

Human Rights Standards for Conservation

PART III

Which Redress Mechanisms are Available to Peoples and Communities Affected by Conservation Initiatives?

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Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa since 2007. Through its offices in Cape Town, New York, Bangalore and Kota Kinabalu, Natural Justice works at the local level to support Indigenous peoples and local communities, provide advice at the national level and engage in international processes, such as meeting of the Convention on Biological Diversity.

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Despite the wealth of international law that confers rights on Indigenous Peoples and local communities and responsibilities on a wide range of conservation actors, it is often difficult for communities to find effective mechanisms to obtain redress when injustices occur. This paper is intended to help clarify which official redress mechanisms exist and how they can be used. It forms the final part of a series of three papers that aims to serve as a foundation for developing an accessible *Guide to Human Rights Standards for Conservation*.

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Foreword

In 2013 Natural Justice published the second edition of *The Living Convention*¹ – the first compilation of the full extent of international law relevant to Indigenous and Tribal Peoples and local communities. It sets out the specific provisions of relevant international instruments in an integrated compendium, so that – for example – all provisions from across the full spectrum of international law that deal with ‘free, prior and informed consent’ are grouped under the same heading.

Building on its earlier engagement in the Conservation Initiative on Human Rights², the International Institute for Environment and Development (IIED) is working with Natural Justice and an advisory group of Indigenous and other lawyers and practitioners to further develop *The Living Convention* to provide a clear articulation of minimum human rights standards for stakeholders working in the context of protected areas and other effective area-based conservation measures – as described in Aichi Biodiversity Target 11. Like *The Living Convention*, this approach is based on existing international law and policy.

The first publication in the series – *To Which Conservation Actors do International Standards Apply?* – provides an analysis of the relevance of human rights standards to the following conservation actors:

- Governments and their agencies,
- International organisations,
- Businesses, and
- Non-governmental organisations.

The second publication – *Which International Standards Apply to Conservation Initiatives?* – provides an overview of the key international instruments that confer rights and responsibilities on different conservation actors and details the broad categories of rights covered by those instruments.

This final publication in the series provides a review of existing judicial and non-judicial non-state-based redress mechanisms available to Indigenous Peoples and local communities alleging infringement of their rights.

Together, these publications will be presented at the World Parks Congress (Sydney, November 2014) and will form the basis of discussions about next steps. It is expected that these will include – at least – the development of a *Guide to Human Rights Standards for Conservation*, focusing specifically on conservation measures as articulated in Aichi Target 11.

We are extremely grateful to the members of the Technical Advisory Group for their comments on initial drafts of Parts I and II in this series of papers, and welcome further inputs from all interested parties as we prepare to discuss this work at the World Parks Congress.

Dilys Roe and Harry Jonas, 1 November 2014

Summary

In 2008 the World Conservation Congress acknowledged “that injustices to Indigenous Peoples have been and continue to be caused in the name of conservation of nature and natural resources...” Despite the wealth of international law that confers rights on Indigenous Peoples and local communities and responsibilities on a wide range of conservation actors to uphold those rights, it is often difficult for many local people to find proper and effective mechanisms to obtain redress when injustices occur.

There are many different kinds of redress mechanisms that Indigenous Peoples and local communities can access when their human rights are impacted by conservation initiatives including judicial and non-judicial mechanisms administered at the national as well as the international level. But none to date has been effective in acting as a deterrent against continuing injustices. The case of the Endorois people in Kenya highlights some of the challenges facing Indigenous and local communities when trying to remedy the injustices of conservation (Box 1).

BOX 1: THE ENDOROIS: HIGHLIGHTING THE CHALLENGES OF CONSERVATION REDRESS MECHANISMS

The Endorois are an Indigenous people who for centuries have traditionally inhabited the Lake Bogoria area within the Rift Valley province in Kenya. The Endorois exercised customary rights over their traditional lands without challenge from any centralised government until 1973 but the area was then gazetted as a game reserve and after some years of dispute about compensation, the Endorois were finally evicted in 1986, which led to the loss of livestock and severe economic hardship.

Unable to reach agreement with the government, the community sought relief before the national courts. However, they experienced several obstacles including their lack of knowledge of their rights under national and international law, their limited capacity to engage with the legal system, and the lack of legal aid in Kenya. Despite these challenges, in 2000 the community filed a “constitutional reference case” in the Kenya High Court alleging violations of the Kenya Constitution by local county councils. In April 2002, the High Court ruled against the community. In May 2002, the community filed a notice of appeal against the judgement but after more than a year had passed, the Appeals Court still had not issued the necessary documents required to file a substantive appeal. In 2003, the Endorois notified the African Commission of their intent to submit a Communication regarding the issues they faced in relation to the loss of their traditional land. The Endorois alleged several violations of the African Charter including Articles 8 (the right to practice religion), 14 (right to property), 17 (right to culture), 21 (rights to free disposition of natural resources) and 22 (right to development). The Endorois also sought restitution of their land, with legal title and clear demarcation; and compensation for material losses as well as the loss of the freedom to practice religion and culture. The African Commission found for the community on all their claims, recommending various remedial actions from the Kenyan government.

The African Commission’s ruling in the Endorois Decision was hailed as a major victory for Indigenous Peoples across Africa but its effects so far, however, have been mixed. The Endorois community has regained access to most of the land from which it had been excluded, but enforcement has been a challenge. As a result, many of the recommendations have not yet been implemented by the Kenyan government. A new Kenyan Wildlife Bill developed without consultation with the Endorois requires the payment of entrance fees for entry into Lake Bogoria, and criminalizes activities that could endanger wildlife in the area. There are no exceptions provided for the religious and cultural practices of the people indigenous to the land.

