

Urban Collectives as Victims of International Human Rights Violations

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Abstract

Cities are places where people experience human rights violations collectively. Disputes arising from such experiences are increasingly percolating into the international legal arena. Focusing on decisions of international and regional human rights tribunals in matters concerning multiple individuals bound together by urban residence, this article considers how the urban condition is beginning to transform conceptions of victimhood, conventional understandings of individual and collective rights and reparations in international human rights law.

1 Introduction

International law scholarship is engaging urbanity with increasing regularity. Much of this engagement has focused on the evolving/emerging role of cities (frequently understood by legal scholars as synonymous or closely overlapping with local governments for urban areas) as actors in international law.¹ Conventionally, cities lack independent international legal subjectivity, instead attracting obligations, indirectly and invisibly, as subsidiary organs of state.² But their increasing clout in international

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¹ See Blank, 'International Legal Personality/Subjectivity of Cities', in H.P. Aust and J.E. Nijman (eds), *Research Handbook on International Law and Cities* (2021) 103, at 105; Oomen *et al.*, 'General Introduction: Urban Politics of Human Rights', in J.E. Nijman *et al.* (eds), *Urban Politics of Human Rights* (2023) 1, at 3.

² See Aust, 'Shining Cities on the Hill? The Global City, Climate Change, and International Law', 26 *European Journal of International Law (EJIL)* (2015) 255, at 267; Blank, 'The City and the World', 44 *Columbia Journal of Transnational Law* (2006) 868, at 884–887; Blank, *supra* note 1, at 106–110; Frug and Barron,

relations and their growing prominence in domestic systems of constitutional law is causing cities to shimmer through the Westphalian veil, and it is not uncommonly predicted or advocated that they will or should play a more marked role in ‘the international law of the future’.³

Contemporary international human rights law scholarship has highlighted cities’ crucial role as implementors and guarantors of human rights as well as their significant capacity, on the other side of this coin, to violate rights.⁴ Drawing on insights from international relations, urban sociology and political science, there has also been significant scholarly engagement with cities’ role in the shaping of international human rights norms, including the formulation of soft law by international city networks, the entrenchment of ‘new’ urban rights in local legal instruments and the adaptation and mainstreaming of existing international law rights in the everyday governance of ‘human rights cities’.⁵

Nearly all of this scholarship foregrounds the ways in which cities today frequently imitate the behaviour of states. However, especially when looking beyond their oversimplified equation with local government, it is also acknowledged (albeit less explored) that cities are in fact far more pluralistic creatures, at times displaying characteristics that are more commonly associated with non-state actors and, at other times, behaving more like groups of individuals.⁶ Coloured by the simultaneous metamorphosis of the international legal subjectivity of individuals and non-state actors, the emergence of cities on the international legal plane is therefore a far more layered occurrence than merely the arrival of a ‘new’ kind of public actor.⁷

‘International Local Government Law’, 38 *Urban Lawyer* (2006) 1, at 14–16; Oomen and Baumgärtel, ‘Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law’, 29 *EJIL* (2018) 607, at 620; Schroeder, ‘Cities in International Law: The New Landscape of Global Governance’, 61 *Virginia Journal of International Law* (2021) 363, at 375–376; Swiney, ‘The Urbanization of International Law and International Relations: The Rising Soft Power of Cities in Global Governance’, 41 *Michigan Journal of International Law* (2020) 227, at 233–235.

³ Nijman, ‘The Future of the City and the International Law of the Future’, in S. Muller *et al.* (eds), *The Law of the Future and the Future of Law* (2011) 213, at 218–221, 227–228; see also Aust and Nijman, ‘The Emerging Roles of Cities in International Law: Introductory Remarks on Practice, Scholarship and the Handbook’, in Aust and Nijman (eds), *supra* note 1, 1 at 1–2; Blank, ‘City and the World’, *supra* note 2, at 870, 891; Blank, ‘Localism in the New Global Legal Order’, 47 *Harvard International Law Journal* (2006) 263, at 266; Frug and Barron, *supra* note 2, at 16; R. Hirschl, *City, State: Constitutionalism and the Megacity* (2020), at 28; Oomen *et al.*, *supra* note 1, at 8–9; Oomen and Baumgärtel, *supra* note 2, at 627–629; Schroeder, *supra* note 2, at 369.

⁴ See Aust and Nijman, *supra* note 3, at 7; Blank, ‘City and the World’, *supra* note 2, at 916–918; Creutz, ‘Responsibility’, in Aust and Nijman, *supra* note 1, 135, at 140–141; Nijman, *supra* note 3, at 221–223; Oomen *et al.*, *supra* note 1, at 11; Oomen and Baumgärtel, *supra* note 2, at 622; Pieterse, ‘Urbanizing Human Rights Law: Cities, Local Governance and Corporate Power’, 23 *German Law Journal* (2022) 1212, at 1214–1215; Saul, ‘Local Authorities at the European Court of Human Rights’, 28 *International Journal of Human Rights* (2024) 1060, at 1061, 1064.

⁵ See Aust, *supra* note 2, at 271–272; Aust and Nijman, *supra* note 3, at 10; Davis, ‘Finding International Law Close to Home: The Case of Human Rights Cities’, in Aust and Nijman, *supra* note 1, 227; Durmus, ‘A Typology of Local Governments’ Engagement with Human Rights: Legal Pluralist Contributions to International Law and Human Rights’, 38 *Netherlands Quarterly of Human Rights (NQHR)* (2020) 30, at 32–35, 42; M. Grigolo, *The Human Rights City: New York, San Francisco, Barcelona* (2019), at 3–5; Nijman, *supra* note 3, at 224–225; Oomen *et al.*, *supra* note 1, at 3–4, 9, 14; Pieterse, *supra* note 4, at 1223; Schroeder, *supra* note 2, at 389–409.

⁶ See Blank, ‘City and the World’, *supra* note 2, at 872; Blank, ‘Localism’, *supra* note 3, at 276; Durmus, *supra* note 5, at 38–39; Oomen and Baumgärtel, *supra* note 2, at 625.

⁷ Oomen *et al.*, *supra* note 1, at 4–5.

Above all, cities are places, which are produced and acted upon by the full gamut of private and public entities of international and domestic law. As such, they are also frequently sites where human rights violations are observed at scale. Whether through the devastating impact of human/state-made/exacerbated disasters (such as the 2020 Beirut blast), the urbanization of armed conflict (recently displayed, for instance, in Aleppo, Mariupol and Gaza City), large-scale environmental devastation caused by urban industries or the effects of the unfolding global climate catastrophe, cities are places where commonly situated people experience human rights violations collectively.⁸ How international human rights law deals with such violations begins to reveal another dimension of the city as an international legal subject: the city as victim.

In focusing on this dimension, this article shows how the urban condition is bringing international human rights law face to face with limitations of its conventional approaches to standing and subjectivity, with conceptual lacunae in the substantive content of its rights canon and with its limited remedial reach. It argues that collectively experienced urban human rights violations are leading international human rights law to increasingly reflect the interdependence between civil and political rights and social, economic and cultural rights, to transcend conventionally limited understandings of group/collective rights, to growingly acknowledge the aggregate or collective dimensions of individual rights and to experiment with collective reparations for infringements. Section 2 considers some of the complexities relating to the kinds of human rights violations typically suffered by urban collectives before indicating how human rights claims representing the shared interests of urban communities filter through to the international level. Section 3 then engages the jurisprudence of international and regional human rights tribunals pertaining to aggregate, collective or cumulative human rights violations in urban areas. This discussion touches on three interrelated clusters of questions. First, there are questions pertaining to representation and standing: do systems provide for collective or representative standing and who represents victims? Second, there are questions that go to the substance of the rights invoked: how does the canon of justiciable rights in a system structure tribunals' engagement with collective urban complaints, what rights are commonly invoked and vindicated and how do tribunals understand their content? Third, there are questions of remedy: where a human rights violation has a city-wide impact, what relief is ordered, and does it

⁸ See Angel-Cabo and Sotomayor, 'Seeing Human Rights Like a City: The Prospects and Perils of the "Urban Turn"', in M.F. Davis, M. Kjaerum and A. Lyons (eds), *Research Handbook on Human Rights and Poverty* (2021) 264, at 268–269; Grigolo, *supra* note 5, at 2, 6; Pieterse, *supra* note 4, at 1214; Sassen, 'When the City Itself Becomes a Technology of War', 27 *Theory, Culture and Society* (2010) 33, at 34–35, 47; Sossai, 'The Place of Cities in the Evolution of International Humanitarian Law', 31 *Italian Yearbook of International Law Online* (2021) 227, at 227–231, 237–238.

address the broader violation? In conclusion, section 4 reflects on how the urban condition is altering the framing, adjudication and remedying of human rights claims.

2 Cities, Urban Collectives and Human Rights Violations

‘City’ and ‘urban’ are thick, amorphous concepts that defy neat definition across realms of geography, politics and sociology. Yet most have a sense of the ‘urban’ ‘city’ as a dense, heterogenous built environment where sizeable numbers of people, who are often/ mostly unrelated strangers, form multiple economic, social, political and cultural relationships and associations in the course of jointly inhabiting and making use of the buildings, infrastructure, public spaces, services and amenities that they share.⁹ While urban inhabitants’ individual interests do not always correspond and, indeed, often come into conflict, residents collectively benefit from, and closely depend upon, both the concrete and intangible benefits of their shared occupation and exploitation of urban space, amenities and resources.¹⁰

Understood thus, cities are indispensable for the human rights of their inhabitants. As places, they are ‘sites where civil and political rights are performed, where the objects of socio-economic rights are accessed and delivered and where the participatory dimensions of all rights are actualized’.¹¹ As political spaces, cities are simultaneously the breeding place of social movements that claim human rights at different scales and sites of control where these claims are disciplined and suppressed by different assemblages of public and private power.¹² Rights are thus asserted, claimed and defended in cities by and on behalf of different combinations of individuals and groups against an equally broad spectrum of entities,¹³ whereas cities function as ‘incubators of wider struggles’ around human rights.¹⁴ Over and above this, urban life, proximity, fabric and infrastructure generate and enable many of the tangible and intangible objects of, and preconditions for, the enjoyment of human rights – from houses and essential services to work

⁹ For more thoroughly theorized understandings, see, e.g., P. Hubbard, *City* (2006); Pile, ‘What Is a City?’, in D. Massey, J. Allen and S. Pile (eds), *City Worlds* (1999) 3; I.M. Young, *Justice and the Politics of Difference* (1990), at 226–256.

¹⁰ See Foster, ‘Collective Action and the Urban Commons’, 87 *Notre Dame Law Review* (2011) 57, at 58; Young, *supra* note 9, at 238, 240.

¹¹ Pieterse, *supra* note 4, at 1214.

¹² Angel-Cabo and Sotomayor, *supra* note 8, at 264, 272–273; Uitermark, Nicholls and Loopmans, ‘Cities and Social Movements: Theorizing beyond the Right to the City’, 44 *Environment and Planning A* (2021) 2546, at 2546–2552.

¹³ Agrawal and Kaplinsky, ‘Group Rights and Collective Rights: What Are They and How Do They Affect Urban Issues?’, in S. Agrawal (ed.), *Rights and the City: Problems, Progress and Practice* (2022) 101, at 111–113, 120–122; Angel-Cabo and Sotomayor, *supra* note 8, at 268; Oomen *et al.*, *supra* note 1, at 11–12; Oomen and van der Berg, ‘Human Rights Cities: Urban Actors as Pragmatic Idealistic Human Rights Users’, 8 *Human Rights and International Legal Discourse* (2014) 160, at 162.

