994.
[181] See International Strategy for Disaster Reduction, 'Yokohama strategy and plan of action for a safer world – guidelines for natural disaster prevention, preparedness and mitigation', paper presented at World Conference on Natural Disaster Reduction, Yokohama, 23-27 May 1994.
[182] See UNISDR, Compilation of National Progress Reports on the Implementation of the Hyogo Framework for Action. c. i. HFA Priority 1. UNISDR, Geneva, 2009a.

Switzerland) were not held responsible for neglecting to protect, aid, or alert other states and their population.[183] However, owing to the severity of both incidents that extended well beyond the national borders, they managed to draw attention of the international community to the necessity for much greater environmental protection. Since then, and especially in the last decade, several international treaties, declarations, and laws, as well as those enacted at the state level, have been put in place to impose more stringent regulations on states to assist and notify other states in the event of environmental disasters.

According to Nanda and Pring, the duty of 'good neighbourliness'[184] or cooperation has different ramifications, especially when state activities have the capability to damage the natural world outside its national borders. In such circumstances, the incumbent state may be obliged to give potentially affected states prior notification of any work plans. In addition, they must engage in joint consultation or discussion of these plans and negotiate in good faith on alternatives to plans that are deemed overly risky or unacceptable.

At present, however, international disaster response law is built on bilateral and multilateral agreements, there are a range of non-binding instruments targeted at translating general laws and principles into practice. Venturini[185] highlight, such practices are inadequate, as environmental disasters can have much wider ramifications beyond the entities that are party to such agreements.

3.4. Tailings Dam and Disasters

Before addressing the correlation between human rights and dam disasters which is the focus of this investigation, it is necessary to provide definitions of some technical terms related to

[183] D. McClatchy, 'Chernobyl and Sandoz one decade later: The evolution of state responsibility for international disasters:1986-1996', *Georgia Journal of International and Comparative Law*, vol. 25, 1996, p. 659.
[184] V. Nanda and G. Pring, *International Environmental Law and Policy for the 21st Century*, Boston, Martinus Nijhoff Publishers, 2013, p. 60.
[185] G. Venturini, 'International Disaster Response Law in Relation to Other Branches of International Law', in A. Guttry, M. Gestri and G. Venturini (eds.), *International Disaster Response law*, The Hague, Springer, 2012, p. 62.

this issue. Shortly, a dam is any structure in a permanent or temporary watercourse for the containment or accumulation of liquid, or liquid and solid material.

According to Gruner, 'the building of dams is as old as the recorded history of mankind. Traces of these ancient dams are found today in both the old and the new worlds and bear witness to the achievements of civilisations which long passed away' [186] For example, the Orontes Valley near Horn in Syria is home to one of the first dams ever built. The author further notes that the first reference of a dam collapse dates back to 1219, when a dam near Grenoble collapsed after 28 years of operation.

However, Schulz and Adams explain that the process of 'planning, construction, operation, and management of dams present complex challenges'[187] as the engineering behind these constructions are expensive and time consuming, which often requiring extensive involvement from a variety of authorities and trained professionals, and therefore the process is not so simplified.

Dams are also classified by their purpose, examples of what some can perform are irrigation, hydroelectric power, flood control and mineral activities. In particular, Rico, Benito and Díez-Herrero[188] note that tailings dams are built to retain the solid and liquid waste that result from mining activities, these dams are particularly prone to collapse as their construction and operation entail the following processes:

> (1) embankments formed by locally derived fills (soil, coarse waste, overburden from mining operations and tailings); (2) multi-stage raising of the dam to cope with the increase in solid material stored and effluent (plus runoff from precipitation) released; (3) the lack of regulations on specific design criteria; (4) dam stability requiring a continuous monitoring and control during emplacement, construction and operation of the dam, and (5) the high cost of remediation works following the closure of mining activities.[189]

[186] E. Gruner, 'Dam Disasters', *Proceedings of the ICE*, vol. 24, issue 1, 1963, p.48.
[187] C. Schulz and W. Adams, 'In search of the good dam: contemporary views on dam planning in Latin America', *Sustain Science*, vol. 16, 2021, pp. 255–269.
[188] M. Rico, G. Benito and A. Díez-Herrero, 'Floods from tailings dam failures', *Journal of Hazardous Materials*, vol. 154, issues 1-3, 2008, p. 79-87.
[189] ibid., p. 79.

Consequently, as argued by Kempton et al.[190] mining and mineral waste have the potential to cause environmental, social, and economic damage that lasts for thousands of years. Inevitably, dam failures have occurred since the construction of the first dams. Most studies of dam collapse have concentrated their efforts on liquid dams, even though tailings dam collapses might have a considerably greater impact. This assertion is affirmed by the following statement issued by the United Nations Environment Programme:

> Mine tailings are one of the components of mine waste besides overburden, waste rock and water. Their physical and chemical properties vary and are dependent on factors such as the size of mined materials and their moisture content, the structure of the mined rock, and the method of processing used. They may also contain harmful material ranging from heavy to radioactive metals as well as sulphide minerals and reactants such as cyanide, which pollute the soil and vital water sources.[191]

Thus, emphasising the importance of natural resources in modern civilization. Global and national discussions regarding mining and sustainability have centred on the issues of renewability, resource availability and endowment, consumption rates, and acceptable usage of tailings dams. Luino, Tosatti, and Bonaria affirms that 'the construction of a dam inevitably unsettles the morphologic features of a valley, as well as a river's regime and flow rate'.[192] The authors allude to a systemic degradation of the environment around the dam, and such dysfunction can lead to disasters. Benito, Benito, and Díaz-Herrero aggregates that:

> The reports on tailings dam failures are incomplete and heavily biased. There is no (complete) worldwide database of all historical failures. This database is, therefore, a subset of the actual number of tailings dam incidents in the world. The majority of tailings dam incidents remain unreported, especially in developing countries. In cases where a known accident did occur it is often difficult to access basic information regarding the tailings dam and its condition prior to the incident (e.g. dam height, tailings storage volume, tailings thickness, water content, etc). To date, 250 cases of tailings dam failures in the world have been compiled. For each case, as much

[190] H. Kempton, T. Bloomfield, J. Hanson, et al., 'Policy guidance for identifying and effectively managing perpetual environmental impacts from New Hardrock mines', *Environmental Science & Policy*, vol. 13, pp. 558–566.
[191] UNEP, 'Dam or be damned: Mining safety under scrutiny', 22 March 2018, https://www.unep.org/news-and-stories/story/dam-or-be-damned-mining-safety-under-scrutiny, (accessed 1 June 2021).
[192] F. Luino, G. Tosatti, and V. Bonaria, 'Dam Failures in the 20th Century: Nearly 1,000 Avoidable Victims in Italy Alone*', J. Environmental Sci. Eng*, vol.3, 2014, p. 3.

> information as possible was sought and documented. In the majority of cases, the information obtained is scarce; therefore, only 28 accidents with complete information on tailings outflow volume and flood run-out distance have been used in the correlation analysis presented in this study.[193]

The premise of a human right to a specific quality of environment naturally matters to people who want to achieve greater protection for the environment and develop a better understanding of humans' interrelationship with it. However, there are many concerns regarding how such a right can be defined and how we can justify a healthy environment as something that should be classified as human right. The above chapter examined a variety of ideas that describe what environmental rights are and why they should be protected as well as if any of them might endorse the premise of a right to a healthy environment.

As previously stated, the preparation work for finally approaching the case study is extremely important, given that it is possible to analyse the existing infrastructure that precede the case study. In fact, other dimensions could still be observed, but this first glance from various angles sharpens the senses and makes the subsequent analysis easier to digest. This is also seen in the case study of the environmental disaster in Brumadinho where clearer and more understandable research is demonstrated by working together within a critical human rights framework. Such instruments of research are not implemented to control the direction but instead to demonstrate all the available instruments for guiding a given fact towards different outcomes.

[193] Rico, Benito, and Díaz-Herrero, p.43.

4. BRUMADINHO CASE STUDY

This session focuses on a case study of Brumadinho Dam Disaster vs Vale S.A., a mining company. The human rights and transitional justice here will be part of the recognition of environmental provisions and contingencies in the aftermath of the Brumadinho disaster.

4.1. Brazil's Context

Brazil has some of the world's most diverse ecosystems. It contains the biggest tropical forest area and is one of the nations that had considerable economic expansion throughout the twentieth and early twenty-first centuries, eventually gaining status as one of world's top ten economies. Brazil's vast biodiversity, natural resources and dynamic economy situate the country as a key actor in the environmental discussion.

The Brazilian environmental challenge has been underlined since the early days of Lusitanian rule in Brazilian territory. According to the Superior Court of Justice (STJ)[194] the first environmental protection law in Brazil, dates back to 1605. This would regulate the '*Pau-Brasil*', where it was established whereby citizens would need a royal permit for the wood harvesting. However, it was only in the beginning of the 20th century that the creation of the first Forest Reserve occurred[195] as well as the first Forest Code[196], demonstrating that environmental protection has evolved into a national concern.