The Endorois case is indicative of the challenges that many Indigenous Peoples and local communities face when seeking redress for violations of their rights. Lacking effective national mechanisms, they bring claims at the regional or international level, and even if they obtain a favourable decision, enforcement may be difficult or impossible for a variety of reasons.

Different types of redress mechanisms have different strengths and weaknesses. State-based redress mechanisms can issue binding decisions that parties must abide by but local communities face many challenges in trying to engage with these processes, not least discrimination, weak rule of law, and non-recognition of collective rights.

The focus of this paper is largely on non-state mechanisms since these are widely applicable in different country contexts. Non-state-based regional and international mechanisms have generally been more progressive as far as Indigenous and local community rights, but the judicial mechanisms often have procedural requirements that make access by local communities a challenge while non-judicial mechanisms often face challenges in enforcement of their decisions.

Several kinds of redress mechanisms exist outside of government processes including those that revolve around non-state actors such as businesses. These are generally non-judicial in nature, with an emphasis on mediating between communities and other parties to reach an amicable settlement. In addition there is increasing recognition of more 'bottom-up' processes such as the IUCN-led Whakatane Mechanism that involves communities from the outset, including in the design of the procedures that the mechanism uses. And crucially, the dispute resolution mechanisms of Indigenous Peoples and local communities are increasingly being recognised as a viable method of providing redress for human rights impacts.

The challenges associated with each of the existing mechanisms raise an important question: should a body focused specifically on the conduct of conservation initiatives be formed? One model for such a mechanism is the roundtable approach that industries such as soy and palm oil have formed to certify their operations and in the case of palm oil to settle disputes. A 'Roundtable for Ethical Conservation' could serve as a clearinghouse for states, NGOs and funders to ensure that the conservation initiatives they wish to undertake comply with human rights standards. The Roundtable could also support a dedicated redress mechanism where those in charge of conservation initiatives fail to comply with human rights standards.

Join the debate

What do you think an effective redress mechanism should look like? Does the existing mix of state and non-state, judicial and non-judicial processes cover all that is needed? Or would a roundtable approach work better? We welcome your thoughts on the strengths and weaknesses of the mechanisms that currently exist and your suggestions for any further mechanisms that are needed.

Introduction

1

Conservation Conflicts

Some conservation interventions – such as those typically associated with strict protected areas – can often involve preventing communities from accessing lands and resources that their ancestors have traditionally owned, occupied or otherwise used or acquired. In many countries, protected areas are located on or overlap with the ancestral domains of local people. In the Philippines, for example, as of 2004 at least 69 protected areas overlapped with 86 ancestral domains and community conserved areas of Indigenous Peoples, amounting to an aggregate area of overlap of almost one million hectares.⁵ While a ‘new conservation paradigm’ that respects the rights of Indigenous Peoples is said to have emerged, injustices in the name of conservation continue to occur – as we discuss in Part II of this series.

One conflict that underscores the challenges involved in seeking redress for negative impacts of conservation activities involves the Endorois community, an Indigenous People who for centuries have traditionally inhabited the Lake Bogoria area within the Rift Valley province in Kenya. Lake Bogoria is important to the pastoralist Endorois for livestock grazing, and many other religious and cultural reasons.

Despite the imposition of British jurisprudence in Kenya in 1896, which had a profound effect on land rights in the country, the Endorois exercised customary rights over their traditional lands without challenge from any centralized government until 1973. In that year, however, the Kenyan government gazetted the area as a game reserve, and five years later began denying 400 Endorois families access to their traditional lands. Kenya Wildlife Service – the protected area authority – promised compensation for the loss of access to resources including cash payments, a percentage of tourist revenue, employment in the Game Reserve, and infrastructure improvements. Ultimately, however, less than half of the affected families received cash payments, and none of the other promises were kept. The Endorois were finally evicted in 1986, which led to the loss of livestock and severe economic hardship.⁶

Unable to reach agreement with the government, the community sought relief before the national courts. However, they experienced several obstacles including their lack of knowledge of their rights under national and international law, their limited capacity to engage with the legal system, and the lack of legal aid in Kenya.⁷ Additionally, the community faced opposition from the government even before a lawsuit was filed. For example, one of the community’s lawyers was harassed and arrested, and ultimately charged with incitement to violence and unlawful assembly after organizing a cultural event that was violently broken up by the police. The police also threatened to search the attorney’s law offices.⁸

Despite these challenges, in 2000 the community filed a “constitutional reference case” in the Kenya High Court alleging violations of the Kenya Constitution by local county councils. The community sought relief pursuant to two chapters of the 1969 Kenya Constitution: Chapter V, entitled Protection of Fundamental Rights and Freedoms of the Individual, and Chapter IX, which dealt with Trust Land. In April 2002, the High Court ruled against the community. It concluded that the community’s application did not fall within Chapter V because the community had not alleged that any of the provisions in that chapter “have been contravened or are likely to be contravened.”⁹ In regard to the claims under Chapter IX, the High Court found that the community had been paid compensation when the land was set apart as a game reserve, and that it was the community’s responsibility to appeal if it felt the amount to be inadequate.¹⁰ The High Court found that no appeal of the compensation paid to the community had been filed and held that the time to appeal had passed. Furthermore, the High Court concluded that “In any case there is no proper identity of the people who were affected by the setting aside of the land to form the game reserve.”¹¹ In May 2002, the community filed a notice of appeal of the High Court’s judgment with the Court of Appeal of Kenya (Appeals Court). However, after more than a year had passed, the Appeals Court still had not issued the necessary documents required to file a substantive appeal. Furthermore, because the High Court ruled that no violation of Chapter V of the Kenya Constitution had been alleged, it was not clear that the ruling could even be appealed under Kenya’s appellate rules.¹²