¹⁴ Uitermark, Nicholls and Loopmans, *supra* note 12, at 2552.

and livelihood, political association and family life.¹⁵ As such, rights ‘to the city’ overlap with and reinforce the practice of rights ‘in the city’.¹⁶

On the flipside, cities are also sites where a multitude of human rights violations occur. Domestic courts and international tribunals are routinely called upon to adjudicate and remedy infringements of individual or group rights in cities, which frequently entails the balancing and reconciliation of competing rights.¹⁷ But this becomes complicated where a single event or state of affairs impacts on the rights of many or all residents of a particular urban area. When the number of impacted residents is relatively determinate, and where they are both similarly situated in relation to a violation and similarly impacted by it, current understandings of human rights may well provide adequate protection and compensation, provided remedies can be scaled up to the aggregate. However, human rights law’s conventional individualistic focus on the experiences of particular claimants may complicate the articulation or remedying of collective, systemic or cumulative harms where the totality of the impacted interests extends beyond the sum of their parts.¹⁸

In cities, this can be the case where, in addition to the aggregate individual rights of urban inhabitants, a human rights violation also destroys or damages aspects of the collective urban fabric or infrastructure that enables access to, or performance of, different individual and group rights. For instance, commentaries on the aftermath of the 2020 Beirut blast bemoan not only the individual lives lost, the injuries sustained and the property damaged but also the diminished access to education, health care, housing and essential urban services and the obliteration of, or damage to, livelihood-sustaining infrastructures or facilities and social, economic and care networks.¹⁹ Similarly, scholars on urban armed conflict speak of ‘urbicide’, the premeditated destruction of cities that intends to pulverize not only culturally significant buildings and sites of essential service

¹⁵ See, e.g., Coggin and Pieterse, ‘Rights and the City: An Exploration of the Interaction between Socio-Economic Rights and the City’, 23 *Urban Forum* (2012) 257. More theoretically, see Young, *supra* note 9, at 238–240.

¹⁶ See Grigolo, *supra* note 5, at 3–6; García Chueca, ‘Human Rights in the City and the Right to the City: Two Different Paradigms Confronting Urbanisation’, in B. Oomen, M.F. Davis and M. Grigolo (eds), *Global Urban Justice: The Rise of Human Rights Cities* (2016) 103, at 103–108; Oomen, ‘Introduction: The Promise and Challenges of Human Rights Cities’, in Oomen, Davis and Grigolo, *ibid.*, 1, at 3–6.

¹⁷ See, e.g., Agrawal and Kaplinsky, *supra* note 13, at 120–122; D. Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (2003), at 230–231; M. Pieterse, *Rights-based Litigation, Urban Governance and Social Justice in South Africa: The Right to Joburg* (2017), at 166.

¹⁸ See Ashford, ‘The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights’, 19 *Canadian Journal of Law and Jurisprudence (CJLJ)* (2006) 217, at 219; Francioni, ‘International Human Rights in an Environmental Horizon’, 21 *EJIL* (2010) 41, at 50–51, 55; Jones, ‘Human Rights, Group Rights and Peoples’ Rights’, 21 *Human Rights Quarterly* (1999) 80, at 84–85, 98; Rosenfeld, ‘Collective Reparation for Victims of Armed Conflict’, 92 *International Review of the Red Cross* (2010) 731, at 741–743; Sassen, *supra* note 8, at 38; Torres, ‘Reparations: To What End? Developing the State’s Positive Duties to Address Socio-Economic Harms in Post-Conflict Settings through the European Court of Human Rights’, 32 *EJIL* (2021) 807, at 818, 828.

¹⁹ See, e.g., Human Rights Watch, *They Killed Us from the Inside: An Investigation into the August 4 Beirut Blast* (2021), at 1–7, 98–99, 113–115; Timko, ‘Beirut after the Explosion: A Time for Truth and Compensatory Justice’, 54 *George Washington International Law Review* (2023) 511, at 516–517.

delivery but also the unremarkable and mundane everyday urban infrastructure and fabric that enables and sustains lives, livelihoods and relationships.²⁰

In other instances, the full extent of a human rights violation is only grasped when seemingly disparate harms that occur over time in a particular city are viewed cumulatively. This is the case, for instance, where residents suffer an array of health-related harms traceable to climate change, a polluting industry or a single source of contamination.²¹ A recent United Nations (UN) special rapporteur's report on toxic environments speaks in this regard of cities that are 'sacrifice zones', 'place[s] where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas',²² where 'the burden of contamination falls disproportionately upon the shoulders of individuals, groups and communities that are already enduring poverty, discrimination and systemic marginalization'.²³

Framing a claim from the perspective of an individual applicant might thus inadequately capture and correct for the essence of large-scale human rights infringements in cities, both where the harm resides in an injury to a shared urban good or aspect of urban life that enables rights and where cumulative harm manifests over time across the city. However, while it has long been recognized that all human rights have collective dimensions,²⁴ collectively framing human rights claims are, for many reasons, complicated and controversial. Much ink has been spilled on the desirability and practicalities of defining and enforcing group or collective rights in domestic and international law. Most agent-centred understandings of group rights would extend them only to self-defined collectives displaying high degrees of homogeneity and singularity of purpose²⁵ and subject to considerable caution pertaining to conflicts between the group rights and opposing individual rights of members.²⁶ Conceived such, collective rights (such

²⁰ See, e.g., Campbell, Graham and Monk, 'Introduction to Urbicide: The Killing of Cities?', 10 *Theory and Event* (T&E) (2007), paras 2–3, 7–8; Coward, 'Urbicide Reconsidered', 10 T&E (2007), paras 1–3, 11, 21–23, 36; Donets and Prezanti, 'A Hostage City: Hunger, Disease and Inhumanity in Russian-occupied Mariupol', 58 *Texas International Law Journal* (2023) 99; Glumcevic and Odobasic Novo, 'Shifting Morphology: Sarajevo under Siege', 7 *Montreal Architectural Review* (2021) 59, at 60–63; Mezentsev and Mezentsev, 'War and the City: Lessons from Urbicide in Ukraine', 93 *Czasopismo Geograficzne* (2022) 495, at 497–501, 517.

²¹ See Heri, 'Mattering in the Anthropocene: The ECtHR's Domesticating Framing of Climate Change', *International Journal of Human Rights* (online first), available at <https://doi.org/10.1080/13642987.2025.2475001>; Swan, 'Plaintiff Cities', 71 *Vanderbilt Law Review* (2018) 1227, at 1249–1251.

²² UN Human Rights Council (UNHRC), 'The Right to a Clean, Healthy and Sustainable Environment: Toxic Environment: Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, UN Doc. A/HRC/49/53, 12 January 2022, para. 27.

²³ *Ibid.*, para. 21.

²⁴ See, e.g., McDonald, 'Can Collective and Individual Rights Coexist?', 22 *Melbourne University Law Review* (1998) 310, at 316, 320–322; Waldron, 'Can Communal Goods Be Human Rights?', 28 *European Journal for Sociology* (1987) 296, at 299–300; Wellman, 'Solidarity, the Individual and Human Rights', 22 *Human Rights Quarterly* (2000) 639, at 643.

²⁵ See, e.g., Agrawal and Kaplinsky, *supra* note 13, at 103–106; Galenkamp, 'Collective Rights: Much Ado About Nothing – A Review Essay', 9 *NQHR* (1991) 291, at 298; Hartney, 'Some Confusions Concerning Collective Rights', 4 *CJLJ* (1991) 293, at 294–296; McDonald, *supra* note 24, at 315.

²⁶ See Galenkamp, *supra* note 25, at 300–301; Lopez Calera, 'The Concept of Collective Rights', 34 *Rechtstheorie* (2003) 351, at 369; Newman, 'Value Collectivism, Collective Rights, and Self-Threatening Theory', 33 *Oxford Journal of Legal Studies* (2013) 197, at 203; Waldron, *supra* note 24, at 319.

as the cultural, self-preservation and development rights of indigenous communities) have been termed anti-urban in their orientation and would clearly apply to heterogeneous city dwellers only with considerable difficulty.²⁷

Value- or interest-based theories of collective rights, in contrast, focus on the collective value of public goods that benefit most members of a community, albeit divergently.²⁸ A conception of rights as vesting collectively in the beneficiaries of such goods – including both aggregate goods, which members could also access and enjoy individually (such as clean air and public space), and non-aggregate goods, which can only be collectively produced and enjoyed (such as conviviality, proximity, solidarity, democracy and economic markets)²⁹ – is arguably more reflective of urbanity. While collective interests may sometimes effectively be vindicated if expressed as an aggregate of individual rights,³⁰ there would also be instances where it would only make sense to invoke them on behalf of the collective.³¹ Even so, cities' heterogeneity means that the interests of urban populations are difficult to represent collectively since inhabitants are seldom similarly situated in relation to, and may in fact be conflicted over, a particular human rights threat or violation.³² For practical reasons, cases pertaining to large-scale human rights violations in urban areas are therefore most likely to be brought by civil society organizations on behalf of (admittedly, often imperfectly representative) aggregates or collectives of residents.³³

However, the global rise of urban local governments as political actors is altering this landscape. While municipalities will frequently be among the respondents in urban human rights cases – particularly where these involve rights (such as socio-economic rights) that are closely connected to their governance mandates³⁴ – they are also increasingly featuring as plaintiffs. For example, in the USA, there has been a significant rise in recent years in mass-tort claims brought by city governments in the public interest against non-state actors (such as oil companies, pharmaceutical companies, tobacco companies, gun manufacturers and the manufacturers of lead paint), demanding compensation for the collective harm suffered by residents as a result of, for instance, climate

²⁷ See Agrawal and Kaplinsky, *supra* note 13, at 120–122; Galenkamp, *supra* note 25, at 300; Lopez Calera, *supra* note 26, at 362; Young, *supra* note 9, at 236–238.

²⁸ See Jones, *supra* note 18, at 84–85, 98; Lopez Calera, *supra* note 26, at 364–365; McDonald, *supra* note 24, at 316, 330; Newman, 'Collective Interests and Collective Rights', 49 *American Journal of Jurisprudence* (2004) 127, at 158; Newman, *supra* note 26, at 198–199; Waldron, *supra* note 24, at 304–305.

²⁹ See McDonald, *supra* note 24, at 316; Newman, *supra* note 28, at 140–141, 149; D.G Newman, *Community and Collective Rights: A Theoretical Framework for Rights Held by Groups* (2011), ch. 3, ss III–IV; Waldron, *supra* note 24, at 307–312; Walker, 'Human Rights and Global Public Goods: The Sound of One Hand Clapping?', 23 *Indiana Journal of Global Legal Studies* (2016) 249, at 252–253.

³⁰ See Galenkamp, *supra* note 25, at 296–297; Hartney, *supra* note 25, at 309–310.

³¹ See Jones, *supra* note 18, at 98; McDonald, *supra* note 24, at 320; Waldron, *supra* note 24, at 314–315; Wellman, *supra* note 24, at 653.