Provided for in the 1988 Constitution, the right to a healthy and sustainable environment fulfils the need to discipline the environment to ensure a quality of life for the present and future population, it is seen as a condition for the enjoyment of civil, political, economic, social, cultural, and collective rights. It translates the historically established framework of

[194] Superior Tribunal de Justiça, Linha do tempo: um breve resumo da evolução da legislação ambiental no Brasil, *Jusbrasil*, 2011, https://stj.jusbrasil.com.br/noticias/2219914/linha-do-tempo-um-breve-resumo-da-evolucao-da-legislacao-ambiental-no-brasil, (accessed 20 June 2021).
[195] See Decree No. 8,843, which creates the first forest reserve in Brazil, in the former Acre Territory.
[196] The Forest Code, Decree 23.793 of January 1934, which imposes limits on the exercise of property rights, and the Water Code is sanctioned. They contain the essence of what would become, decades later, the current Brazilian environmental legislation

International Human Rights Law and incorporates the ultimate essence of the right to development, in this sense, the 1988 Brazil's Constitution states:

> Art. 225, §1°. Everyone has the right to an ecologically balanced environment, an asset for common use by the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend and preserve it for present and future generations.[197]

The Brazilian legal normative of protection features some important safeguard mechanisms besides the constitution itself, for example, the New Brazilian Forest Code of 2012,[198] the Environmental Crimes Act of 1998,[199] Fauna Law of 1967,[200] National System of Protected Areas Management (SNUC) of 2000,[201] Environmental Policy Act of 1981, National Water Resources Policy of 1997,[202] Agricultural Policy of 1991.[203]

The protection of the environment, present in treaties and resolutions adopted by international organisations of which Brazil is a signatory, it is also supported by the decisions of consultative and jurisdictional bodies recognized by the Brazilian State, notably the Commission and the Court that make up the Inter-American Human Rights System, besides several other environmental-related treaties such as Paris Agreement, Stockholm Convention, Kyoto Protocol, UNCCD, UNFCCC, CBD.[204]

Historically, it can be observed that, since the establishment of the first Portuguese settlers, has allowed nature to be an object of exploitation for economic purposes, from that phase to the present day, there have been different forms and phases of exploitation of natural resources, including the mining activities. The historical and empirical experiences provide

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[197] Brazil, *Constitution of the Federative Republic of Brazil*, Brasília, The Federal Senate, 2010, p. 119.
[198] Brazil, Lei de Proteção *da* Vegetação Nativa, (adopted 25 May 2012), *DOU*, Law 12.651/2012.
[199] Brazil, Lei de Crimes Ambientais, (adopted 12 February 1998), *DOU*, Law 9.605/1998.
[200] Brazil, Lei de Proteção dos Animais / Código de Caça, (adopted 3 January 1967), *DOU*, Law 5.197/1967.
[201] Brazil, Lei que institui o Sistema Nacional de Unidades de Conservação da Natureza e dá outras providências. (adopted 10 July 2000), *DOU*, Law no. 9.985/2000.
[202] Brazil, Institui a Política Nacional de Recursos Hídricos, (adopted 8 January 1997), *DOU*, Law 9.433/1997.
[203] Brazil, Política Agrícola, (adopted 17 January 1991), *DOU*, Law 8.171/1991.
[204] Observatory on Principle 10 in Latin America and the Caribbean, Treaties Ratified by Brazil, 2021, https://observatoriop10.cepal.org/en/countries/34/treaties, (accessed 15 June 2021).

the foundation for Brazilian environmental law and therefore its implementation in environmental management.

Consequently, Meira et al. suggest that, in Brazil, environmental disasters, especially those involving companies, have had severe consequences for the environment and for society. The examples are 'the oil spills in Tramandaí, Araucária and Rio de Janeiro caused by Petrobras S.A.; Chevron Corp. at Campos Basin in Rio de Janeiro'[205] and other locations across the country. Recently, the same company, Vale S.A., caused two major disasters in the state of Minas Gerais, both of which resulted in the death of individuals as well as incalculable and irreversible damage. The latest occurrences raise concern, as it is quite important to note that there are hundreds of mining waste dams in Brazil, notably in Minas Gerais.

4.1.2. The Mining Legal Protection Framework in Brazil

The development process characteristic of the state of Minas Gerais, historically and fundamentally based on the exploitation of mineral resources, has given rise to many reservations and criticisms in different sectors of institutions and academia, in Brazil. One should not overlook the fact that mining is also a recurring theme in Brazilian daily life, both because of the strong dependence of humans on its by-products, in various items, and the strategic, historical, and economic weight of the activity for Brazil.

The Food and Agriculture Organization exemplifies how the country is home of valuable minerals, including gold, bauxite, diamonds, platinum, iron, tin, coal, copper, manganese, chromium, and other.[206] According to the Brazilian Mining Institute (IBRAM), which congregates more than 130 associates companies and is responsible for 85% of mineral

[205] R. Meira, A. Peixoto, M. Coelho, et al., 'Brazil's mining code under attack: giant mining companies impose unprecedented risk to biodiversity', *Biodiversity and Conservation*, vol 25(2), 2016, p. 408.
[206] Food and Agriculture Organization, 'Country Profiles: Brazil', 1991, http://www.fao.org/3/w7560e/W7560E06.htm#:~:text=Brazil%20is%20rich%20in%20a,has%20no%20significant%20oil%20reserves, (accessed 28 June 2021)

production in Brazil, reported that the Brazilian mining sector in 2020 had revenues in a total of R$209 billion reais ($38.7 billion dollars) up by 36% from 2019.[207]

However, it is quite evident that the challenge of making development compatible with the indispensable need for responsible environmental management does not find in the activities of tailings dams an example to be followed. The first Mining Code adopted in brazil, instituted by decree 24.642 of July 1934 and only published on 20 July of the same year. However, it was in 1967 that Decree-law No. 227 was approved, [208] which is up to the present moment the normative for mining in the country. Although the attempt to amend the 1967 Mining Code by means of a provisional measure in 2017 have failed, some meaningful updating occurred through ordinances, resolutions, decrees, and laws.

It is from the publication of Law 12.334, 20 September 2010, the National Dam Safety Policy in Brazil (PNSB) together with the National Information System on Dam Safety (SNISB), appear as a sort of legislative response to the accident that occurred in Cataguases/MG. At that time, the regulations on the subject were generic and scarce. Up this time certain terms and expressions lacked legal definition, such as 'dams' which was done by Law 12.334/2010, therefore, under the terms published in Article 2, Subpara. I, and amended by Law No. 14.066, of 2020, a dam is:

> Any structure on a permanent or temporary course of water for containment, in a slope or in a pit exhausted with a dike, for the purpose of accumulation of liquid substances or mixtures of liquids and solids, comprising the dam and associated structures.[209]

The main objectives of the PNSB, according to article 3, is 'to ensure compliance with dam safety standards to foster prevention and reduce the possibility of accidents or disasters and their consequences'.[210] In addition, the National Mining Agency Ordinance No. 70.389 of

[207] IBRAIM, [mining in figures] Mineração em números: dados econômicos trimestrais, 2021 https://ibram.org.br/mineracao-em-numeros/, (accessed 28 June 2021).
[208] Brazil, Código de Mineração, (adopted 28 Febuary 1967), *DOU*, Law no. 22.
[209] Brazil, Política Nacional de Segurança de Barragens, (adopted November 2010, updated by Law No. 14.066/2020), *DOU*, Law no. 12.334, art. 2, para. I. [personal translation]
[210] ibid, article 3, para. 2.

17 May 2017 published by the National Mining Agency (ANM) established the guidelines for the PNSB.[211] Initially, establishing the National Register of Dams (CNBM), as well as the Mining Dam Safety Management System (SIGBM).

The article 2 of the Ordinance No.70.389 comprises of a 'register under the responsibility of the DNPM, with an official database containing all mining dams declared by the entrepreneurs or identified by the DNPM in the national territory'.[212] The registration shall be done directly by the entrepreneur in the SIGBM. This attempt is significant since it indicates that the company shall register with SIGBM directly. Furthermore, the defined concept of dam is covered by the categorization of the dam, in terms of the Risk Category and Associated Potential Damage.

However, Freitas et al. adds people's vulnerability to disaster events have increased faster than their capacity to minimize susceptibility, by normative framework, in Brazil and across the world. This can be notable with fact that during the twentieth century, and notably over the last 50 years, the number of disasters resulting in severe and extended negative consequences have increased. [213] For this reason, the mining process in Brazil should be considered as one of the elements that contribute to vulnerability that can conduct to disasters circumstances.

Complementarily, it is perceivable that there is need for an adjustment of the existing regulations on the subject, Armstrong, Petter, Petter, Vargasreveal reveal that dam failures were previously classified as an uncommon occurrence, but the number of dam failures has increased consistently in the last twenty year.[214] The most recent tailings dam disasters, the Mariana and Brumadinho disasters, demonstrate the significance of this demand.

[211] Brazil, Ministério de Minas e Energia, Departamento Nacional de Produção Mineral, (adopted 17 May 2017), DOU, Law no. 70.390, session 1, p. 68.74.
[212] ibid., article 2, para. X.
[213] C. Freitas, M. da Silva, F. Menezes, 'O desastre na barragem de mineração da Samarco: fratura exposta dos limites do Brasil na redução de risco de desastres', *Ciência e Cultura*, vol. 68, no. 3, 2016, p. 25-30.
[214] M. Armstrong, R. Petter, and C. Petter, 'Why have so many tailings dams failed in recent years?', *Resources Policy*, vol. 63, 2019.

4.2. The Brumadinho Dam Disaster

Brumadinho, is a city located in the state of Minas Gerais, endowed with mineral assets and numerous natural resources. According to the Brazilian Institute of Geography and Statistics (IBGE)[215] the development of coffee production as well as the possibility of extracting and exporting iron ores out from the region's abundant supply, led to the construction of the Paraopeba branch line of the Estrada de Ferro Central do Brasil railway. This gave birth to and developed the town with the arrival of foreign workers and immigrants. The district was created with the denomination of 'Brumado do Paraopeba', a former village, and was subordinated to the municipality of Bonfim in Minas Gerais.

The Brazilian Gold Rush left a mark on the history of Brumadinho, coinciding with the beginning of the municipality's historical formation. Bechler and Bechler[216] affirm that although in the early mid-20th century, mining activity has developed rapidly and intensely, the official establishment of the activity in the municipality took place only in 1941, by means of Decree no. 7442 of 25 June 1941.[217]

Iron ore mining at the Córrego do Feijão mine, first owned by Cia. de Mineração Ferro e Carvão, that came under the control of Ferteco Mineração, in 1973. However, in 2003 the mine was incorporated by Companhia Vale do Rio Doce, which was named Vale S.A. as of 2009 and Vale, the world's largest producer of iron ore, announced the incorporation of Ferteco and its responsibilities arising from the acquisition, according to Pereira et al. [218] Currently, the Mine Córrego do Feijão dam is owned by the mining company Vale S.A.

In December 2018, there was a meeting regarding new authorizations for the continuation or even expansion of mining activities in that region and the superintendent of IBAMA pointed out the risk of these activities and even warned about the possibility of the dam collapse.

[215] IBGE, 'Brumadinho', *Cidades*, 2017, https://cidades.ibge.gov.br/brasil/mg/brumadinho/historico, (accessed 22 June 2021).
[216] R. Bechler, G. Becheler, (Des)Caminhos da Mineração em Brumadinho: presente, passados e futuros, *Revista Tempo e Argumento, Florianópolis*, vol. 11, no. 26, 2019, p. 548 – 559.
[217] Brazil, Decreto No. 7.442, Coleção de Leis do Brasil, vol. 006, col. 1, 25 June 1941, p. 739
[218] Pereira et al., 2019, p.3.