Because of the challenges of obtaining relief at the national level, in 2003, the Endorois notified the African Commission on Human and Peoples Rights (African Commission) of their intent to submit a Communication regarding the issues they faced in relation to the loss of their traditional land.¹³ The African Commission, which is governed by the African Charter on Human and Peoples’ Rights (African Charter), is required to consider Communications if they “are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged...”¹⁴ The Endorois claimed that they fulfilled this requirement based on the reasons discussed above, and the African Commission agreed to consider the case.¹⁵

The Endorois alleged several violations of the African Charter including Articles 8 (the right to practice religion), 14 (right to property), 17 (right to culture), 21 (rights to free disposition of natural resources) and 22 (right to development). The Endorois also sought restitution of their land, with legal title and clear demarcation; and compensation for material losses as well as the loss of the freedom to practice religion and culture.

In its decision, the African Commission first determined that the Endorois are an “indigenous community” and a “people” which entitled them to benefit from provisions of the African Charter that protect collective rights.¹⁶ It then found for them on all their claims, recommending that the Kenyan government should:

- (a) Recognise rights of ownership to the Endorois and restitute Endorois ancestral land.*
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.*
- (c) Pay adequate compensation to the community for all the loss suffered.*
- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.*

The African Commission’s ruling in the Endorois Decision was called “unprecedented” and hailed as a “major victory for Indigenous Peoples across Africa.”¹⁷ Its effects so far, however, have been mixed. The Endorois community has regained access to most of the land from which it had been excluded and has signed a memorandum of understanding with the Kenyan Commission to UNESCO that recognises Lake Bogoria as Endorois ancestral land and requires Endorois inclusion in management of the land. However, enforcement of the African Commission’s decisions has sometimes been a challenge. As a result, many of the recommendations have not yet been implemented by the Kenyan government. A new Kenyan Wildlife Bill developed without consultation with the Endorois requires the payment of entrance fees for entry into Lake Bogoria, and criminalises activities that could endanger wildlife in the area. There are no exceptions provided for the religious and cultural practices of the people indigenous to the land.

The Endorois case is indicative of the challenges that many Indigenous Peoples and local communities face when seeking redress for violations of their rights. Lacking effective national mechanisms, they bring claims at the regional or international level. In order to access these mechanisms, procedural requirements, such as exhaustion of domestic remedies, must first be met.¹⁸ Even if those requirements are met and a mechanism accepts their case, they must still obtain a decision in their favour. And even if they obtain a favourable decision, enforcement may be difficult for a variety of reasons. Despite these challenges, however, non-state redress mechanisms are a crucial part of the system of ensuring protection of and respect for the human rights of Indigenous Peoples and local communities.

Section 2 of this discussion paper provides a brief explanation of different types of redress mechanisms – state and non-state, judicial and non-judicial. In Section 3, it moves on to explore existing non-state mechanisms in detail and their potential application to a conservation context. The focus is specifically on non-state mechanisms since these are widely applicable in different countries. State mechanisms, by contrast, are country-specific and the details of each would need to be understood on a country-by-country basis.

Key Definitions and Procedural Issues

2

Redress Mechanisms

There are many terms used for processes by which parties can seek remedies if their rights have been infringed. These include: courts, tribunals, accountability mechanisms, grievance mechanisms, redress mechanisms and others. For the purposes of this paper, we use the term 'redress mechanisms' because redress, and mechanisms for obtaining it, are referred to multiple times in the UN Declaration on the Rights of Indigenous Peoples (UN Declaration). The term 'redress mechanism' is not defined in the UN Declaration. However, the UN Guiding Principles on Business and Human Rights (Guiding Principles)¹⁹ provides a useful definition of the closely related term 'grievance mechanisms' as "any routinized, state-based or non-state-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought."²⁰ We will apply this definition to redress mechanisms where grievances concerning conservation-related human rights abuse can be raised.

There are two important points to make regarding this definition. First, it indicates that there are at least two broad ways to categorise redress mechanisms: state- or non-state-based; and judicial or non-judicial. These broad categories provide a helpful point from which to begin an overview of the various forms of redress mechanisms that are available to those impacted by conservation initiatives as discussed below. Second, the definition refers to mechanisms where remedies can be sought. Like many of the other concepts discussed in this paper, the concept of 'remedy' is subject to broad interpretation. According to the Guiding Principles, remedies aim "to counteract or make good any human rights harms that have occurred."²¹ Forms of remedy "may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition."²²

Theoretically, state-based mechanisms are often in the best position to provide effective remedies, because in states where the rule of law functions, procedures will also be in place to enforce the rulings of such mechanisms at the domestic level. However in many states either the rule of law does not function or other factors exist to prevent Indigenous Peoples from obtaining effective remedies at the national level. In such situations, non-state based mechanisms play an important role, although the remedies they are empowered to provide can face severe challenges in terms of their effectiveness.