³² See Caruso, 'Associational Standing for Cities', 47 *Connecticut Law Review* (2014) 61, at 63, 78–80; Lopez Calera, *supra* note 26, at 366–367; Rosenfeld, *supra* note 18, at 743; Wellman, *supra* note 24, at 655–656.

³³ See van den Berg, 'Making Human Rights the Talk of the Town: Civil Society and Human Rights Cities, a Case Study of the Netherlands', in Oomen, Davis and Grigolo, *supra* note 16, 44.

³⁴ See Angel-Cabo and Sotomayor, *supra* note 8, at 267; Pieterse, *supra* note 4, at 1223; Saul, *supra* note 4, at 1061.

change, pollution, gun violence and the opioid epidemic.³⁵ Elsewhere, municipalities have frequently invoked residents' human rights in intergovernmental disputes with national or regional governments – for instance, in justifying their claims for greater constitutional autonomy or in defending local policies or regulatory schemes that are aimed at promoting human rights.³⁶

For many reasons, urban local governments appear well situated to represent the urban collective in matters involving structural, collective and cumulative human rights violations. In domestic systems of constitutional law, municipalities not uncommonly have legal personality and are thus capable of suing and being sued.³⁷ Their leadership increasingly tends to be democratically elected by residents, thereby bestowing legitimate representative capacity.³⁸ Moreover, because of the nature of everyday urban governance, they are legally charged with implementing rights in the collective urban interest, are typically the custodians of the public goods in which their residents have a collective rights-based stake and have unparalleled access and proximity to the data that would reveal cumulative human rights violations.³⁹ Indeed, the growing legal autonomy and political clout of city governments around the world present significant possibilities for adjudicating collective claims pertaining to large-scale urban human rights violations. As Sarah Swan has remarked, by 'establishing themselves as entities responsible for and capable of achieving justice for their populations',⁴⁰ 'plaintiff cities' are 'defining and demanding recognition not just for those impacted constituents, but also for themselves, as distinct and meaningful polities, ... [thereby] reopening the practical and theoretical possibilities of cities in the political order and opening up new potential paths for urban justice'.⁴¹

3 Urban Collectives before International Tribunals

Given the margin of appreciation afforded to states by international and regional human rights law, rights-based claims seeking relief for large-scale urban injustices have primarily been adjudicated under domestic public law.⁴² This means that the success of

³⁵ See generally Clopton and Shoked, 'The City Suit', 72 *Emory Law Journal* (2023) 1351; Lemos, 'State-Local Litigation Conflicts', *Wisconsin Law Review* (2021) 971; Swan, *supra* note 21.

³⁶ See, e.g., Hirschl, *supra* note 3, at 162–164; Oomen and Baumgärtel, *supra* note 2, at 625; Pieterse, *supra* note 4, at 1222–1223; Pieterse, 'Human Rights Cities' in Africa? Rights as Resources for Urban Governance in the Global South', 50 *Journal of Law and Society* (2023) 538, at 539–540.

³⁷ See Lopez Calera, *supra* note 26, at 358, 365.

³⁸ See Besson and Marti, 'Cities as Democratic Representatives in International Law-making', in Aust and Nijman, *supra* note 1, 341, at 347–351; Hirschl, *supra* note 3, at 230; Lemos, *supra* note 35, at 976–978; Young, *supra* note 9, at 249.

³⁹ See Angel-Cabo and Sotomayor, *supra* note 8, at 267; Caruso, *supra* note 32, at 61–63; Caruso, 'Who and What Is a City "for"? Municipal Associational Standing Reexamined', 62 *William and Mary Law Review* (2021) 105, at 115, 120; Durmus, *supra* note 5, at 52; Oomen and van der Berg, *supra* note 13, at 166; Saul, *supra* note 4, at 1064, 1075–1076; Swan, *supra* note 21, at 1249–1251; Swiney, *supra* note 2, at 269.

⁴⁰ Swan, *supra* note 21, at 1285.

⁴¹ *Ibid.*, at 1232.

⁴² Ezer, 'Localizing Human Rights in Cities', 31 *Southern California Review of Law and Social Justice* (2022) 67, at 107–109; Oomen, *supra* note 16, at 13; Oomen, Baumgärtel and Durmus, 'Accelerating Cities,

human rights claims pertaining to urban collectives has hinged on, *inter alia*, the substantive scope and reach of domestic public law systems' human rights canons, their approach to standing and remedies and the extent to which they provide for local government autonomy and accountability.⁴³ Unfortunately, domestic public law systems often fall short of effectively accommodating and vindicating claims concerning collective urban rights violations. National legal systems, for instance, may not grant standing to local governments or civil society to enforce rights on behalf of resident groupings or may deflect their claims to biased or ineffective intergovernmental dispute resolution processes.⁴⁴ Even where applicant bodies have standing, most domestic legal systems do not provide for rights to be invoked against foreign states and only provide for very limited instances of 'horizontal' application of rights against non-state actors, thereby shielding some frequent perpetrators of large-scale violations from accountability.⁴⁵ Moreover, relevant rights may not be domestically guaranteed or justiciable (with many systems providing limited protection for collective rights, socio-economic rights or environmental rights)⁴⁶ or may be restrictively interpreted by domestic courts, which may have limited remedial competencies or may be overly deferent to national executives or parliaments.⁴⁷

In these circumstances, international human rights law presents an additional port of call to the injured urban collective. There are several documented instances of attempts by local governments or civil society to invoke rights that are guaranteed in international instruments, but imperfectly entrenched in domestic law, before domestic courts.⁴⁸ Similarly, as in the case of 'human rights cities', local governments sometimes rely on states' international human rights obligations in attempts to boost their own regulatory authority or democratic legitimacy or to enhance their capacity to protect or implement rights locally.⁴⁹ Moreover, failure to obtain adequate relief for collective rights violations domestically sometimes spurs representatives of urban collectives to attempt to enforce their rights internationally.

This is where urban collectives run into the state-centredness of international law. Most international or regional human rights systems deny local governments independent standing, with rights claims against foreign states typically being the

Constitutional Brakes? Local Authorities between Global Challenges and Domestic Law', 2 *European Yearbook of Constitutional Law* (2020) 249, at 250.

⁴³ See Ezer, *supra* note 42, at 110–113; Frug and Barron, *supra* note 2, at 11, 61; Hirschl, *supra* note 3, at 18–20, 34–37, 48–52; Pieterse, *supra* note 4, at 1216, 1222, 1224; Swan, *supra* note 21, at 1286.

⁴⁴ See, e.g., Blank, *supra* note 1, at 105; Bosire, 'Local Government and Human Rights: Building Institutional Links for the Effective Protection or Realisation of Human Rights in Africa', 11 *African Human Rights Law Journal* (2011) 147, at 155; Clopton and Shoked, *supra* note 35, at 1360; Ezer, *supra* note 42, at 78–80; Hirschl, *supra* note 3, at 10–11.

⁴⁵ See, e.g., Pieterse, *supra* note 4, at 1217–1220.

⁴⁶ See, e.g., Angel-Cabo and Sotomayor, *supra* note 8, at 275–276; Pieterse, *supra* note 4, at 1222.

⁴⁷ Oomen, Baumgärtel and Durmus, *supra* note 42, at 267.

⁴⁸ See examples discussed by Aust and Nijman, *supra* note 3, at 5–6; Baumgärtel, 'Dispute Settlement', in Aust and Nijman, *supra* note 1, 147, at 155; Blank, 'City and the World', *supra* note 2, at 895; Blank, *supra* note 1, at 111; Pieterse, 'Human Rights Cities', *supra* note 36, at 540.

⁴⁹ See Blank, *supra* note 1, at 110, 117; Frug and Barron, *supra* note 2, at 28; Hirschl, *supra* note 3, at 162–164; Oomen and Baumgärtel, *supra* note 2, at 614, 617–618, 625; Pieterse, 'Human Rights Cities', *supra* note 36, at 548; Pieterse, *supra* note 4, at 1223.

exclusive domain of interstate complaints, while claims by local governments against their own states are viewed as matters of domestic intergovernmental relations, which are not justiciable in international law.⁵⁰ For the most part, the only collective urban claims that filter through to the international level in instances where domestic justice is not forthcoming are those taken up by national states in the form of interstate complaints, those initially pursued by individuals or civil society organisations or those that can be newly recast into such claims especially for the purpose of an international claim. In remaining instances, ‘the exhaustion of local remedies equates to the exhaustion of all remedies’.⁵¹

This said, international or regional tribunals have from time to time engaged with human rights infringements where groups of claimants are bound together primarily by their common urban residence. The discussion that follows considers judgments representing one or more of three (not uncommonly overlapping) scenarios: first, where claims arise from calamitous events that have been caused or exacerbated by urban governance failure; second, where violations involve the reconfiguration or destruction of the urban fabric in the course of armed conflict; and third, where industrial activity causes environmental devastation that impacts cumulatively on the health and welfare of urban communities over time. Apart from the threshold issue of who represents urban collectives in such matters, this section also canvasses courts’ understanding of the kinds of rights involved as well as the reach of the remedies that are typically ordered.

A *The International Court of Justice and the UN Human Rights System*

Engagement with urban residents’ collective suffering has been especially sparse at the international level, where international law’s state-centredness is most pronounced. This is partly a matter of standing and representation. While the UN Human Rights Council has recognized its ‘complementary role’ in the protection and promotion of human rights and has remarked that its lack of autonomy in domestic law often stifles rights-based accountability,⁵² local governments lack independent standing in the UN system and tend to feature in the decisions of UN treaty monitoring bodies only as subsidiary violators of individual human rights.⁵³ Claims pertaining to city-wide violations are accordingly pursued only by civil society organizations or individual victims, meaning that they are seldom considered in their collective dimension.

At the same time, the fact that the International Court of Justice’s (ICJ) jurisdiction is confined to deciding interstate complaints and providing advisory opinions means that it has seldom grappled directly with claims concerning collective urban human rights violations, even in instances where such claims patently underlay the disputes

⁵⁰ Baumgärtel, *supra* note 48, at 150; Blank, *supra* note 1, at 110; Oomen and Baumgärtel, *supra* note 2, at 622–624.

⁵¹ Oomen, Baumgärtel and Durmus, *supra* note 42, at 267; see also Baumgärtel, *supra* note 48, at 156.

⁵² UN Human Rights Council, Role of Local Government in the Promotion and Protection of Human Rights: Final Report of the Human Rights Council, UN Doc. A/HRC/30/49, 7 August 2015, paras 21, 31.

⁵³ Blank, *supra* note 1, at 106–107.

that it has decided. The ICJ's well-known decision in the *Pulp Mills on the River Uruguay* case,⁵⁴ for example, focuses exclusively on the interpretation of a bilateral treaty between Argentina and Uruguay on the use and protection of the Uruguay river. Yet the matter originated when residents of Gualeguaychu on the Argentinean side of the river rose up against the construction of pulp mills near Fray Bentos on the Uruguayan side because they feared that the environmental effects of the mills would diminish the quality of life in the city. Their opposition against the mills included an invocation of domestic environmental rights before the Argentinean courts, an environmental rights complaint before the inter-American Commission on Human Rights and mass protests (including the protracted blockading of an international bridge between the two countries).⁵⁵ But this highly contentious rights dispute was obscured as the matter filtered through the international arena, and there is no sign of it in the ICJ's eventual judgment.