However, this was completely ignored and a month after that meeting occurred the materialization of the Brazil's worst mining disaster occurred. On the sequence of these facts, the State of Minas Gerais (2021) summarises the event as follows:

> At 12:28:20 [Brasília Time] on 25 January 2019, Dam I (B1) burst, leading to the collapse, in sequence, of the B-IV and B-IV-A dams at the Córrego do Feijão mine, of the Paraopeba II Complex, located in Brumadinho/MG. [219]

The afternoon of 25 January 2019 represented a milestone in the lives of thousands of people who, in some way, were impacted by the biggest environmental global disaster since the 1960s. The collapse of Dam I of the Feijão mine occurred, an immense sea of waste that caused damages beyond the economic and financial sphere[220]. The State of Minas Gerais reports:

> With the collapse, approximately 12 million m³ of tailings were carried away. Of these, part remained in the area of the old B-I, about 2 Mm³. In the channel of the Ribeirão Ferro-Carvão creek, up to its confluence with the Paraopeba River, 7.8 Mm³ were deposited and the remaining part (2.2 Mm³) reached the channel of the Paraopeba River, spreading to the backwater of the Retiro Baixo Hydroelectric Plant (UHE), between the municipalities of Curvelo and Pompéu.[221]

With strong potential for destruction, the mud coming from the dam, approximately tinged at a speed of 70 km/h, claiming the lives of hundreds of victims. This totalled more than 270 dead individuals, 11 missing persons and exposing physical risks to more than 727 people. These figured were published by the Report of the Emergency Mission to Brumadinho/Minas Gerais after the dam rupture of Vale S/A and National Human Rights Commission.[222]

Besides the destruction of the company's administrative structures, small businesses, bridges, houses, yards, grasslands, and food cultivation areas were abandoned. As a result, a ghost town atmosphere accompanied the 300-kilometer tailings trail left in the Paraopeba River

[219] Estado de Minas Gerais, [summary of the history of the dam collapse] 'Histórico do rompimento das barragens da Vale S.A. em Brumadinho', 2020, https://www.mg.gov.br/conteudo/pro-brumadinho/historico, (accessed 22 June 2021). [personal translation]
[220] Conselho Nacional dos Direitos Humanos, 'Relatório da Missão Emergencial a Brumadinho/MG após rompimento da barragem da Vale S/A', Brasília, Conselho Nacional dos Direitos Humanos, 2019, p. 10.
[221] Estado de Minas Gerais, 2020. [personal translation].
[222] National Human Rights Commission, Emergency Mission Report, 2019.

hydrographic basin after the rupture of dam B1. The disaster exposed a territoriality far beyond the surroundings of the mine and the dam that broke had an impact on small communities who were forced to leave their homes. Whether in urban or rural regions, many animals and cattle were left for dead due to the satiation with contaminated water.

In a review of the most recent Demographic Census tract, the Oswaldo Cruz Foundation, the Climate, Health Observatory, and others exposed that the city of Brumadinho had 87 sectors and a total population of 33,792 in 2010, but the disaster affected 9 sectors with an estimated population of 3,485 people and 1,090 domiciles.[223]

The SOS Mata Atlantica, the Paraopeba River is dead in the stretch that cuts through Pará de Minas, a fact confirmed by Ana Paula Fracalanza, professor of Environmental Management at the University of São Paulo: 'When the SOS Mata Atlantica Foundation says that the river is dead, it means that there is no aquatic life'[224].

On 30 January 2019, the UN Special Rapporteurs on Toxic Substances on water, Baskut Tuncak and Léo Heller, within the UN Working Group on Business and Human Rights exposed a demand to hold those involved accountable, urging the government to act:

> We call upon the Brazilian Government to prioritize the safety evaluations of existing dams and rectify current licensing and safety inspection processes to prevent reoccurrence of this tragic incident. We further call upon the Government not to authorize any new tailing dams nor allow any activities that would affect the integrity of existing ones until safety is ensured.[225]

Therefore, the UN calls on authorities to focus on the safety and suggested that the Brazilian authorities should not authorise new tailings dams. On that account, in analysing the

[223] A. Romão, C. Froes, C. Barcellos et al., 'Avaliação preliminar dos impactos sobre a saúde do desastre da mineração da Vale (Brumadinho, MG)', São Paulo, Fundação Oswaldo Cruz, 2019, https://www.arca.fiocruz.br/bitstream/icict/32268/2/Avalia%C3%A7ao_preliminar_saude_Brumadinho2019.pdf, (accessed 23 June 2021).
[224] C. Aragaki, 'Rio Paraopeba está morto e perda de biodiversidade é irreversível', *Jornal da USP*, [web blog], 4 April 2019, https://jornal.usp.br/atualidades/rio-paraopeba-esta-morto-e- perda-de-biodiversidade-e-irreversivel, (accessed 23 June 2021).
[225] UHCHR, 'Brazil: UN experts call for probe into deadly dam collapse', 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24128, (accessed 24 June 2021).

manifestations of international bodies, the various violations of human rights are perceptible, considering the competence of such bodies and their representativeness in the protection of basic rights at the international level.

The dam collapse at Córrego do Feijão was the worst environmental disaster in three decades in terms of lives lost, and in terms of environmental destruction. This occurrence should not be viewed as an exception, the Brumadinho dam disaster is a clear illustration of devastating infrastructure failure. The socio-economic, environmental, and health impacts are massive and difficult to quantify, but it is crucial to assess these dimensions in order to pursue a comprehensive understanding of this complex phenomenon.

4.2.1. Socio-economic, Environmental, and Health Impacts

The human and socio-economic damage occurred in a degressive manner to the dam. The damage was not restricted to the stretch closest to the dam, with impacts being recorded throughout the entire Paraopeba River basin. The Brazilian Analysis Report summons that eighteen municipalities are considered to be affected, that encompass citizens and traditional communities[226] directly and indirectly exposed to the extension of the collapse.[227]

Associated with the dimension of the analysis, the flow of rejects harmed a variety of agricultural, pastoral, transportation, mining, and urbanization facilities. This resulted in dramatic changes on the way of life of the inhabitants, which were exacerbated by the loss of homes and subsistence activities. A key economic driver is the reduction of family income due to the impossibility of activities and unemployment because of the disruption of multiple businesses.

According to Rodrigues from the NGO (O)Eco the affected area exceeds 300km[228] along the river. However, one of the strategies of reducing the discussion and simplifying reality is to

[226] Including indigenous, quilombolas, and artisanal fishermen.
[227] Brazil, Ministério da Economia, *Relatório de Análise de Acidente de Trabalho: Rompimento da barragem B I da Vale S.A. em Brumadinho/MG, Belo Horizonte, 25 setembro 2019*, p. 07.
[228] S. Rodrigues, 'Brumadinho: Após um ano, água de Paraopeba continua sem condições para consumo', in OECO, 23 January 2020, https://www.oeco.org.br/noticias/brumadinho-apos-um-ano-agua-de-paraopeba-continua-sem-condicoes-para-consumo, (accessed 10 June 2021).

assign different values of relevance to the various spatial clusters affected. In this sense, the entire geographical complexity of the disaster is restricted to Brumadinho, under a distorted lens of the local reality as a result, the rest of the basin, so that the lower course is barely mentioned by official agencies.

The changes in the physical environment have reverberated and will continue to be seen in the social and biotic environment. In addition to the death of individuals, local flora and fauna, the severe loss of biodiversity and ecological wealth, the modification of habitats affects human and non-human lives. Amongst the environmental changes are those associated with the suppression of natural forest environments and the overlapping of marginal strips of the affected springs. Fragmenting preservation units and the degrading atmospheric quality, including the loss of terrestrial and aquatic habitat negatively influenced the flora and fauna.

The passage of the mud caused the destruction of native Atlantic Forest vegetation and of preservation areas. Similarly, a study conducted by the Institute Butantã and Federal University of Rio de Janeiro, with the contributions of several researchers, highlighted that the tailings may cause death and abnormalities in fish embryos. The researchers warn about the possible negative outcomes arising from long-term exposure, including those related to the consumption of contaminated water. The tailings sludge, even after being diluted several times, [229] was able to kill and cause mutagenic defects in fish.

It is remarkable that the deposition of part of the tailings on the river bottom is a factor that transforms the habitat and harms aquatic life, as it makes important nutrients unavailable for the development of microfauna and benthic organisms. As well as aquatic plants that remove nutrients from the river bottom and the water column. Consequently, the other trophic levels of the food web are also affected by this modification. The decrease in the population

[229] F. Thompson, B. Oliveira, M. Cordeiro, et al., 'Severe impacts of the Brumadinho dam failure (Minas Gerais, Brazil) on the water quality of the Paraopeba River', *Sci Total Environ., vol. 705,* 2020, p. 09.

of benthos, amphibians and fish generates a loss of biodiversity. Furthermore, the alteration in the life cycle of insects can cause the proliferation of diseases, causing harm to the general health of the population as affirms the coordinator for Minas de Lama, Felippe Miguel et al.[230]

For the understanding of health, diseases and other aggravations, the epidemiological bulletin of the Ministry of Health[231] pointed out for an increase in clinical manifestations throughout the first year after the disaster. According to the Ministry, the increase in cases may be related to the unconformity of the quality of the water analysed.

Regarding this the Ministry of Health collected 1.847 samples in 16 affected municipalities.[232] The results indicate unsatisfactory values for the following parameters: From the data analysed, it was found that the levels of iron and manganese in 100% of the samples exceeded the average of these metals found in the soils in the region. For manganese, the levels were to be 27 times higher than the average levels and for iron up to 2 times higher.[233] The microbiological and organoleptic parameters were unsatisfactory, the concentrations detected for some of these substances exceed the values of health risk suggested by the World Health Organization (WHO) and are in non-compliance with the Brazilian standard of potability. [234]

On the report, the data provided by the Municipal Health Secretariat of Brumadinho The data from the Registry of Outpatient Health Care shows that psychosocial disorders had a significant increase in 2019, when compared to the previous year. For the aggravation

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[230] M. Felippe, A. Costa, R. Gonçalves, et al., 'Minas de lama: relatório da expedição geográfica no vale do rio Paraopeba', Juiz de Fora, 2020, p. 61, https://www.nacab.org.br/wp-content/uploads/2020/01/MINAS-DE-LAMA-RelatorioDeCampo.pdf, (accessed 26 June 2021).

[231] Brazil, Ministério da Saúde, Secretaria de Vigilância em Saúde, 'Um ano do desastre da Vale: Organização e resposta do Ministério da Saúde', *Boletim Epidemiológico*, no. 51, 2020, p. 1-35, *https://antigo.saude.gov.br/images/pdf/2020/janeiro/28/boletim-especial-27jan20-final.pdf, (accessed 25 June 2021).*

[232] ibid., p.16.

[233] Brazil, Ministério da Saúde, 2020, p. 14.