State-Based Mechanisms

A state-based redress mechanism is one administered by a single state. These mechanisms include national courts, administrative bodies that can hold hearings and issue decisions, and national human rights institutions (this latter category is discussed in more detail below). There are many reasons for seeking redress in these fora, including the fact they are generally best placed to interpret national law, which often has a direct impact on Indigenous Peoples and local communities. However, the challenges for Indigenous Peoples and local communities in obtaining adequate redress at the national level have been well documented and include:

- Indigenous Peoples have historically been victims of persistent patterns of denial of justice over long periods of time. This can include entrenched discrimination against Indigenous Peoples and the conducting of judicial proceedings in non-native languages.²³
- "Collusion between private sector entities and governments to deprive Indigenous Peoples of access to justice for their lands."²⁴
- Geographical distance from urban centres where courts are located.
- Failure to recognise indigenous customary law, particularly collective ownership of land.²⁵

Despite these challenges national human rights institutions (NHRIs) are a potentially important redress mechanism in the context of conservation-related human rights impacts. NHRIs are responsible for submitting "opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights" to relevant state institutions, and can do so either on an advisory basis on their own if states empower them to hear matters without higher referral.²⁶ Cases can be brought by individuals and NGOs, and NHRIs can seek conciliatory settlement, or "within the limits prescribed by the law, through binding decisions..."²⁷ Additionally, they can propose amendments and reforms of laws and regulations to competent state agencies.

As of January 2014, 100 countries had a NHRI, with 70 of those accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.²⁸ As with any state-based mechanism, however, the potential for NHRIs to act as effective redress mechanisms will depend upon the mandate that states choose to provide them. The reality is that most NHRIs have limited powers and many "operate in an environment in which human rights are not an official priority or, worse, are under attack."²⁹

Non-State Mechanisms

Non-state-based redress mechanisms can be organised into four broad categories:

1. Intergovernmental Institutions and Processes
2. Financial Institutions
3. Corporate Accountability
4. Other Kinds of Redress Mechanisms³⁰

Some categories are more relevant in the context of conservation than others. For instance, the first category dealing with intergovernmental institutions and processes currently encompasses the non-state mechanisms that will generally be best placed to deal with conservation-related human rights abuses. The other categories may be relevant in more specific circumstances and so will be addressed in brief below. A list of relevant mechanisms is provided in Appendix 1. Non-state mechanisms are reviewed in detail in the next section of the paper.

Judicial and Non-Judicial Mechanisms

Judicial mechanisms typically exhibit a few common characteristics. They are generally processes related to a judge or a court with powers prescribed by legislative act, and where procedural rules are of paramount importance. Often, judicial mechanisms are bound by precedent, or decisions that those mechanisms – or others with powers of review – have made in the past. Finally, judicial mechanisms generally operate in a public manner, and their decisions are considered to be binding upon the parties to the dispute.³¹

Although judicial mechanisms are generally empowered to issue binding decisions, their power comes at a cost since they often require interactions to take place through lawyers, and can be subject to long delays due to their complicated procedural rules. Furthermore, they can be intimidating to parties who are unfamiliar with rules and norms governing the system.

Non-judicial mechanisms can vary widely in form and process and their decisions often lack enforcement power.³² However, in contrast to judicial mechanisms, non-judicial mechanisms often have fewer procedural requirements and as a result can be quicker and easier to access.

Judicial and non-judicial mechanisms are probably best viewed as representing the ends of a continuum rather than being mutually exclusive concepts. For instance, ‘quasi-judicial’ mechanisms, which are technically non-judicial but might operate in ways that closely resemble judicial proceedings, would fall somewhere between the ends of this continuum.³³

Procedural Issues

Before discussing the specific mechanisms that fall within the categories above, it is important to note that some redress mechanisms – particularly judicial ones – often have procedural rules that govern whether a court, for example, will consider a dispute. Two procedural issues are particularly important. The first is that those who wish to access a judicial mechanism must satisfy what is known as ‘standing’ i.e. that they have the right to make a legal claim. This requirement manifests itself in a number of ways and different jurisdictions may articulate their own tests to determine whether the standing requirement is met. In the United States federal court system, for example, one requirement for standing is a demonstration that an actual injury has been suffered.³⁴ An example at the international level is the International Court of Justice, where individuals have no standing to bring cases. Only states have standing to bring legal disputes in that forum.³⁵

The second procedural issue is the requirement that domestic (national-level) remedies must be attempted before seeking redress at the regional or international level. This is typically known as the ‘exhaustion of domestic remedies’ requirement.

Both of these issues arose in the Endorois case. At the national level, the High Court appears to have considered that the Endorois did not have standing because they did not have a “proper identity.” Additionally, the community went to great lengths before the African Commission to demonstrate that they had exhausted domestic remedies because their rights were not protected under the Kenya Constitution and they had no way to effectively appeal their case.

Non-State Redress Mechanisms

3

3.1 Intergovernmental Institutions and Processes

Intergovernmental redress mechanisms include those available through the United Nations system, including UN treaty and charter-based mechanisms, as well as the regional human rights systems of Europe, Africa and the Americas. It encompasses both judicial and non-judicial mechanisms.

3.1.1 The United Nations Human Rights System

The UN human rights system, which applies to the currently 193 UN Member States, is the system with the broadest scope. It is based on two general types of mechanisms – one based on the Charter of the United Nations (UN Charter),³⁶ and the other based on human rights treaties.