Matters have not been helped by the UN human rights system's cautious stance towards the recognition and enforcement of group rights, which have mostly been vindicated only for indigenous communities.⁵⁶ Collective dimensions of individual rights remain similarly under-developed. The UN Human Rights Committee has overwhelmingly interpreted the rights in the International Covenant on Civil and Political Rights (ICCPR) in an individualist dimension, with the partial exception being the right to life in Article 6 of the covenant, where there have been opinions finding states in violation of the obligation to protect the right in instances where multiple individuals have died or suffered harm as a result of states' non-enforcement of environmental standards.⁵⁷ Meanwhile, social, economic and cultural rights, which are by their nature more collective (and, frequently, more urban) were until recently enforced only in terms of a reporting mechanism, while the handful of complaints decided by the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have mostly related to instances where individuals have suffered discrete harm.⁵⁸

The UN's recent recognition, first by resolution of the Human Rights Council and then by resolution of the General Assembly,⁵⁹ of a right to a clean, healthy and sustainable environment might well change this state of affairs, seeing that it often features in collective claims in the regional human rights systems that recognize it and is directly relevant to the fate of those living in urban 'sacrifice zones'. Moreover, the ICJ's affirmation, in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*,

⁵⁴ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 April 2010, ICJ Reports (2010) 14.

⁵⁵ See, e.g., Escribuela, 'Environmental Conflicts and Ecological Citizenship: The Case of Gualeguaychu and the Pulp Mills', 21 *Azafea: Revista de Filosofía* (2019) 77; Francioni, *supra* note 18, at 46–47; Lee, 'Enforcing the Equator Principles: An NGOs Principled Effort to Stop the Financing of a Paper Pulp Mill in Uruguay', 6 *Northwestern Journal of International Human Rights* (2008) 354, at 360–361, 370, 373.

⁵⁶ Francioni, *supra* note 18, at 43–44, 53; Jones, *supra* note 18, at 85.

⁵⁷ International Covenant on Civil and Political Rights 1966, 999 UNTS 171; see, e.g., UN Human Rights Committee, *Caceres et al. v. Paraguay* (2751/2016), CCPR/C/126/D/2751/2016, 25 July 2019.

⁵⁸ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966, 999 UNTS 302; International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3.

⁵⁹ Respectively HRC Res. 48/13, 8 October 2021; GA Res. 76/300, 28 July 2022.

that international human rights law continues to operate in situations of armed conflict, albeit in complementarity with international humanitarian law as *lex specialis*,⁶⁰ has opened the door for the recognition of collective violations of human violations suffered by urban populations in the course of armed conflict. While there are significant complexities when it comes to infusing human rights inquiries with standards of humanitarian law, given humanitarian law's more sacrificial logic when it comes to the limitation of individual interests,⁶¹ humanitarian law is arguably more alive to urban populations' collective positioning in relation to violations thereof.

Several provisions of the Geneva Conventions and their Additional Protocols prohibit unleashing collective harm on urban civilian populations.⁶² Additional Protocol I, for instance, prohibits the indiscriminate bombardment of cities, towns and villages as undifferentiated military targets as well as the deliberate starvation of civilian populations in cities under siege.⁶³ While the ICJ has found that the indiscriminate destruction of the urban fabric in the course of the siege of Sarajevo did not reveal genocidal intent, it did indicate that this probably qualified as a war crime under the Geneva Conventions.⁶⁴ The UN Security Council and the UN General Assembly have further condemned 'urbicidal' sieges and the deliberate starvation of urban residents under military occupation (in, for instance, Damascus, Aleppo and Mariupol) on the basis of humanitarian law,⁶⁵ while the Security Council has passed a resolution on the protection of 'objects indispensable to the survival of civilian populations' during armed conflict,⁶⁶ which logically extends to elements of essential urban infrastructure.⁶⁷

Indeed, the case where the ICJ has arguably come closest to vindicating the collective dimensions of urban residents' human rights has been in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, where it affirmed the operation of both the ICCPR and the ICESCR alongside international humanitarian law in occupied Palestine.⁶⁸ The wall dramatically altered (and, in places,

⁶⁰ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 226, para. 25.

⁶¹ See Gross, 'Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation', 18 *EJIL* (2010) 1.

⁶² Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949, 75 UNTS 31; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949, 75 UNTS 85; Geneva Convention III relative to the Treatment of Prisoners of War 1949, 75 UNTS 135; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 1949, 75 UNTS 287 [Geneva Conventions].

⁶³ Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1977, 1125 UNTS 3, Arts 51(5)(a), 54; see also Sossai, *supra* note 8, at 238–240, 246–248.

⁶⁴ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, ICJ Reports (2007) 43, paras 336–337, 340, 342, 344.

⁶⁵ See GA Res. ES-11/1, 2 March 2022, para. 8; SC Res. 2319, 22 February 2014, para. 5, as discussed by Sossai, *supra* note 8, at 246; see also the ICJ's remarks in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Indication of Provisional Measures, Order, 26 January 2024, paras 13, 22, 38, 46, 70.

⁶⁶ SC Res. 2573, 27 April 2021.

⁶⁷ Sossai, *supra* note 8, at 242.

⁶⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports (2004) 136, paras 101, 106, 111–113.

destroyed) the urban fabric and urban everyday life in parts of Jerusalem, while enclaving the entire city of Qalqiliya and severely restricting its residents' access to schools, hospitals and water sources.⁶⁹ The ICJ regarded the wall as a restrictive measure under Article 46 of Geneva Convention IV and as a violation of Palestinians' collective right of self-determination under Article 1.1 of the ICCPR.⁷⁰ Pertinently, it further found that the wall infringed residents of East Jerusalem and Qalqiliya's freedom of movement (under Article 12 of the ICCPR), as well as their rights to work, health, education and an adequate standard of living under the ICESCR.⁷¹ It accordingly ordered Israel to cease construction of the wall and to dismantle those parts of it that encroached on Palestinian territory, including the section in East Jerusalem.⁷² Israel's non-compliance with the judgment remains a grave example of ongoing collective urban rights violations.

B The European Human Rights System

At the international level, the European human rights system is bifurcated, with the European Court for Human Rights (ECtHR) (on which this discussion focuses) presiding over the enforcement of the European Convention on Human Rights (ECHR), a treaty geared towards protecting individuals' civil and political rights. More collective social, economic and cultural rights find protection under the European Social Charter (ESC), the obligations inherent to which have conventionally been enforced only through a state reporting system.⁷³

Since 1988, this has been supplemented by the quasi-judicial resolution of collective complaints brought by non-governmental organizations (NGOs) and social partner organizations before the European Committee of Social Rights (ECSR).⁷⁴ Whereas it has only tangentially considered collective rights of urban communities, the ESC's collective complaints system has allowed the ECSR to address substandard living conditions of vulnerable urban outgroups, as represented by findings vindicating the health and housing rights of Roma populations in European cities.⁷⁵ Moreover, much as the collective complaints system engages municipalities only as subsidiary organs of (respondent) states and does not allow them to bring cases on behalf of residents, progressive city governments sometimes collaborate with civil society in advancing the interests of vulnerable residents under the ESC. This was most notable in the Dutch 'bed, bath and

⁶⁹ See, e.g., Blank, 'Legalizing the Barrier: The Legality and Materiality of the Israel/Palestine Separation Barrier', 46 *Texas International Law Journal* (2011) 309; Khamaisi, 'In the Shadow of the Separation Wall: Impeding the Right to the City and Shaping the Palestinian Spatial Environment in Jerusalem/al-Quds', in S. Hassan (ed.), *Jerusalem in the Future: The Challenge of Transition* (2007) 63.

⁷⁰ *Legal Consequences of a Wall*, *supra* note 68, paras 122, 134, 137.

⁷¹ *Ibid.*, paras 132–134, 136–137; see also *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, 19 July 2024, ICJ Reports (2024) 174, paras 117–119, 206, 242.

⁷² *Legal Consequences of a Wall*, *supra* note 68, paras 149–151.

⁷³ Convention for the Protection of Human Rights and Fundamental Freedoms 1950, 213 UNTS 222; European Social Charter 1996, 2151 UNTS 277.

⁷⁴ See Cullen, 'The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee on Social Rights', 9 *Human Rights Law Review* (HRLR) 61, at 61–62.

⁷⁵ See, e.g., *ibid.*, at 64, 76–80, 83; Papadopoulos, 'Strategic Litigation before the European Committee of Social Rights: Fit for Purpose', 40 *NQHR* (2022) 379, at 390–391.

bread' litigation where civil society organizations successfully challenged Dutch laws restricting undocumented migrants' access to shelter and social services, with the support of the municipalities of Utrecht and Amsterdam.⁷⁶

Meanwhile, the ECtHR's engagement with cities has tended to focus on local governments' subsidiary role in implementing rights and on their concomitant ability to infringe rights.⁷⁷ However, and despite the preponderantly individualist formulation of the civil and political rights guaranteed by the ECHR, the Court has on several occasions considered claims that reflect the collective interests of residents of villages, towns and cities. These claims have overwhelmingly involved combinations of the right to life in Article 2, the right to respect for home and private/family life in Article 8 and the right to peaceful enjoyment of possessions in Article 1 of Protocol no. 1 to the ECHR.⁷⁸

The ECtHR's approach to standing under Article 34 of the ECHR, which determines that '[t]he Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation ... of the rights set forth in the Convention or the protocols thereto' has been fairly restrictive. For instance, as recently confirmed in its groundbreaking judgment in *Verein Klimaseniorinnen Schweiz v. Switzerland* (which found, for the first time, that a member state breached Article 8 of the ECHR by failing to take adequate measures to combat climate change), the Court has steadfastly refused to entertain *actio popularis*-type public interest claims and has insisted that claimants be personally impacted by alleged rights violations as a prerequisite for standing.⁷⁹ Importantly, however, the *Verein Klimaseniorinnen* judgment also confirms that geographical proximity to the source of harm can constitute, in appropriate circumstances, sufficient personal impact to confer standing.⁸⁰

Moreover, the ECtHR has consistently denied standing to local government bodies, holding that they are organs of state rather than NGOs or representatives of groups of people.⁸¹ Accordingly, its jurisprudence engages municipalities as respondents only. While acknowledging that elected municipal councils frequently represent communities democratically and, therefore, that mayors' exercise of their personal rights and freedoms may have special significance for a city's residents,⁸² the Court has explicitly dismissed arguments that municipalities' (domestic) public law obligations to promote the

⁷⁶ See *Council of European Churches v. The Netherlands*, Case no. 90/213, Judgment of 1 July 2014; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. The Netherlands*, Case no. 86/2012, Judgment of 2 July 2014; Durmus, *supra* note 5, at 45; Oomen and Baumgärtel, *supra* note 2, at 617–618; Papadopoulos, *supra* note 75, at 393–394.

⁷⁷ For comprehensive discussion, see Saul, *supra* note 4.

⁷⁸ Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms 1952, ETS no. 9.

⁷⁹ ECtHR, *Verein Klimaseniorinnen Schweiz v. Switzerland*, Appl. no. 53600/20, Judgment of 9 April 2024, paras 460–461, 472, 483–484, 487, 515–516, 527–535; see Heri, *supra* note 21, at 8.

⁸⁰ *Verein Klimaseniorinnen Schweiz v. Switzerland*, *supra* note 79, para. 472 and authorities cited there.

