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EXERCISING ENVIRONMENTAL HUMAN RIGHTS AND REMEDIES IN THE UNITED NATIONS SYSTEM *

LINDA A. MALONE** AND SCOTT PASTERNAK***

Whenever environmental degradation results in a human harm that violates accepted human rights norms, an international, regional or domestic human rights committee, commission, and/or court may provide a remedy that can contribute effectively to rectifying the underlying environmental degradation as well as the human rights violation. This Article chronicles in the United Nations ("UN") system the array of environmental human rights claims, how to determine and establish jurisdiction in the proper forum, the functions of varying fora where such claims may be filed, and newly emerging rights that have been recognized and legitimized in international law through this process.

Part I enumerates the factors that are involved in establishing a valid human rights claim. In general, Part I demonstrates what constitutes environmental degradation for the purposes of a claim, what conditions must be present to bring an action against a nation-state, and what deprivations are theoretically actionable.

Part II generally discusses the process for selecting a proper forum for an established, valid human rights claim. Part II details when and how a forum may exercise jurisdiction over a claim, including the ways in which a forum determines subject matter jurisdiction, jurisdiction over the nation-state or individual perpetrator, and authority over the individual petitioner. Part II also discusses strategies for choosing the best possible forum, rather than merely choosing the most obvious forum that can legally hear the claim.

Part III discusses several of the specific human rights fora provided by the UN. The enumerated programs include the Human Rights Commission authorized by the UN Charter and Economics and Social Council ("ECOSOC"), the Committee on Economic, Social, and Cultural Rights, the Committee for the Elimination of all Forms of Racial

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Discrimination, the Committee for the Elimination of all Forms of Discrimination Against Women, the Committee on the Rights of the Child, the Committee on Human Rights founded under the International Covenant and Civil and Political Rights ("ICCPR"), Sub-Commission on the Promotion and Protection of Human Rights, and the Commission on the Status of Women. This part also addresses procedures for dealing with gross violations of human rights under the section 1235 and 1503 procedures of ECOSOC, which are not necessarily brought on behalf of any individual party. Finally, this part discusses the specialized role of the Economics and Social Council within the United Nations, and it expresses some possible alternatives to bringing a petition to one of these human rights fora in addressing a human rights violation.

Part IV addresses the newly emerging rights and fundamental rights that are becoming recognized as customary international law. Some of these changes in customary law can be found within section 702 of the Third Restatement of Foreign Relations Law, and the historical implications of these changes are discussed from the perspective of the reporter's notes in Restatement 701.¹

Part V addresses enforcement procedures after an international forum has made the determination of an actionable human rights violation and the nation-state involved has failed to remedy the situation. These remedies include notifying the United Nations High Commissioner for Human Rights, who in turn can inform the United Nations Secretary General of the violation. The Secretary General, as a last resort, may then bring the claim to the United Nations Security Council who can continue attempts to arbitrate the situation or can penalize the nation-state with sanctions or military action.

I. DETERMINING VALID ENVIRONMENTAL HUMAN RIGHTS CLAIMS

When undertaking a human rights approach to resolving environmental degradation problems, the first step is to determine whether a valid claim exists. Essential to the understanding of what validates a human rights claim in an international forum is the concept that environmental human rights refer to the link between human rights and the environment. This link involves the deprivation of human rights as a result of environmental degradation. More specifically, an environmental human

¹ See *infra* Part IV.

rights claim alleges that an act or omission of a nation-state has proximately caused environmental degradation that deprives individuals or groups within the jurisdiction of that nation-state of certain rights that the nation-state is obligated to safeguard for those individuals or groups. In more limited circumstances a claim may be brought against a corporation or individual for such degradation, or violations of human rights in furtherance of the degradation.

In general, an environmental human rights claim will not persevere unless it satisfies three conditions: (1) an environmental degradation; (2) a nation-state action or omission that results in or contributes to that environmental degradation; and (3) a deprivation of human rights that results from the environmental degradation.

Establishing that an environmental degradation has occurred is the preliminary condition to satisfy in this process. Environmental degradation involves harm to the atmosphere, lithosphere, hydrosphere, and/or biosphere. Such degradation includes, but is hardly limited to, emission of hazardous pollutants into the air (for example, from oil refineries and chemical plants); discharge of hazardous materials into internal waters, coastal waters, the ocean, and the soil (for example, from mining, petroleum exploration, and other extraction projects); and destruction of ecosystems, including forests (for example, to build roads in connection with dam projects, to construct a pipeline in connection with a natural gas project, to obtain timber products, or to eradicate illicit agricultural crops).

Usually, a valid environmental human rights claim will also require a specific act or omission from a nation-state, commonly referred to as "state action." Examples of state action that result in or contribute to environmental degradation include, but once again are hardly limited to, the granting of permits to emit air pollutants and discharge hazardous waste, the allowance of or failure to prevent ecosystem destruction, especially from development and extraction projects that often result in air, water, soil and/or ecosystem destruction, the forbiddance of or affirmative efforts to combat protests against environmental degradation, and the provision of military or other support to safeguard an activity giving rise to environmental harm.²

² One distinct exception to the state action requirement is the possibility of a complaint in United States federal court pursuant to the Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350, to hold non-state actors accountable for human rights violations. The ATCA provides United States federal courts with "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." *Id.*

Because the text refers to tortious conduct, numerous alien victims of environmental degradation have filed environmental human rights claims against non-state actors, particularly multinational corporations, and referred to the ATCA as the basis for the court's jurisdiction. *See Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001); *see also* *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000); *Bowoto v. Chevron*, No. C99-2506 (N.D. Cal. filed May 27, 1999). Initially, the courts had held in cases filed against private individuals that the ATCA can apply to non-state actors but only for human rights claims other than environmental human rights claims. *See In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 978 F.2d 493, 499 (9th Cir. 1992); *see also* *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984). In subsequent cases filed against multinational corporations pursuant to the ATCA and involving environmental human rights claims, the courts have applied a four-part judicial test common to domestic civil rights litigation that considers whether the non-state actor acted like a state in connection with the environmental human rights claim alleged. *See Doe v. Unocal*, 110 F. Supp. 2d 1294, 1304 (C.D. Cal. 2000) (holding that ATCA did not apply to Unocal, a multinational petroleum corporation, because Unocal did not satisfy the test).

A groundbreaking case under the ATCA recently took another significant step forward. In *Doe v. Unocal Corporation*, 2002 U.S. App. LEXIS 19263 (9th Cir. 2002), several Burmese villagers sued under the ATCA, alleging that the corporation had aided and abetted the military government of Myanmar in using the plaintiffs as forced laborers, and that members of the military had killed, tortured and raped villagers. These human rights violations were designed to discourage opposition to a pipeline project in the Tenasserim region. Myanmar had granted Total S.A., a French oil company, a license to explore coastal gas deposits. The project involved building the Yadana Gas Pipeline Project from the coast through the Tenasserim region to Thailand. Unocal acquired twenty-eight percent of the project from Total.

The court cited the Second Circuit's *Kadic v. Karadzic*, 70 F.3d 232, 240 (2d Cir. 1995), decision for the proposition that state action is not necessary for ATCA liability to attach. The ATCA, according to the court, not only confers jurisdiction, but also creates a cause of action. As to Unocal's liability for knowingly aiding the violations, the court adopted the reasoning of the International Criminal Tribunal for the former Yugoslavia in *The Prosecutor v. Furundzija*, International Tribunal for Yugoslavia, Case No. IT-95-17/1-T (Dec. 10, 1998), available at http://www.un.org/icty/furundzija/trialcz/judgement/fur_tj_981210e.pdf, that the *actus reus* of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support that substantially affects the criminal behavior. The court concluded that there were genuine issues of fact as to whether Unocal satisfied the *actus reus* and *mens rea* required under the ATCA for aiding and abetting forced labor, murder, and rape. The court found insufficient evidence, however, to support the torture claims against dismissal. As this Article was going to press, the Ninth Circuit Court of Appeals granted a rehearing *en banc*, vacating the panel decision. 2003 U.S. App. LEXIS 2716 (9th Cir. 2003).

Although this Article focuses on United Nations fora, the ATCA cases in United States federal court are relevant and instructive in several respects. First, the ATCA complaints are establishing a new form of linkage between environmental harm and human rights—the violation of human rights to oppress opposition to environmental degradation.

Once one establishes that an environmental degradation has occurred and, in most circumstances, that state action exists, the final requisite condition underlying an actionable human rights claim is proof that an actual human right was violated. Such an assessment involves considering how an environmental degradation harmed individuals and/or groups and whether such harm translates into the violation of any accepted human rights norms. For some human rights remedies, it is important to ensure that claims are made only on behalf of actual victims.³

Generally speaking, environmental degradation interferes adversely in human existence. Among other things, the types of environmental degradation described above can make air unhealthy for humans to breathe, water unhealthy for humans to consume or clean with, and soil unhealthy for humans to grow on or inhabit. Air, water, and ground pollution can invade the privacy of one's home, adversely affect one's food, or disturb the balance of the ecosystem necessary for continued human existence. The question is whether any of these elements of human existence rise to the level of a legal right.

Currently the debate over human rights seems to demarcate three categories for such rights. There are existing human rights that are mobilized to combat environmental degradation, existing human rights that are reinterpreted to apply to environmental degradation, and new human rights that safeguard against environmental degradation.⁴ Mobilized existing human

See Bano v. Union Carbide, 273 F.3d 120 (2d Cir. 2001); Sarei v. Rio Tinto PLC, 221 F. Supp.2d 1116 (C.D. Cal. 2002). Secondly, the law developing on the liability of non-state actors conversely sheds light on when nation-state responsibility may be predicated on the acts of non-state actors, either individuals or private corporations. *See, e.g.,* William Aceves, *Affirming the Law of Nations in U.S. Courts: The Karadzic Litigation and the Yugoslav Conflict*, 14 BERKELEY J. INT'L L. 137 (1996); Peggy Rodgers Kalas, *International Environmental Dispute Resolution and the Need for Access by Non-State Entities*, 12 COLO. J. INT'L ENVTL. L. & POL'Y 191 (2001). Finally, having to litigate these international torts of environmental oppression may inspire greater use of supranational fora within the United Nations system (*e.g.,* the Committee Against Torture) and outside (*e.g.,* the International Criminal Court and domestic courts for crimes against humanity). Doe v. Unocal, Nos. 00-56603, 00-57197, Nos. 00-56628, 00-57195, 2002, *supra*.

³ *See, e.g.,* Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 1, 999 U.N.T.S. 302, *available at* http://www.unhchr.ch/html/menu3/b/a_opt.htm [hereinafter Optional Protocol to ICCPR].

⁴ *See* Alan Boyle, *Human Rights Approaches to Environmental Protection: An Overview*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 2-10 (Alan Boyle &

rights are those human rights found repeatedly in human rights treaties, many of which have crystallized into customary international law, that either enable or motivate individuals and/or groups to take civil action in response to existing or potential environmental degradation. Examples include the:

- a. Right to information⁵
- b. Right to public participation⁶
- c. Right to freedom of speech⁷
- d. Right to freedom of association⁸ and
- e. Right to vote.⁹

Reinterpreted, existing human rights are those human rights found repeatedly in human rights treaties, some of which have crystallized into customary international law, that apply to environmental degradation when reinterpreted with sufficient breadth. Examples include the:

Michael Anderson eds., 1996).

⁵ See, e.g., *Report on the Situation of Human Rights in Ecuador*, Inter-Am. C.H.R., OEA/ser. L./V./II.96, doc. 10 rev. 1 (Apr. 24, 1997), available at <http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuador.htm> [hereinafter *Ecuador Report*].

⁶ *Id.*

⁷ In *Wiwa v. Royal Dutch Shell Petroleum Co.*, No. 96 Civ. 8386, 2002 U.S. Dist. LEXIS 3293 (S.D. N.Y. Feb. 22, 2002), four Nigerians, including three United States residents, sued Royal Dutch Petroleum of the Netherlands and Shell Transport and Trading Company of the United Kingdom. *Id.* at *3. Allegedly Shell Nigeria recruited the Nigerian police and military to attack villages and suppress opposition to its oil development activities in the Ogoni region. *Id.* at *5. In addition, the complaint states that Shell encouraged Nigerian government officials to imprison, torture, and kill plaintiffs and their families, and forcibly took land without adequate compensation while causing pollution of the air and water. *Id.* at *4, *41. Shell allegedly gave the Nigerian military money, weapons, vehicles, ammunition, and other logistical support in the village raids. *Id.* at *42. On February 22, 2002, the district court rejected almost all of the grounds for dismissal, allowing the case to move to discovery. *Id.* at *101. The human rights violations from environmental harm include crimes against humanity against Doe and Owens Wiwa, torture of Doe, cruel, inhuman, and degrading treatment of Doe and Wiwa, violation of the right to peaceful assembly and association for Doe and Wiwa, as well as the rights to life, liberty, and security of person for Doe.

⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 22, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁹ *Id.* art. 25, 999 U.N.T.S. at 179.

- a. Right to life¹⁰
- b. Right to health¹¹
- c. Right to residence¹²
- d. Right to privacy and/or inviolability of the home and family¹³
- e. Right to food¹⁴
- f. Right to sustenance¹⁵
- g. Right to property¹⁶
- h. Right of liberty or security of person¹⁷
- i. Right to freedom from inhumane treatment¹⁸
- j. Right to equal protection¹⁹ and
- k. Right to culture.²⁰

Lastly, new human rights are those rights not yet codified or well-codified in treaties but strongly evident in sources of customary international law that protect against environmental degradation. Examples include the:

¹⁰ E.g., *Ecuador Report*, *supra* note 5; K.H.W. v. F.R.G., 40 I.L.M. 773 *passim* (2001).

¹¹ E.g., *The Yanomami Case*, Res. 12/85, Case 7615, Inter-Am. C.H.R., OEA/ser. L./V./II.66, doc. 10 rev. 1 (Mar. 5, 1985), *reprinted in* 1985 INTER-AM. Y.B. ON HUM. RTS. (Inter-Am. C.H.R.) 264, 272-76.

¹² ICCPR, *supra* note 8, art. 12, 999 U.N.T.S. at 176.

¹³ E.g., *Lopez Ostra v. Spain*, App. No. 16798/90, 20 Eur. H.R. Rep. 277 (Dec. 4, 1994); *Hatton & Others v. U. K.*, Application No. 36022/97 (Feb. 10, 2001).

¹⁴ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 11(1)-(2), 993 U.N.T.S. 7 [hereinafter ICESCR].

¹⁵ See e.g., *Sierra Club Politics, Environmental Justice Principles*, art. 1(E), *available at* <http://www.sierraclub.org/policy/conservation/justice.asp> (last visited Apr. 15, 2003).

¹⁶ E.g., *The Mayagna (Sumo) Awas Tingni Community Case*, Case No. 11.557, Inter-Am. C.H.R. 79 (Aug. 31, 2001), *available at* <http://www1.umn.edu/humanrts/iachr/AwasTingnicase.html>; see generally S. James Anaya, *The Awas Tingni Petition to the Inter-American Commission on Human Rights: Indigenous Lands, Loggers, and Government Neglect in Nicaragua*, 9 ST. THOMAS L. REV. 157 (1996).

¹⁷ ICCPR, *supra* note 8, art. 9(b), 999 U.N.T.S. at 175.

¹⁸ *Id.* art. 10(1), 999 U.N.T.S. at 176.

¹⁹ E.g., *Lubicon Lake Band v. Canada*, U.N. Hum. Rts. Comm. (HRC), Comm. No. 167/1984, Supp. No. 40, U.N. Doc. A/45/40 (1990).

²⁰ E.g. *id.*; *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., Supp. No. 2, art. 15, U.N. Doc. A/810 (1948), *available at* <http://www1.umn.edu/humanrts/instrree/b1udhr.htm> [hereinafter UDHR].

- a. Right to a clean environment, healthy or clean and healthy environment
- b. Right to clean and healthy air
- c. Right to clean and healthy water²¹
- d. Right to clean and healthy soil
- e. Right to environmental protection and
- f. Right to biodiversity.

The above three groups of human rights enable one to validly claim that the environmental degradation resulting from the act or omission of a nation-state proximately caused a harm that violated the human rights of the individuals and/or groups within the jurisdiction of that nation-state. Additional sources of international law that a petitioner can cite to support many of the aforementioned rights can be found in Table A at the end of the Article. It is essential to note that with every treaty provision listed in Table A which may be included in submissions made to any human rights body or process, it must be determined that the nation-state against which the environmental human rights claims are alleged either has ratified, acceded, accepted, or at least signed the convention in which the provision appears. In contrast, for inclusion of a declaration or resolution, it is helpful but not essential to determine if the nation-state in question voted in favor of that document. One can easily find the above information on the internet site where the human right instrument is located or in the official records for that instrument cited in Table A.²²

To the degree that claims presented in human rights petitions regarding the above rights rely primarily on sources of customary international law rather than on treaties, general principles of law, international court and tribunal decisions, and scholarly writings as is frequently necessary, the articulation of the environmental human rights through custom is more complex. Consequently, this Article devotes Part IV to the topic and encourages the reader to consider that material as well.