[234] World Health Organization, *Guidelines for Drinking-water Quality, vol. 1, Recommendations: addendum*, 2006, p. 159.

depressive episodes, 352 cases were recorded in 2018 and 993 cases in 2019, while the grievance of reactions to severe stress presented 68 cases registered in 2018, and in 2019, 672 cases were recorded. The severe stress reactions and adaptation disorder presented 68 cases in 2018 and 933 cases in 2019. The ministry highlights that people affected by disasters, in general, experience situations of ruptures that can generate a lot of suffering and acute stress reactions, anguish, anxiety, feeling of insecurity.[235]

4.3. Provisions, Contingencies, and Human Rights Related Measures

4.3.1. Federal government and the omission of the Legislative Branch

The lack of commitment of the Brazilian State to the preservation and maintenance of the environment since the current Federal Constitution of the Brazilian Republic CFRB/88 was the first Magna Carta of Brazil to establish the environmental policy of the environment in its own chapter, provided from art. 225, for an ecologically balanced environment and a collective obligation to safeguard and protect the environment for the benefit of upcoming generations.

Facing this environment conundrum, one of the main problems in Brazil lies in the difficulty of understanding the concept of environment, since many believe it is linked only to natural issues of flora and fauna. Silva[236] argues that the environment is not only made up of woods and forests, but by a whole set of material and immaterial principles which include the cultural environment and was listed as the intangible heritage of mankind. In terms of damage to the environment, the State of Minas Gerais estimates that:

> Vegetation, fauna and other rivers were affected along hundreds of kilometers, crossing the territory of more than 20 municipalities and causing one of the biggest socio-environmental disasters in the history of the country. The negative impacts on the economy were not restricted to the municipalities of the Paraopeba River basin but were reflected in the Metropolitan Region of Belo Horizonte and the state of Minas Gerais as a whole.[237]

[235] Brazil, Ministério da Saúde, p.22.
[236] J. da Silva, *Curso de Direito Constitucional Positivo* (32 ed.), São Paulo, Malheiros, 2009.
[237] Minas Gerais, 2020, p. 10. [personal translation]

Only in September 2019, the Legislative Assembly of Minas Gerais, established a Parliamentary Commission of Inquiry to investigate what caused the Brumadinho dam to break. According to art. 7 of Law No. 12.334, dams must be classified to ensure safety and stability, however, during the Parliamentary Commission of Inquiry it was demonstrated that Vale S.A. had failed to comply with the law.

In the case of the Feijão dam, it was essential to develop the Dam Safety Emergency Plan (PAE), which was proposed in 2015; however, it was not possible to conclude it. The PAE, when properly developed through preventive and corrective procedures to be adopted as a strategy and means of dissemination to potentially affected communities in emergency situations, it can inhibit and prevent possible disasters such as those of Brumadinho and Mariana.

The Public Prosecutor's Office [238] calls upon for what had not been observed at any time. This is why during the proceedings, it is possible to verify facts that directly contributed to the collapse of the dam, first that it was known to Vale S.A. operated with a safety factor much lower than the internationally recommended guidelines and followed by it in its other dams. Moreover, the issuance of two declarations of stability condition by the company Tüv Süd in June and September 2018, when the very low safety factor of the dam indicated a real possibility of liquefaction occurring. In the investigation of the facts, there were indications that Vale and Tüv Süd had joined forces to make inspection and control agencies, as they presented false documents attesting to the stability of dam B1. As demonstrated throughout the report,[239] both the companies had an interest in maintaining the activities of the Córrego de Feijão Mine.

The inquiries of Public Prosecutor's Office indicate that there was collusion between Tüv Süd and Vale to 'make up' the real situation of dam B1 and, therefore, hinder the inspection by the competent public agencies. The MPF highlights that the company could have

[238] MPF. [Brumadinho Case] 'Caso Brumadinho', 2019, http://www.mpf.mp.br/grandes-casos/caso-brumadinho/apresentacao/apresentacao, (accessed 23 June 2021).
[239] Public Prosecutor's Office, 2019

prevented the eventual collapse from causing so much damage to life and the environment, this is due to the failure to notify the ANM of the real state of the dam in the audits of June and September 2018, which would lead to the ban of the administrative area of the mine.[240].

It is pivotal to note that the event did not occur in a sporadic and unexpected way but was added to a set of actions and omissions that, when added together, led to the collapse of Dam I. Consequently, it is possible to argue that such actions and omissions, in addition to criminal liability, lead to civil liability of the company.

By virtue of the Parliamentary Inquiry Committee (CPI)[241] and the investigations carried out by it, nine months after the fact, they point out obvious and indisputable points regarding responsibility and the damages caused. It was stated that these were caused by human conduct that consisted of criminally relevant actions and omissions that were imputable to those who had the duty to prevent the structure from breaking down; as well as to providing and using means to reduce them to the greatest extent possible. The Committee observed[242] that the omission of measures required to concomitantly increase the level of safety and stability of the dam and reduce the risk of damage associated with the eventual collapse of the structure, especially the number of fatal victims in the event of an accident of this nature, was a determining cause for the occurrence of the 'event'.

In 2019, the Court of Justice of Minas Gerais joined forces with Public Defenders' Office and the Public Prosecutor's Office fixed for the organisation the payment of an allowance.[243] In this regard, an informative note of the case exposes that: these payments would be made for another 10 months, from 25 February 2020. Each adult was entitled to one monthly wage, half of a wage for teenagers and a quarter for children. The payment is intended for people who can be proven to have lived, before the collapse, in the communities

[240] Federal Public Prosecutor's Office, 2021.
[241] Assembleia Legislativa do Estado de Minas Gerais, 'CPI - Rompimento da Barragem de Brumadinho, Relatório Final', Belo Horizonte, 2019.
[242] Assembleia Legislativa do Estado de Minas Gerais, p. 26.
[243] Tribunal de Justiça do Estado de Minas Gerais, 'Pagamentos emergenciais', https://www.mg.gov/ata_acordo_vale04-02-2021.pdf, (accessed 23 June 2021).

of Córrego do Feijão, Parque da Cachoeira, Alberto Flores, Cantagalo, Pires and on the sides of Córrego Ferro Carvão. Affected individuals, who live in areas apart from those listed and are registered in Vale's residence, social aid, economic programs, will also be entitled to payment for a further 10 months.

The provision is that such payment should be understood as a maintenance aid on a temporary basis, it does not replace future claims and legal demands questioning the civil liability of the Mining Company. This understanding is already emphasised by the court itself and the Company, which further clarifies, due to the emergency compensation nature of the amount, the extension of the payment is valid exclusively for those who reside in areas other than those listed above and are currently enrolled in one of Vale's support programs, such as housing, social aid, agricultural support, or assistance to local food suppliers.

As per Melo, one cannot forget about the responsibility of the Mining Company in the face of the Moral damage it caused to the local population.[244] The author clarifies that although the legal system counts on instruments that aim towards at the prevention of damage as individual, collective and diffuse inhibitory measures and, for some, the punitive quantification of the moral damage would serve such purpose and, therefore, would exercise a dissuasive function of the potentially harmful conduct.

The fact is that the reality is still far from the ethical paradigm propounded by the social solidarity is foreseen in the Brazilian Constitution, the moral damage to local residents is flagrant, since many will be deprived of family life, return to their homes, possession of objects of high affective value, loss of pets among other issue. In this sense, Melo reminds us that 'besides this material damage, moral damages can be claimed for the loss of the loved ones, a fact that offends an important part of the dignity of the person'.[245]. In these cases, the

[244] M. Melo, 'Algumas possibilidades da responsabilidade civil no Caso Brumadinho', *GEN Jurídico, [web blog], 5 February* 2019, http://genjuridico.com.br/2019/02/05/algumas-possibilidades-da-responsabilidade-civil-no-caso-brumadinho/, (accessed 24 June 2021).
[245] Melo, 2019, p. 01. [personal translation]

moral damage arises from the fact itself and therefore generates a non-material perspective of loss, that must be addressed.

The application of civil liability and patrimonial reparation should still only be seen as a way of reducing the damage caused to the local population. The stipulation of such an amount will only try to mitigate all the damage and suffering that the victims incurred. Although there is no single way of quantifying the real damage caused by the mining company, pecuniary compensation is one of the measures and legal mechanisms but should not be the only one.

4.3.2. Vale Company Responsibility and The Brumadinho Disaster Compensation Agreement

In practical terms, much has been questioned about the sanctions for the crime committed against Brumadinho and others affected by the environmental damage, in order to punish and prevent the commission of new crimes, avoiding further damage by means of fines in billions of dollars, and even the deregulation of the company responsible for the damage, since the environment is not like other legal assets that can be reconstituted at any time.

Vale do Rio do Doce[246] informs that the people affected by the rupture of Dam I, at the Córrego do Feijão mine, in Brumadinho, can adhere to different types of compensation: individual, emergency and labour. In the context of the negotiations with the State, the organization explains that an agreement of about R$37 billion[247] was reached between the mining company and the State of Minas Gerais, to repair the damage derived from the dam collapse.

The Company alludes that the service stations of Brumadinho, created soon after the incident, continue to provide humanitarian assistance to those affected. [248] According to Vale, in these places, the analysis of the situation and the demands of the community are made and

[246]Companhia Vale do Rio Doce, 'Reparação e desenvolvimento', 2019, http://www.vale.com/brasil/PT/aboutvale/servicos-para-comunidade/minas-gerais/atualizacoes_brumadinho/Paginas/default.aspx, (accessed 24 June 2021).
[247] approximately $7,2 billion dollars.
[248] ibid.

forwarded to specialized teams, responsible for ensuring issues such as medical care and medical attention, psychosocial care, temporary housing, water distribution and others, distribution of water, and others.

As for figures, Vale states that since 2019 the Company has carried out that 101.575 people receive emergency aid every month.[249] There have already been signed more that 4.200 civil agreements involving 9.400 people, the company has paid out R$13 billion since 2019,[250] with its repair program. Likewise, the company has signed a Term of Commitment with the regional Public Defenders' Office of Minas Gerais to speed up the payment of compensation for the collapse of Dam I.

However, Brumadinho disaster response demonstrates in which manner the current legislative framework is not always efficient in safeguarding the environment, protecting people, and preventing other disasters. While authorities are still determining the best strategy to redressing damages and examining possible sanctions, besides the billionaire agreement with the Vale Company, some have expressed concern that little has been done to remedy or to provide accountability for the violators.