⁸¹ See, e.g., ECtHR, *Austrian Communes v. Austria*, Appl. no. 5765/77, Decision on admissibility of 31 May 1974; ECtHR, *Donderyds Commun. v. Sweden*, Appl. no. 52559/99, Decision on admissibility of 7 June 2001; see also Oomen and Baumgärtel, *supra* note 2, at 622.

⁸² See ECtHR, *Willem v. France*, Appl. no. 10883/05, Judgment of 16 July 2009, para. 32.

interests of community members ought to enable them to define and assert such interests against their national governments.⁸³

The fact that this restricts consideration of claims by urban collectives is aptly illustrated by the ECtHR's recent judgment in *Carême v. France*, which held that the former mayor of Dunkerque's Grand-Synthe municipality – the future existence of which is threatened by rising sea levels – lacked a sufficiently close connection to the alleged harm (threats to future enjoyment of the rights to life and respect for home and family life if the town was to be submerged) to bring a claim against the central French government for its failure to take adequate steps to protect the town against the effects of climate change. This was because the applicant no longer lived or owned property in the town and because he was not eligible to bring a claim in his erstwhile official capacity as mayor, which would have rendered him an organ of state.⁸⁴ Underlining that collective urban rights violations are more easily perceived, pursued and remedied in domestic law than in the European regional system, the Court noted that the municipality had obtained (during the applicant's stint as its mayor) partial relief on behalf of the town's residents in earlier litigation brought before the domestic courts.⁸⁵

Municipalities do feature as respondents, alongside central and regional governments, in matters brought by individuals, groups or NGOs that reflect collective rights infringements brought about by urban governance failure. The ECtHR's seminal judgment on the positive obligations imposed on states by the right to life in Article 2 of the ECHR, *Öneryildiz v. Turkey*, fits this bill.⁸⁶ The applicant and members of his extended family were among several residents of an informal settlement in Ümraniye on the outskirts of Istanbul, who were devastated by a methane explosion at an adjacent rubbish tip. The explosion and a resulting landslide, which buried several dwellings and killed 39 people, occurred after several years of unheeded warnings that the tip, if left unrehabilitated, posed a grave danger to the surrounding settlements.⁸⁷ Official documentation further revealed several fruitless efforts by local government representatives to accelerate the tip's rehabilitation, which were mostly met with indifference from authorities in greater Istanbul.⁸⁸

The ECtHR held that the right to life 'lays down a positive obligation on states to take appropriate steps to safeguard the lives of those within their jurisdiction',⁸⁹ which included an obligation to inform residents of the risks inherent to their living arrangements.⁹⁰ These obligations were breached by the authorities' failure to take urgent measures to rehabilitate the rubbish tip, to prevent adjacent slum formation and to share

⁸³ See ECtHR, *Glyfada Municipal Council v. Greece*, Appl. no. 462599/99, Decision on admissibility of 27 January 2000.

⁸⁴ ECtHR, *Carême v. France*, Appl. no. 7189/21, Judgment of 9 April 2024, paras 81–85, 88.

⁸⁵ *Ibid.*, paras 15, 86.

⁸⁶ ECtHR, *Öneryildiz v. Turkey*, Appl. no. 48939/99, Judgment of 30 November 2004.

⁸⁷ *Ibid.*, paras 13, 18.

⁸⁸ *Ibid.*, paras 14–16, 26.

⁸⁹ *Ibid.*, para. 71; see also paras 89, 91.

⁹⁰ *Ibid.*, para. 90, affirming an earlier finding in ECtHR, *Guerra v. Italy*, Appl. no. 116/1996/735/932, Judgment of 19 February 1998, para. 60 (that the state breached townspeople's right to respect for home and family life by not informing them of the health risks posed by industrial pollution).

their knowledge of the growing risk of disaster that it posed.⁹¹ The Court accordingly awarded both pecuniary and non-pecuniary damages to the applicant.⁹² In addition to vindicating the right to life, these damages were also to compensate for infringements of their right to the peaceful enjoyment of their possessions under Article 1 of Protocol no. 1 to the ECHR, which was held to impose a positive obligation on authorities to take measures that prevent the destruction of property, which the Court understood to include proprietary interests in informal dwellings.⁹³

The facts of *Öneryıldız* arguably represent an aggregate violation of the individual rights of a discrete group of urban residents. However, that the principles laid down in this case are capable of being upscaled to apply to city-wide violations is illustrated by the ECtHR's judgment in *Budayeva v. Russia*, where Russia was found to have breached the right to life of six applicants by failing to take adequate measures to protect a town from a known risk of mudslides.⁹⁴ The authorities were aware that a mud retention dam above the mudslide-prone town of Tyrnaus had been damaged, yet they failed to adequately warn residents or to timeously undertake urgent repair works. When a large mudslide in July 2000 broke the dam and engulfed the town, the applicants' apartment block was among the buildings destroyed, and some of their family members were among the several individuals killed.⁹⁵

The ECtHR reiterated that the right to life imposed substantive and procedural obligations on states to do everything within their power to safeguard lives in such circumstances, and it held that Russia had breached these obligations by neglecting to maintain mud barriers and early warning systems, by failing to inform residents of the known risk of disaster or to adequately communicate with them during its occurrence and by not assuring *ex post* accountability for the relevant officials.⁹⁶ *Öneryıldız's* understanding of the right to the peaceful enjoyment of possessions was also reiterated, but, here, the Court found that the obligations imposed were less exacting than those inhering to the right to life in that the state was only required to take reasonable measures to protect property.⁹⁷ Given that Russia had offered all victims replacement housing, the Court accordingly found no violation of Article 1 of Protocol no. 1 to the ECHR.⁹⁸ It ordered that the applicants be paid non-pecuniary damages for the right-to-life violation.⁹⁹

Whereas the rights to life and property are the ECtHR's go-to frame for matters arising from disastrous events traceable to urban governance failure, it has instead predominantly considered claims relating to more systemic and cumulative harms in cities, such

⁹¹ *Öneryıldız*, *supra* note 86, paras 101, 105, 109–110.

⁹² *Ibid.*, paras 167–168, 171.

⁹³ *Ibid.*, paras 129, 136.

⁹⁴ ECtHR, *Budayeva v. Russia*, Appl. nos. 15539/02, 2166/02, 20058/02, 1673/02, 15343/02, Judgment of 20 March 2008.

⁹⁵ *Ibid.*, paras 3–33.

⁹⁶ *Ibid.*, paras 128–133, 146–160. The Court found that similar considerations applied to alleged breaches of the right to protection of home and family life in Article 8 of the ECHR but did not regard it necessary to also consider that right. *Ibid.*, paras 133, 201.

⁹⁷ *Ibid.*, paras 172–175.

⁹⁸ *Ibid.*, paras 179, 183, 185.

⁹⁹ *Ibid.*, para. 205.

as persistent pollution, in terms of the right to respect for home and family life in Article 8 of the ECHR. While emphasizing that Article 8 does not embody a generally enforceable environmental right,¹⁰⁰ the ECtHR has consistently found that ‘severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely’.¹⁰¹ Its growing case law on the environmental dimensions of Article 8 has predominantly involved matters brought by small groups of claimants residing in urban areas whose health, well-being and/or peaceful occupation of their homes have been severely affected by pollution or disturbances emanating from mining activity or heavy industry.¹⁰²

These matters inevitably required the ECtHR to consider environmental conditions in the relevant cities or towns in assessing whether the respondent states have fulfilled their obligations to ensure the effective protection of the right. However, it appears that, in keeping with the Court’s refusal to allow an *actio popularis*, such an assessment is only triggered where it can be satisfied that the pollution impacted significantly on the health or home life of the individual applicants specifically.¹⁰³ Moreover, claims under Article 8 have typically failed where the harm complained of was considered non-specific and/or slight, with the Court in *Verein Klimasenioreninnen* stating that ‘there will be no arguable claim under Article 8 if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city’.¹⁰⁴

In cases where significant detrimental impact on the applicants’ home life is established, the ECtHR then considered whether the state has struck a fair balance between the applicants’ individual concerns and the communal interest, which the Court has

¹⁰⁰ ECtHR, *Kyrtatos v. Greece*, Appl. no. 41666/98, Judgment of 22 May 2003, para. 52; ECtHR, *Hatton v. United Kingdom*, Appl. no. 36022/97, Judgment of 8 July 2003, para. 96; see also Francioni, *supra* note 17, at 45–46.

¹⁰¹ *Guerra v. Italy*, *supra* note 90, para. 60; see also ECtHR, *Lopez Ostra v. Spain*, Appl. no. 16798/90, Judgment of 9 December 1994, para. 51; ECtHR, *Taskin v. Turkey*, Appl. no. 46117/99, Judgment of 10 December 2004, para. 113.

¹⁰² Borne out, for instance, by the facts of ECtHR, *Cordella v. Italy*, Appl. nos. 55414/13 and 54264/15, Judgment of 24 January 2019 (Article 8 was violated by the failure to protect residents against air pollution caused by steelworks in Taranta); *Guerra v. Italy*, *supra* note 90 (Article 8 was violated by failure to protect against pollution from a fertilizer factory in Manfredonia); *Lopez Ostra v. Spain*, *supra* note 101 (Article 8 was violated by failure to protect against fumes, noise and nuisance from leather industries in Lorca); ECtHR, *Tatar v. Romania*, Appl. no. 57021/01, Judgment of 27 January 2009 (Article 8 was violated by failure to regulate mining and associated pollution impacting life in Baia Mare); and *Taskin v. Turkey*, *supra* note 101 (Article 8 was violated by failure to ameliorate disturbances and threat of cyanide contamination from mining operations near Bergama). On the urban leaning of the European Court of Human Rights’ (ECtHR) Article 8 jurisprudence, see Stival and Silva, ‘Environmental Protection and Urban Environment in the International Courts of Human Rights’, 23 *Revista Jurídica da Presidência* (2021) 292, at 301, 307.

¹⁰³ See, e.g., *Kyrtatos v. Greece*, *supra* note 100, paras 53–55; *Verein Klimasenioreninnen Schweiz v. Switzerland*, *supra* note 79, paras 515–516. For critical discussion, see Francioni, *supra* note 18, at 43–44, 50–51; Heri, *supra* note 21, at 6–7. The European Committee of Social Rights (ECSR) has found a violation of the right to health on facts similar to the ECtHR’s Article 8 cases, in a matter brought by a non-governmental organization (NGO) in the public interest. See ECtHR, *Marongopoulos Foundation for Human Rights v. Greece*, Appl. no. 30/2005, Judgment of 6 December 2006.