²¹ See *General Comment No. 15 (2002), The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Comm. on Econ., Soc., & Cultural Rts., U.N. Doc. E/C.12/2002/11 (2002), available at <http://www.unhchr.ch/html/menu2/6/gc15.doc>.

²² See *id.* and Table A, *infra*.

It is important to note that if environmental degradation has occurred but either no state action is present where required or no accepted human rights standards were violated, precluding a valid environmental human rights claim, other colorable judicial avenues most likely exist by which to remedy the harm. Such avenues may include tort actions, nuisance actions, and/or class action lawsuits against either the nation-state, a non-state actor, or various citizen enforcement lawsuits under domestic environmental laws against the nation-state. However, these types of actions involve domestic environmental law, not international environmental law (of which environmental human rights is one aspect), so they are beyond the scope of this Article.²³

II. DETERMINING WHERE TO FILE THE ENVIRONMENTAL HUMAN RIGHTS CLAIM

After the determination has been made that a valid environmental human rights claim exists, the second step is selecting the most effective forum in which to present the claim. This determination depends on whether the forum has jurisdiction over the subject of the claim, the defendant, and the petitioner (i.e., whether a private right of action exists for the petitioner). Table A is designed to assist the reader in this process.

The UN system is one of several supranational systems that provides fora for resolving various human rights environmental claims. Other systems such as the European and Inter-American system are beyond the scope of this Article. In addition to supranational dispute resolution fora, United States courts may be able to exercise jurisdiction over such matters pursuant to the Alien Tort Claims Act, 28 U.S.C. § 1350. This process is also beyond the scope of this Article.²⁴

The UN human rights system includes charter-based bodies and procedures and treaty-based bodies within or linked to the UN Economic and Social Council, as well as UN specialized agencies such as the UN Educational, Scientific and Cultural Organization ("UNESCO") and the International Labor Organization ("ILO"). It is important to note, however, that individuals and groups can seek the assistance of some of these UN

²³ See generally LINDA A. MALONE, ENVIRONMENTAL REGULATION OF LAND USE (2003).

²⁴ See generally Richard L. Herz, *Litigating Environmental Abuses Under the Alien Torts Claim Act: A Practical Assessment*, 40 VA. J. INT'L L. 545 (2000).

human rights bodies only after exhausting or simultaneously resorting to domestic remedies.²⁵ In addition, individuals and groups often can seek the assistance of UN human rights bodies only at the exclusion of seeking assistance from other supra-national bodies.²⁶

The first step in determining which of these various UN human rights fora to approach requires assessing the subject matter jurisdiction of each body—that is, what rights the forum is authorized to consider. For treaty-based human rights fora (e.g., the UN Human Rights Committee), relevant rights are primarily those listed in the treaty creating that forum.²⁷ For charter-based human rights fora (e.g., UN Commission on Human Rights), rights come from the charter provisions creating that forum, and are often elaborated in a related declaration or resolution.²⁸ Table B summarizes the relevant human rights instrument for each body and the list of rights to which the jurisdiction of that forum is usually limited.²⁹

Despite the limitations of an individual forum's jurisdiction as reflected in Table B, limitations are only relevant to determine the correct forum to which one makes a submission. Once a specific forum is selected, the human rights body will usually consider arguments in a given submission that depend on sources of international law outside the specific treaty or charter creating that institution.³⁰ For example, in submitting an

²⁵ See, e.g. *M.A. v. Canada*, Committee Against Torture (CAT) Comm. No. 22/1995, CAT/C/14/D/22/1995 (Jurisprudence), 14th Sess., Annex (May 5, 1995) (denying evaluation by the Committee Against Torture because the claimant had not exhausted all available domestic remedies as required by the Convention Against Torture and did not fit within the exception), available at <http://193.194.138.190/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/dc94422b8e0fla86802567a6004f36f7?OpenDocument>.

²⁶ See, e.g., *Cameroon v. Nigeria*, 1998 I.C.J. 275, 359 (Jun. 11) (noting the “final and binding force” of the Court's decisions), available at 1998 WL 1148893; *Concerning Application of Convention on Prevention and Punishment of the Crime of Genocide*, 1996 I.C.J. 595, 619 (Jul. 11) (noting same), available at 1996 WL 943410.

²⁷ See, e.g. Introduction to the U.N Human Rights Committee, at <http://193.194.138.190/html/menu2/6/a/introhrc.htm> (last visited Apr. 15, 2003). The site explains that the U.N. Human Rights Committee was created to monitor the implementation of the ICCPR.

²⁸ See *infra* Table B.

²⁹ See *infra* Table B.

³⁰ See, e.g., *Concerning the Arrest Warrant of 11 April 2000*, 2000 I.C.J. 182, 206-07, 233 n.9 (Dec. 8), available at 2000 WL 33942512; *Concerning the Aerial Incident of 10 August 1999*, 2000 I.C.J. 12, 45 (Jun. 21) (Koroma, J., separate opinion), available at 2000 WL 33942493; *Concerning Kasiki/Sedudu Island*, 1999 I.C.J. 1045, 1045 (Dec. 13), available at 1999 WL 1693057. See generally, American Convention on Human Rights, Nov. 22, 1969, art. 29, OAS T.S. No. 36, 1144 U.N.T.S. 123.

environmental human rights claim based on the right to life acknowledged by the UN Human Rights Committee (“HRC”), the petition can cite not only the appropriate provision of the ICCPR and prior HRC decisions, but also (1) any similar right to life provisions in other treaties, whether international or regional, as well as evidence of customary international law on the right to life such as declarations, resolutions, and reports; (2) evidence of general principles among civilized nations, documented in national constitutions and statutes, judicial and quasi-judicial decisions; and (3) opinions of scholars, so long as they are all relevant to the right to life.³¹

The second criteria in considering whether a human rights forum has jurisdiction over the alleged nation-state is whether the nation-state has accepted the jurisdiction of the human rights forum or whether the nation state is a party to any international instruments which automatically subjects that nation-state to the jurisdiction of that human rights forum. The last column in Table B summarizes this information.

The last step in determining an appropriate human rights forum is to strategize on which of the competent human rights fora is preferred. Factors to consider are: whether the forum has handed down favorable decisions on the factual claims and/or legal issues at stake; whether exhaustion of domestic or regional remedies is required before filing a claim with that forum; whether submission to that forum is to the exclusion of all other forums; whether the forum entertains requests for provisional measures; where the forum meets to determine travel expenses to the forum for any oral hearings; and how quickly the forum disposes of matter on its docket, determined in part by how often the forum meets and how well-funded the forum is; and whether the forum’s decisions are enforceable. Information about various human rights fora discussed in the next part highlights advantages and disadvantages of each one that can help with selecting a preferred forum.

Regarding what private rights of actions are available to the petitioner, not every avenue available to address international human rights problems is open to non-state actors and not every human right is redressable before those bodies where private rights of action do exist. Consequently, one must consider what kind of submissions can be made through each

³¹ See *infra* Table B.

available human rights body and/or process. Table C summarizes these possibilities.³²

With respect to the enforceability of a forum's decisions, one should note that generally speaking, such decisions can only *persuade* the nation-state in question to take steps to curtail the human rights violations resulting from the environmental degradation. In other words, only a public showing occurs. However, additional procedures discussed separately in Part V may be available to obtain enforcement of these decisions.³³ In addition to the information provided in this part, the discussion in the next part about how to file a claim in each forum may serve to highlight additional advantages and disadvantages that can help with selecting a preferred forum.

III. BRINGING THE ENVIRONMENTAL HUMAN RIGHTS CLAIM TO THE PROPER FORUM.

With a valid environmental human rights claim in one hand and a selected human rights forum in the other, the next major step is the actual filing of the claim. The information below introduces each UN human rights forum and explains briefly how to bring an environmental human rights claim to various human rights fora. Tables B and C provide guidance on use of these fora, including which states are parties to what processes.

Before turning to each specific forum, it is extremely important to note that before nongovernmental organizations ("NGO") can make written and/or oral submissions to most of these fora, such NGOs often must have consultative status of some kind with the UN or must identify an NGO with such status and ask that NGO to make the submission. The authorization for NGO consultative status with the UN is found in Article 71 of the UN Charter,³⁴ and the procedure for obtaining such status is set forth in ECOSOC Resolution 1996/31.³⁵ These instruments have led to the creation of the

³² See *infra* Table C.

³³ See *infra* Part V.

³⁴ "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned." U.N. CHARTER art. 71, available at <http://www.un.org/aboutun/charter> (last visited Apr. 15, 2003).

³⁵ See E.S.C. Res. 1996/31, U.N. ESCOR, 51st Sess., 49th plen. mtg., U.N. Doc. E/1996/96 (1996), available at <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>.

Committee on Non-Governmental Organizations and the NGO Section of ECOSOC.

NGOs seeking consultative status should contact the NGO Section of ECOSOC. Such contact information as well as a consultative status application and answers to many questions can be found at <http://www.un.org/esa/coordination/ngo>. Again, consultative status is often required for an NGO to make use of the strategies discussed herein. Consequently, one can either obtain such consultative status or ask an NGO with such status to provide assistance.

A. *Human Rights Committee*³⁶

One potential forum for voicing human rights grievances is the HRC established by the International Covenant on Civil and Political Rights (“the Covenant”).³⁷ The HRC consists of 18 members who are nominated by the states and serve in their individual capacities, not as government representatives.³⁸

The HRC has various functions, all designed to ensure a state’s compliance with the Covenant.³⁹ The HRC has adjudicative functions under Optional Protocol I, which establishes a right to individual petition.⁴⁰ Individuals and groups can present environmental human rights claims to the HRC in four different ways: filing an individual petition under Optional Protocol I;⁴¹ making an *amicus* submission to any Article 41 and 42 dispute; encouraging a state to initiate an inter-state dispute;⁴² or submitting a critique of Article 40 reports.⁴³

The first method for presenting environmental human rights claims is the filing of an individual petition under the Optional Protocol to the Covenant on Civil and Political Rights (“the Protocol”).⁴⁴ The Protocol enables private parties to file individual communications and complaints with

³⁶ The official website for the Human Rights Committee may be found at <http://www.unhchr.ch/html/menu2/6/hrc.htm>.

³⁷ See ICCPR, *supra* note 8, art. 28, 999 U.N.T.S. at 179.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Optional Protocol to the ICCPR, *supra* note 3, art. 5, 999 U.N.T.S. at 303.

⁴¹ *Id.* art. 2, 999 U.N.T.S. at 303.

⁴² ICCPR, *supra* note 8, arts. 41-42, 999 U.N.T.S. at 182-84.

⁴³ *Id.* art. 40, 999 U.N.T.S. at 181-82.

⁴⁴ See Optional Protocol to the ICCPR, *supra* note 3, art. 2, 999 U.N.T.S. at 302.

the HRC.⁴⁵ Since 1976, the HRC has dealt with an increasing number of individual communications. Many of these are ruled inadmissible, usually because the complaint is already being examined under another procedure of international investigation or there has been no exhaustion of domestic remedies.⁴⁶ The HRC has developed a body of case law interpreting and applying the Covenant and Protocol.⁴⁷ Individual complaints may only be filed against state parties to the Covenant that have also ratified Protocol I.⁴⁸

The review process for Protocol I has two stages. In the first stage, the HRC must decide on the admissibility of the communication under Articles 2, 3, and 5 of the Protocol. Article 2 requires that the complaining party must have exhausted all available domestic remedies and must submit a written communication.⁴⁹ Article 3 requires that a communication is deemed inadmissible if it is anonymous, if the committee considers it to be an abuse of the right of submission, or if the committee considers it to be incompatible with the provisions of the covenant.⁵⁰ Article 5(a) states that the Committee consider each communication in light of all the written information made available to it by the individual and the State involved.⁵¹ The complaining party must also prove that they have exhausted all available domestic remedies per Article 5(b), which provides that the Committee will not consider a communication unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, and that the individual has exhausted domestic remedies.⁵² Furthermore, meetings are closed while the committee examines each

⁴⁵ It is important to distinguish in all UN processes between "individual" complaints with respect to who may petition and with respect to what claims can be brought. For example, under the 1235 and 1503 procedures, individuals may file petitions but they must allege widespread or systematic violations. See E.S.C. Res. 1235, U.N. ESCOR, 42d Sess., Supp. No. 1A, at 17, U.N. Doc. E/4393 (1967), available at <http://www.oup.co.uk/pdf/bt/cassese/cases/part3/ch16/1602.pdf> (last visited Apr. 15, 2003) [hereinafter E.S.C. Res. 1235].

⁴⁶ See *id.*

⁴⁷ For a list of case law decisions, see the HRC website, *Documents on Jurisprudence*, at <http://193.194.138.190/tbs/doc.nsf/FramePage/TypeJurisprudence?OpenDocument&Start=1&Count=15&Expand=3> (last visited Apr. 15, 2003).

⁴⁸ Optional Protocol to the ICCPR, *supra* note 3, art. 1, 999 U.N.T.S. at 302.

⁴⁹ *Id.* art. 2, 999 U.N.T.S. at 302.

⁵⁰ *Id.* art. 3, 999 U.N.T.S. at 302-03.

⁵¹ *Id.* art. 5(a), 999 U.N.T.S. at 303.

⁵² *Id.* art. 5(b), 999 U.N.T.S. at 303.

communication, and the Committee must forward its views to both the State and the individual.⁵³

Once the Committee has decided that a communication is admissible, it informs the state of the matter and the state has six months to respond to the charges.⁵⁴ The Committee reviews written communications of the state and the individual and communicates its findings to the parties.⁵⁵ The Committee also provides the UN General Assembly with a summary of the findings in its annual report.⁵⁶ As a result of the increasing number of parties that have ratified the Protocol, the Committee now issues its annual report in two volumes, using the second volume to report on practice under the Protocol.⁵⁷

The HRC has strengthened the effectiveness of the human rights mechanism established by the Protocol. The HRC now has the power to propose interim measures to avoid irreparable damage to the victim of a violation.⁵⁸ The HRC also now requires state parties to indicate in their reports what measures they have taken to give effect to the HRC's recommendations in cases in which the HRC has found the state to be in violation of the Protocol, particularly stressing the remedy that has been given to the victim.⁵⁹

A second method for bringing a complaint within the HRC is achieved with an *amicus* submission to the Article 41 and 42 dispute process for inter-state complaints.⁶⁰ When an environmental rights claim is presented to the Human Rights Committee, individuals and groups who do not directly suffer from the harm alleged but are nonetheless aware of and concerned about the outcome of such claim—both in terms of the relief for the petitioner and the impact on human rights jurisprudence—are usually unable to file their own petition. However, they may be able to play a formal role in the process by filing an *amicus curiae* or “friends of the court” brief in

⁵³ *Id.* art. 5(c), 5(d), 999 U.N.T.S. at 303.

⁵⁴ Optional Protocol to the ICCPR, *supra* note 3, art. 4, 999 U.N.T.S. at 303.

⁵⁵ *Id.* art. 5(4), 999 U.N.T.S. at 303.

⁵⁶ ICCPR, *supra* note 8, art. 45, 999 U.N.T.S. at 184.

⁵⁷ *Report of the Human Rights Committee*, U.N. GOAR, Hum. Rts. Comm., 54th Sess., Supp. No. 40, U.N. Doc. A/54/40, Vol. II (1999), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/64f3eba65d74c527c12569b900554f3d?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/64f3eba65d74c527c12569b900554f3d?OpenDocument).

⁵⁸ See Optional Protocol to the ICCPR, *supra* note 3, art. 4(1), 999 U.N.T.S. at 303.

⁵⁹ *Id.* art. 4(2), 999 U.N.T.S. at 303.

⁶⁰ See ICCPR, *supra* note 8, arts. 41-42, 999 U.N.T.S. at 182-84.

support of the petitioner's claim.⁶¹ Nothing in the text of the ICCPR or the HRC's rules of procedure appears to prevent a non-party from filing such an *amicus* brief.