Charter-Based Mechanisms

The main charter-based mechanism of the United Nations is the UN Human Rights Council (UNHRC), which succeeded the Human Rights Commission in 2006. Since its establishment in 1946, the UNHRC has created several mechanisms for dealing with human rights violations. In the context of impacts caused by conservation initiatives, the most relevant are: the Special Procedures (including the Special Rapporteur on the rights of Indigenous Peoples); the Complaint Procedure; and the Universal Periodic Review process.

The Special Procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective and can be either individuals (often called a “Special Rapporteur” or “Independent Expert”) or a working group. The mandates of most special procedures authorise them to receive information on specific allegations of human rights violations from individuals, groups, organisations and others. Each Special Procedure has its own criteria for the intake and review of allegations, but in general they analyse allegations by examining the reliability of the source, the internal consistency of the information received, and the precision of the factual details included in the information. There is no requirement that domestic remedies be exhausted. Special Procedures can act on allegations of human rights abuses by sending “urgent appeals” or “letters of allegation” to states to bring allegations to their attention. While these communications are not judicial in nature, they can be used to put swift public pressure on states to address human rights abuses. One of the most relevant Special Procedures in the context of conservation initiatives is the Special Rapporteur on the Rights of Indigenous Peoples.

The Complaint Procedure is also open to individuals’ and groups’ complaints about human rights abuses but is limited to addressing “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms...” It has more procedural requirements than the Special Procedures: domestic remedies must be exhausted, it must be the only venue where that complaint is being reviewed; and its operations are generally confidential. It makes recommendations to the UNHRC which can then engage in a range of measures, including taking up public consideration of the issue and recommending the OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the state concerned.³⁸ The Complaint Procedure may be a viable option for addressing human rights violations from conservation initiatives under certain circumstances, but in the past it has been “criticized for its slowness, complexity and vulnerability to political influence.”³⁹ Additionally, the confidential nature of the process makes it difficult to judge its effectiveness.

The Universal Periodic Review (UPR) is a regular (every 4.5 years) process for reviewing the human rights records of all UN Member States. UPRs rely upon three principle sources of information: (1) information provided by the state under review, (2) information prepared by the Office of the High Commissioner for Human Rights, and (3) information provided by NGOs and national human rights institutions.

The UPR “is becoming increasingly concerned with indigenous issues”⁴⁰ and could potentially serve as a mechanism for bringing human rights violations arising out of conservation activities to the attention of the UNHRC. However, because reviews are conducted periodically, the UPR is not a mechanism that can address immediate issues. Furthermore, “in practice, reviews remain all too often an international diplomatic exercise which produces results below the expectations of civil society.”⁴¹ Thus, other mechanisms may be more effective to address impacts from conservation activities.

Treaty-Based Mechanisms

In addition to the obligations under the UN Charter, which states accept as a condition of membership in the United Nations, states have also agreed to be bound by other human rights obligations set forth in the nine core UN human rights treaties.⁴² These treaties are:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Convention on the Rights of Persons with Disabilities; and
- International Convention for the Protection of All Persons from Enforced Disappearance.

Each of these treaties has a committee that monitors implementation and is empowered to accept complaints from individuals or groups⁴³ against states if they feel that rights protected by those treaties have been violated. In order for a complaint to be filed against a particular state, the state in question must: (1) be a party to the treaty, and (2) have agreed to the authority of the treaty's committee to accept individual complaints.⁴⁴

As far as process is concerned, domestic remedies must be exhausted and a complaint may not be simultaneously filed in another non-state mechanism. The respective committee will first make a decision about the admissibility of the complaint, and then turn to examine its substance. However, if the committee determines that special circumstances of urgency or sensitivity exist, it can “at any stage before the case is considered, issue a request to the state party for what are known as ‘interim measures’ in order to prevent any irreparable harm.”⁴⁵

Once the committee has reached a decision, it is published, and if violations of the treaty in question are found, the committee invites the state to supply information within a certain amount of time (often three months) on the steps the state has taken to give effect to its findings. In certain situations the committee can appoint a special rapporteur to follow up on its findings.

Despite the fact that states have agreed to be bound by the treaty in question and submitted to the authority of the committee to decide complaints, the decisions of the committees are not legally binding. Nevertheless, “it is generally considered that states have an obligation in good faith to take Committees’ opinions into consideration and to implement their recommendations.”⁴⁶ Additionally, decisions of the committees play an important role in articulating the nature of the rights contained in the treaties.

Other Mechanisms within the UN System

United Nations Development Programme Accountability Mechanism

In 2014 the United Nations Development Programme (UNDP) approved a set of Social and Environmental Standards (“UNDP Standards”) effective from January 2015. The Social and Environmental Standards provide that “UNDP will not participate in a Project that violates the human rights of Indigenous Peoples as affirmed by Applicable Law and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).”⁴⁷

Along with the UNDP Standards, the UNDP is also creating a redress mechanism with two key components: 1) a Compliance Review to respond to claims that UNDP is not in compliance with applicable environmental and social policies, and 2) a Stakeholder Response Mechanism (SRM) that ensures individuals, peoples, and communities affected by projects have access to appropriate grievance resolution procedures for hearing and addressing project-related complaints and disputes.⁴⁸ At the time of this writing, the exact procedures regarding the Compliance Review and SRM are still being developed. However, if the UNDP is involved in conservation initiatives that impact human rights, these mechanisms should provide another avenue to address those issues.⁴⁹