Consequently, Zaneti[251] exemplifies that collective redress in brazil and the 'procedural law of disasters' has proven to be ineffective, for the author because of the complexities of the structural proceedings to the address the company responsibility require a revisiting on new forms of litigation. In addition, Jefferson Nascimento affirms that, in Brazil, the accountability process to hold companies, such as Vale, faces some barriers for this reason

[249] Companhia Vale do Rio Doce, Vale remains focused on repair fronts in Brumadinho, Donations and indemnities, 2019, http://www.vale.com/EN/aboutvale/news/Pages/vale-segue-focada-nas-varias-frentes-em-brumadinho.aspx, (accessed 24 June 2021).
[250] Companhia Vale do Rio Doce, Brumadinho, Programa de Reparação Integral, 2021, http://www.vale.com/esg/pt/Paginas/Brumadinho.aspx, (accessed 24 June 2021).
[251] H., Zaneti, 'Collective Redress in Brazil: Success or Disappointment?', In: Uzelac A., Voet S. (eds) Class Actions in Europe. *Ius Gentium: Comparative Perspectives on Law and Justice*, vol. 89, 2021. pp. 345-368, (accessed 25 June 2021).

'it is necessary to amend criminal law to remove obstacle'[252], which still makes it difficult to be held responsible for environmental crimes in the country.

Even though more than two years had passed since the disaster, the victims have not had the consolation of being able to seek compensation in another jurisdiction; instead, the victims rely on provisions of Vale's reparations programs and what the Brazilian Justice have been offering. Measures and mechanisms, still, insufficient to restore the damages and deepen wounds caused in the society by disaster that could have been avoided.

4.3.3. The Role of Human Rights Protection Bodies

The waste buried the lives and dignity of hundreds of people, violating several fundamental rights, as well as destroying the local fauna and flora. This reached as far as the Paraopeba River. Various international bodies, both global and regional, have taken a stance on the event in Brumadinho. The Inter-American Commission on Human Rights expressed its position through the of the Special Rapporteur for Economic, Social, Cultural and, Soledad García Muñoz. This Commission who took advantage of the moment to emphasize the role of companies in the preservation of the environment.

> This Office of the Special Rapporteur also emphasizes that, in accordance with international standards in the matter, in the case of disasters such as Brumadinho, it is imperative and urgent that public institutions ensure that victims and their families, including workers, are informed and participate effectively during the decision-making processes, as in the implementation of all the plans and measures that are determined. In this regard, "the State of Brazil must immediately ensure the effective participation of the people and communities affected as well as their movements in the management of this terrible socio-environmental tragedy; even when there are regulations, such as Decree 9691 of the Interministerial Council for the Supervision of Disaster Responses, that do not contemplate such participation", said Special Rapporteur SRESCER of the IACHR, Soledad García Muñoz.[253]

[252] J. Nascimento, 'Brumadinho: one year after Brazil's worst social and environmental disaster', Conectas, Series, 2020. https://www.conectas.org/en/noticias/series-brumadinho-one-year-after-brazils-worst-social-and-environmental-disaster/, (accessed 27 June 2021).

[253] OAS, 'Special Rapporteurship ESCER of the IACHR expresses deep concerns about human, environmental and labor tragedy in Brumadinho (Minas Gerais, Brazil), and calls for the integral reparations for victims', 30 January 2019, https://www.oas.org/en/iachr/media_center/PReleases/2019/019.asp, (accessed 24 June 2021).

Furthermore, specifically on the case of Brumadinho, the Inter-American Commission on Rights believes that such an incident indicates a probable weakening of the regulations surrounding the upholding of licenses in the country's mining sector:

> On the other hand, considering the multiple questionings pertaining to the state response and the companies involved in the case of Mariana, and a new disaster occurred in Brumadinho of magnitudes that would have exceeded the first, it is particularly worrisome the information that points to a possible flexibility in the regulations relating to the licensing of the mining sector in that country. SRESCER recalls that the IACHR has already indicated that the obligations of the State in this matter include "the duty to prevent human rights violations, that is, it is applied before authorizing an activity and granting permits, as well as during the implementation and the life cycle of the project under scrutiny through supervision and oversight measures. " To this is added that in both tragedies the same mining company, Vale SA, is involved, a situation that the State must take into special consideration when determining the corresponding responsibilities and actions, including the integral reparation to the victims by the company.[254]

As already noted, the UN has also expressed its concern through a working group but also as an international coalition of civil society organizations and later requested that Vale, the Brazilian mining giant, be removed from the United Nations Global Compact which is the world's biggest network for corporate social responsibility.[255]

> Dear Ms. Kingo, On January 25, 2019, a tailings dam at an iron ore mine operated by Vale SA in Brazil collapsed, engulfing large areas of the town of Brumadinho (Minas Gerais, Brazil) in toxic mud. This was the second deadly collapse of a tailings dam owned by Vale in little more than three years. In light of Vale's catastrophic failures, the undersigned organizations request that you take immediate action to ensure that this egregious environmental and human rights abuse is addressed as per the Global Compact's Integrity Measures Policy (IMP). Specifically, we request that you delist Vale.[256]

[254] ibid., p. 06.
[255] The organisations that signed the document International Articulation of People Affected by Vale, with the support of the third sector, academic observatories, and other regional and global movements.
[256] See Allegation to the global compact dam collapse in Brumadinho, 11 February, 2019, https://www.fidh.org/IMG/pdf/allegation_to_the_global_compact__dam_collapse_in_brumadinho_11022019_final.pdf, (accessed 24 June 2021)

Human rights must address the socio-environmental vulnerability that increases the danger to health due to interaction with chemical, physical, and biological pollutants. The danger created is not dispersed evenly and disadvantaged people often take the burden of the consequences of this crime. As a result, Professor Andréa Zahouri reveals how democracy, social and environmental justice, quality of life, and human rights are subordinated, given that such an occurrence increases social disparities, damages the environment, and creates a situation of systemic calamity risk. The professor complements by saying:

> Disaster is a process! I would like to repeat here in good tone: the disaster is not the breaking of the dam, people confuse disaster with breaking and even call it an "event", that is a critical event within a disaster process, which begins before that and continues.[257]

The civil society organization Conectas mentioned, for example, its national action as 'advocated together with civil society organizations for stronger regulations to prevent new catastrophes', the actions it has provided are both in monitoring parliamentary debates in the national congress, as they state 'we closely followed and submitted insights during the debates in the External Committee on Brumadinho in the Lower House of Congress, which proposed, at the end of its work, a new set of laws with measures for prevention, reparation and accountability of those responsible for social and environmental tragedies, including a national policy for people affected by dams.

Throughout everything that has been exposed previously in this research it has become evident in the difficulty of effectiveness of the right to 'an ecologically balanced environment'.[258] Since this right is not realized with the desire of only a small portion of society, for such realization there is a need for multi-layered coordination. By acknowledging that they have the right to property, as well as to a dignified life, being indispensable to them a healthy, ecologically balanced environment, information, judicial protection, personal integrity and freedom of association.

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[257] 'Seminário Desastres da Vale SA. em Brumadinho: seis meses de impacto e ações - parte 4' [online vídeo], 2019, https://www.youtube.com/watch?v=sl5Cq7egrhM, (accessed 25 June 2021). [personal translation]
[258] Brazil, *Constitution of the Federative Republic of Brazil*, p. 119

It is verified that there are solid jurisprudential precedents that support the international responsibility of Brazil and the companies involved. The disrespect for the rights enshrined in the commitments made in the International Human Rights Law are deeply related to the right to a wholesome environment. Finally, it should be noted that the failure to protect the environment has as a consequence on the series of human rights violations, since there are individuals who depend exclusively on natural means for their sustain.

The rupture of dam I of the Córrego do Feijão complex of the Vale company is not an externality. The event represents a significant paradigm in the mode of compensation for the environment, social justice, and human rights. The absence and inefficiency of the state apparatus in resolving the doubts and questions of the population is clear in this case. The emergency action of the government only intensified the insecurity of the population. Disconnected warnings and unfounded alarms ended up undermining the credibility of official information.

The Brumadinho experiences demonstrates that the debate on disaster responsibility for disasters is continuously postponed by an empty 'blame game'. The mutilated landscape will remain a record for an immeasurable period of time with the insufficiency of socio-environmental concerns in the face of the profit agendas. The disaster compensation factor appears as a complicated weave of historical legacies in the architecture of anthropogenic disasters of the twenty-first century.

5. HUMAN RIGHTS AND TRANSITIONAL JUSTICE MECHANISMS FOR ENVIRONMENTAL JUSTICE IN DISASTERS SITUATIONS.

During the chronology of this work, it was sought to develop and provide a scientific and historical background for a comprehensive and constructive understanding of the object of analysis. A brief exposition helps to gather the concepts previously discussed and encompassed hereby. The research begins with an assessment on civil, political, economic, social, cultural, and collective rights enshrined in international and regional human rights instruments, with the aim of empowering people to shape their lives in compliance with liberty, equality, and respect for human dignity.

Similarly, it is within this context of mechanisms establishment for the protection of human rights, in the scenario of violations, and especially impunity of massive past abuses that the transitional justice was born. Subsequently the understanding of human rights was extended to environmental understanding; the theoretical basis for the right to a healthy environment and protection as a driver greater environmental awareness, putting anthropogenic disasters in the Anthropocene as a core of the study. Again, all of this contributed to sharpening the senses to discern human rights and transitional justice flourishing.

Klaus Bosselmann claims that, historically, different political philosophies have developed the notion of human rights, for instance liberal ideas establishing the idea of individual freedoms, in the 18th century, or even democratic and social ideas, establishing to equality and solidarity, encompassing the definition we have today 'it makes sense to define the human being [...] as an individual in a free, democratic society'.[259]

However, the author adds that it should not be forgotten that the notion of human rights, and how they have been shaped throughout years, was born out of the experience of social injustice. As long as there has been injustice, there is room for the advancement of human rights in pursuit of justice. Therefore, nowadays, society faces environmental injustice as an independent, much further issue, it is only natural to investigate the environmental dimension

[259] Bosselmann, 2010, p. 114.

of human rights, as well as other relevant human rights frameworks such as transitional justice towards an environmental justice.

Inequality and environmental injustice affect the potential for development, creating a vicious circle, since vulnerability leads to more intense exposure to environmental risks and costs, which, in turn, leads to even more vulnerability by hindering the possibilities of development. Environmental vulnerability also increases the risk of environmental disaster situations, and environmental disasters, whether natural or anthropogenic, have direct repercussions on human life and well-being.

It is worth bearing in mind the theoretical assistance from the Green Theory in this construction, also known as Environmentalist Theory, focuses discussions on the environment, which is now understood as not only an ecosystem where the issue of pollution from industrialization prevails and concerns, but also as something in which various factors subsist and can, in general, be conceptualized as a combination of material, biochemical, and physiological circumstances, rules, and social normative that support life and its development.