Generally speaking, such submissions should: (1) explain how the case relates to the work of the NGO or community group filing it; (2) elaborate on legal arguments not adequately addressed in the petition; and (3) provide additional, supportive factual information not presented in the petition.⁶² For example, in *Association of Lhaka Honhat Aboriginal Communities (Nuestra Tierra/Our Land) v. the State of Argentina, Precautionary Measures Request*,⁶³ filed with the Inter-American Commission on Human Rights, two NGOs—the Center for Human Rights and the Environment in Cordoba, Argentina⁶⁴ and the Center for International Environmental Law in Washington, D.C.⁶⁵—jointly filed an *amicus curiae* brief⁶⁶ to support the petitioner's claim that Argentina's plan to cut through the center of the protected land of the indigenous Wichi, Chorote, Chulupi, Toba, and Tapiete peoples to build a transnational road through Argentina linking Brazil to Chile would violate their right to life and their right to a clean and healthy environment.⁶⁷

A third, indirect method found under Articles 41 and 42 of the Covenant is through the inter-state complaint machinery, which enables one

⁶¹ See *id.*

⁶² See e.g., Brief of Amici Curiae American Civil Liberties Union AIDS Project, Cahill v. Rosa, 674 N.E.2d 274 (N.Y. 1996) (Nos. 180, 181).

⁶³ Brief of Amici Curiae Center for Human Rights and the Environment and Center for International Environmental Law, Ass'n of Lhaka Honhat Aboriginal Communities (Nuestra Tierra/Our Land) v. Argentina, Precautionary Measures Request, Inter-Am. C.H.R. (2000) (No. P12.094), available at <http://www.ciel.org/Publications/WichiAmiciCuriae2.pdf>.

⁶⁴ The Center for Human Rights and the Environment ("CEDHA") is a nonprofit organization promoting sustainable development through the promotion of the symbiotic relationship existing between the environment and people, and striving to build awareness of the importance of addressing human rights and environmental protection in all development processes. See CEDHA, About CEDHA, at <http://www.cedha.org.ar/cedha.htm> (last visited Apr. 15, 2003).

⁶⁵ The Center for International Environmental Law ("CIEL") is a public interest, not-for-profit environmental law firm founded in 1989 to strengthen international and comparative environmental law and policy around the world. See CIEL, CIEL's Goals, at <http://www.ciel.org/reciel.html> (last visited Apr. 15, 2003).

⁶⁶ Brief of Amici Curiae CEDHA and CIEL, Ass'n of Lhaka Honhat Aboriginal Communities (No. P12.094).

⁶⁷ See *id.*

state party to charge another with a violation of the treaty.⁶⁸ Although the machinery is optional and can be used only by and against parties that have recognized HRC's jurisdiction to receive these complaints,⁶⁹ NGOs can encourage a state party to make use of the machinery so that the complaint might bring attention to human rights issues occurring in another country. In practice, the system establishes little more than a formal conciliation machinery. If a state believes another state is in violation of the Covenant, it can make a formal statement to the other state, addressing the alleged violation.⁷⁰ If the two states do not resolve their differences within six months, each has the right to submit their case to the HRC.⁷¹ Each side is invited to present its case and submit evidence.⁷² If a friendly solution is reached within twelve months, it is reported by the HRC.⁷³ Otherwise, the HRC must prepare a report on the situation, including a brief statement of the facts, and the written and oral statements of the parties.⁷⁴ The role of the HRC ends there, unless the states consent to the appointment of an *ad hoc* Conciliation Committee,⁷⁵ consisting of five members approved by the States.⁷⁶ After examining the case, the Commission attempts to negotiate a friendly settlement and then can make its own findings of the relevant facts and suggest a resolution.⁷⁷ The parties are not required to accept the suggested resolution,⁷⁸ but the Commission can call a failure to do so to the attention of the General Assembly in the HRC's annual report.⁷⁹

A fourth method for bringing a complaint within the HRC is under Article 40(1) of the Covenant.⁸⁰ Because all state parties must submit reports on the measures they have adopted in compliance with the Covenant,⁸¹ NGOs can bring attention to environmental human rights concerns occurring within

⁶⁸ See ICCPR, *supra* note 8, arts. 41-42, 999 U.N.T.S. at 182-84..

⁶⁹ *Id.* art. 41(1), 999 U.N.T.S. at 182.

⁷⁰ *Id.* art. 41(1)(a), 999 U.N.T.S. at 182.

⁷¹ *Id.* art. 41(1)(b), 999 U.N.T.S. at 182.

⁷² *Id.* art. 41(1)(f), 999 U.N.T.S. at 182.

⁷³ *Id.* art. 41(1)(h)(i), 999 U.N.T.S. at 183.

⁷⁴ ICCPR, *supra* note 8, art. 41(1)(h)(ii), 999 U.N.T.S. at 183.

⁷⁵ *Id.* art. 42(1)(a), 999 U.N.T.S. at 183.

⁷⁶ *Id.* art. 42(1)(b), 999 U.N.T.S. at 183.

⁷⁷ *Id.* art. 42(7), 999 U.N.T.S. at 184.

⁷⁸ *Id.* art. 42(7)(d), 999 U.N.T.S. at 184.

⁷⁹ *Id.* art. 45, 999 U.N.T.S. at 184.

⁸⁰ ICCPR, *supra* note 8, art. 40(1), 999 U.N.T.S. at 181.

⁸¹ See *id.*

or committed by state parties that submits reports. Such NGOs can prepare and submit to the HRC a critique that focuses on material omissions and/or misrepresentations in the state report regarding environmental human rights.⁸² The HRC is responsible for examining these reports and any NGO critiques, and has developed a set of reporting guidelines and procedures for dealing with the reports to ensure state compliance with their obligations, and to assist states in overcoming any difficulties.⁸³ Although the Covenant does not vest the HRC with the power to verify state reports or conduct investigations, it can seek permission to do so from the states concerned.⁸⁴ In addition, each state's representatives must be present when the HRC reviews its reports.⁸⁵ This requirement allows the HRC to ask for supplemental information and to pinpoint serious compliance problems.⁸⁶ The HRC can then call any problems to the attention of the UN General Assembly in an annual report.⁸⁷ In the past few years, the reporting system has evolved into an increasingly more effective instrument for ensuring compliance with the Covenant. Among the activities increasing the reporting system's effectiveness is the HRC's decision to bring information concerning any grave violations of human rights revealed in the reporting system to the UN Secretary General.⁸⁸ In addition, the HRC has adopted a number of General

⁸² See e.g., *Concluding Observations of the Human Rights Committee (Hong Kong): China 12/11/99*, U.N. GOAR, HRC, 67th Sess., U.N. Doc. CCPR/C/79/Add.117(1999) (noting NGO's participation in report filed by the Hong Kong Special Administrative Region), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.117.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.117.En?Opendocument) (last visited Mar. 15, 2003); George E. Edwards & Mark Zuckerman, *Rights Monitoring Under Threat?: Hong Kong at the United Nations*, CHINA RTS. F.: J. OF HUM. RTS. IN CHINA (1996), available at http://iso.hrichina.org/iso/article.adp?article_id=339&subcategory_id=26 (last visited Apr. 7, 2003).

⁸³ ICCPR, *supra* note 8, art. 40(4), 999 U.N.T.S. at 182.

⁸⁴ *Id.* art. 40(5), 999 U.N.T.S. at 182.

⁸⁵ *Rules of Procedure of the Human Rights Committee*, U.N.GAOR, Hum. Rts. Comm. (HRC), 56th Sess., Supp. No. 40, 1924th mtg., at rule 68, U.N. Doc CCPR/C/3/Rev. 6 (2001), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.3.Rev.6.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.3.Rev.6.En?Opendocument) [hereinafter *HRC Rules*]. See also *Reporting Obligations of State Parties under Article 40 of the Covenant: General Comment No. 30*, U.N. GAOR, HRC, 57th Sess., Supp. No. 40, 2025th mtg., U.N. Doc. CCPR/C/21/Rev.2/Add.12 (2002), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/452ffba066e323b8c1256c480036f5ca?opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/452ffba066e323b8c1256c480036f5ca?opendocument) (explaining that in an effort to remedy noncompliance with delegation obligations, the HRC may proceed to review a report in the absence of a delegation from a state party).

⁸⁶ *HRC Rules*, *supra* note 85, at 68.

⁸⁷ ICCPR, *supra* note 8, art. 45, 999 U.N.T.S. at 184.

⁸⁸ See Philip Alston & Henry J. Steiner, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW,

Comments that spell out the meaning of provisions of the Covenant and are similar to advisory opinions that interpret the Covenant.⁸⁹

B. *Committee on Economic, Social, and Cultural Rights*⁹⁰

The Committee on Economic, Social and Cultural Rights ("ESC") carries out duties under the International Covenant on Economic, Social and Cultural Rights ("E.S.C. Covenant").⁹¹ Designed to address human rights violations within the UN, the E.S.C. Covenant itself does not establish a formal complaint system. It only requires that state parties submit reports on steps that they have taken and progress that has been made toward the observance of the rights the E.S.C. Covenant recognizes.⁹² Furthermore, it was not until the establishment of the ESC that there existed a permanent committee dedicated to the review of these reports.⁹³

The ESC consists of eighteen members who serve in their individual capacities.⁹⁴ Prior to the ESC's first meeting in March 1987, the Sessional Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights was responsible for the review of the reports.⁹⁵ The working group's members were drawn from the ECOSOC and its findings were reported back to ECOSOC, the UN Commission on Human Rights, and to the specialized agencies of the UN concerned with economic, social and cultural rights.⁹⁶ With the establishment of the permanent committee, efforts to promote the implementation of the E.S.C. Covenant

POLITICS, MORALS 619-621 (2d ed. 2000).

⁸⁹ A list of all General Comments from the HRC under ICCPR are available at the UN website at <http://www.unhchr.ch/tbs/doc.nsf>.

⁹⁰ The official website for the Committee on Economic, Social and Cultural Rights may be found at <http://www.unhchr.ch/html/menu2/6/cescr.htm>.

⁹¹ E.S.C. Res. 1985/17, U.N. ESCOR, 2d Sess., 22d mtg., U.N. Doc. S/RES/1985/17 (1985) available at <http://www.un.org/esa/coordination/ecosoc/archives.htm>. (establishing the ESC).

⁹² ICESCR, *supra* note 14, art. 16(1), 993 U.N.T.S. at 3, 9.

⁹³ UNITED NATIONS, FACT SHEET NO. 16 (REV. 1), Comm. on Econ., Soc. & Cultural Rts. (2002), available at <http://www.unhchr.ch/html/menu6/2/fs16.htm> [hereinafter FACT SHEET No. 16].

⁹⁴ *Id.*

⁹⁵ International Covenant on Human Rights, G.A. Res. 40/115, U.N. GAOR, 40th Sess., Supp. No. 24, at 231, U.N. Doc. A/Res/40/115 (1985).

⁹⁶ U.N. ESCOR, E.S.C. DEC. 1978/10, 2d Sess., 12th mtg., U.N. Sales No. #.80.I.1 (1978), reprinted in 1978 U.N.Y.B. 727-28 (establishing the Working Group).

became more effective.⁹⁷ The ESC has used general comments and analyses to clarify ambiguities in the language of the Convention.⁹⁸ In particular, it was the Committee's analysis of Article 2(1) of the E.S.C. Covenant in General Comment No. 3 (1990) that solidified the immediate, although progressive, nature of the states parties obligations.⁹⁹

Unlike the Covenant on Civil and Political Rights, the E.S.C. Covenant allows for progressive implementation.¹⁰⁰ Article 2(1) of the E.S.C. Covenant requires that the state parties "take steps...with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures,"¹⁰¹ and Article 2(2) requires that state parties "undertake to guarantee" that these rights will be exercised without discrimination.¹⁰² In its General Comment No. 3, the ESC made clear its opinion that this language does impose obligations of immediate effect.¹⁰³ With regard to the undertaking of non-discrimination, the Committee notes that "the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies."¹⁰⁴

Further, the ESC recognizes that legislation is necessary to combat discrimination effectively.¹⁰⁵ Concerning the progressive nature of the implementation requirements, the Committee states that "while the full realization of the relevant rights may be achieved progressively, steps toward that goal must be taken within a reasonably short time after the Covenant's

⁹⁷ See Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 332, 340-342 (1987) (detailing the shortcomings of the Working Group). But see PHILIP ALSTON & JAMES CRAWFORD, *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 139-144 (2000) (cataloguing improvements in the effectiveness of the Committee).

⁹⁸ *Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. ESCOR, 21st Sess., Supp. No. 2, U.N. Doc. E/2000/22-E/C.12/1999/11+Corr.1 (1999).

⁹⁹ *The Nature of State Parties' Obligations (art. 2, par. 1)*, General Comment 3, U.N. ESCOR, 5th Sess., Supp. No. 3, U.N. Doc. E/1991/23-E/C.12/1990/8+Corr.1 (1991) [hereinafter *Nature of State Parties' Obligations, Gen. Comment 3*].

¹⁰⁰ Compare ICESCR, *supra* note 14, art. 2(1), 993 U.N.T.S. at 5 with ICCPR, *supra* note 8, art. 2(1), 999 U.N.T.S. at 173.

¹⁰¹ ICESCR, *supra* note 14, art. 2(1), 993 U.N.T.S. at 5.

¹⁰² *Id.* art. 2(2), 993 U.N.T.S. at 5.

¹⁰³ *Nature of State Parties' Obligations, Gen. Comment 3, supra* note 99.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 3.

entry into force for the states concerned.”¹⁰⁶ In addition, while the rights enumerated in the E.S.C. Covenant in many cases cannot be ensured without significant technical, economic, or educational resources, it is incumbent upon state parties to maximize their available resources.¹⁰⁷ In other words, a state party is obligated to meet at least a minimum essential level of each right, and if it ascribes its failure to do so to a lack of resources, “it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”¹⁰⁸

As with the HRC, NGOs can similarly submit written comments to the ESC.¹⁰⁹ Such comments either can focus on particular environmental degradation adversely impacting economic, social and cultural rights, or can critique a state report submitted to the ESC that materially omits or misrepresents an environmental human rights issue.¹¹⁰

C. *Committee for the Elimination of Racial Discrimination*¹¹¹

The Committee for the Elimination of Racial Discrimination (“CERD”) is created pursuant to the International Convention on the

¹⁰⁶ *Id.* at 2.

¹⁰⁷ ICESCR, *supra* note 14, at art. 2(1), 993 U.N.T.S. at 5.

¹⁰⁸ *The Nature of State Parties Obligations, Gen. Comment 3, supra* note 99.

¹⁰⁹ See *NGO Participation in Activities of the Committee on Economic, Social and Cultural Rights*, U.N. ESCOR, 8th Sess., ¶ 354, U.N. Doc. E/1994/23 (1993), reprinted in FACT SHEET NO. 16, *supra* note 93 (accepting written comments or allowing your client to make oral comments to the Committee itself on the first day it meets or to its Working Group in advance of the Committee meeting). See also *Rules of Procedure of the Committee on Economic, Social, and Cultural Rights*, U.N. ESC, 3d Sess., at rule 69, U.N. Doc. E/C.12/1990/4/Rev.1 (1989).

¹¹⁰ See *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Honduras*, U.N. ESCOR, 25th mtg., UN Doc. E/C.12/1/Add.57 (2001), at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.57.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.57.En?Opendocument). See, e.g., Ctr. for Econ. & Soc. Rts., *The Price of Gold: Gold Mining & Human Rights Violations in Honduras*, Report to the U.N. ESC (2001), available at <http://www.cesr.org/PROGRAMS/honduras/Honduras%20Report%20Revised.pdf>. The ESC considered this report for its May 2001 concluding observations for Honduras.

¹¹¹ The official website for the Committee for the Elimination of Racial Discrimination may be found at <http://www.unhchr.ch/html/menu2/6/cerd.htm>.

Elimination of All Forms of Racial Discrimination.¹¹² The Convention prohibits racial discrimination, which it defines as

any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹¹³

The basic human rights and fundamental freedoms it protects include the rights enumerated in the Universal Declaration, the Covenant on Civil and Political Rights, and the ESC.¹¹⁴ Not only is it incumbent upon state parties to eliminate governmental discrimination, they must also "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization."¹¹⁵

The Convention does allow that "special measures" may be required for the protection or adequate advancement of the enjoyment of fundamental rights and freedoms for certain racial or ethnic groups, and that such action "shall not be deemed racial discrimination" as long as such measures do not "lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were undertaken have been achieved."¹¹⁶ States are also obligated to prevent, prohibit and eradicate the practice of apartheid in their territories.¹¹⁷

As an enforcement mechanism, the Covenant establishes the CERD¹¹⁸ not only to review the periodic reports which the states parties are obligated to submit,¹¹⁹ but also to deal with the inter-state and individual complaints

¹¹² International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195, 216 [hereinafter "ICERD"].