Global Environment Facility

While the Global Environment Facility (GEF) is not technically a UN agency, it is the financial mechanism for several UN treaties including the Convention on Biological Diversity and the UN Framework Convention on Climate Change.⁵⁰ The GEF “has been an important source of funding for protected areas around the world.”⁵¹ It acknowledges “adverse environmental and social impacts can arise from activities in pursuit of sustainable development.”⁵²

To address these impacts, the GEF has committed itself and its agencies to “facilitate access by Indigenous Peoples to local or country level grievance and dispute resolution systems as a first step in addressing project concerns.”⁵³ It has developed a set of eight “Minimum Environmental and Social Safeguard Standards” that address Impact Assessments (Minimum Standard 1), involuntary resettlement (Minimum Standard 3), Indigenous Peoples (Minimum Standard 4), and accountability and grievance systems (Minimum Standard 8), among others.⁵⁴ Minimum Standard 8 requires GEF Partner Agencies to have their own systems that can uphold the GEF safeguards as procedures for dealing with complaints from anyone affected by the implementation of a GEF project.

In addition, the GEF has established a Conflict Resolution Commissioner and Indigenous Peoples Focal Point who are “available and actively involved in complaints brought forward by Indigenous Peoples to the GEF that fail to be adequately addressed at the local, country, or GEF Partner agency level.”⁵⁵

The GEF systems could serve as an effective redress mechanism for communities affected by GEF conservation projects. While the specific accountability procedures of each implementing agency will vary they are likely to be relatively easy to access, with fewer procedural requirements than judicial mechanisms.

3.1.2 The Inter-American System

The Inter-American System for the protection of human rights is responsible for monitoring and implementation of the human rights obligations of the 35 Member States that make up the Organization of American States (OAS). It consists of two main bodies: the Inter-American Commission on Human Rights (“I-A Commission”) and the Inter-American Court of Human Rights (“I-A Court”).⁵⁶

The Inter-American Commission on Human Rights

Individuals, groups and organisations recognised in OAS Member States may submit complaints concerning alleged violations of regional human rights treaties to the I-A Commission. The complaint must be filed against one or more Member States of the OAS.

In order to file a complaint with the I-A Commission, domestic remedies must have been exhausted. Once the complaint is filed, the I-A Commission conducts an admissibility analysis and, if admissible, then analyses the allegations and evidence submitted. In urgent cases, the I-A Commission is empowered to request that a state adopt precautionary measures to prevent irreparable harm to persons.

If the I-A Commission determines that a state is responsible for human rights violations, it will issue a report that may include recommendations that the State:

- suspend the acts in violation of human rights;
- investigate and punish the persons responsible;
- make reparation for the damages caused;
- make changes to legislation; and/or
- adopt other measures or actions.⁵⁷

If states do not comply with the recommendations, the I-A Commission will decide to publish the case or refer it to the Inter-American Court of Human rights if it deems such referral appropriate.⁵⁸

Unfortunately, the Commission is seriously under-resourced. For example, in 2005 the Commission received 1,330 complaints of human rights violations but was able to process and resolve only 84.⁵⁹ Furthermore, states rarely fully comply with recommendations of the Commission although “substantial normative pressure exists to cooperate... and states usually comply with orders for reparations.”⁶⁰

The Inter-American Court of Human Rights

The I-A Court is a judicial institution of the OAS with two main functions: adjudicatory and advisory. The adjudicatory function is the mechanism through which the I-A Court determines if a state has violated rights protected by the American Convention on Human Rights (American Convention). Through its advisory function, the I-A Court responds to requests by OAS member states regarding the interpretation of the American Convention or regional human rights instruments.⁶¹

Individuals cannot directly access the I-A Court. Instead, they must first file complaints with the I-A Commission, which will subsequently refer the complaint to the I-A Court if warranted. In order for the I-A Court to hear the complaint the accused state must be Party to the American Convention and have accepted the I-A Court’s jurisdiction. Like the I-A Commission, the I-A Court is also empowered to take provisional measures in cases of extreme gravity and urgency, and when necessary in order to avoid irreparable damages to people.

Judgments of the I-A Court are binding on states that have accepted its jurisdiction, and its judgments are not appealable.⁶² It is empowered to provide redress for victims of verified human rights violations by awarding reparations including restoration of the prior situation, compensatory or actual damages, and other kinds of damages, such as “moral damages.”⁶³

Like the I-A Commission, the I-A Court also suffers from lack of resources. With regard to enforcement of its judgments, the I-A Court can report non-compliance to the General Assembly of the OAS which may then take measures against the offending state. In practice, however, this has not happened and many of the I-A Court’s judgments are not enforced. Overall studies have shown that between 2001 and 2006, states complied with judgments 36 per cent of the time, partially complied 14 per cent of the time, and did not comply 50 per cent of the time.⁶⁴

3.1.3 The African System

The African human rights system is grounded in the African Charter on Human and Peoples’ Rights (African Charter), which entered into force in 1986. The African Charter is administered by two main bodies: the African Commission on Human and Peoples’ Rights (African Commission) and the African Court on Human and Peoples’ Rights (African Court).

The African Commission on Human and Peoples' Rights

The African Commission consists of 11 expert members chosen by the African Union Assembly. Any individual or NGO may bring a communication before the Commission alleging violations by a state of the provisions of the African Charter – once domestic remedies must have been exhausted.⁶⁵ Like other human rights bodies, the African Commission is empowered to request provisional measures to be undertaken by a state in order to prevent irreparable damage to victims. If a state fails to comply with a request for the adoption of provisional measures, the African Commission may refer the communication to the African Court.