¹⁰⁴ *Verein Klimasenioreninnen Schweiz v. Switzerland*, *supra* note 79, para. 517; see *Hatton v. United Kingdom*, *supra* note 100, para. 106 (where the Court regarded the applicants as overly sensitive, referring to the fact that thousands of similarly situated London residents did not complain of noise emanating from planes landing at Heathrow airport).

understood to include the economic benefits that the city or town derives from the presence of the polluting industry.¹⁰⁵ In this, the state is awarded a broad margin of discretion to ameliorate the pollution or disturbance, or to regulate its source, so as to proportionally counterbalance the harm complained of.¹⁰⁶ In cases where the state could not show that a fair balance was struck, successful applicants have mostly been awarded non-pecuniary damages, with the Court sometimes also impressing on the respondent state that it needs to take preventative or rehabilitative measures to improve conditions in the city or town.¹⁰⁷

In *Fadeyeva v. Russia*, which is representative of this case law, the ECtHR found that Russia had violated Article 8 in relation to the applicant, who lived within a 5,000-metre ‘sanitary security zone’ around a steel plant in the city of Cherepovets, from which the authorities intended to evacuate residents due to toxic air pollution levels far in excess of national environmental standards. The evacuation plans were never implemented, and the applicant, who for several years unsuccessfully pleaded with authorities to be resettled, developed serious health problems directly traceable to the pollution.¹⁰⁸ Finding that the pollution clearly increased the applicant’s vulnerability to illness and adversely affected the quality of their home life,¹⁰⁹ and judging the various measures taken over the years to reduce pollution in Cherepovets to have been wholly inadequate,¹¹⁰ the ECtHR held that Russia could not show that, even within its broad margin of discretion, it had struck a fair balance between the applicants’ interests and those of the broader urban community.¹¹¹ It accordingly ordered Russia to pay the applicant non-pecuniary damages and to take measures to remedy their living situation.¹¹²

Alongside the rights to life and to peaceful enjoyment of possessions, the right to respect for home and family life also features centrally in the ECtHR’s case law pertaining to armed conflict, which has mostly concerned the occupation and destruction of rural villages during internal armed conflicts between governments and rebel forces. At the international level, the ECtHR has affirmed that the rights in the ECHR operate alongside international humanitarian law during such conflict situations. Specifically, it has held that failure to protect civilians during village occupations – for instance, by using them as human shields – violates the right to life in Article 2 of the ECHR.¹¹³ Further, where villages have been razed and their residents expelled, the Court has consistently found

¹⁰⁵ See e.g., *Hatton v. United Kingdom*, *supra* note 100, paras 98, 101, 119, 122; *Lopez Ostra v. Spain*, *supra* note 101, para. 58.

¹⁰⁶ In *Hatton v. United Kingdom*, *supra* note 100, the Court found that UK authorities’ elaborate regulation of noise pollution from Heathrow airport struck a fair balance and that the state was therefore fulfilling its obligations within its margin of discretion.

¹⁰⁷ See, e.g., *Cordella v. Italy*, *supra* note 102, para. 182; *Lopez Ostra v. Spain*, *supra* note 101, para. 65.

¹⁰⁸ ECtHR, *Fadeyeva v. Russia*, Appl. no. 55723/00, Judgment of 9 June 2005, paras 10–47.

¹⁰⁹ *Ibid.*, paras 45–47, 88.

¹¹⁰ *Ibid.*, paras 124–132.

¹¹¹ *Ibid.*, para. 134.

¹¹² *Ibid.*, paras 138, 142.

¹¹³ See, e.g., ECtHR, *Isayeva v. Russia*, Appl. no. 57950/00, Judgment of 24 February 2005; see also Abresch, ‘A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya’, 16 *EJIL* (2005) 741 and cases discussed there; Torres, *supra* note 18, at 815.

violations of the rights to respect for home and family life and of the peaceful enjoyment of possessions.¹¹⁴

While the villages in these cases can hardly be described as urban, these judgments' understanding of private and family life and of the peaceful enjoyment of possessions, as being intricately linked to communal village life, does indicate an appreciation for the urban fabric as a communal good worthy of rights-based protection. Most notably, in *Dogan v. Turkey*, the best-known in a string of decisions pertaining to Turkey's conduct in villages across Turkish Kurdistan, the ECtHR held forth a broad understanding of the notion of 'possessions' under Article 1 of Protocol no. 1 to the ECHR, claiming that it extends beyond individual dwellings and businesses to also include a communal proprietary interest in the 'common lands' in the village, which function to enable many villagers' livelihood-generating activities.¹¹⁵ To deprive villagers of these communal economic resources by expelling them from their villages was held to infringe their peaceful enjoyment of their possessions, and the Court ordered that they had to be compensated also for this loss.¹¹⁶

C The Inter-American Human Rights System

Read with its San Salvador Protocol, the text of the American Convention on Human Rights reflects the interdependence between civil and political rights and economic, social and cultural rights and also embodies a right to a healthy environment, which has been interpreted by the Inter-American Court on Human Rights (IACtHR) as being closely connected to the right to life, as embodying both individual and collective dimensions and as requiring special concern for the position of vulnerable groups in society.¹¹⁷ It may accordingly be expected that communal urban rights violations would be easier to articulate and vindicate in the Inter-American system.¹¹⁸

Indeed, the IACtHR has vindicated collective rights, including environmental rights, of indigenous or vulnerable groups in a range of circumstances, including the dispossession of indigenous land and the destruction of rural villages in the course of armed conflict.¹¹⁹ A noteworthy feature of its jurisprudence in this realm has been the Court's

¹¹⁴ See, e.g., ECtHR, *Akdivar v. Turkey*, Appl. no. 21893/93, Judgment of 16 September 1996; ECtHR, *Dogan v. Turkey*, Appl. nos. 8803-8811/02, 8813/02, 8815-8819/02, Judgment of 29 June 2004; ECtHR, *Sargsyan v. Azerbaijan*, Appl. no. 40167/06, Judgment of 16 June 2015; ECtHR, *Selcuk and Asker v Turkey*, Appl. no. 12/1997/796/998-999, Judgment of 24 April 1998.

¹¹⁵ *Dogan v. Turkey*, *supra* note 114, para. 139; see also Torres, *supra* note 18, at 829–830.

¹¹⁶ *Dogan v. Turkey*, *supra* note 114, paras 143, 152, 156, 159–160; see also *Sargsyan v. Azerbaijan*, *supra* note 114, paras 179–184.

¹¹⁷ American Convention on Human Rights 1969, 1144 UNTS 123; IACtHR, *Environment and Human Rights*, Advisory Opinion OC 23/17 (requested by the Republic of Colombia), 15 November 2017, paras 59, 64, 66, 108–109.

¹¹⁸ See Francioni, *supra* note 18, at 51–52.

¹¹⁹ See, e.g., IACtHR, *Aloeboetoe v. Suriname*, Judgment (Reparations and Costs), 10 September 1993; IACtHR, *Moiwana Community v. Suriname*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 15 June 2005; IACtHR, *Case of Plan de Sánchez Massacre v. Guatemala*, Judgment (Merits), 29 April 2004 and discussion of these and similar cases by Ching-Soto, 'Reparations in the Inter-American System of Human Rights: An Analysis of the Jurisprudence on Collective Cases of Indigenous Peoples and the Economic, Social and Cultural Aspects of Their Reparations', 10 *Revista do Instituto Brasileiro de Direitos Humanos* (2010) 219, at 222–223; Rosenfeld, *supra* note 18, at 739–742.

tendency to order ‘collective reparations’, aimed at addressing systemic causes or lingering effects of violations that extend beyond individual victims to their entire communities. Such reparations have included requiring the offending states to issue apologies and guarantees of non-repetition, to adopt legislative measures aimed at protecting communities’ interests, to ensure or restore communities’ access to housing and educational or health facilities and to commemorate victims through, for instance, erecting memorials and renaming streets.¹²⁰ While some of these reparations clearly evoke notions of urban fabric and infrastructure, this communal reparations jurisprudence has been tied closely to the protection of the communal property rights of indigenous populations residing far outside urban areas.¹²¹

However, a recent landmark judgment concerning the environmental and health rights of the residents of the city of La Oroya in Peru also extended the Court’s approach to communal rights and reparations to the context of mass human rights violations occurring in cities. La Oroya, built around a heavily polluting metallurgical complex, has been namechecked by the UN Special Rapporteur on the Right to a Clean Healthy and Sustainable Environment as a prime example of an environmental ‘sacrifice zone’¹²² and was once classified as one of the 10 most contaminated places on earth.¹²³ Specifically, the concentration of lead in its air and water and the lead levels in the blood of its residents far exceed prevailing environmental and health standards.¹²⁴ Following on from a matter brought in domestic constitutional law, the *La Oroya* case originated in the Inter-American system as a petition brought before the Inter-American Commission on Human Rights by NGOs on behalf of 66 named residents of the city (a number that rose to 80 in the course of the commission’s lengthy proceedings), whose health and everyday lives had been severely impacted by the pollution.¹²⁵

Upon the matter’s referral by the Inter-American Commission on Human Rights to the IACtHR, Peru argued that the judgment could only be based on the 80 listed applicants, while NGOs submitting *amicus* briefs emphasized that the contamination impacted all of the city’s residents collectively and urged the court to tailor its relief accordingly.¹²⁶ Emphasizing the importance of legal certainty, the Court found that it

¹²⁰ For discussion, see Ching-Soto, *supra* note 119, at 219–224; Rosenfeld, *supra* note 18, at 739–740; Schonsteiner, ‘Dissuasive Measures and the “Society as a Whole”: A Working Theory of Reparations in the Inter-American Court of Human Rights’, 23 *American University International Law Review* (2007) 127.

¹²¹ Ching-Soto, *supra* note 119, at 232–233; Stival and Silva, *supra* note 102, at 295, 302–304.

¹²² See UNHRC, *supra* note 22, para. 40.

¹²³ IACtHR, *Habitantes de La Oroya v. Peru*, Judgment (Preliminary Exceptions, Merits, Reparations and Costs), 27 November 2023, paras 76, 180; J. Saldana, ‘People from La Oroya v Peru, Inter-American Court of Human Rights: How Effective Is International Law to Protect the Environment in Extractive Contexts?’, *EJIL:Talk!* (11 April 2024), available at <https://www.ejiltalk.org/people-from-la-oroya-vs-peru-inter-american-court-of-human-rights-how-effective-is-international-law-to-protect-the-environment-in-extractive-contexts/>. This article relies on an English translation of the *La Oroya* judgment obtained via Google Translate.

¹²⁴ *Habitantes de La Oroya v. Peru*, *supra* note 123, paras 77–80.

¹²⁵ On the many conflicted interests and co-dependencies among La Oroya’s residents, their city and its industries, see Neumann, ‘Toxic Talk and Collective (In)action in a Company Town: The Case of La Oroya, Peru’, 63 *Social Problems* (2016) 431.

¹²⁶ *Habitantes de La Oroya v. Peru*, *supra* note 123, para. 55.

was not possible to add new victims to those identified in the commission's report on the merits. However, it noted that the impact of the alleged violation of the right to a healthy environment far transcended the listed applicants and stated that the 'legal consequences' of the violation, including any reparations that it ordered, had to be cognisant and reflective of this fact.¹²⁷

Noting that the Peruvian Constitutional Court had found the state to have breached residents' health and environmental rights and ordered it to provide specialized medical care for contaminated residents and to enforce environmental control measures,¹²⁸ the IACtHR emphasized that states' obligation to protect rights required of them to prevent private corporations from causing harm.¹²⁹ It held forth an elaborate, decidedly urban, interpretation of the right to a healthy environment that included the right of urban residents to breathe clean air as well as the right to clean water, which, in addition to being understood ecocentrically, also embodied an anthropocentric guarantee to piped water that is safe for human consumption.¹³⁰ Peru's failure to prevent the metallurgic corporations from contaminating La Oroya's air and water was held to infringe the environmental right thus understood and, in its effects, also constituted a violation of the residents' right to health.¹³¹ Noting how La Oroya's residents had to alter their lifestyles as a result of the pollution (by, for instance, remaining indoors with closed windows for long periods)¹³² and remarking that the impact of the pollution was felt most heavily by the city's most marginalized residents,¹³³ the state was further found to have infringed the residents' right to life, which was understood as a right to live a dignified life.¹³⁴ There were also violations of their rights to personal integrity, access to information and political participation and the rights of the city's children to health, life and a healthy environment.¹³⁵

Given its acknowledgement of the collective impact of the violations, and in line with its previous remedial practice, the reparations ordered by the IACtHR had individual and collective components. It awarded pecuniary and non-pecuniary damages to be paid only to the individuals listed as victims on the application.¹³⁶ However, it also ordered a range of non-pecuniary remedies, explicitly aimed at alleviating the plight of all of La Oroya's residents. Peru was ordered to carry out a 'baseline diagnosis' of the state of contamination in the city and to adopt an action plan to remedy the damage in the short, medium and long term. This action plan had to be formulated with residents' participation and had to include decontamination measures specifically

¹²⁷ *Ibid.*, paras 57–58, 154, 324.