¹¹³ *Id.* art. 1(1), 660 U.N.T.S. at 216.

¹¹⁴ Compare ICERD, *supra* note 112, art 5, 660 U.N.T.S. at 220-21 with UDHR, *supra* note 20, at 135 and ICCPR, *supra* note 8, pt. III, 999 U.N.T.S. at 174-79, and ICESCR, *supra* note 14, pt. III, 993 U.N.T.S. at 6-9.

¹¹⁵ ICERD, *supra* note 112, art. 2(1)(d), 660 U.N.T.S. at 218.

¹¹⁶ *Id.* art 1(4), 660 U.N.T.S. at 216.

¹¹⁷ *Id.* art 3, 660 U.N.T.S. at 218.

¹¹⁸ *Id.* art. 8(1), 660 U.N.T.S. at 224.

¹¹⁹ *Id.* art. 9(1), 660 U.N.T.S. at 224.

systems.¹²⁰ Submission to the inter-state complaint system is not optional for the state parties under the Race Convention as it is under the ICCPR.¹²¹

The inter-state complaint system as laid out by Article 11 of the Convention is a two-stage process.¹²² The CERD first rules on the admissibility of the complaint.¹²³ All state parties concerned are obligated to supply any information that CERD deems relevant.¹²⁴ After the fact-finding process is complete, CERD establishes an ad hoc Conciliation Commission,¹²⁵ which will complete a report on the dispute¹²⁶ and issue recommendations to the state parties concerned.¹²⁷ No interstate complaint has ever been filed.¹²⁸

The individual complaint system, on the other hand, is optional and therefore requires that the state parties separately declare that they recognize the jurisdiction of CERD to hear the complaint.¹²⁹ CERD does not use an *ad hoc* Commission to deal with individual complaints.¹³⁰ CERD reviews information from the state concerned and the petitioner,¹³¹ summarizes its findings and makes recommendations.¹³² These recommendations are published in its annual report to the General Assembly.¹³³ The International Court of Justice ("ICJ") may also address disputes regarding interpretation and application if the respondent state has agreed to its jurisdiction.¹³⁴ In addition, non-parties with a legitimate interest in the outcome of a petition may be able to file an *amicus* brief. Nothing in the CERD appears to prevent that possibility.

¹²⁰ *Id.* art. 11(1), 660 U.N.T.S. at 226.

¹²¹ Compare ICERD, *supra* note 112, art. 11(1), 660 U.N.T.S. at 226 with ICCPR, *supra* note 8, art. 41(1), 999 U.N.T.S. at 182-83.

¹²² ICERD, *supra* note 112, art. 11, 660 U.N.T.S. at 226.

¹²³ *Id.* art. 11 (1-3), 660 U.N.T.S. at 226.

¹²⁴ *Id.* art. 11(4), 660 U.N.T.S. at 226, art. 12(8), 660 U.N.T.S. at 228.

¹²⁵ *Id.* art. 12(1)(a), 660 U.N.T.S. at 228.

¹²⁶ *Id.* art. 13(1), 660 U.N.T.S. at 230.

¹²⁷ *Id.*

¹²⁸ See Alston & Steiner, *supra* note 88, at 776.

¹²⁹ ICERD, *supra* note 112, art. 14(1), 660 U.N.T.S. at 230.

¹³⁰ *Id.* art. 14(2), 660 U.N.T.S. at 230.

¹³¹ *Id.* art. 14(7)(a), 660 U.N.T.S. at 232.

¹³² *Id.* art. 14(7)(b), 660 U.N.T.S. at 232.

¹³³ *Id.* art. 14 (8), 660 U.N.T.S. at 232.

¹³⁴ *Id.* art. 16, 660 U.N.T.S. at 234.

D. *Committee for the Elimination of Discrimination Against Women*

The first international document to recognize equal rights without regard to sex was the UN Charter.¹³⁵ The Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"), which was adopted by the General Assembly on December 18, 1979, and entered into force on September 3, 1981,¹³⁶ focuses on the status of women and provides an extensive bill of rights for women including the right to equal education, health care, and equality before the law.¹³⁷ State parties to the Convention have an obligation to condemn discrimination against women and to implement measures to advance the enjoyment of equal rights by women from all walks of life.¹³⁸

"Discrimination against women" is defined as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹³⁹

Under Article 3 of the Convention on the Elimination of All Forms of Discrimination Against Women:

[S]tate Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹⁴⁰

¹³⁵ U.N. CHARTER, art. 8.

¹³⁶ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, 14 n.1 [hereinafter CEDAW].

¹³⁷ *Id.* art. 1-16, 1249 U.N.T.S. at 16-20.

¹³⁸ *Id.* art. 2, 1249 U.N.T.S. at 16.

¹³⁹ *Id.* art. 1, 1249 U.N.T.S. at 16.

¹⁴⁰ *Id.* art. 3, 1249 U.N.T.S. at 16.

Special measures designed to achieve equality between men and women shall not be considered discrimination, but shall be discontinued when the objective of equality has been achieved.¹⁴¹ The Convention also requires that state parties must take all “appropriate measures”

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.¹⁴²

In ratifying the Convention, many states made reservations in order to preserve national or religious institutions that are in conflict with the Convention.¹⁴³ These reservations have undermined the effectiveness of the Convention, despite the provision in Article 28 that declares, “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted.”¹⁴⁴ The 1993 Vienna World Conference on Human Rights called on the Committee on the Elimination of Discrimination Against Women (“CEDAW”) to review the current reservations to the Convention, and called on states to withdraw their reservations that were incompatible with the object and purpose of the Convention,¹⁴⁵ giving a boost to efforts to get states to withdraw their reservations.

¹⁴¹ *Id.* art. 4, 1249 U.N.T.S. at 16.

¹⁴² *Id.* art. 5, 1249 U.N.T.S. at 17.

¹⁴³ *Id.*; Reservations and Declarations Made Upon Signature, 1249 U.N.T.S. at 121-42, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty10.asp> (last visited Apr. 15, 2003) [hereinafter CEDAW Reservations] (listing further reservations occurring after printing of U.N.T.S. version). These Reservations generally involve three issues: those provisions in conflict with the laws of *Shariah Islam*; those provisions incompatible with national laws regarding succession to the throne; and those provisions of national law involving children taking the nationality of their mothers. *Id.*

¹⁴⁴ *Id.* art. 28(2), 1249 U.N.T.S. at 23.

¹⁴⁵ World Conf. on Hum. Rts., Vienna Declaration and Programme of Action, U.N. GAOR, art. II, ¶ 39, U.N. Doc. A/CONF.157/23 (1993).

Under the Convention, implementation is reviewed through submission of periodic reports by state parties to the CEDAW.¹⁴⁶ CEDAW consists of twenty-three members elected by the state parties to serve in their personal capacities.¹⁴⁷ CEDAW reviews the reports from the states and then reports on its findings to the state parties, the UN Commission on the Status of Women, and the UN General Assembly.¹⁴⁸ Under the Convention, CEDAW "shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted."¹⁴⁹ In 1996 the General Assembly authorized two annual sessions of three weeks each.¹⁵⁰ Because of significant time constraints, CEDAW does not have the power of many of the other UN treaty organs. The Convention itself sets up neither an inter-state nor individual complaint system, which prevents the CEDAW from strengthening its authority.

Article 29(1) of the Convention gives jurisdiction to the ICJ for disputes between the state parties regarding the interpretation or application of the Convention.¹⁵¹ However, Article 29(2) allows states to opt out of Article 29(1) and decline to accept the ICJ's jurisdiction.¹⁵² Many of the state parties that have made reservations incompatible with the goals of the Convention have opted out of the ICJ's jurisdiction, making it difficult for other states to challenge the reservations.¹⁵³

On December 22, 2000, an Optional Protocol authorized the Committee to allow individuals or groups of individuals to submit complaints against a state party to the Protocol.¹⁵⁴ The confidential process gives a responding state six months to provide a written response to the views of the Committee.¹⁵⁵ In addition, under Article 8, a confidential inquiry

¹⁴⁶ CEDAW, *supra* note 136, art. 17-18, 1249 U.N.T.S. at 21-22.

¹⁴⁷ *Id.* art. 17(1), 1249 U.N.T.S. at 21.

¹⁴⁸ *Id.* art. 21(1)-(2), 1249 U.N.T.S. at 22.

¹⁴⁹ *Id.* art. 20(1), 1249 U.N.T.S. at 22.

¹⁵⁰ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 51/68, U.N. GAOR, 51st Sess., Supp No. 49, at 198, U.N. Doc. A/Res/51/68 (1996).

¹⁵¹ CEDAW, *supra* note 136, art. 29(1)-(2), 1249 U.N.T.S. at 23.

¹⁵² *Id.*

¹⁵³ See generally CEDAW Reservations, *supra* note 143 (33 out of 97 signatory states to CEDAW opted out of Article 29(1)).

¹⁵⁴ CEDAW, *supra* note 136, Optional Protocol, G.A. Res. 4, U.N. GAOR, 54th Sess., Agenda Item 109, Annex, art. 2, at 3, U.N. Doc. A/RES/54/4 (1999), available at <http://www.un.org/womenwatch/daw/cedaw/protocol.op.pdf> (last visited Apr. 15, 2003).

¹⁵⁵ *Id.* art. 6, ¶¶ 1-2.

can be conducted by one of the Committee members when it receives reliable information of “grave or systematic violations.”¹⁵⁶

Moreover, CEDAW allows for NGO input in several ways. First, rule 47 of the Rules of Procedure allows NGO written submissions by invitation only.¹⁵⁷ Second, rule 68(1) of the Rules of Procedure allows submissions “by others on behalf of an alleged victim where the alleged victim consents.”¹⁵⁸ Third, rule 83(3) of the Rules of Procedure allows the Committee to request additional information from, among others, NGOs.¹⁵⁹ Through these three avenues, NGOs may be able to submit an *amicus* brief, among other courses of action.

E. *Committee on the Rights of the Child*¹⁶⁰

The Convention on the Rights of the Child, the most widely adopted human rights treaty, was adopted on November 20, 1989 and entered into force on September 2, 1990.¹⁶¹ For the purposes of the Convention, a child is understood to be “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹⁶² The Convention was the first time many of the international civil, political, economic and social rights laid out in other human rights treaties were extended to children.¹⁶³

¹⁵⁶ *Id.* art. 8, ¶ 1.

¹⁵⁷ *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, annex I, U.N. Doc. A/56/38(Supp), reprinted in *Compilation of Rules of Procedure Adopted by Human Rights Treaty Bodies*, U.N. Human Rights Instruments, addendum, ch. IV, U.N. Doc. HRI/GEN/3/Add.1 (2002), available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc764043c1256a450044f331/9430376abc72c30ec1256bcd00395ed9/\\$FILE/G0241183.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc764043c1256a450044f331/9430376abc72c30ec1256bcd00395ed9/$FILE/G0241183.pdf) (last visited Apr. 15, 2003).

¹⁵⁸ *Id.* rule 68(1).

¹⁵⁹ *Id.* rule 83(3).

¹⁶⁰ The official website for the Committee on the Rights of the Child may be found at <http://www.unhchr.ch/html/menu2/6/crc/>.

¹⁶¹ See Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁶² *Id.* art. 1, 1577 U.N.T.S. at 46.

¹⁶³ Nigel Cantwell, *The Origins, Development and Significance of the United Nations Convention on the Rights of the Child*, in *THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE 'TRAVAUX PREPARATOIRES'* 19 (S. Detrick ed., 1992) reprinted in *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 512, 516 (Philip Alston & Henry J. Steiner eds., 2d ed. 2000).

The Convention also establishes the Committee on the Rights of the Child ("CRC"), whose task it is to review the reports on implementation which state parties are obliged to submit.¹⁶⁴ The CRC does not, however, have any power to receive inter-state or individual complaints.¹⁶⁵ However, Article 45 of the Convention and rule 70(2) of the Rules of Procedure allows the Committee to request expert advice from any body it deems competent.¹⁶⁶

F. *Commission on Human Rights and UN Special Rapporteurs*¹⁶⁷

The Commission on Human Rights ("CHR"), created by ECOSOC in 1946 pursuant to its mandate to create "commissions in economic and social fields . . . for the promotion of human rights,"¹⁶⁸ allows NGOs the opportunity to make written and oral statements on environmental human rights issues arguably within the scope of any agenda item appearing on the agenda for the CHR's annual meeting.¹⁶⁹ Expanded from its initial eighteen members to its current fifty-three member states, the CHR meets annually every spring to implement existing human rights treaties.¹⁷⁰ In the January prior to the CHR's session, NGOs can submit written comments on any matter within the scope of the CHR's broad agenda;¹⁷¹ in addition, at the session, the practice of the CHR is to invite these NGOs at the start of each

¹⁶⁴ CRC, *supra* note 161, art. 38, 1577 U.N.T.S. at 56.

¹⁶⁵ *Id.* arts. 44-45, 1577 U.N.T.S. at 59-60.

¹⁶⁶ *Id.* art. 45, 1577 U.N.T.S. at 59-60; Provisional Rules of Procedure, U.N. Comm. on the Rts. of the Child (CRC/C/R), at rule 70(2), U.N. Doc. CRC/C/4 (1991), available at [http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/CRC.C.4.En?OpenDocument](http://193.194.138.190/tbs/doc.nsf/(Symbol)/CRC.C.4.En?OpenDocument).

¹⁶⁷ The official website for the Commission on Human Rights may be found at <http://www.unhchr.ch/html/menu2/2/chr.htm>. The Committee also publishes General Comments of the Convention, General Recommendations on thematic issues and its methods of work, and holds public discussions on particular issues. *Id.*

¹⁶⁸ U.N. CHARTER, art. 68.

¹⁶⁹ See Earthjustice Legal Defense Fund, *Issue Paper: Human Rights and the Environment*, submitted to the 57th Session of the U.N. Comm. on Hum. Rts. (CHR) (2001), available at http://www.earthjustice.org/regional/international/2001_human_rights_issue_paper.pdf; Earthjustice Legal Defense Fund, *Spraying Toxic Herbicides on Rural Colombian and Ecuadorian Communities*, U.N. Doc. E/CN.4/2002/NGO/36 (2002), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/dac6aff3c94f3067c1256b5d005bcd57?OpenDocument>. See also Alston & Steiner, *supra* note 88, at 620.

¹⁷⁰ See Introduction to the Human Rights Committee at <http://193.194.138.190/html/menu2/6/a/introhrc.htm> (last visited Apr. 15, 2003).

¹⁷¹ See generally E.S.C. Res. 1996/31, U.N. ESCOR, 49th plen. mtg. (1996), available at <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>.

new agenda item to make short oral statements in support of those submitted comments.¹⁷² NGO participation helps to focus part of the CHR sessions on otherwise unaddressed, current environmental human rights abuses.

In designating member states, the ECOSOC utilizes a formula to ensure equitable distribution of representation across the different regions of the world.¹⁷³ These representatives do not serve in their individual capacity, but rather as instructed government delegates.¹⁷⁴

The CHR was created to draft treaties implementing Articles 55 and 56 of the UN Charter.¹⁷⁵ While early in its existence it was actually barred from taking actions on specific charges, the CHR did act in a promotional capacity and was responsible for drafting the Universal Declaration, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights.¹⁷⁶ Beginning in the late 1960s, however, human rights concerns began to play a larger role in the formation of the UN's political agenda.¹⁷⁷ Then, the 1980s and 1990s saw both an increased willingness on the part of the member states to accept UN intervention in these issues and an explosion in the number of human rights issues brought before the UN.¹⁷⁸ As a result, today the CHR's jurisdiction has expanded to such a degree in the areas of promotion and protection of human rights that few subjects relating to human rights are not brought before it. Together with the UN Human Rights Center, the Commission coordinates the many UN human rights institutions and is the principal political body addressing charges of human rights violations.

A key mechanism for accomplishing this goal has been the appointment of and reports from experts known as Special Rapporteurs. These individuals provide an informal outlet for NGOs to present written and oral submission on human rights concerns including environmental issues. Tables B and C provide further details on appropriate, special rapporteurs for

¹⁷² *Id.*

¹⁷³ Economic and Social Council website, at http://www.un.org/esa/coordination/ecosoc/sub_bodies.htm (last visited Apr. 7, 2003).

¹⁷⁴ See CHR, Membership, at <http://www.unhchr.ch/html/menu2/2/chrmem.htm> (last visited Apr. 15, 2003) (listing members by nation only, not by individual representative).

¹⁷⁵ U.N. CHARTER, arts. 55, 56.