If the African Commission determines that a state is in violation of the African Charter, it can issue a declaration to that effect. The African Commission can also make recommendations regarding actions the state can take to bring it into compliance with the African Charter – for example recognizing rights of ownership to land and awarding monetary compensation to victims. The African Commission's enforcement powers are, however, essentially limited to political pressure – for example it can make instances of non-compliance public and/or refer them to the African Court.

Overall, the African Commission is under-resourced and receives relatively few complaints, which is due in part to the challenging process for submitting communications.⁶⁶ The treatment of violations of the African Charter has also not always been consistent.⁶⁷ However, as described above in the Endorois Decision, the African Commission's recommendation can lead to change on the ground, even if it is relatively slow.

The African Court on Human and Peoples' Rights

The African Court was created by a subsidiary treaty to the African Charter called the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol). The African Court Protocol, which entered into force in 2004, empowers the African Court to decide cases concerning the interpretation of the African Charter as well as “any other relevant Human Rights instrument ratified by the States concerned.”⁶⁸

Several entities are entitled to submit cases to the African Court. These include the African Commission, states that are party to the African Court Protocol, and African Intergovernmental Organisations. Additionally, individuals and NGOs can submit cases to the African Court alleging human rights violations against a state so long as that state has agreed to the African Court's jurisdiction to receive such cases.

The African Court is empowered to issue binding judgments, which are not subject to appeal. By agreeing to be bound by the African Court Protocol, states “undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.”⁶⁹ Nevertheless, implementation of decisions of the African Court will generally depend upon the will of the state involved. However, the African Court's decisions are public and their implementation is monitored by the Council of Ministers of the African Union, which can pass binding rulings on reluctant states.

As a relatively young institution, it remains to be seen how effective the African Court will be in addressing human rights violations in Africa. At the very least, the establishment of the African Court itself “is a significant advance in the institutionalisation of human rights in Africa. Through its advisory and contentious jurisdiction, the Court comes with the prospect of strengthening the African human rights system and ensuring the protection and fulfilment of fundamental rights and duties in the continent.”⁷⁰ However, the inability of individuals to file cases with the African Court unless a state has specifically agreed to such action is a limitation on its accessibility. On the other hand, the stick of the African Union's powers may ensure compliance with the African Court's decisions.

Other African Mechanisms

African countries have also entered into regional economic agreements, and some have established tribunals to settle disputes involving the instruments codifying those agreements. Many of these regional tribunals are empowered, explicitly or implicitly, to rule on human rights claims brought by individuals against states. For more information on these regional mechanisms, see the FIDH Guide Part III Chapter 1.D.: D. The Courts of Justice of the African Regional Economic Communities.

3.1.4 The European System

The European human rights system is administered in large part by the Council of Europe, an organisation with 47 Member States. The Council of Europe consists of six main bodies, including the European Court of Human Rights (European Court). The European Court oversees the implementation of the European Convention on Human Rights (ECHR), which all Member States of the Council of Europe have agreed to.

Any individual can file a complaint before the European Court – once domestic remedies have been exhausted – alleging that a state has violated the ECHR. While complaints can only be brought against Member States, the European Court has applied the “horizontal effect of the [ECHR],” under which it “can rule that a Member State(s) is in violation of the [ECHR] if it fails to protect

people under their jurisdiction **from the violations of a third private party.**⁷¹ This 'horizontal effect' has implications for holding non-state entities indirectly accountable for violations of the ECHR.

The European Court is a promising mechanism because its decisions are binding on states, and it is empowered to award monetary damages. The Council of Europe Committee of Ministers is responsible for monitoring the implementation of judgments and ensuring that damages are paid. Additionally, unlike the other regional bodies discussed above, which are limited to addressing allegations of human rights entities against states, the European Court can use the 'horizontal effect' of the ECHR to address human rights violations of non-state entities. However, the court is currently very limited in capacity, receiving far more cases than it can effectively process.

3.2 Financial Institution Processes

In addition to financing infrastructure projects and other activities associated with development, financial institutions also finance conservation initiatives such as protected areas. For example, the World Bank is the largest international funder of biodiversity conservation, spending an average of \$275 million annually to support parks in developing countries.⁷² Development banks often provide grants or loans for establishing and maintaining protected areas as part of support for national conservation plans.⁷³

Most financial institutions have policies in place that govern a variety of issues related to their lending. These policies can establish requirements applying to the financial institution as well as its borrowers. For example, the World Bank's environmental and social safeguard policies require it to screen projects to determine whether they will affect Indigenous Peoples, and require the borrower to develop a social assessment and take other actions to minimize the project's effects.⁷⁴

Most international financial institutions (IFIs) such as the World Bank have their own redress mechanisms to deal with complaints from people affected by their projects. Commonly referred to as independent accountability mechanisms (IAMs), they are part of the institutional structure of IFIs, but are intended to operate independently in order to ensure objectivity when handling complaints. IAMs generally deal with complaints in one of two ways. The first is called a compliance review, where the IAM will analyse whether the IFI has complied with relevant IFI policies. The second is called dispute resolution, where the IAM will seek to facilitate a compromise between the IFI and the affected community. Some IFI IAMs, such as the World Bank's Inspection Panel, only conduct compliance reviews, while others, such as the International Financial Corporation's Compliance Advisor Ombudsman, will engage in both compliance review and/or dispute

resolution, depending upon the situation.