Of course, the historical review of the environmental question in this article is a much-discussed issue in academia, but it is necessary to see the context of the birth of Green Theory and understand its place in the current situation, where the need to ensure a balanced and healthy environment is raised in various contexts, such as environmental disasters.

In this way, to bring up the subject ‘environment’, it was noted that classical theories, such as liberalism and realism, would be "green blind" and could no longer be used by international society when facing environmental problems, since they would not be sufficient. Besides the environmental development highlighted since de 1970s with the first Conference on Development and Environment held in Stockholm, ECO 72, and then the UN Framework on Climate Change, Rio 92, subsequently for Rio +20, and Paris agreement.

The Green Theory must clearly be regarded as a critique rather than a problem-solving theory, its contribution is distinctive. It offers an alternative method of analysis and whose

higher ideals, the environment and its guidelines can no longer be neglected, since although there is no certainty about the future, the hereafter has to be expected to have a probability of the environment no longer being balanced due to human action.

Inspired by Green Theory awareness, it is observed that while there has been limited specific consideration of transitional justice's possible role in responding to injustices in disaster settings, this study might serve as basis for additional insights among transitional justice researchers with anthropogenic environmental damages. Taking into account the need to have a green view, that is, disseminate a culture in favour of the environment, in which there is a generalized vision about the problem. This effort opens the door for a green human rights and transitional justice.

5.1. Anthropogenic Environmental Disaster as a Human Rights and Transitional Justice Issue

The aftermath of environmental disasters can affect groups, individuals, and communities differently due to this vulnerability, as emphasized by some of the environmental movement authors, aforenamed Rachel Carson. Environmental risks are not equitably distributed, and factors such as poverty, ethnic or racial composition may be at the heart of the distribution of these risks and environmental costs. In this respect, environmental vulnerability also contributes to greater exposure to human rights violations, especially the right to life.

Although human rights protection systems can perform an important role in protecting the human rights of vulnerable individuals and groups in situations of ecological disasters, such as the role of the Inter-American Court of Human Rights, stands out in this regard, as it has an innovative jurisprudence in environmental matters, and which recognizes the violation of the rights through and environmental lens, however, it is necessary to explore some other supporting mechanisms, such as Transitional Justice procedures as well.

The Brumadinho disaster, discussed previously, exemplifies some of the factors involved in environmental disasters. Disasters in mining dams, resulting from technical failures and historical and structural processes, constitute an enormous challenge to human rights, since

they expose the population and the environment to multifaceted risks that overlap, from contact with toxic agents present in the mining tailings to disruptive feelings of loss of identity and community memory, financial disorganization of the municipality, among many others.

The collective representation of such occurrences requires an amalgamated response that contemplates several mechanisms, since the effects caused in environmental disaster situations produce damages that are visible in an immediate manner in lives and in the environment, but also in a longitudinal manner, over time, affecting the operating conditions of an entire society. An in-depth Brazilian thinker, Milton Santos[260], contributes to this idea by mentioning that the territorial space is complex, and sometimes mixes with the subjective space, the social space. Therefore, in situations of environmental disasters it is not possible to dissociate the environmental damage from the social damage.

The experience in Brumadinho demonstrated the vulnerabilities in not combining methods and mechanisms, exposing society to risks, and not necessarily protecting from future disasters. Through a 'green' lens, human rights sharpen the perception that the risks generated are not distributed equitably; and vulnerable populations are those who suffer most from the consequences of this one-sided response model of dealing with environmental disasters. Democracy, social and environmental justice cannot develop without deepening human rights in the search to address social inequalities and environmental degradation, which establish and amplify the structural disaster risk scenario.

Environmental responsibility in the face of the dam collapse shows that, despite the legal infrastructure of the state, as indicated in the preceding section in the Brazilian instance, such as Law 9.605/98 on environmental crimes and the Constitutional Provision. The state penal apparatus indicates that it still does not prevent, punish, or compel the repair of environmental damage as it should. The mud that reached areas of environmental preservation, destroyed

[260] M. Santos, 'da Política dos Estados à política das Empresas', *Cadernos da Escola do Legislativo*, vol. 3, n. 6, p. 9-23, https://cadernosdolegislativo.almg.gov.br/ojs/index.php/cadernos-ele/rt/captureCite/337/290, (accessed 26 June 2021).

villages, killed tons of fish, damaged the water supply in several municipalities that use the Paraopeba River, one of the main tributaries of the watershed of the São Francisco River, making fishing and tourism, and sometimes living conditions, in the region unfeasible, up to the present moment has not had a positive response, in the administrative, civil and criminal liability.

Liability for environmental crimes is an additional factor, although it is advocated in this research that a combined approach is employed, in the case of Brumadinho it is possible to note that the current normative framework is weak, in terms of practice, of holding actors accountable for environmental crimes. Baskut Tuncak, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, claims that:

> Accountability and reparations for victims is wanting, where in many cases nobody is held accountable for unquestionable environmental crimes, attacks, and murders [...] Following the Mariana and Brumadinho disasters, no corporate executive of Vale, BHP or Samarco stands convicted of criminal conduct, a travesty of justice suggesting some in Brazil are indeed above the law.[261]

The human rights report, which focuses on environmental concerns such as the Brumadinho disaster, makes recommendations for transparency, reparation, and institutional reform, based on the need to effectively execute constitutional provisions, and enhance the existing system. Therefore, recommendation (m) includes accountability, access to justice, and effective remedy for victims (i) in addition to institutional reform (ii) and accountability for corporations (iii, iv, v). As can be seen in the original fragment:

> (l) Fully implement judicial decisions, including closure of the last existing asbestos mine and implementation of a full ban on the mining, production, use, import and export of asbestos, and strengthening legal and institutional measures relating to the full lifecycle of asbestos products.

[261] OHCHR, Visit to Brazil – Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, UN, A/HRC/45/12/Add 2, 17 September 2020, p. 17.

(m) Improve accountability, access to justice and an effective remedy for victims by:
(i) Establishing a truth and reconciliation committee for those killed or harassed for protecting their human rights, including to a healthy environment and safe work;
(ii) Institute reforms to enhance the ability of victims of hazardous substances and wastes to access justice and an effective remedy, including challenges such as causation, timeliness, costs and technical assistance, among others;
(iii) Identifying and implementing necessary reforms to ensure corporate executives are always held accountable for environmental and occupational crimes, including Vale, BHP Billiton, Samarco, Tuv Sud, and other related companies for their inaction leading up to the Brumadinho and Mariana disasters;
(iv) Reforming the governance structure of the Renova Foundation to replace all influence of Vale, BHP and Samarco with independent experts free of conflicts;
(v) Ensuring in coordination with Vale and other companies implicated the necessary resources are made available for the Piquiá de Baixo community's resettlement, and formal issuance of an apology by the Government, Vale and other companies.[262]

Human rights challenges certainly take multiple forms, including the most serious abuses and disasters, as well as executions, torture and war crimes. Each case demands a specific response. Furthermore, in the recommendations presented to the UN, it is apparent that there is a preference for the combination of mechanisms, accountability, access to justice, remediation, and institutional reform for the enforcement of human rights themselves, particularly in the case of Brumadinho. Nonetheless, these mechanisms presented in the recommendations are very similar to the mechanisms, and especially, the notion of combination of mechanisms, of transitional justice.

A legal and transitional justice mechanisms basis designed to regulate the prevention, management and remediation of the effects of ecological disasters also requires incorporating the dimension of environmental and social justice, recognising that individuals and communities are not equally prepared to adopt measures to prevent, to cope with and to recover from ecological disasters, which vary according to their degree of environmental vulnerability. In this sense, it is also fundamental to recognize that the poor are also more

[262] ibid., p. 21.

environmentally vulnerable and, consequently more exposed to ecological disasters and resulting human rights violations.

5.1.1. Addressing Environmental Disaster through Transitional Justice

Transitional Justice is embedded in responsibility and reparations for victims. The ICTJ has said that ignoring significant abuses undermines a society's fundamental principles. It is impossible to pinpoint when human rights end and transitional justice begins since the two processes are closely tied. This is because transitional justice is a human rights-based strategy that prioritizes victims' dignity. Transitional justice, on the other hand, supplements human rights by addressing certain critical concerns, such as how to fulfil the needs of victims and agents to bring justice and healing to past violations. As well as Karen Hulme clarifies:

> 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*.[263]

The traditional authors McAdams, Teitel, Minow, Rosenblum who directed the initial development of the concept of transitional justice in terms of a justice that facilitates the transition from a period of violation to a more constructive alternative period. Although the essential character remains, the concept has been broadened over the years, passing through several waves of development that have added much to its complexity, and the most recent one the 'third wave' translates it into a combination of judicial and non-judicial measures to address the legacy of gross human rights violations.

Based on this enlargement, influenced by recent developments, it is also possible to understand its application to the environment, and consequently its application to environmental disaster situations. The search for Justice, as a collective future constitution, includes the environment and the numerous implications of protection, for this reason the

[263] K. Hulme, 'Using a Framework of Human Rights and Transitional Justice for Post-Conflict Environmental Protection and Remediation', in C. Stahn, J. Iverson, and J. Easterday, *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices*, Oxford, Oxford Scholarship Online, 2017, p. 120.

necessity to address grounded injustices, while laying down the groundwork for a future-oriented protection, is a key factor.

Bradley, writing for the International Journal of Transitional Justice, an important portal for development in the field, mentioned that often environmental disasters are little observed by transitional justice processes, which in her conception would be a way to further propagate injustices in these contexts.[264] Bradley suggests that the observance of environmental disasters should represent a concern for the field of transitional justice, the author cites natural disasters, but in the understanding of this research extends to anthropogenic disasters.

The applicability of transitional justice in contexts and circumstances is therefore an approach that matches it and can be valuable in protecting human rights and promoting justice to the environment. Bradley mentions:

> Do widespread, grave abuses in disaster and post disaster contexts fall within the scope of transitional justice? In exploring this question, I aim to contribute to the growing literature on the proper scope of transitional justice by drawing attention to a facet of mass injustice that has been ignored, arbitrarily discounted or inadvertently effaced. I suggest that misperceptions about natural disasters as inevitable, blameless misfortunes contribute to the neglect, in theory and in practice, of injustices associated with natural disasters, and draw on insights from the disaster studies literature to challenge this exclusion.[265]

When interrogating assumptions about these disasters as infelicities considering inputs from the disaster research field, it makes sense that environmental disasters connect to the framework of transitional justice, because there are no differences in praxis and morality between the casualties and suffering that occur to victims of disasters and the victims of war and violent regimes. The experience of physical and emotional grief looks similar.