¹⁷⁶ See Earth Summit 2002, *Toolkit for Women, Commission on Human Rights*, at <http://www.earthsummit2002.org/toolkits/women/un-doku/un-comm/chr/commissi5.htm> (last visited Apr. 15, 2003).

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

environmental human rights. Moreover, Table A cites several reports from special rapporteurs related to environmental human rights issues.

The political nature of the representation on the Commission unfortunately does tend to politicize the treatment of alleged human rights violations. Still, even in the face of the limitations posed by the political maneuverings of the representatives, the Commission has succeeded in bringing human rights issues to the fore as a major component of the UN agenda.

G. *Subcommission on Promotion and Protection of Human Rights*¹⁷⁹

This Subcommission, formerly the Subcommission on the Prevention of Discrimination and Protection of Minorities, was established in 1947 as a subsidiary organ of the CHR.¹⁸⁰ It consists of twenty-six members elected by the CHR from nominees selected by the member states.¹⁸¹ In contrast to the CHR, the members of the Subcommission serve in their individual capacities.¹⁸² No doubt this has in some part contributed to the common conception that of all the human rights institutions, it is the most sympathetic to the human rights cause.

The Subcommission is charged with undertaking studies and making recommendations to the CHR concerning "the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious, and linguistic minorities."¹⁸³ This mandate has been interpreted broadly, allowing the Subcommission to deal with the whole spectrum of human rights issues that are presented to the UN.¹⁸⁴ Not only has the Subcommission undertaken a wide variety of studies and reports and participated in the drafting of human rights instruments, but also it recently has been heavily involved in examination of human rights violations.¹⁸⁵ In fact, it has been instrumental in pressing the UN to

¹⁷⁹ The official website of the Subcommission on Promotion and Protection of Human Rights may be found at <http://www.unhchr.ch/html/menu2/2/sc.htm>.

¹⁸⁰ *See id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *See Subcommission on Prevention of Discrimination and Protection of Minorities Meets in Geneva from 1 to 26 August*, U.N. Info. Serv., U.N. Doc. HR/CN/57 (July 29, 1994), at <http://nativenet.uthscsa.edu/archive/nl/9408/0017.html> (last visited Apr. 15, 2003).

¹⁸⁵ *See id.*

strengthen the complaint procedures. The Subcommission has also played an influential role in getting issues relating to minorities, indigenous peoples, slavery and disappearances on the UN agenda.¹⁸⁶

NGOs have contributed to the environmental human rights work of the Subcommission by participating in working groups such as one focused on transnational corporations¹⁸⁷ and by submitting written comments on agenda items.¹⁸⁸ As with the CHR, such participation helps the Subcommission focus on current, otherwise unaddressed, human rights concerns.

H. *Commission on the Status of Women*

The Commission on the Status of Women was established in 1946 to study, report on, and make recommendations concerning human rights and related issues as they affect women.¹⁸⁹ Its forty-five members are elected as state representatives under a system of regional representation similar to that of the CHR.¹⁹⁰ In the first few decades of its existence the Commission was dedicated to initiating programs to eliminate discrimination against women and was involved in the drafting of the principal treaties dealing with women's rights.¹⁹¹ The political influence of the Commission has grown in

¹⁸⁶ *Id.*

¹⁸⁷ *Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its Fourth Session*, U.N. ESCOR, 54th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/2002/13 (2002), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/971d73502dd31b7bc1256c1e00533042?Opendocument> (last visited Apr. 7, 2003); see also Press Release, Sub-Commission on the Promotion and Protection of Human Rights, Sub-Commission Begins Review of Agenda Item on Prevention on Discrimination; Expert Presents Report on Affirmative Action (Aug. 8, 2002), available at <http://www.unhchr.ch/huricane/hurricane.nsf/view01/7F2A67CF9BE4B670C1256C0F0055982D?opendocument> (last visited Apr. 7, 2003).

¹⁸⁸ E.S.C. Res. 31, U.N. ESCOR, 49th plen. mtg. (1996), available at <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>.

¹⁸⁹ E.S.C. Res. 11, U.N. ESCOR, 2d Sess. (1946), expanded by E.S.C. Res. 22, U.N. ESCOR (1987). See also U.N. Office of the High Comm'r for Hum. Rts., Comm. on the Status of Women, at <http://193.194.138.190/html/menu2/2/cswomen.htm> (last visited Apr. 15, 2003); U.N. Comm. on the Status of Women, at <http://www.un.org/womenwatch/daw/csw> (last visited Apr. 7, 2003) [hereinafter CSW].

¹⁹⁰ CSW, *supra* note 189.

¹⁹¹ *Id.*

recent years as the UN world conferences on women's rights have gained a higher profile.¹⁹²

The Commission has not been able to do much in the way of acting on specific violations of women's rights. Although in the early 1980s the ECOSOC empowered the Commission to review complaints, the Commission still mostly engages in promotional activities.¹⁹³ Currently, their limited capacity to review communications serves more as a source of information for their studies than as an instrument of force, and there is an ongoing effort to expand the Commission's enforcement authority. One current avenue for NGOs is the ability to submit a complaint or petition to the UN Division for the Advancement of Women for advisory purposes.¹⁹⁴

I. *The 1235 and 1503 Procedures for Dealing With Gross Human Rights Violations*

This discussion of the 1235 and 1503 procedures is included primarily for the sake of completeness. Resistance in international human rights law to the recognition of environmental human rights claims as gross violations of human rights at this time makes challenging the use of these procedures to remedy such claims.

From the very beginning, the UN has been inundated with petitions concerning human rights violations from individuals and NGOs. In 1947, however, the CHR declared itself to have no authority to take action with regard to any of these communications.¹⁹⁵ The ECOSOC confirmed that opinion with Resolution 75(V) later that year.¹⁹⁶ The Resolution also established a system of classification for petitions and restricted access to information on the petitions to such a degree that the CHR was unable to access information contained in them, even to take action on specific cases.¹⁹⁷ Despite efforts to reverse this decision and empower the CHR to act on

¹⁹² *Id.*

¹⁹³ *Id.*; see also *Gender Mainstreaming, Extract from Report of the Economic and Social Council for 1997*, at 1, U.N. Doc. A/52/3, available at <http://www.un.org/womenwatch/daw/csw/GMS.PDF> (last visited Apr. 15, 2003) (stating the goal of "mainstreaming the gender perspective into all policies and programmes of the United Nations system").

¹⁹⁴ See generally CSW, *supra* note 189.

¹⁹⁵ *Report to the Economic and Social Council on the First Session of the Commission*, U.N. CHR, U.N. ESCOR, 4th Sess., Supp. No. 1, at 6, U.N. Doc. E/259 (1947).

¹⁹⁶ E.S.C. Res. 75(V), U.N. ESCOR, reprinted in 1947-48 U.N.Y.B. 579.

¹⁹⁷ *Id.*

communications, in July 1959, ECOSOC Resolution 728(F) again reaffirmed the CHR's opinion that it had no power to act on human rights complaints.¹⁹⁸ In general, the Commission still has no power to act on human rights abuses, but two ECOSOC resolutions have created notable exceptions to this general rule.

Resolution 1235 allows the CHR and the Subcommission on Promotion and Protection of Human Rights to examine "gross violations of human rights and fundamental freedoms."¹⁹⁹ If, upon examination, the CHR discovers a consistent pattern of discrimination and violations of human rights, the CHR is authorized to conduct a thorough study and make a report to the ECOSOC.²⁰⁰ While the language of Resolution 1235 makes specific reference to policies of "apartheid as practiced in the Republic of South Africa and in the Territory of South West Africa" and to "racial discrimination as practiced notably in Southern Rhodesia," it is generally understood that 1235 procedures apply to any large-scale violation of human rights.²⁰¹ The CHR's power to establish working groups and the rapporteur system for reporting on violations is derived from its 1235 powers.²⁰² In addition, UN members may also place items falling under 1235 directly on the CHR's agenda without first having them reviewed by the Subcommission.²⁰³

The 1503 procedure was revised in 2000 under ECOSOC resolution 2000/3 to improve upon its effectiveness.²⁰⁴ Resolution 1503 authorizes the

¹⁹⁸ *Report of the Commission on Human Rights*, U.N. ESCOR, 28th Sess., Annex, Agenda Item 10, at 2, U.N.Doc. E/3285 (1959).

¹⁹⁹ *Question of the Violation of Human Rights and Fundamental Freedoms, Including Policies of Racial Discrimination and Segregation and of Apartheid, in All Countries, with Particular Reference to Colonial and Other Dependent Countries and Territories*, U.N. ESCOR, 42nd Sess., Supp. No. 1, at 17, U.N. Doc. E/4393 (1967). See E.S.C. Res. 1235, *supra* note 45.

²⁰⁰ *Id.* at 18.

²⁰¹ *Id.* at 17.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See generally Procedure for Dealing with Communications Concerning Human Rights, E.S.C. Res. 3, U.N. ESCOR, Supp. No. 1, at 24, U.N. Doc. E/RES/2000/3 (2000), available at [http://www.unhchr.ch/huridoca.nsf/\(Symbol\)/E.RES.2000.3.En?OpenDocument](http://www.unhchr.ch/huridoca.nsf/(Symbol)/E.RES.2000.3.En?OpenDocument); Office of the High Commissioner for Human Rights, *The Revised 1503 Procedure*, at <http://www.unhchr.ch/html/menu2/8/1503.htm>. For text of Resolution 1503, see E.S.C. Res. 1503, U.N. ESCOR, 49th Sess., Supp. No.1A, at 8, U.N. Doc. E/4832/Add.1 (1970), available at <http://www.oup.co.uk/pdf/bt/cassese/cases/part3/ch16/1603.pdf> (last visited Apr.

Subcommission to designate a working group, known as the Working Group on Communications, to examine communications received by the U.N. and to bring to the attention of the Working Group on Situations any communication that might "reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."²⁰⁵ Under Resolution 1503 all proceedings must still be kept confidential.²⁰⁶ The Subcommission adheres so closely to this confidentiality directive that petitioner is not even kept abreast of the status of their complaint beyond acknowledgment of its receipt.²⁰⁷

After the Working Group on Situations reviews a petition it may refer the petition back to the Subcommission with comments. The Subcommission in turn reviews the communications and relevant government responses and comments and decides whether to refer the petitions to the CHR for further investigation.²⁰⁸ The CHR's own working group will screen the petitions before the petitions will be accepted by the Commission.²⁰⁹ If a petition is referred to the CHR, the CHR will then decide whether to undertake a thorough study of the situation²¹⁰ or to establish an ad hoc committee to investigate the complaint.²¹¹ Investigative action by an ad hoc committee can only be undertaken with the consent of the states involved.²¹² Proceedings in the CHR ad hoc committee will take place in closed sessions²¹³ but the Commission will reveal the identities of the countries whose conduct is being treated under the 1503 procedures.²¹⁴ The CHR will make a finding and decide whether to refer the situation to the ECOSOC,²¹⁵ who may along with the General Assembly adopt resolutions calling for remedies to the

15, 2003).

²⁰⁵ *Procedure for Dealing With Communications Relating to Violations of Human Rights and Fundamental Freedoms*, U.N. ESCOR, 49th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970) [hereinafter *Procedure for Communications*].

²⁰⁶ *Id.*

²⁰⁷ UNITED NATIONS, FACT SHEET NO. 7 (REV. 1), COMPLAINT PROCEDURES, pt. II, at <http://www.unhchr.ch/html/menu6/2/fs7.htm> (last visited Apr. 15, 2003).

²⁰⁸ *Procedure for Communications*, *supra* note 204.

²⁰⁹ *Id.*

²¹⁰ E.S.C. Res. 1503, *supra* note 204, ¶ 6(a).

²¹¹ *Id.* ¶ 6(b).

²¹² *Id.* ¶ 7.

²¹³ *Id.* ¶ 7(c).

²¹⁴ E.S.C. Res. 3, *supra* note 204, ¶ 7(c).

²¹⁵ E.S.C. Res. 1503, *supra* note 204, ¶ 8.

violations.²¹⁶ Obviously, at this point the debate becomes public. The Assembly's power extends beyond condemnation; in some cases it may call for member states to participate in voluntary sanctions.²¹⁷

The Commission may also choose to turn a 1503 proceeding into a 1235 proceeding, effectively circumventing the confidentiality requirements of 1503.²¹⁸ In such a case, the CHR can still act on a situation without being bound to confidentiality.²¹⁹ The CHR used this arrangement in its 1993 actions against Sudan and Zaire.²²⁰

It is important to note that under 1235 and 1503 procedures individuals do have standing to file, but that this standing does not in a strict sense stem from a violation of any one person's individual rights. Rather, their standing is established by virtue of the violation being part of a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."²²¹ Further, as long as the petitioner has "direct and reliable knowledge" of violations, the petitioner need not be an actual victim of the violation.²²² It is also incumbent upon the petitioner to demonstrate that all domestic remedies have been exhausted, unless it can be shown that domestic remedies would be inadequate or unreasonably delayed.²²³

These human rights resolutions and the implementing organs that deal with human rights violations are effectively working under the principle that any gross violation of the rights laid out in the Universal Declaration or the Conventions is ultimately a failure to fulfill member state obligations as described in Articles 55 and 56 of the UN Charter.²²⁴ As such, the UN is authorized to intervene in matters that otherwise might be deemed the states'

²¹⁶ U.N. CHARTER, art. 14.

²¹⁷ *Id.* art. 41.

²¹⁸ E.S.C. Res. 3, *supra* note 204, ¶ 7(d)(iv).

²¹⁹ *Id.*

²²⁰ See Clarence J. Dias, *Part I: Human Rights-Based Approach to Development*, in OCCASIONAL PAPER 21—HUMAN DEVELOPMENT AND SHLETER: A HUMAN RIGHTS PERSPECTIVE (Clarence J. Dias & Scott Leckie eds., 1996) available at http://hdr.undp.org/docs/publications/ocational_papers/oc21b.htm.

²²¹ E.S.C. Res. 1503, *supra* note 204, ¶ 1.

²²² Sub-Comm. on Prevention of Discrimination and Prot. of Minorities Res. 1, U.N. ESCOR, 24th Sess., at 50-51, U.N. Doc. E/CN.4/1070 (1971), available at <http://www.umn.edu/humanrts/demo/1503Resolution1.html> (last visited Apr. 15, 2003).

²²³ *Id.*

²²⁴ U.N. CHARTER arts. 55, 56.

domestic jurisdiction, notwithstanding the prohibition of Article 2(7) on domestic intervention.²²⁵ Although currently the idea of "gross violations" is identified mainly with violations of the most basic civil and political rights laid out in the Universal Declaration, there is nothing to prohibit international opinion from broadening the definition of what constitutes a fundamental right and thereby recognizing expanded authority to intervene.

J. *UNESCO*²²⁶

UNESCO is a specialized UN agency that has been active in the area of developing human rights law and that may provide an additional dispute resolution process for environmental human rights claims.

UNESCO is comprised of fifty-four members, who are elected by the General Assembly to serve three year terms.²²⁷ The Council has one substantive meeting per year, lasting for about five weeks and alternating between New York and Geneva, Switzerland.²²⁸ Commissions and committees who report back to the Council conduct the year-around work of UNESCO.²²⁹ The Council is charged with "mak[ing] or initiat[ing] studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations" about these matters to the General Assembly.²³⁰ The Council also may "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."²³¹ Furthermore, the Council is authorized to establish relations with, and regulate the activities of, specialized agencies and to set up commissions for the promotion of human rights.²³²

UNESCO has set up a confidential procedure for human rights complaints in its fields of education, science, culture, and information, under

²²⁵ *Id.* art. 2, para. 7.

²²⁶ The official website of UNESCO may be found at <http://www.unesco.org/>.

²²⁷ U.N. CHARTER art. 61, ¶¶ 1-2.

²²⁸ U.N. ESCOR, *What ECOSOC Does*, at <http://www.un.org/esa/coordination/ecosoc/about.htm> (last visited Apr. 15, 2003).

²²⁹ *Id.*

²³⁰ U.N. CHARTER art. 62, ¶ 1.

²³¹ *Id.* art. 62, ¶ 2.

²³² *Id.* arts. 63 & 68.