¹²⁸ *Ibid.*, paras 87–92.

¹²⁹ *Ibid.*, paras 111–112, 156–157.

¹³⁰ *Ibid.*, paras 118–124. On the urban slant of the Court's understanding of the environmental right, see Kahl, 'Upgrading Environmental Rights: La Oroya and Its Significance for a Safer Climate', *Verfassungsblog* (16 May 2024), available at <https://verfassungsblog.de/upgrading-environmental-rights/>.

¹³¹ *Habitantes de La Oroya v. Peru*, *supra* note 123, paras 125–127, 176–179, 204–208, 214, 266.

¹³² *Ibid.*, paras 220–21.

¹³³ *Ibid.*, para. 231.

¹³⁴ *Ibid.*, paras 223, 266.

¹³⁵ *Ibid.*, para. 266; see further Kahl, *supra* note 130; Saldana, *supra* note 123.

¹³⁶ *Habitantes de La Oroya v. Peru*, *supra* note 123, paras 367–368, 376, 393.

pertaining to their homes.¹³⁷ Further, Peru had to implement and consistently monitor the achievement of relevant environmental standards and take measures to restore the ecosystem around the city¹³⁸ as well as to provide free, appropriate health-care services to all victims of violations and to ensure that victims could practically access care, either in La Oroya or close by, without bearing additional cost.¹³⁹ Moreover, the state needed to publicly recognize its culpability and responsibility towards the residents in a public ceremony and issue guarantees of non-repetition.¹⁴⁰

D The African Human Rights System

The African Charter on Human and Peoples' Rights not only guarantees civil, political, social, economic and cultural rights without distinguishing their justiciability but also contains several enforceable group rights (for instance, to self-determination, development, equal concern and respect, peace and a healthy environment) that might speak especially to urban human rights violations.¹⁴¹ The collective and socio-economic rights jurisprudence of the African Commission for Human and Peoples' Rights (ACHPR) was slow to get off the ground and, as in the Inter-American system, initially predominantly pertained to the communal interests of indigenous groups.¹⁴² In recent years, however, it has distinctly urbanized. This arguably began with the ACHPR's landmark decision in *Social and Economic Rights Action Centre (SERAC) v. Nigeria*, which, in concluding that Nigeria had infringed the (erstwhile rural) Ogoniland community's rights to life, health, development and a healthy environment by aiding the Shell corporation in exploiting the area, evacuating its residents and polluting its environment,¹⁴³ indicated that harmful urban conditions can constitute a violation of the collective rights in the African Charter.¹⁴⁴

Then, in *Gunme v. Cameroon*, the ACHPR confirmed that the 'peoples' rights in the African Charter were not limited to indigenous groups and found that the Cameroonian government had infringed the right to equal concern and respect of the peoples of the anglophone areas in Southern Cameroon by sidelining southern cities in the allocation of development projects and funding, and by relocating major economic infrastructure (such as the country's deepwater port) from the southern cities to cities in the

¹³⁷ *Ibid.*, paras 332–334, 393.

¹³⁸ *Ibid.*, paras 347, 351, 393.

¹³⁹ *Ibid.*, paras 338, 348–349, 393.

¹⁴⁰ *Ibid.*, paras 341, 345, 393.

¹⁴¹ African Charter on Human and Peoples' Rights 1981, 1520 UNTS 217; see Francioni, *supra* note 18, at 51–52; Pieterse, 'The Relevance of the African Regional Human Rights System in the Urban Age', 36 *Leiden Journal of International Law* (2023) 657, at 664–666.

¹⁴² See Chirwa, 'Group Rights and the Protection of Economic, Social and Cultural Rights in Africa', in D.M. Chirwa and L. Chenwi (eds), *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (2016) 212, at 217; Pieterse, *supra* note 141, at 671 and the cases discussed there.

¹⁴³ African Commission for Human and Peoples' Rights (ACHPR), *Social and Economic Rights Action Centre (SERAC) v. Nigeria*, Communication no. 155/96, (2001) AHRLR 60, paras 1–9, 50–54, 62, 65–67.

¹⁴⁴ See Chirwa, *supra* note 142, at 230, 240–241; Francioni, *supra* note 18, at 51–52; Pieterse, *supra* note 141, at 669–670.

francophone areas.¹⁴⁵ As with the ECtHR, the ACHPR's decisions pertaining to human rights violations in the course of armed conflict have included several findings pertaining to villages sieged, forcibly evacuated and razed, although the commission is yet to be confronted with facts reflecting such conduct at an urban scale. Like the ECtHR, the ACHPR in these cases found violations of rights to life, property and freedom of movement and residence, alongside infringements of international humanitarian law.¹⁴⁶ But it has also gone further to find, for instance, that the destruction of homes and livestock alongside the poisoning of a village's water sources constituted a violation of the right to health,¹⁴⁷ that looting villages and destroying hospitals and schools infringed rights to health, education, development and free disposal of resources¹⁴⁸ and that occupying, attacking or razing villages infringed villagers' rights to peace and to self-determination¹⁴⁹ as well as, by 'denying them the opportunity to engage in economic, social and cultural activities', the right to development.¹⁵⁰

The recently established African Court on Human and Peoples' Rights (ACtHPR) handed down its first judgment concerning a large-scale urban human rights violation in late 2023. The case of *Ligue Ivoirienne des Droits de l'Homme (LIDO) v. Republic of Cote D'Ivoire* was brought by a conglomeration of NGOs with observer status before the ACHPR, on behalf of residents of Cote D'Ivoire's capital city Abidjan. It pertained to the catastrophic events of 19 August 2006 when a cargo ship chartered by a multinational oil company discharged 528 cubic metres of highly toxic waste into Abidjan's port, from where the waste was then dumped at several sites across the city and its suburbs. Thousands of residents presented for urgent care at hospitals across the city on the same day. Seventeen people eventually died from toxic gas inhalation, and over 100,000 residents were ultimately affected, with many of them suffering lasting health problems. The city's groundwater was also severely contaminated.¹⁵¹ Some of the oil company's executives were successfully criminally prosecuted, and the company also paid the state a large amount of reparations and assisted with clean-up operations. But the victims remained largely uncompensated, leading to the present proceedings, which were initially brought on behalf of some 16,000 residents, including the families of 11 of the deceased.¹⁵²

¹⁴⁵ ACHPR, *Gunme v. Cameroon*, Communication no. 266/2003, (2009) AHRLR 9, paras 160–162, 170–179; see also Chirwa, *supra* note 142, at 222; Pieterse, *supra* note 141, at 671–672.

¹⁴⁶ ACHPR, *Democratic Republic of Congo v. Burundi, Rwanda and Uganda*, Communication no. 227/99, (2004) AHRLR 19, paras 69–70, 79, 88; ACHPR, *Malawi African Association v. Mauritania*, Communication nos 54/91, 61/91, 98/93, 164–196/97, 210/98, (2000) AHRLR 149, paras 126, 128; ACHPR, *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v. Sudan*, Communication nos 279/03, 296/05, (2009) AHRLR 153, paras 190, 194, 205.

¹⁴⁷ *Sudan Human Rights Organisation v. Sudan*, *supra* note 146, para. 212.

¹⁴⁸ *Democratic Republic of Congo v. Burundi, Rwanda and Uganda*, *supra* note 146, para. 88.

¹⁴⁹ *Ibid.*, paras 68, 76, 94–95; *Malawi African Association v. Mauritania*, *supra* note 146, para. 140; see also Chirwa, *supra* note 142, at 225–226.

¹⁵⁰ *Sudan Human Rights Organisation v. Sudan*, *supra* note 146, para. 224.

¹⁵¹ ACtHPR, *Ligue Ivoirienne des Droits de l'Homme (LIDO) v. Republic of Cote D'Ivoire*, Appl. no. 041/2016, Judgment of 5 September 2023, paras 3–4, 137–140, 173.

¹⁵² *Ibid.*, paras 5–12.

Dismissing the state's contention that the applications should have been 'personalised and individualised', the ACtHPR awarded the NGOs standing in the public interest.¹⁵³ It found that both the oil company and the state had violated the right to life (in Article 4 of the African Charter) of all affected residents of Abidjan, respectively by dumping the toxic waste and by failing to take adequate measures to mitigate its effects.¹⁵⁴ The dumping, together with the insufficiency and inadequacy of emergency medical care provided to victims across the city, further led to a finding that residents' right to health in Article 16 of the African Charter had been violated,¹⁵⁵ while the state's failure to prevent the dumping and to effectively decontaminate the city was held to infringe the right to a satisfactory environment in Article 24 of the African Charter.¹⁵⁶ The state's efforts at communicating with residents during the disaster and raising awareness thereof were also judged inadequate, thereby amounting to a violation of the right to receive adequate information in Article 9 of the African Charter.¹⁵⁷ In light of these violations, the terms of the settlement between the state and the multinational company were further found to infringe the residents' right to an effective remedy under Article 7(1) of the African Charter.¹⁵⁸

As to remedy, the ACtHPR regarded both pecuniary and non-pecuniary damages to be appropriate and ordered Cote D'Ivoire to set up a compensation fund for all victims (that is, not only those on whose behalf the litigation was explicitly brought).¹⁵⁹ The state was further instructed to reopen investigations into the violations, to ensure that all victims receive adequate medical care for their ongoing health complaints, to adopt appropriate legislative and policy measures to ensure non-recurrence of events (including by ensuring that multinational corporations are sufficiently held accountable for harm caused) and to 'implement structural reforms with a view to boost waste treatment capacity at Abidjan Port'.¹⁶⁰

4 Concluding Reflections

While the international and regional human rights systems have in recent years become increasingly attuned to the plight of groups of vulnerable and marginalized urban inhabitants,¹⁶¹ this article has inquired after their handling of violations that are at

¹⁵³ *Ibid.*, paras 69–70, 77–80.

¹⁵⁴ *Ibid.*, paras 131–143.

¹⁵⁵ *Ibid.*, paras 172–174.

¹⁵⁶ *Ibid.*, paras 183–186.

¹⁵⁷ *Ibid.*, paras 196–200.

¹⁵⁸ *Ibid.*, paras 145–163.

¹⁵⁹ *Ibid.*, paras 207, 215, 256.

¹⁶⁰ *Ibid.*, paras 232, 238–239, 245, 247, 254, 256 (quoted portion appears in para. 254).