The four pillars of transitional justice are composed by criminal prosecutions, truth-seeking, reparations, and reforms. These instruments should enrich the right to justice, right to memory and truth, right to symbolic and financial reparations, and the guarantee of non-

[264] Bradley, 2017, pp. 400-420.
[265] Bradley, 2017, p. 402.

recurrence. However, the concept has over the years undergone a broadening, passing through several waves of development, which have added much to its complexity, and in the current 'third wave' it translates in essence into the combination of judicial and non-judicial measures to address the legacy left by severe human rights violations.

The understanding of the third wave also encourages the current research to consider how and what the potential of implementing transitional justice in situations of environmental disasters, especially the Brumadinho disaster. Nonetheless, because of the evolution of existing considerations, rigorous normative standards can only consider the challenges of transitional justice to a limited extent. It is necessary to adapt it. Every scenario must be acknowledged, and changes over time may be required based on particular factors.

5.3. Applying Transitional Justice Mechanisms: The Brumadinho Case.

The development of this research, which aims to contribute by creating a bridge between the diverse and complex concepts outlined hereby. Taking into consideration the pillars of transitional justice and the possibility of relating it to anthropogenic environmental disasters, a real case is employed, to represent in what shape and how important it would be to consider a disaster response supported by the transitional justice framework.

The case study of Brumadinho demonstrates that the immediate response, and even the long-term response, exactly two years after the disaster, has been profoundly ineffective and unjust, further aggravating the situation of human rights violations and the natural vulnerability of the entire context. Given that it is understood in this study that the systematic violations that occurred during and after the Brumadinho disaster can contribute to the construction of a transitional justice conceptual apparatus, then, various mechanisms linked to disasters like the Brumadinho disaster are applied.

Initially, recalling what has already been studied of the case, especially anthropogenic disasters like Brumadinho, do not occur without a historical and structural background of social, economic, cultural, and political injustices that fuel the environment in which they

develop. Thus, as already noted, Brazil is a country that has high levels of inequality, portraying a social abyss that is challenging.

Structural vulnerabilities are known to increase in extreme situations, a setting similar to Brazil, where an environmental disaster event is accompanied by a context of pre-existing rights violations, demands and clearly demonstrates the need for a combination of mechanisms for a positive and constructive response. As a result, the use of transitional justice mechanisms appears to be appropriate.

The author M. Bradley recalls, inspired by the work of Eric Klinenberg[266], that the evaluation and monitoring of the mechanisms to be used cannot depend on a unilateral understanding, 'disaster-related harms need to be understood and tackled holistically, overcoming the impulse to neatly pin blame on isolated individuals or institutions'.[267] Hence, in this analysis a systemic approach is applied, not to address specific perpetrator, but necessarily pointing to the different roles involved, including business, state, society, and their organisations agencies as part of a system that led to the conditions of turning dangers into disasters.

In short, most of the actions taken so far regarding Brumadinho have been at the level of individual agreements and one large joint agreement. In fact, the biggest legal agreement in the history of Latin America, in terms of monetary value, signed between the company Vale S.A., the government of Minas Gerais, the Public Defenders' Office and the Public Prosecutors' Offices. The agreement aims to 'end' the possibility of a legal battle for collective rights. Although the agreement provides for reparation guidelines, its essence lies in fund compensation. The representative of the Movement of Dam Affected People (MAB) Joceli Andrioli clarify:

> [the agreement] It benefits the company itself: it used the agreement as a marketing strategy to increase the value of its shares in the market. Vale has had a R$ 174 billion increase in value in the last year, since it began negotiating this agreement. It worked

[266] E. Klinenberg. *Heat Wave: A Social Autopsy of Disaster*, Chicago, University of Chicago, 2015.
[267] Bradley, 2017, p. 417.

> on the false image of a company that seeks to build a socio-environmental reparation and sustainability policy.[268]

The affected people, the main actors of the agreement, did not participate in the discussion and were excluded from the proceedings. As stated by leaders of the Movement for the Mountains and Waters of Minas (MOvSAM) 'society was not fully heard from the beginning of the negotiations within the Judiciary. There were difficulties for other public agents, persons and groups to be able to manifest themselves'[269] the MOvSAM alerts that this is highly serious since the incident's consequences have harmed the environment, people, and society, and certainly the federal and municipalities governments are not the only with an opinion or a voice on the matter.

Accordingly, when considering transitional justice mechanisms, it is necessary to consider that legal procedures are crucial, but the process should not be based on and limited to these processes alone. Brumadinho demonstrates this very well, the representative value of R$37 billion reais, although expressive, proves to be inefficient in repairing the damage caused. Not that the amount does not financially indemnify, but as mentioned, the damages are systemic, and the social reparation is deeper and complex. To clarify and complement the transitional justice provisions that are understood to apply hereof are the right to (1) justice, (2) right to financial and symbolic reparations, (3) right to truth and memory, and (4) guarantee of non-occurrence through institutional reform.

When applying the right to justice mechanism to the case study, it should be added that in addition to agreements, the legal process should include a public trial process. In some transitional experiences, specific tribunals and ad hoc tribunals have been established, for example Military Tribunals, International Criminal Tribunals experiences, Hybrid Courts, or even the International Criminal Court instance. Nevertheless, in the case of Brumadinho, the

[268] Movimento dos atingidos por Barragens (MAB), 2020, https://thousandcurrents.org/partners/movimento-dos-atingidos-por-barragens/, (accessed 26 June 2021). [personal translation]

[269] Fundo Brasil, Movimento pelas Serras e Águas e Minas (MovSAM), https://www.fundobrasil.org.br/projeto/movimento-pelas-serras-e-aguas-de-minas-movsam-minas-gerais/, (accessed 27 June 2021). [personal translation]

establishment of a theme-specific public tribunal, which includes an adequate hearing process, could be initially applicable, and as it develops, the establishment of other instances such as a Hybrid Court. Unlike what occurred under the ordinary Brazilian justice system, mediated by the Court of Justice of the state of Minas Gerais.

In the light of transitional justice legacy and its adjustment to the environmental disasters, one must understand that the international criminal law still needs to be further developed towards environmental crimes. There is already a broad academic debate regarding the crime of ecocide, but no provision for such crimes is yet recognised before the ICC. For this reason, even though it is considered crucial that the Brumadinho occurrence and other environmental disaster be pleaded before the International Court, it is still challenging to think about this possibility.

The right to justice symbolises, as mentioned in the first chapter, a consolidation not only in a legal awareness, but also in a comprehensive perception of interpreting the suppression of a past violation, which tries to convert the past violations towards an optimistic future. Anja Seibert-Fohr adds that the accomplishment of access to justice can also mean, in practical terms, the prosecution, and whatever form it takes must be guaranteed 'fair trial standards'[270].

Tomasz Lachowski points out that while 'at least in theory, acts or omissions that lead to the natural catastrophe can be attributed to the particular person, being responsible, civil or criminal liability'[271], a positive response must comprise other means of justice. It is worth bearing in mind that, in Brumadinho, and in environmental disasters in general, it is not only the prosecution of an individual that applies. Besides this Criminal trials, ad hoc tribunals, prosecutions of the perpetrators held, either internationally or nationally, must demonstrate

[270] A. Seibert-Fohr, 'Transitional Justice in Post-Conflict Situations', in: R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford, Oxford University Press, 2012, pp. 1042-1049.
[271] T. Lachowski, Climate Change and Transitional Justice: Towards the Pursuit of Justice for Climate Change Victims, in M. Rahman, R. Ullah, *ELCOP Yearbook of Human Rights: Human Rights and Climate Justice*, Bangladesh, ELCOP, 2013, pp. 21-38.

a responsiveness to the environment. Again, a ‘green vision’ must underpin measures and actions under prosecutions and trials.

In addition, reparations, and their appropriate programmes, are a crucial procedure of the transitional justice approach. Whether symbolic or material, reparations must be based on the real sense of healing and recovery of a society. Equally, when dealing with an environmental disaster, it is necessary to think about natural damages and reparations to nature.

In recent history, the advancement of transitional justice and the concern with reparations for human rights abuses has taken a fundamental place, regarding the weight of reparations in the healing process, as mentioned by Brand on Hamber and Richard A. Wilson ‘Psychologically speaking the so-called symbolic acts of reparations and material reparations serve to the same end’, although one does not outweigh the other, the function of the reparations is to provide recovery, both tangible and intangible dimensions should be explored.

On the practical side, in Brumadinho, symbolic reparation measures have not yet been configured, two years after the event, the socio-environmental recovery plan for the Paraopeba river watershed has not yet been established. The reparation promoted, mostly material, was exercised as an emergency measure after the disaster: the primary efforts in were focused on containing tailings discharged by the dam rupture, with the building of different structures.

Following a transitional justice approach, it is suggested that a reparations programme, which can usually be tailored within a process with ample coverage for all possible abuses and impacts on victims and the environment. Sonja Klinsky, who sought to apply transition justice to climate challenges but who this research could be extended to environmental disasters, suggests that the measures must first and foremost focus attention on the need of those who have suffered from the damage, by saying ‘the Victim- focused element of reparations highlights the importance of rooting them in the harms experienced’[272]. An

[272] Klinsky, 2018, p.760.

adequate restitution process recognizes and redresses society, and in the Brumadinho Case, the vulnerable must be acknowledged, and the fundamental reasons that exposed nature and people prior to the occurrence must be grasped and tackled.

The reparations, whether individual or collective, need to count on the diverse forces of society, and in this case, the combination of mechanisms is the safest way to plead for social and environmental justice. The Brazilian non-governmental organization Conectas adds 'the damage caused by the mud was far greater than the material losses: relatives of missing victims are unable to mourn; the affected people suffer from stress and depression; and they are still fighting for fair compensation and decent emergency assistance'.[273]

It is important to note that occasionally reparations programs inspire further transitional justice mechanisms, such as truth commissions, or suggest creating other specific reparations programmes. Truth and memory commissions can join this process. To foresee truth commissions and memory institutions in Brumadinho, encompasses the perspective of the families, configuring a broad understanding that the people affected must be accompanied also out of court in order to plan and execute actions aimed at repairing the damages.