104 Ex/Decision 3.3 of the Executive Board.²³³ The procedure is implemented by a subcommittee of UNESCO's Executive Board, namely the Committee on Conventions and Recommendations.²³⁴ Individuals, groups of individuals, and NGOs may submit communications to UNESCO if victims of violations or if they have "reliable knowledge" of such violations.²³⁵ Communications are sent to the government concerned and the Committee on Conventions. The Committee examines communications twice yearly in private session.²³⁶ The petitioning party and government concerned are informed of the Committee's decision on the substance of the communication.²³⁷ Any additional enforcement action is dependent upon the Director-General of UNESCO who, under 19C/Resolution 12.1, may make humanitarian representations on behalf of victims of human rights violations whose cases call for urgent consideration.²³⁸ When denial of environmental protection is tied to rights of education, sharing in scientific advancement, participating freely in cultural life, and the right to information under Articles 26, 27, and 19 of the Universal Declaration of Human Rights, the UNESCO procedure may be available as yet another alternative forum.²³⁹

K. *International Labour Organization*²⁴⁰

Like UNESCO, the International Labour Organization ("ILO") is another UN specialized agency with a potential dispute resolution process available to handle environmental human rights claims, albeit only for indigenous and tribal peoples at this time. Although the ILO's work

²³³ *Decision Adopted by the Executive Board*, U.N. ESCOR, 104th Sess., Agenda Item 3.3, at 12-15, U.N. Doc. EX/Decisions (1977), available at <http://unesdoc.unesco.org/images/0002/000284/028409E.pdf>.

²³⁴ *Id.* at 13.

²³⁵ *Id.*

²³⁶ *Id.* at 14.

²³⁷ *Id.* at 15.

²³⁸ *The Protection of the Rights of Minorities*, Pamphlet No. 11, U.N. ESCOR, at 9, available at <http://193.194.138.190/html/racism/minorpam11.doc> (last visited Apr. 15, 2003).

²³⁹ See U.N. ESCOR, *Complaints Concerning Violations of Human Rights in UNESCO's Fields of Competence*, at <http://www.unesco.org/general/eng/legal/hrights/> (last visited on Apr. 7, 2003).

²⁴⁰ For general information about ILO human rights strategies, see Lee Swepston, *Human Rights Complaint Procedures of the International Labour Organization*, in HURST HANNUM, *GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE* 104 (2d ed. 1992).

predominantly focuses on labor rights, not environmental rights, at least one opportunity exists at the ILO to protect environmental human rights, limited to indigenous and tribal peoples. The ILO Convention 169: Indigenous and Tribal Peoples Convention of 1989²⁴¹ ("ILO 169") sets forth several different human rights obligations of ILO members who have ratified it.²⁴² Among those duties, state parties must:

- adopt special measures to safeguard the environment of indigenous and tribal peoples²⁴³
- assess environmental impacts to indigenous and tribal peoples from any development activities and consult with such peoples on such assessments²⁴⁴
- protect and preserve the environment of indigenous and tribal territories²⁴⁵
- safeguard the right of indigenous and tribal peoples to participate in the use, management, and conservation of natural resources on or beneath their land²⁴⁶
- consult with indigenous and tribal peoples regarding their relocation in light of development activities and safeguard their right to return after the development activity ends.²⁴⁷

Whenever a state party to ILO 169 fails to adhere to these standards, then an industrial association of employers or workers on behalf of indigenous and tribal individuals and groups (but not those individuals or groups themselves)²⁴⁸ can pursue a two-part strategy against the state party.

²⁴¹ Indigenous and Tribal Peoples Convention of 1989, *entered into force* Sept. 5, 1991, 72 ILO Official Bull. 59, *available at* <http://www.ilo.org/ilolex/english/convdisp1.htm> [hereinafter ILO 169].

²⁴² To date, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, Peru, Venezuela have ratified ILO 169. *See* ILOLEX, *Ratifications*, *at* <http://ilolex.ilo.ch:1567/cgi-lex/ratifice.pl?C169> (last visited Apr. 15, 2003).

²⁴³ ILO 169, *supra* note 241, art. 4(1).

²⁴⁴ *Id.* art. 7(3).

²⁴⁵ *Id.* art. 7(4).

²⁴⁶ *Id.* art. 15.

²⁴⁷ *Id.* art. 16.

²⁴⁸ The ILO determines what constitutes an industrial association of employers or workers. However, the more recognized the association or the closer its interests are to the dispute,

That two-part strategy is set forth in Articles 24 to 34 of the ILO Constitution²⁴⁹ and summarized below.

Although the number of ILO Members bound by ILO 169 is small, the list includes many countries that have permitted and/or will permit within their borders major development projects that advance the interests of multinational corporate and financial institutions at the expense of certain environmental human rights of indigenous and tribal peoples. Consequently, the two-step strategy to enforce ILO 169 obligations is an important accountability mechanism for such development. Moreover, because the strategy has not been used frequently, particularly in the case of ILO 169,²⁵⁰ the door is wide open to shape this area of international environmental law enforcement.

The first step involves submitting a representation of non-observance of ILO 169.²⁵¹ An industrial association of employers or workers on behalf of indigenous and tribal individuals or groups (but not an individual or group itself) can present to the ILO's International Labour Office a representation that a state party "has failed to secure in any respect the effective observance within its jurisdiction of [ILO 169]."²⁵²

The representations must:

- a. be in writing;
- b. come from an industrial association with proof of status where possible;
- c. concern an ILO Member State Party to ILO 169;
- d. include well-documented, well-substantiated, and complete allegations of how the state party has failed to observe ILO 169;

the more likely the ILO is to give its written submissions more weight. See Swepston, *supra* note 240, at 104.

²⁴⁹ ILO CONSTITUTION, arts. 24-34, available at <http://www.ilo.org/public/english/about/iloconst.htm> (last visited Apr. 15, 2003).

²⁵⁰ See ILO, *Use of Complaints Procedure, in Practice*, at http://www.ilo.org/public/english/standards/norm/enforced/complnt/a26_use.htm (last modified Oct. 20, 2000) [hereinafter *Complaints Procedure*].

²⁵¹ See ILO, *Article 24 Representation Procedure*, at <http://www.ilo.org/public/english/standards/norm/enforced/reprsnt/index.htm> (last modified Oct. 20, 2000).

²⁵² See ILO CONSTITUTION, *supra* note 249, art. 24.

- e. be in any language, but preferably English, French, Spanish (ILO official languages) or German, Russian, or Chinese (additional ILO working languages); and
- f. be mailed to:
Director-General
International Labour Office
4, route des Morillons
CH-1211 Geneva 22
Switzerland
T: 41.22.799.6026 or 41.22.799.6111
F: 41.22.799.8533 or 41.22.798.8685
E: cabinet@ilo.org or ilo@ilo.org

The International Labour Office provides the representation to the ILO Governing Body.²⁵³ After the ILO Governing Body declares the representation receivable as to form, an *ad hoc* committee appointed by the ILO Governing Body from among its members considers the substance of the representation.²⁵⁴ The *ad hoc* committee asks the government for comments and may also ask the filing organization for additional information.²⁵⁵ The *ad hoc* committee then reviews the materials and makes a recommendation to the ILO Governing Body.²⁵⁶

Based on the recommendation, the ILO Governing Body then decides whether the government's response is satisfactory.²⁵⁷ If the ILO Governing Body decides in favor of the government, then the procedure is closed and the ILO Governing Body may publish the allegations and the government response.²⁵⁸ If the ILO Governing Body decides against the government, then the ILO Governing Body may decide to pursue a complaint against the government and on behalf of the filing organization under Article 26 of the

²⁵³ ILO, *Article 24 Representation Procedure*, at <http://www.ilo.org/public/english/standards/norm/enforced/reprsnt/index.htm> (last modified Oct. 20, 2000); ILO, *Standing Orders: Representations, Articles 24 and 25 of the Constitution*, art. 2, at <http://www.ilo.org/public/english/standards/norm/enforced/reprsnt/art24.htm#comexam> (last modified Oct. 20, 2000) [hereinafter *Representations*].

²⁵⁴ *Representations*, *supra* note 253, art. 3(1).

²⁵⁵ *Id.* art. 4.

²⁵⁶ *Id.* art. 6.

²⁵⁷ *Id.* art. 7.

²⁵⁸ *Id.* art. 8.

ILO Constitution as discussed below.²⁵⁹ In addition, the ILO Governing Body will still publish the allegations and the government response but along with its own discussion of the case.²⁶⁰

Thus, the representation stage can result in a statement of whether the government is complying with ILO 169. Moreover, the publication of the allegations, government response, and ILO Governing Body discussion, if any, alerts other ILO offices to potential concerns regarding ILO 169 compliance in a given country. Once alerted, those ILO offices are likely to monitor the situation as part of their future agenda.

The second step involves submitting a complaint of non-observance of ILO 169.²⁶¹ Although neither an industrial association of employers or workers nor individuals or groups can submit a complaint, the ILO Governing Body can do so, if it decides that the government's response to a representation is not satisfactory.²⁶² Moreover, any other ILO government and any delegate attending the International Labour Conference can submit a complaint.²⁶³ Thus, even if one government or delegate decides against submitting a representation or fails to do so adequately, other avenues exist for a filing organization to ask another government or International Labour Conference delegate to submit a complaint.

Similar to representations, complaints must:

- a. come from the ILO Governing Body, a government, or Conference delegate;
- b. be in writing;
- c. demonstrate—with well-documented, well-substantiated and complete allegations—that a present or former member of the ILO is not “securing the effective observance of [ILO 169].”²⁶⁴
- d. be in any language, but preferably English, French, Spanish (ILO official languages) or German, Russian, or Chinese (additional ILO working languages); and

²⁵⁹ *Id.* art. 10.

²⁶⁰ *Representations*, *supra* note 253, art. 8.

²⁶¹ See ILO, *Article 26 Complaints Procedure*, at <http://www.ilo.org/public/english/standards/norm/enforced/complnt/index.htm> (last modified Oct. 20, 2000).

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ ILO CONSTITUTION, *supra* note 249, art. 26(1).

- e. be mailed to:
Director-General
International Labour Office
4, route des Morillons
CH-1211 Geneva 22
Switzerland
T: 41.22.799.6026 or 41.22.799.6111
F: 41.22.799.8533 or 41.22.798.8685
E: cabinet@ilo.org or ilo@ilo.org

Just as with representations, the International Labour Office forwards materials to the ILO Governing Body which then forwards the complaint to the government for comments. The ILO Governing Body then establishes, at its discretion, a Commission of Inquiry.²⁶⁵

The Commission of Inquiry can establish its own rules and procedures but usually follows established practices.²⁶⁶ Such practice includes requesting written submissions from both parties on the merits of the case.²⁶⁷ Such submissions are usually shared among the parties and opportunities for responses are usually provided. The Commission of Inquiry also can request information from other governments or NGOs, hold a hearing with parties and witnesses, and conduct on-site visits.²⁶⁸

The Commission of Inquiry eventually produces a report in response to the complaint.²⁶⁹ That report includes recommendations and timetables to assure compliance with the Convention at issue (*i.e.* ILO 169). The Director-General communicates the report to the ILO Governing Body and the concerned government(s), and then publishes it.²⁷⁰ Concerned governments have three months in which to decide to appeal the report to the International Court of Justice.²⁷¹

Similar to the outcome from the filing of representation, publication of the Commission of Inquiry recommendation will alert other ILO offices

²⁶⁵ *Representations*, *supra* note 253, art. 8.

²⁶⁶ See ILO, *Explanation of Article 26 Complaints Practice*, at http://www.ilo.org/public/english/standards/norm/enforced/complnt/art26_2.htm#rules (last modified Oct. 20, 2000).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ ILO CONSTITUTION, *supra* note 249, art. 28.

²⁷⁰ *Id.* art. 29(1).

²⁷¹ *Id.* art. 29(2).

that likely will make the issue part of their future agenda. Moreover, if a government fails to comply with the Commission on Inquiry's recommendations within the specified time or any decision from the International Court of Justice requiring compliance, then the ILO Governing Body may recommend certain actions to the entire ILO Conference and/or establish a subsequent Commission of Inquiry to verify compliance.²⁷²

As for case studies, this two-party strategy discussed in this part does not appear to have been used yet to challenge a lack of compliance with ILO 169. Thus, although one can refer to the list of ILO cases, no specific case studies concern ILO 169.²⁷³

IV. NEWLY EMERGING RIGHTS AND FUNDAMENTAL RIGHTS RECOGNIZED AS CUSTOMARY INTERNATIONAL LAW

Environmental human rights arise at least as often from customary international law rather than codified treaty provisions, so inclusion of this source of law is crucial to any NGO arguments made. Many of the rights recognized in the international agreements above are also recognized as customary international law. An early invocation of human rights as part of customary international law was found in the Nuremberg Charter, charging Nazi leaders with "crimes against humanity."²⁷⁴ A more recent acknowledgment of the universality of some rights recognized in customary law is found in *Filartiga v. Pena-Irala*,²⁷⁵ a decision of the United States Court of Appeals for the Second Circuit which states, "we conclude that official torture is now prohibited by the law of nations."²⁷⁶ "[T]he torturer has become like the pirate and slave trader before him *hostis humani generis*, an enemy of all mankind."²⁷⁷

²⁷² *Id.* arts. 33–34.

²⁷³ See *Complaints Procedure*, *supra* note 250.

²⁷⁴ Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain, and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the Prosecution of the Major War Criminals of the European Axis, Aug. 8, 1945, Charter of the International Military Tribunal, art. 6(c), 59 Stat. 1544, 1547, 3 Bevans 1238, 1242 [hereinafter Nuremberg Charter].

²⁷⁵ 630 F.2d 876, 884 (2d Cir. 1980).

²⁷⁶ *Id.* at 884.

²⁷⁷ *Id.* at 890.

Section 702 of the Third Restatement of the Foreign Relations Law of the United States ("Restatement") gives additional examples of human rights initiatives becoming crystallized into customary international law. The comments following this section indicate that section 702 is a list of human rights generally accepted as customary law.²⁷⁸ The comments further state that the list is neither complete nor closed, and that other rights may have also reached the status of customary law.²⁷⁹

A state violates international law if, as a matter of state policy, it practices, encourages, or condones

- (a) genocide,
- (b) slavery or slave trade,
- (c) the murder or causing the disappearance of individuals,
- (d) torture or other cruel, inhuman or degrading treatment or punishment,
- (e) prolonged arbitrary detention,
- (f) systematic racial discrimination, or
- (g) a consistent pattern of gross violations of internationally recognized human rights.²⁸⁰

The process by which human rights become widely accepted in international customary law is somewhat unique, at least according to the Restatement's comments. The reporters' notes to section 701 suggest that customary human rights law is established in a manner different from other customary law because, historically, human rights have been a matter between a state and its own inhabitants.²⁸¹ According to the notes, customary human rights law may be established through: virtually universal adherence to the UN Charter; virtually universal adherence to the Universal Declaration of Human Rights; widespread participation of states in preparation and adoption of international human rights agreements; widespread support for UN General Assembly resolutions applying international human rights principles; and frequent invocation and application of international human rights principles in both domestic practice and diplomatic practice.²⁸²

²⁷⁸ RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, § 702 cmt. a (1986).

²⁷⁹ *Id.*

²⁸⁰ *Id.* § 702.

²⁸¹ *See id.* §701 n.2.

²⁸² *Id.*

Thus, human rights law is constantly evolving in a multitude of sources and fora, from recognition of rights in treaties, UN resolutions, and domestic state practice, to the level of custom and *jus cogens*. Many protections originate in internal domestic law, with gradual recognition as general principles of international law if common to most legal systems. Such is arguably becoming the case for inclusion of environmental degradation among existing human rights, as well as the addition of new human rights focused solely on the environment.²⁸³

V. SEEKING ENFORCEMENT IF A CLAIM PREVAILS AND A NATION-STATE FAILS TO COMPLY

In some cases, a petitioner will bring a human rights claim in one of the above UN human rights bodies against a nation-state and prevail, but the nation-state will fail to comply with the decided-upon remedy. When a state fails to comply with the decision of a UN human rights body, several additional steps may be necessary and/or possible to obtain enforcement of the decision. Although some measures are rarely, if ever, invoked up to this point in time, their availability and potential use should not be overlooked.

A. *Notify the UN High Commissioner for Human Rights*

If the human rights body rendering the decisions fails to do so within a reasonable amount of time, the petitioner or, where appropriate, the *amicus curiae*, should notify the Office of the UN High Commission for Human Rights ("OHCHR") of a state's failure to comply with a decision.²⁸⁴

The position of High Commissioner on Human Rights ("HCHR") was established under UN General Assembly Resolution 48/141 of December 20, 1993.²⁸⁵ The HCHR has an official position with the principal responsibility for UN human rights activities under the direction of the Secretary General.²⁸⁶ The HCHR's most important function is to "play an active role in removing the current obstacles and in meeting the challenges to the full realization of all the human rights and in preventing the continuation of

²⁸³ See *supra* text accompanying notes 274-282.