¹⁶¹ Examples include the ECSR's engagement with the treatment of destitute migrants in Dutch cities (see note 76 above) and the African Court on Human and Peoples Rights' (ACtHPR) advisory opinion on how disadvantaged urban dwellers are impacted by vagrancy laws in cities across various member states. ACtHPR, *Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments in Africa*, Appl. no. 001/2018, 4 December 2020, and discussion by Pieterse, *supra* note 141, at 672–674.

once bigger in scale and less discriminate in their impact: instances where entire cities or towns are impacted by human-made catastrophes, armed conflict or environmental devastation. Against the background of the well-documented rise of cities as politically significant actors in international relations and in domestic systems of constitutional law, it has shown that urban communities are beginning to collectively articulate human rights claims in the international arena. Such claims, which elevate urban destruction from being a background factor in human rights matters¹⁶² to being at their centre, embody a challenge to international human rights law's limited conception of legal subjectivity and are beginning to transform its understandings of victimhood, harm, rights and reparations.¹⁶³

First, as recognized by the ECtHR in *Verein Klimasenioreninnen*, understandings of victimhood are evolving in keeping with contemporary, increasingly urban, society.¹⁶⁴ This recognition challenges conventional approaches to standing before international tribunals. While framing claims around the experiences of individual claimants might well be adequately representative of aggregate harms (such as, say, in the *Öneryıldız* case), it risks mispresenting, obscuring or denying instances of more collective or cumulative harm.¹⁶⁵ For instance, the ECtHR's resistance to public interest standing has arguably unduly narrowed the lens through which it engages collective urban claims and has concomitantly restricted the reach and impact of its remedial arsenal.¹⁶⁶ Similarly, denying independent standing to local government bodies or officials has unduly stifled articulations of communal harm. While all international human rights systems recognize that local government can perpetrate human rights violations, none of them have come to terms with the growing representative function of urban local governments as democratically authorized guardians of their residents' collective welfare. As urban autonomy and democracy become features of more domestic constitutional systems, the incongruity of these blind spots becomes increasingly apparent.¹⁶⁷

Second, tribunals' substantive understandings of human rights sometimes struggle to capture the fulness of both cumulative harm and instances where, in overlap with residents' aggregate individual interests, a communally beneficial, civic element of the urban fabric is lost or destroyed.¹⁶⁸ Overcoming this arguably requires a more value- or interest-centred interpretation of group rights than has thus far been the norm,¹⁶⁹ a greater embrace of the interdependence between civil and political and economic, social

¹⁶² See Torres, *supra* note 18, at 818.

¹⁶³ See Blank, *supra* note 1, at 114–116, 119–120; Swan, *supra* note 21, at 1286–1288.

¹⁶⁴ *Verein Klimasenioreninnen Schweiz v. Switzerland*, *supra* note 79, paras 461, 482.

¹⁶⁵ For a similar argument regarding the ECtHR's recent climate change judgments, see Heri, *supra* note 21, at 2.

¹⁶⁶ See Rosenfeld, *supra* note 18, at 738–740; Wellman, *supra* note 24, at 656.

¹⁶⁷ See Blank, 'Localism', *supra* note 3, at 276; Blank, *supra* note 1, at 119–120; Oomen and Baumgärtel, *supra* note 2, at 627–629; Baumgärtel, *supra* note 48, at 153 (who details the beginnings of local government standing before the Court of Justice of the European Union, albeit not in matters concerning human rights violations).

¹⁶⁸ See Coward, *supra* note 20, para. 23; Mezentssev and Mezentssev, *supra* note 20, at 501; Sassen, *supra* note 8, at 38.

¹⁶⁹ See Jones, *supra* note 18, at 93–98.

and cultural rights¹⁷⁰ and the acknowledgement and elaboration of collective interests inherent to all individual rights. These needs are reflected by the soft law emanating from global local government organizations and networks, such as the World Charter on the Right to the City and the European Charter for the Safeguarding of Human Rights in the City.¹⁷¹ These instruments tend to enshrine a collective ‘right to the city’ that entitles urban residents to benefit economically, socially and culturally from the communal urban form and fabric,¹⁷² usually contain communal socio-economic rights to the essentials of everyday urban life (such as rights to essential urban services and to a healthy, safe and inclusive urban environment) and typically reformulate conventional individual civil and political rights (such as the right to security of the person, the right of access to public information, freedom of assembly and the right to property) in a more collective and participatory frame.¹⁷³

Before the ICJ and the ECtHR, most cases of urban harm have thus far invoked combinations of the right to life, the right to freedom of movement, the right to peaceful enjoyment of possessions and the right to respect for home and private/family life. Tellingly, the Inter-American and African systems’ greater recognition of socio-economic rights and group rights has caused these rights – especially, the right to health and the right to a safe and healthy environment – to feature more prominently alongside the right to life in urban cases. It is then perhaps unsurprising that, even as their jurisprudence on group rights initially displayed strong rural leanings, it has been the Inter-American and African courts, in *La Oroya* and *LIDO* respectively, that most explicitly articulated and remedied the city-wide impact of violations.

It is certainly to be welcomed that all tribunals acknowledge the positive (and, arguably, collective) obligations inherent to the right to life, including an obligation to inform urban residents of environmental risks and/or risk of imminent disaster¹⁷⁴ and to take proactive steps to ameliorate such risks. This has arguably been enabled, first, by the tribunals’ embrace of the interdependence principle, especially in those systems where economic and social rights are explicitly recognized, and, second, by the tribunals’

¹⁷⁰ See Angel-Cabo and Sotomayor, *supra* note 8, at 275–276.

¹⁷¹ World Charter on the Right to the City (2004) available at <https://www.uclg-cisd.org/sites/default/files/documents/files/2021-06/WorldCharterRighttoCity.pdf>; European Charter for the Safeguarding of Human Rights in the City (2000) available at https://uclg-cisd.org/sites/default/files/documents/files/2021-06/CISDP%20Carta%20Europea%20Sencera_baixa_3.pdf.

¹⁷² World Charter on the Right to the City, *supra* note 171, Art. 1 (which guarantees the ‘right to the city’, which is understood as ‘the equitable usufruct of cities within principles of sustainability, equity and social justice’ and pertaining to the city as ‘a culturally rich and diversified collective space that pertains to all of its inhabitants’). European Charter for the Safeguarding of Human Rights in the City, *supra* note 171, Art. 1 (which states that ‘[t]he city is a collective space belonging to all who live in it. These have a right to conditions which allow their own political, social and ecological development but at the same time accepting a commitment to solidarity’). For discussion, see Angel-Cabo and Sotomayor, *supra* note 8, at 276–277; García Chueca, *supra* note 16, at 116–118; Grigolo, ‘Towards a Sociology of the Human Rights City: Focusing on Practice’, in Oomen, Davis and Grigolo, *supra* note 16, 276, at 286.

¹⁷³ See Durmus, *supra* note 5, at 50–51; Grigolo, *supra* note 5, at 52–55; Grigolo, *supra* note 172, at 287; Oomen, *supra* note 16, at 6–7.

¹⁷⁴ The ECtHR’s vindication of Articles 2 and 8 of the ECHR in cases displaying collective urban dimensions has involved some of its strongest articulations of a right of access to public information. See McDonagh, ‘The Right to Information in International Human Rights Law’, 13 *HRLR* (2013) 25, at 40–41.

willingness, in armed conflict cases, to give effect to the overlap of human rights law with the protection conferred by international humanitarian law, which is by nature more communal in its application. It is further to be welcomed that the European and African courts, albeit in the predominantly rural context of villages raided during armed conflict, have understood the right to property as including economic interests underlying shared public space and public life. This provides a potential portal for the recognition of urban life and urban fabric as objects worthy of rights-based protection, at least in so far as they enable livelihood-generating activities. As such, claims based jointly on the rights to property and the positive dimensions of the right to life may begin to capture the harm associated, for instance, with 'urbicide' and the deliberate destruction of urban life.¹⁷⁵

On the other hand, an overly individualist interpretation of rights continues to hamper the recognition of harm located in a diminution of quality of city life.¹⁷⁶ This is perhaps most obvious in relation to the ECtHR's insistence on judging cases of collective environmental harm within an individualist understanding of the right to respect for home and family life, with claimants having to show that they have been personally affected by, for instance, pollution. Framing such harm as individual skews the Court's subsequent proportionality inquiry where this harm is to be balanced against 'collective' concerns, which are understood to include the economic benefits flowing from industrial activity. Yet, as clearly appears from the facts of relevant cases, what is actually being weighed are the competing collective interests of, often the same, urban residents. Apart from plastering over the trade-offs that are inherent to this balancing exercise, the Court's individualist focus has the effect of loading the inquiry against the isolated individual complainant, much as they may be far from being alone in their suffering.

Finally, justice for the collective victims of human rights violations in cities can be significantly enhanced if courts explore more collective remedial possibilities.¹⁷⁷ Combined with its restrained approach to standing, the ECtHR's tendency towards an individualized inquiry appears to have significantly restricted its remedial arsenal. The Court has tended to award a combination of pecuniary and non-pecuniary monetary compensation limited to successful individual claimants, at most coupled with instructions to the state to ensure that similarly situated residents have access to adequate remedies at domestic law. In the context of villages razed by armed conflict, Felix Torres has shown that such individualized relief falls far short of restoring what was lost and is counter-productive where public resources ought rather to be channelled towards community rebuilding and the restoration of destroyed communal 'property'.¹⁷⁸ Meanwhile, while the ECSR adjudicates more collective complaints and pronounces on more systemic violations under the ESC, it has thus far ordered only declaratory relief.¹⁷⁹

¹⁷⁵ On the need to view the urban fabric as an object of human rights, see Angel-Cabo and Sotomayor, *supra* note 8, at 277.

¹⁷⁶ *Ibid.*, at 276.

¹⁷⁷ As allowed for by Rule 97 of the International Criminal Court's rules of procedure. See Rosenfeld, *supra* note 18, at 738–739.

¹⁷⁸ Torres, *supra* note 18, at 809, 811, 830–832.

¹⁷⁹ Cullen, *supra* note 74, at 66.

By way of contrast, while the IACtHR and the ACtHR have often focused on evidence pertaining to individual plaintiffs when establishing whether rights have been infringed, they have emphasized the community-wide reach of infringements when it comes to ordering remedies.¹⁸⁰ The respective courts in *La Oroya* and *LIDO* emphasized that the harm extended far beyond those plaintiffs listed in the pleadings and ordered that, in addition to compensating such plaintiffs, the respondent states had to take measures targeted at restoring or rehabilitating the urban fabric, had to ensure that all affected residents receive appropriate health care and social assistance and had to reform the domestic regulatory framework so as to prevent recurrences or similar violations.

Overall, the trend of urban residents seeking to collectively enforce human rights in the international arena has shone the spotlight on the scales at which international law is capable of perceiving and remedying injustice. Urbanization is profoundly changing the ways in which human rights are experienced, defended and infringed around the world. If international human rights law is to retain its relevance in an increasingly urban age, it needs to reflect and respond to these changes.¹⁸¹

¹⁸⁰ Remarkled in relation to the remedial practices of the IACtHR by Schonsteiner, *supra* note 120, at 137–138.

¹⁸¹ Angel-Cabo and Sotomayor, *supra* note 8, at 265; Oomen and Baumgärtel, *supra* note 2, at 608, 614; Pieterse, *supra* note 141, at 657–658, 663; Sassen, *supra* note 8, at 47.

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