Truth commissions are not limited to legal issues, but also to the evident physical and mental health impacts of the people affected, that is because deaths and disappearances, cause a profound and painful collective trauma. Sonja mentions:

> Truth commissions can bolster a regime's legitimacy by breaking with the past, create opportunities for reconciliation, develop recommendations for further actions, and address elements of harm not covered within judicial processes. Like other transitional justice mechanisms, truth commissions alone are unlikely to be successful, and without accompanying actions, they can alienate supporters. This mechanism could be used as inspiration within the climate context in three ways. [274]

[273] Conectas, 'Brumadinho: one year after Brazil's worst social and environmental disaster', Series, 2020. https://www.conectas.org/en/noticias/series-brumadinho-one-year-after-brazils-worst-social-and-environmental-disaster/, (accessed 27 June 2021).
[274] Klinsky, 2018, p.759.

The experience of Brumadinho, although painfully felt by the residents, has been silenced in an attempt to minimise collective damage in the face of the established agreement. In situations of environmental disasters, as well as in other situations of extreme violations already provided by transitional justice, trust is undermined. Hence, the relevance of this mechanism also in environmental disasters is first to publicly provide information and public record of violations and their impact on lives after the disaster.

Truth commissions and their repercussions on memory institutes evoke the need for institutional reform. In the scope of transitional justice, the mechanism of institutional reform is based on a comprehensive view to prevent further disasters from occurring in the future. Bradley states that disaster-focused institutions are relevant to establish commissions that have a mandate to address and monitor parallel disparities in the aftermath of a disaster.

Those institutions should promote the acknowledgement of the losses and encourage a positive change. In the Brumadinho disaster, there is a management committee, formed in the planning department's den; however, it is possible to observe that such committee has a little spectrum of action within the state government. The establishment of an independent institution, which, even in the government's antrum, can monitor, facilitate, and influence so that justice is done in the present and in the future, is recommended.

Indeed, transitional justice can be an alternative, early aspect of wider attempts to achieve justice in the aftermath of tragedies, such environmental disaster. During this application, it has been clear the favourable conditions to reconsider the negligence in environmental disaster contexts, from academic and operational attempts, to hold accountability for human rights violations, notably under transitional justice mechanisms.

Finally, the study of the Brumadinho case, and its possibility of broadening the academic debate on Transitional Justice does not end in itself. This understanding shows the concern with similar disastrous experiences, which unfortunately due to a degree of social and economic inequalities, can still occur in Brazil and in the world, especially in vulnerable and

fragile States. So, both inequalities and environmental exploitation, in the model that is currently presented, create possibilities for other disasters to take shape.

Post-disaster settings tend to be equivalent to conflict or post-conflict conditions in terms of the large number of casualties, and governments' reluctance or inability to give enough assistance and rebuild human rights. Analysing the case of the Brumadinho disaster, it is useful to understand the conditions present before and after an environmental disaster, thinking about the mistakes and successes that are summarized in the entire process; Identify the conditions that constitute a disaster, and most importantly, using the past to guide the future.

5.4. Towards Environmental Justice

Justice is a complex definition, but this application aims to initiate a dialogue on examining environmental disasters and concerns through the lens of transitional justice, striving to make analysis of complex, deep human rights abuses, or abusive systemic practices. The impact of conceivable environmental adaptations of transitional justice mechanisms is connected to a significant change within transitional justice and human rights itself, which involves defining new aims and extending the scope of the environment understanding.

The application of transitional justice measures enables a collective awareness in society about the victims' pain and impact, towards justice. For transitional justice to be effective in post-conflict environmental disasters, it must be applied fully, with all its elements.

However, it must the considered the diversity of power structures that come into play within a justice system can create discrimination in substantive law and procedural rules, including inadequate law and lack of environmental protection measures, thus limiting access to justice for those in a highly vulnerable situation, such as the victims of the Brumadinho disaster. The focus of justice in this construction, beyond accounting for environmental damage, shows itself in the broad sense of a justice that encompasses disasters through multiple mechanisms, as has been exposed with transitional justice mechanisms.

The focus of human rights may, in fact, enhance environmental protection and monitoring in the aftermath of environmental disasters. Environmental injustices demand a multi-layered response that also considers pre-existing inequalities; throughout this perspective, human rights underpin the strategy of the implications on how the common good, or the environment, may be just and include dignity to all living creatures in this planet we share.

FINAL REMARKS

This paper has endeavoured to illustrate, by using a human rights and transitional justice mechanisms, that improvements might be achieved in the existing framework of environmental protection. Certainly, such mechanisms are not in evidence among the environmental rights movement but given the broadening of transitional justice to include environmental perspectives, it could potentially enhance legal protection binding and non-binding on states for environmental remedies and restorative mechanisms.

Subsequently, choosing transitional justice as a source for human rights promotion, which it is, pertains to eliminating the barriers that have hidden environmental abuses and exclude them from human rights provisions in different settings. Injustices and inequalities are evident in disasters, institutional, intertwined with other various degrees of abuses that represent a risk to human life, dignity, and respect for the natural environment, are certainly challenges what human rights aim to confront.

Inspired by what Klinenberg suggests that because the 'looming threat of catastrophe and the quotidian crises that mark our time make this an opportune moment to develop new humanistic and social scientific approaches to the study of life and death'.[275] Regrettably it is not possible to assert that environmental disasters do not happen anymore, however, experiences, such as the one in Brumadinho environmental disaster, are resourceful to contribute to future research as well as to future work prevention. Furthermore, the research demonstrates the interconnectedness of the employment of various transitional justice

[275] Klinenberg, p. 618.

mechanisms to interact with environmental disaster-related violations, that may be addressed to broaden the human rights scope.

Transitional Justice moves towards resignification, by resignification is not to allow traumatic and violent historical events to cease to exist in memory or enter amnesia, but to constitute the sense of justice and transformation of a society, using its mechanisms to access and to reframe what has occurred. Essentially, coping with the grief of human and environmental losses in order to create a trajectory for healing and risk reduction, reinforcing the human rights standards that mankind has already achieved, while bearing in mind the commitment to continue fighting for justice, particularly environmental justice.

In summary, the approach of the study is interpretive based, with a focus on the applicability of case study of Brumadinho, it intended to broaden and deepen the understanding of the study topic by demonstrating the assumption on how human rights and transitional justice mechanisms may act to repair, remedy, and prevent rights infringements in the context of environmental disasters. Throughout the research, it has been assumed that combination of human rights and transitional justice procedures can increase the effectiveness of dealing with anthropogenic environmental damages in disaster scenarios.

In the light of 'Human Rights and Transitional Mechanisms for Environmental Justice: Case Study of the Brumadinho Dam Disaster in Brazil' human rights standards meet environmental justice, justice, compensations, truth, memory, and institutional reforms to provide dignity to the victims and dignified conduct toward the living world that surrounds the existence of the entire Earth.

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ABSTRACT (English)
The purpose of this master's thesis is to investigate the "environmental dimension" of human rights and transitional justice principles. Contemporary challenges are diverse and are equally caused by the multidimensional landscape of the humanity-environment confluence. Human rights are gradually shifting towards a more comprehensive and inclusive dialogue, with environmental protection playing an important role. Whereas the principle of transitional justice, an intrinsic concept to the promotion and preservation of human rights for victims, has proven the possibilities of extending its horizons to accomplish a broader sense of justice, which does not exclude environmental justice. In this regard, human rights and transitional justice mechanisms are powerful tools in the face of anthropogenic environmental damages. Transitional justice has the potential to deepen the perspective of human rights enforcement by integrating a variety of mechanisms along with access to justice, reparations, remembrance practices, institutional reforms, and their confluence on investigations, finding initiatives, reconciliations processes, arrangement reconstruction, and contributing to a systemic dialogue of justice in response to environmental abuses. Accordingly, this analysis assumes that combining human rights and transitional justice mechanisms can asseverate contribute for the effectiveness of dealing with anthropogenic environmental damages in disaster contexts, relying on an inclusive response for the natural and human losses caused by such situations. In addition, the proposed case study of the Brumadinho dam disaster in Brazil (2019) is a rich source of knowledge on how anthropogenic environmental disaster scenarios entail a myriad of mechanisms towards social and environmental recovery.
Key Topics: International Human Rights, Transitional Justice, Environmental Rights, Green Theory, Environmental Justice, Disaster Response.

ABSTRACT (Deutsch)
Das Ziel dieser Masterarbeit ist, die "Umweltdimension" der Menschenrechte und Grundsätze der Übergangsjustiz zu untersuchen. Die Herausforderungen der Gegenwart sind vielfältig und oft nicht staatszentriert. Zudem wurden die Herausforderungen dieses Jahrhunderts auch durch die multidimensionale Landschaft des Zusammenspiels von Menschen und Umwelt verursacht. Die Menschenrechte entwickeln sich allmählich zu einem umfassenderen und integrativen Dialog, bei welchem der Umweltschutz eine wichtige Rolle spielt. Das Prinzip der sogenannten "Transitional Justice" (z. dt.: Übergangsjustiz), ein wesentliches Konzept zur Förderung und Wahrung der Menschenrechte, zeigt, dass der Anwendungsbereich erweitert werden kann, um ein breiteres Verständnis von Gerechtigkeit zu erreichen, welches die Umweltgerechtigkeit nicht ausschließt. In dieser Hinsicht sind Mechanismen der Menschenrechte und der Übergangsjustiz mächtige Instrumente angesichts der anthropogenen Umweltschäden. Letztere hat das Potenzial, die Perspektive der Durchsetzung von Menschenrechten zu vertiefen, indem sie eine Vielzahl von Möglichkeiten wie Zugang zu Gerichten, Wiedergutmachung, Erinnerungspraktiken, institutionelle Reformen und deren Zusammenwirken mit Untersuchungen, Findungsinitiativen, Versöhnungsprozessen und dem Wiederaufbau von Vereinbarungen integriert und zu einem systemischen Dialog über Gerechtigkeit als Reaktion auf Umweltverstöße beiträgt. Dementsprechend geht diese Analyse davon aus, dass die Kombination von Menschenrechts- und Übergangsjustizmechanismen nachweislich zur Effektivität des Umgangs mit anthropogenen Umweltschäden in Katastrophenkontexten beitragen kann. Dabei setzt sie auf eine integrative Antwort, auf die durch oben beschriebene Situationen verursachten, natürlichen und menschlichen Verluste. Darüber hinaus ist die vorgeschlagene Fallstudie der Brumadinho-Staudamm-Katastrophe in Brasilien (2019) eine fundierte Wissensquelle darüber, wie anthropogene Umweltkatastrophen-Szenarien eine Vielzahl von Mechanismen zur sozialen und ökologischen Wiederherstellung nach sich ziehen.
Zentrale Themen: Internationale Menschenrechte, Übergangsjustiz, Umweltrechte, Grüne Theorie, Umweltschutz, Katastrophenmanagement.