²⁸⁴ The High Commissioner for Human Rights at the UN may be contacted through the UN website at <http://www.unhchr.ch/html/hchr.htm>.

²⁸⁵ G.A. Res. 48/141, U.N. GAOR, 48th Sess., Supp. No. 49, at 261, U.N. Doc. A/Res/48/141 (1993).

²⁸⁶ *Id.*

human rights violations throughout the world.”²⁸⁷ The broad language allows the HCHR to be actively engaged in efforts to prevent human rights violations around the world and to address any modern human rights problem.

The HCHR has the rank of an Under-Secretary General of the UN.²⁸⁸ She is charged with the supervision of the Human Rights Center, the human rights secretariat of the UN, and with the coordination of the UN's promotional and protection activities.²⁸⁹ The HCHR is appointed by the Secretary General with the approval of the General Assembly for a term of four years, with a possible renewal of another four years.²⁹⁰ In making the appointments, the Secretary General pays attention to geographic rotation.²⁹¹

B. *Encourage the HCHR to Notify the UN Secretary-General*

After the petitioner and/or *amicus curiae* notifies the HCHR of a nation-state's failure to comply with a human rights decision, the petitioner or *amicus curiae* should confirm with the HCHR when the HCHR notifies the UN Secretary-General. The UN Secretary-General is authorized pursuant to Article 99 of the UN Charter, if a nation-state's failure to abide by a decision causes a breach of international peace and security, to appeal to the UN Security Council to take measures to enforce such human rights decisions.²⁹²

C. *Encourage the UN Security Council to Take Enforcement Action*

The UN Security Council has several measures to compel a nation-state to comply with a decision of a human rights body that is legally binding. Failure to comply can lead to ongoing negotiations between the violating state and the UN Secretary General to reach a diplomatic solution, the imposition of economic sanctions against the violating nation, and even

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ See UN High Commissioner of Human Rights, at <http://www.unhchr.ch/html/hchr/hchrbio.htm> (last visited Apr. 15, 2003).

²⁹² U.N. CHARTER art. 99.

the threat of undertaking military force if the human rights violation is not remedied.²⁹³

VI. CONCLUSION

This Article has provided a comprehensive array of fora and approaches by which environmental degradation may be challenged in the UN system as a violation of human rights. As the analysis indicates, these avenues of enforcement vary widely in the extent to which they have been used and may be used effectively for these type of claims. The challenges and obstacles to enforcement of international environmental law may be more familiar to lawyers and other advocates of public international law than to those who are more grounded in domestic environmental law. Among lawyers and other advocates of public international law, the fora for the environmental human rights claims outlined in this Article may be more familiar to human rights lawyers and advocates than to those specializing in international environmental law. Consequently, progressive enforcement of international environmental law may well depend upon drawing lessons from the advances in human rights enforcement in domestic courts, use of the more expansive supranational fora available for human rights claims, and greater recognition of the substantive relationship between environmental degradation and human rights violations. A necessary first step is for environmental lawyers and advocates to join forces with human rights lawyers and advocates so as to improve familiarity with the fora and approaches in the Article.

Despite the relative weakness and challenges to some of these methods, there is a need to use them in order to strengthen them. If strengthened, they have the potential to be powerful tools not merely for public recognition of environmental degradation throughout the globe as human rights problems, but for remedial measures and sanctions as well. The purpose of this Article is to encourage and enable such use by advocates to lay the groundwork for more meaningful, expanded protection of the environment and human rights.

²⁹³ *Id.* arts. 39-45. For a hypothetical scenario in which Security Council enforcement action might be appropriate and necessary in response to an environmental disaster, see Linda A. Malone, *Discussion in the Security Council on Environmental Intervention in the Ukraine*, 27 LOY. L.A. L. REV. 893 (1994).

TABLE A
SOURCES OF INTERNATIONAL LAW APPLICABLE TO
ENVIRONMENTAL HUMAN RIGHTS¹

RIGHT	TREATY PROVISIONS ²	DECLARATION PROVISIONS ³	RESOLUTIONS, DECISIONS, AND REPORTS ⁴	INTERNATIONAL COURT DECISIONS ⁵	DOMESTIC CONSTITUTIONAL PROVISIONS ⁶
Environment: Clean Environment; Healthy Environment; Environmental Protection	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, http://www.cidh.oas.org/Basicos/basic5.htm ("Protocol of San Salvador"), art. 11 (<i>n.b.</i>). Although this instrument was created under the auspices of the Organization of American States, not the United Nations, the Protocol of San Salvador is the first human rights treaty to recognize a right to the environment and should be mentioned in environmental human rights submissions to the UN human rights bodies).	Stockholm Declaration on the Human Environment, http://www.unep.org/DoDocuments/Default.asp?DocumentID=97&ArticleID=1501 , particularly Principle 1. Draft Declaration of Principles on Human Rights and the Environment, Annex I to <i>Final Report, Human Rights and the Environment</i> , prepared by Mrs. Fatma Zohra Ksentini, <i>Special Rapporteur on Human Rights and the Environment</i> , UN Doc. E/CN.4/Sub.2/1994/9 (1994), available at http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/eeab2b6937bcca18025675c005779c3?OpenDocument .	<i>Final Report, Human Rights and the Environment</i> , prepared by Mrs. Fatma Zohra Ksentini, <i>Special Rapporteur on Human Rights and the Environment</i> , UN Doc. E/CN.4/Sub.2/1994/9 (1994), available at http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/eeab2b6937bcca18025675c005779c3?OpenDocument . <i>The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations</i> , Report of the Sessional Working Group on the Working Methods and Activities of Trans-National Corporations on its Second Session. UN Doc. E/CN.4/Sub.2/2000/12 (2000) ¶ 9(3)(a), 14, 15, 60 (recognizing the right to a healthy environment, the need to assess the impact of transnational corporations on such right, and the ability to read broadly mandates in the sub-commission's resolution for the working group so as to support such work in this area).		<i>See generally</i> Robert L. Maddex, <i>Constitutions of the World</i> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right)

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Environment, cont.	<p>Indigenous and Tribal Peoples Convention, International Labor Convention No. 169 (1989), http://iloex.ilo.ch:1567/icgl_text/convde.pl?C169 ("ILO 169"), arts. 4(1), 7(3), 7(4), 15, and 16.</p>	<p>Draft Principles Relating to the Human Rights Conduct of Companies, Annex I to <i>Principles relating to the human rights conduct of companies</i>, UN Doc. E/CN.4/Sub.2/2000/WG.2/WP.1 (2000), Annex 1, ¶¶ 33-35.</p>	<p><i>The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations</i>, Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its First Session. UN Doc. E/CN.4/Sub.2/1999/9 (1999) at ¶ 9(6) (calling on future work to focus on the impacts of transnational corporations on "the right to healthy environment").</p> <p><i>Promotion of the Right to Democratic and Equitable International Order</i>, Res. 2001/65, UN Comm'n on Human Rights, 57th Sess. UN Doc. E/CN.4/RES/2001/65, at ¶ 3(k); Res. 2000/62, UN Comm'n on Human Rights, 56th Sess. UN Doc. E/CN.4/RES/2000/62, at ¶ 3(k), (stating repeatedly that "a democratic and equitable international order requires, inter alia, the realization of . . . [t]he right to a healthy environment for everyone.").</p>		

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Environment, cont.			<p><i>Promotion of the Realization of the Rights to Drinking Water and Sanitation</i>, Res. 2001/2, UN Sub-Comm'n on Prom. and Prot. of HRTs, UN Doc. E/CN.4/SUB.2/RES/2001/2 (2001); Res. 2000/8, UN Sub-Comm'n on Prom. and Prot. of HRTs, UN Doc. E/CN.4/SUB.2/RES/2000/8 (2000) (recognizing repeatedly the right to a healthy environment).</p> <p><i>Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights</i>, UN Doc. Res. 2000/72, UN Comm'n on Hum. Rts., 56th Sess. UN Doc. E/CN.4/RES/2000/72, at pmbl., paras. 3-5 ("Adverse Effects from Toxics Resolution") (resulting from the annual report of the UN Special Rapporteur for Toxics, this resolution and subsequent ones each year recognizes a right to a sound environment—as well as rights to life and health—in the need to prevent illicit toxic movement and dumping).</p>		

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Water	<p>International Covenant on Economic, Social, and Cultural Rights, http://www.unhchr.ch/hnt/ml/menu3/b/a_ceser.htm, ("ICESCR"), art. 11(1), 12(1).</p> <p>Convention on the Elimination of Discrimination Against Women, http://www.unhchr.ch/hnt/ml/menu3/b/6/cledaw.htm ("CEDAW"), art. 14(2)(b).</p> <p>Convention on the Rights of the Child, http://www.unhchr.ch/hnt/ml/menu3/b/6/2/crc.htm ("CRC"), art. 24(2)(c).</p> <p>General Comment No. 15, note 5.</p>	<p>Universal Declaration of Human Rights http://www.un.org/Overview/rights.html ("UDHR"), arts. 1, 3 (considered in General Comment 15 along with ICESCR arts. 11 and 12 as supporting a right to water).</p>	<p><i>The Right to Water</i>, UN Committee on Economic, Social and Cultural Rights ("CESCR") General Comment 15, UN Doc. E/C.12/2002/11 (2002), http://193.194.138.190/html/men u2/6/gc15.doc, ("General Comment No. 15") (interpreting IESCR arts. 11 and 12 to include a right to water).</p>		<p>See generally Robert L. Maddex, <i>Constitutions of the World</i> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).</p>

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Health	ICESCR, art. 12. CRC, art. 24.	UDHR, art. 25. Declaration of the Rights of the Child, http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.C.12.2000.4.+CESCR+General+comment+14.En?OpenDocument , Principle 2.	<i>The Right to the Highest Attainable Standard of Health</i> , CESCR General Comment 14, UN Doc. E/C.12/2000/4 (2000), at <i>inter alia</i> , ¶¶ 4, 15, http://193.194.138.190/tbs/doc.asf/(symbol)/E.C.12.2000.4.+CESCR+General+comment+14.En?OpenDocument . CRC Concluding Observations: each year, the CRC prepares several concluding observations that call for the country in question to combat environmental degradation as one means for assuring the health of its children. <i>See, e.g., Concluding Observations on Jordan</i> , UN CRC, UN Doc. CRC/C/15/Add.125 (2000), ¶ 50; <i>Concluding Observations on South Africa</i> , UN CRC, UN Doc. CRC/C/15/Add.122 (2000), ¶ 30; <i>Concluding Observations on Kyrgyzstan</i> , UN CRC, UN Doc. CRC/C/15/Add.127 (2000); <i>Concluding Observations on Armenia</i> , UN CRC, UN Doc. CRC/C/15/Add.119 (2000). <i>See</i> Adverse Effects from Toxics Resolution, <i>supra</i> .	<i>Yanomani v. Brazil</i> , Res. 12/85, Case 7615, Inter-Am. C.H.R., OEA/Ser. L/V/II/L66, 1985, reprinted in doc. 10 rev. 1 (Mar. 5, 1985) Inter-Am. Y.B. on H.R. (Inter-Am. C.H.R.) 264, 272-76, available at http://www.cidh.oas.org/Indigenas/Annex1.htm .	<i>See generally</i> Robert L. Maddex, <i>Constitutions of the World</i> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Residence	International Convention on Civil and Political Rights, http://www.unhcr.ch/ftml/menu3/6/a_ccpr.htm ("ICCPR"), art. 12.				<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Privacy; Inviolability of Home and Family	ICCPR, art. 17. CRC, art. 16.	UDHR, art. 12.		<i>Lopez Ostra v. Spain</i> , App. No. 16798/90, 20 Eur. H.R. Rep. 277 (Judgment of Dec. 4, 1994); <i>Hatton & Others v. U. K.</i> , Application No. 36022/97 (Judgment of Feb. 10, 2001), http://www.echr.coe.int/ .	<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Food	ICESCR, art. 11. CRC, art. 24.	UDHR, art. 25.	<i>The Right to Adequate Food</i> , CESCR General Comment 12, UN Doc. E/C.12/1999/5, (1999), http://www.unhcr.ch/tbs/doc.nsf		<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Sustenance	ICESCR, art. 11. CRC, art. 27.	UDHR, art. 25. DRC, Principle 6.			<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Property	ILO 169, arts. 4(1), 7(3), 7(4), 15, and 16.	UDHR, art. 17.		<i>The Mayagna (Sumo) Awas Tingni Community Case</i> , Inter-Am. Ct. H.R., Case No. 11,557 (filed Oct. 2, 1995), Judgment of February 1, 2000, available at http://www1.unm.edu/humanrts/intertr/series_D.html	<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Information	ICCPR, art. 19. Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, http://www.uncece.org/en/vpp/documents/cep43e.pdf ("Aarhus Convention"), arts. 4-5.	UDHR, art. 21. Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26, Annex I, http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm ("Rio Declaration"), Principle 10.		<i>Huorani v. Ecuador</i> , Report on the Situation of Human Rights in Ecuador, Inter-Am. C.H.R., OEA/ser. L/V/II.96, doc. 10 rev. 1 (Apr. 24, 1997), at http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuador.htm .	<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Public Participation	ICCPR, art. 19. Aarhus Convention, art. 6-8.	UDHR, art. 21. Rio Declaration, Principle 10.		<i>Huorani v. Ecuador</i> , Report on the Situation of Human Rights in Ecuador, Inter-Am. C.H.R., OEA/ser. L/V/II.96, doc. 10 rev. 1 (Apr. 24, 1997), at http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuador.htm .	<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Speech; Association	ICCPR, arts. 19, 22. CRC, art. 13, 15.	UDHR, arts. 19, 20.			<i>See generally</i> Robert L. Maddex, <u>World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Vote	ICCPR, art. 25.	UDHR, art. 21.			<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Life	ICCPR, art. 6. CRC, art. 6.	UDHR, art. 3.	<i>See</i> Adverse Effects from Toxics Resolutions, <i>supra</i> .	<i>Huani v. Ecuador</i> , Report on the Situation of Human Rights in Ecuador, Inter-Am. C.H.R., OEA/ser. L/V/II.96, doc. 10 rev. 1 (Apr. 24, 1997), at http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuator.htm . <i>Yanomami</i> , Res. 12/85, Case 7615, Inter-Am. C.H.R., OEA/ser. L/V/II.66, doc. 10 rev. 1 (Mar. 5, 1985), reprinted in 1985 Inter-Am. Y.B. on H.R. (Inter-Am. C.H.R.) 264, 272-76, <i>available at</i> http://www.cidh.oas.org/Indigenas/Annex1.htm .	<i>See generally</i> Robert L. Maddex, Constitutions of the World (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Liberty or Security of Person	ICCPR, art. 9. CRC, art. 37.	UDHR, art. 3.			<i>See generally</i> Robert L. Maddex, Constitutions of the World (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Humane Treatment	ICCPR, art. 7. CRC, art. 37.	UDHR, art. 5. DRC, Principle 9.			<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).
Equal Protection	ICCPR, art. 26.	UDHR, art. 7.	UN Committee on the Elimination of Discrimination Against Women ("CEDAW Comm."); <i>Summaries of Concluding Observations</i> GA Res. 34/180, UN GAOR, Supp. No. 46, at 193, UN Doc. A/34/180 (1981), http://www.un.org/documents/ga/res/34/a34res180.pdf ; Concluding Observations on Romania, CEDAW Comm., UN Doc. CEDAW/C/2000/II/Add.7 at ¶ 38 (2000), http://www.un.org/womenwatch/daw/cedaw/committee.htm .	<i>The Lubicon Lake Band v. Canada</i> , Human Rights Committee, Communication No. 167/1984, CCPR/C/38/D/167/1984 (28 Mar. 1990), available at: http://unhchr.ch/tbs/doc.nsf/(Symbol)/c3166b134879a76fc125696 .	<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

RIGHT	TREATY PROVISIONS	DECLARATION PROVISIONS	RESOLUTIONS, DECISIONS, AND REPORTS	INTERNATIONAL COURT DECISIONS	DOMESTIC CONSTITUTIONAL PROVISIONS
Equal Protection, cont.	Convention on the Elimination of Racial Discrimination, http://www.unhchr.ch/hnt/ml/menu3/b/d_icerd.htm , at preamble, art. 5. CEDAW, preamble.	Declaration on the Elimination of Racial Discrimination, http://www.unhchr.ch/hnt/ml/menu3/b/9.htm , art. 7 Declaration of the Elimination of Discrimination Against Women, http://www.unhchr.ch/hnt/ml/menu3/b/21.htm , pmbl.			
Culture	ICESCR, art. 15. CRC, art. 30.	UDHR, art. 27.		<i>The Lubicon Lake Band v. Canada</i> , Human Rights Committee, Communication No. 167/1984, CCPR/C/38/D/167/1984 (28 Mar. 1990), available at: http://unhchr.ch/tbs/doc.nsf/(Symbol)/c3166b134879a76fc125696 .	<i>See generally</i> Robert L. Maddex, <u>Constitutions of the World</u> (Congressional Quarterly Inc. (2001)) (including constitutions of the world that may contain this right).

1. Please note that the information listed in this chart is not exhaustive but instead suggest some of the leading sources that support each of these environmental human rights.

2. Treaties are akin to international conventions which are a source of international law. *See* Statute of the International Court of Justice, Jun. 26, 1945, art. 38(1)(a), 59 Stat. 1031, 1060, T.S. No. 993, <http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm> (“international conventions, whether general or particular, establishing rules expressly recognized by the contesting states”).

3. Declarations comprise part of international custom which is a source of international law. *See* Statute of the International Court of Justice, Jun. 26, 1945, art. 38(1)(b), 59 Stat. 1031, 1060, T.S. No. 993, <http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm> (“international custom, as evidence of a general practice accepted as law”).

4. Resolutions, decisions, and reports are evidence of international custom which is a source of international law. *See* Statute of the International Court of Justice, Jun. 26, 1945, art. 38(1)(b), 59 Stat. 1031, 1060, T.S. No. 993, <http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm> (“international custom, as evidence of a general practice accepted as law”). Please note that many of the sources in this column are repeated and at times expanded in scope on an annual basis.

5. Judicial decisions are a source of international law. *See* Statute of the International Court of Justice, Jun. 26, 1945, art. 38(1)(b), 59 Stat. 1031, 1060, T.S. No. 993, <http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm> (“judicial decisions . . . as subsidiary means for the determination of rules of law”).

6. When a sufficient number of domestic constitutions recognize the same right, then the right can be considered a general principle of law recognized by civilized nations which is a source of international law. *See* Statute of the International Court of Justice, Jun. 26, 1945, art. 38(1)(c), 59 Stat. 1031, 1060, T.S. No. 993, <http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm> (“general principles of law recognized by civilized nations”).

TABLE B
JURISDICTION OF HUMAN RIGHTS BODY OVER THE CLAIM

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Human Rights Committee <a href="http://www.unhcr.ch/html/men
u2/6/hrc.htm">http://www.unhcr.ch/html/men u2/6/hrc.htm	International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, <a href="http://www.unhcr.ch/html/menau3/b/a_copr.
htm">http://www.unhcr.ch/html/menau3/b/a_copr. htm	Association Equal protection Freedom from inhumane treatment Information Inviolability of home and family Liberty and security of person Life Privacy Property Public participation	Afghanistan, Albania, Algeria, Andorra (s), Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China (s), Colombia, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Cote d'Ivoire, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau (s), Guiana, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic (s), Latvia, Lebanon, Lesotho, Liberia (s), Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia,

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Human Rights Committee, cont.		<p>Residence</p> <p>Speech or expression</p> <p>Vote</p>	<p>Nauru (s), Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay,</p> <p>Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines,</p> <p>San Marino, Sao Tome and Principe (s), Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain,</p> <p>Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Togo</p> <p>Trinidad and Tobago, Tunisia, Turkey (s), Turkmenistan, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay,</p> <p>Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe</p>
UN Committee on Economic, Social, and Cultural Rights <a href="http://www.unhchr.ch/html/men
u2/6/cescr.htm">http://www.unhchr.ch/html/men u2/6/cescr.htm	<p>International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, <a href="http://www.unhchr.ch/html/men
u3/b/a_cescr.htm">http://www.unhchr.ch/html/men u3/b/a_cescr.htm</p>	<p>Culture</p> <p>Food</p> <p>Health</p> <p>Housing</p>	<p>Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize(s), Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Columbia,</p> <p>Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Cote d'Ivoire, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti,</p>

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Committee on Economic, Social, and Cultural Rights, cont.		Sustenance Water	<p>Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Finland,</p> <p>France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia (s), Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe (s), Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa (s), Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, The Former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey (s), Turkmenistan, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States (s), Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe</p>

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
<p>UN Committee on the Elimination of Racial Discrimination</p> <p>http://www.unhchr.ch/html/men/uz2/6/cerd.htm</p>	<p>International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195, http://www.unhchr.ch/html/menu3/b/d_icerd.htm.</p>	<p>Environmental human rights deprived on the basis of race</p>	<p>Afghanistan, Albania, Algeria, Andorra (s), Argentina, Armenia, Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan (s), Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Columbia, Comoros (s), Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Cote d'Ivoire, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada (s), Guatemala, Guinea, Guinea-Bissau (s), Guiana, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nauru (s), Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay (s), Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe (s), Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia,</p>

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Committee on the Elimination of Racial Discrimination, cont.			Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, The Former Yugoslav Republic of Macedonia, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe
UN Committee on the Elimination of Discrimination against Women http://www.unhchr.ch/humr/men u2/6/cedw.htm	Convention on the Elimination of Discrimination against Women, http://www.unhchr.ch/html/menu3/b/1ceda w.htm	Environmental human rights deprived on basis of gender	Afghanistan (s), Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Columbia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Cote d'Ivoire, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guiana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg.

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Committee on the Elimination of Discrimination against Women, cont.			Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sampa, Sao Tome and Principe (s), Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey (s), Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America (s), Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe
UN Committee on the Rights of the Child <a href="http://www.unhchr.ch/html/men
u2/6/crc.htm">http://www.unhchr.ch/html/men u2/6/crc.htm	Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, http://www.unhchr.ch/html/menu3/b/62crc.h tm	Environmental human rights deprived of children	Afghanistan, Albania, Algeria, Andorra, Angola, Anguilla and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Columbia, Comoros, Congo, Cook Islands, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Cote d'Ivoire, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti,

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Committee on the Rights of the Child, cont.			Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guiana, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Martial Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sampa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia (s), South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey (s), Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America (s), Uruguay,

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
UN Committee on the Rights of the Child, cont.			Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Yugoslavia, Zambia, Zimbabwe
UN Permanent Forum on Indigenous Issues <a href="http://www.unhchr.ch/indigenou
s/forum.htm">http://www.unhchr.ch/indigenou s/forum.htm	UN ECOSOC Resolution 2000/22, <a href="http://193.194.138.190/huridoca/huridoca.n
sf/(Symbol)/E.RES.2000.22.En?OpenDocum
ent">http://193.194.138.190/huridoca/huridoca.n sf/(Symbol)/E.RES.2000.22.En?OpenDocum ent	Environmental human rights deprived of indigenous peoples See Draft United Nations Declaration on the Rights of Indigenous Peoples, United Nations Sub-Commission on Prevention of Discrimination and Rights of Minorities, 46th Sess., Resolution 1994/45, U.N. Doc. E/CN.4/Sub.2/1994/56 (1994), <a href="http://www.unhchr.ch/hurid
ocda/huridoca.nsf/2848af40
8d01ec0ac1256609004e770
b/c4fc6deafb3b0c802566
cf003bea6770penDocumen
t#res45">http://www.unhchr.ch/hurid ocda/huridoca.nsf/2848af40 8d01ec0ac1256609004e770 b/c4fc6deafb3b0c802566 cf003bea6770penDocumen t#res45	All current United Nations member-states, http://www.un.org/Overview/unmember.html .
UN Human Rights Special Rapporteurs, <a href="http://www.unhchr.ch/html/men
u27/b/tm.htm">http://www.unhchr.ch/html/men u27/b/tm.htm	Various resolutions of the UN Commission on Human Rights and UN Sub-Commission on the Promotion and Protection of Human Rights, themselves created pursuant to UN Charter, art. 68.	Rights within the scope of the title of the given rapporteur as further detailed in the resolution creating that rapporteur's mandate.	All current United Nations member-states, http://www.un.org/Overview/unmember.html .

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
<p>UN Human Rights Special Rapporteurs, cont.</p> <p>- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. <a href="http://www.unhcr.ch/html/men
u277b/mmen.htm">http://www.unhcr.ch/html/men u277b/mmen.htm.</p> <p>- Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people. <a href="http://www.unhcr.ch/html/men
u277b/mindp.htm">http://www.unhcr.ch/html/men u277b/mindp.htm.</p> <p>- Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. <a href="http://www.unhcr.ch/html/men
u277b/mtow.htm">http://www.unhcr.ch/html/men u277b/mtow.htm.</p>			

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
<p>UN Human Rights Special Rapporteurs, cont.</p> <p>- Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences. http://www.unhchr.ch/html/mennu277/b/mwom.htm.</p> <p>- Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers. http://www.unhchr.ch/html/mennu277/b/mjil.htm.</p> <p>- Special Rapporteur of the Commission on Human Rights on the right to food. http://www.unhchr.ch/html/mennu277/b/mfood/ .htm.</p> <p>- Special Representative of the Secretary-General on the situation of human rights defenders. http://www.unhchr.ch/html/mennu277/b/mdef.htm.</p>			

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
<p>UN Human Rights Special Rapporteurs, cont.</p> <p>- Special Representative of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.</p> <p>http://www.unhchr.ch/html/men u2771b/mrad.htm.</p>			
<p>Economic and Social Council 1503 Procedure</p> <p>http://www.unhchr.ch/html/men u28/1503.htm</p>	<p>Procedure for dealing with communications relating to violations of human rights and fundamental freedoms, ECOSOC Resolution 1503, http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/1970.1503.En?OpenDocument.</p> <p>Revised by:</p> <p>Procedure for dealing with communications concerning human rights, ECOSOC Resolution 2000/3, http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.RES.2000.3.En?OpenDocument.</p>	<p>Protection from gross and consistent pattern of violations in various areas, including environmental law</p>	<p>All current United Nations member-states, http://www.un.org/Overview/unmember.html.</p>
<p>Commission on the Status of Women</p> <p>http://www.un.org/womenwatch/daw/csw/</p>	<p>Economic and Social Council resolutions 76 (V) of 5 August 1947, 3041 (XI) of 14 and 17 July 1950, 1983/27 of 26 May 1983, 1992/19 of 30 July 1992 and 1993/11 of 27 July 1993.</p>	<p>Environmental human rights related to women</p> <p><i>See generally</i> Political Declaration, UN GA Resolution S-23/2, http://www.un.org/womenwatch/daw/followup/res232e.pdf.</p>	<p>All current United Nations member-states, http://www.un.org/Overview/unmember.html.</p>

HUMAN RIGHTS BODIES/ PROCESSES	INSTRUMENT CREATING BODY/PROCESS	ENVIRONMENTAL HUMAN RIGHTS	NATION-STATES SUBJECT TO BODY OR TREATY ¹
United Nations Education, Scientific and Cultural Organization (UNESCO) Complaint Procedure	See text of Article.	See text of Article.	See http://www.unesco.org/general/eng/about/members.shtml
International Labour Organization (ILO): compliance with Indigenous and Tribal Peoples Convention of 1989 (ILO Convention No. 169), http://www.ilo.org/ilolex/english/convdisp2.htm .	Representations: ILO Constitution, http://www.ilo.org/public/english/about/ilocconst.htm , arts. 24–25. Complaints: ILO Constitution, http://www.ilo.org/public/english/about/ilocconst.htm , arts. 26–34.	Environmental human rights deprived of indigenous and tribal peoples. See Indigenous and Tribal Peoples Convention No. 169, http://www.ilo.org/ilolex/english/convdisp2.htm , arts. 4(1), 7(3), 7(4), 15 and 16.	Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Paraguay, Peru, Venezuela have ratified. See http://www.ilo.org/ilolex/english/newraframeE.htm .

¹ States listed are parties to the treaty. Those with an "(s)" following their name are only signatories.

TABLE C
PRIVATE RIGHTS OF ACTION AVAILABLE

See generally Fact Sheet No. 7/Rev. 1, Complaint Procedures, Office of the High Commissioner for Human Rights, <http://www.unhcr.ch/html/menu62/s7.htm>.

HUMAN RIGHTS BODIES	TYPE OF PRIVATE RIGHT OF ACTION	SIGNIFICANT LIMITATIONS
UN Human Rights Committee http://www.unhcr.ch/html/menu2/6/hrc.htm	Complain/Petition Critique of reports submitted by treaty parties Informal written and/or oral advocacy <i>Amicus curiae</i> submissions	To submit complain/petition against particular nation-state, that nation-state must be party to the Optional Protocol Exhaustion of domestic remedies No related proceeding in another formal international or regional dispute resolution forum No individual complain/petition procedure yet in existence
UN Committee on Economic, Social and Cultural Rights http://www.unhcr.ch/html/menu2/6/cescr.htm	Written Statements Oral statements Critique of reports	
UN Committee on the Elimination of Racial Discrimination http://www.unhcr.ch/html/menu2/6/ceerd.htm	Complain/Petition Critique of reports submitted by treaty parties Informal written and/or oral advocacy	To submit complain/petition against particular nation-state, that nation-state must recognize competence of the Committee Exhaustion of domestic remedies
UN Committee on the Elimination of Discrimination Against Women http://www.unhcr.ch/html/menu2/6/cedw.htm	Complain/Petition Critique of reports submitted by treaty parties Informal written and/or oral advocacy <i>Amicus curiae</i> submissions	To submit complain/petition against particular nation-state, that nation-state must be party to the Optional Protocol Exhaustion of domestic remedies No related proceeding in another formal international or regional dispute resolution forum

HUMAN RIGHTS BODIES	TYPE OF PRIVATE RIGHT OF ACTION	SIGNIFICANT LIMITATIONS
UN Committee on the Rights of the Child http://www.unhcr.ch/html/menu2/6/crc.htm	Critique of reports submitted by treaty parties	No individual complaint/petition procedure yet in existence
UN Permanent Forum on Indigenous Issues http://www.unhcr.ch/indigenous/forum.htm	Informal written and/or oral advocacy Informal written and/or oral advocacy	No individual complaint/petition procedure yet in existence
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health http://www.unhcr.ch/html/menu2/7/b/mmen.htm	Written statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people. http://www.unhcr.ch/html/menu2/7/b/mindp.htm	Written statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights http://www.unhcr.ch/html/menu2/7/b/mitow.htm	Written statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences. http://www.unhcr.ch/html/menu2/7/b/mwom.htm	Written statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers. http://www.unhcr.ch/html/menu2/7/b/mijl.htm	Written statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence

HUMAN RIGHTS BODIES	TYPE OF PRIVATE RIGHT OF ACTION	SIGNIFICANT LIMITATIONS
Special Rapporteur of the Commission on Human Rights on the right to food http://www.unhcr.ch/html/menu2/7/b/mfood.htm	Written Statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
Special Representative of the Secretary-General on the situation of human rights defenders http://www.unhcr.ch/html/menu2/7/b/rndef.htm	Written Statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
Special Representative of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance http://www.unhcr.ch/html/menu2/7/b/rmrac.htm	Written Statement Informal oral statement when visit made to nation-state where problem exists	No individual complaint/petition procedure yet in existence
United Nations Commission on Human Rights http://www.unhcr.ch/html/menu2/2/chr.htm	Written Statement/Issue Statements Oral Statement Critique of reports submitted by UN member states <i>Ad hoc</i> advocacy to expand scope of mandates of UN Special Rapporteurs	No individual complaint/petition procedure yet in existence
United Nations Sub-Commission on the Promotion and Protection of Human Rights http://www.unhcr.ch/html/menu2/2/sc.htm	Written statement, including statements particularly directed to Working Group on Transnational Corporations to continue to pressure corporations to adhere to environmental human rights standards <i>Ad hoc</i> advocacy to expand scope of mandates of UN Special Rapporteurs	No individual complaint/petition procedure yet in existence

HUMAN RIGHTS BODIES	TYPE OF PRIVATE RIGHT OF ACTION	SIGNIFICANT LIMITATIONS
United Nations Sub-Commission on the Promotion and Protection of Human Rights	<i>Ad hoc</i> advocacy to Working Group on Transnational Corporations to continue to pressure corporations to adhere to environmental human rights standards	
UN Commission on Human Rights, including the Economic and Social Council 1503 Procedure http://www.unhcr.ch/huridocda.nsf/(Symbol)/E.RES.2000.3.En?OpenDocument	Complaint/Petition submitted to UN Office of High Commissioner for Human Rights	High threshold for consideration of complaint/petition: a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms occurring in any country of the world
UN Commission on the Status of Women http://www.un.org/womenwatch/daw/csw/	Complaint/Petition submitted care of the UN Division for the Advancement of Women for advisory purposes	