The procedure for submitting complaints to IAMs is generally less formal than that of judicial redress mechanisms, and is particular to each IAM (although many share similar processes). They do not usually require exhaustion of domestic remedies. However, in order for a complaint to be admitted it will need to allege that those filing the complaint have been affected by a project financed by the IFI in question. IAMs are only empowered to submit their findings and recommendations to the IFI's Board of Directors and it is up to the Board to decide whether to act on the IAM's decision. As a result, even if a favourable decision is rendered by an IAM, the Board may decide not to implement it.

3.3 Corporate Accountability Mechanisms

Private sector companies and corporations are not typically thought of as being involved in conservation initiatives in the same way that governments and NGOs are. Should that change in the future, however, situations may arise where affected people seek to hold corporations accountable for their actions regarding conservation initiatives. Therefore, we will briefly address the issue of corporate accountability.

Holding corporations accountable for human rights abuses is an area of increasing global interest. Within the United Nations, corporate accountability has generated intense debate, and attempts at developing a binding treaty regulating corporate behaviour have been underway for years. While no treaty has yet been developed, in 2011 the UN Human Rights Council endorsed a set of Guiding Principles on Business and Human Rights. While these do not establish a mechanism by which corporations can be held accountable for human rights abuses, one of their foundational principles is "the need for rights and obligations to be matched to appropriate and effective remedies when breached."⁷⁵

A common avenue for holding corporations accountable is national courts i.e. state-based judicial mechanisms. In addition to that option, some non-state based mechanisms exist to deal specifically with corporations. These include mechanisms established under the Organisation for Economic Co-operation and Development (OECD) as well as operational-level grievance mechanisms.

OECD Mechanisms

The OECD's 34 Member States, together with 12 non-Member States, have subscribed to the OECD Declaration and Decisions on International Investment and Multinational Enterprises (OECD Declaration).⁷⁶ One of the four main elements of this is the OECD Guidelines for Multinational Enterprises (OECD Guidelines) which contain "recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from adhering countries."⁷⁷

The OECD Guidelines include a dispute resolution mechanism – officially known as the 'specific instance' procedure – for resolving conflicts regarding alleged corporate misconduct. The mechanism is administered by National Contact Points (NCPs) in each Member State's government, which attempt to resolve disputes, primarily through mediation. The mechanism "can be used by anyone who can demonstrate an 'interest' (broadly defined) in the alleged violation."⁷⁸ A limitation, however is that the "functioning, efficiency and independence of the NCPs vary considerably, and indeed remain the subject of much criticism."⁷⁹ Additionally, lack of financial resources and rotating staff can hamper the effectiveness of NCPs.

Operational Level Grievance Mechanisms

An operational-level grievance mechanisms is one that is "accessible directly to individuals and communities who may be adversely impacted by a business enterprise."⁸⁰ Typically, operational-level mechanisms "are administered by the business enterprise either alone or in collaboration with others, including the affected stakeholders or their legitimate representatives."⁸¹ The Guiding Principles set out effectiveness criteria for operational-level mechanisms, including that they should be legitimate, accessible, and based on engagement and dialogue.⁸² Depending on the specific situation, there may be an operational-level mechanism that could be accessed for redress in the context of conservation initiatives.

Effective operational-level grievance mechanisms can help manage local conflict and maintain a company's 'social licence to operate' but such mechanisms may have problems with providing consistent remedies and "will be far closer to the very corporate power that is opposing the development of more effective judicial and non-judicial grievance mechanisms at the home state level."⁸³ It is important that companies do not use project-level mechanisms to undermine legitimate opposition to projects.

3.4 Other Kinds of Redress Mechanisms

In addition to the mechanisms discussed above, which are administered by intergovernmental organisations or companies, there are also other kinds of mechanisms that can be used to address human rights impacts of conservation initiatives. One category is participatory mechanisms such as the 'Whakatane Mechanism,' an initiative of the International Union for the Conservation of Nature (IUCN) that "aims to ensure that conservation policy and practice respect the rights of Indigenous Peoples and local communities, including those specified in the [UN Declaration]."⁸⁴ The Whakatane Mechanism is the outcome of resolutions adopted by the IUCN during its 4th World Conservation Congress, including Resolution 4.052 which highlighted the need to "identify and propose mechanisms to address and redress the effects of historic and current injustices against Indigenous Peoples in the name of conservation of nature and natural resources..."⁸⁵ One pilot of the Whakatane Mechanism was begun in 2011 with the Ogiek people of Mt Elgon, Kenya, whose ancestral lands were converted into a national game reserve without their consent in 2000.⁸⁶ Through the Whakatane Mechanism, two roundtables were held that brought the key stakeholders together, including the Ogiek, the Kenyan government agencies, the World Bank, and others, to engage in dialogue about the game reserve. The process involved a scoping study that found that the Ogiek's presence in the game reserve contributed to protecting natural resources. A programme of work was also developed to implement a co-management structure regarding the Ogiek's ancestral land. This programme of work was validated by all participants during the roundtable process.⁸⁷

The Whakatane Mechanism looks promising but is a relatively new development that will require further analysis to determine its effectiveness. Enforcement of agreements reached through the Whakatane Mechanism is one issue of critical importance to be evaluated.

In addition to the Whakatane Mechanism, Indigenous Peoples have their own dispute resolution mechanisms and judicial systems based on their respective customary laws, traditions and practices. Such mechanisms have been shown to be effective in remedying human rights abuses caused by companies and can be much cheaper and more accessible than externally administered redress mechanisms. Additionally, using customary laws and practices as mechanisms to address human rights abuses can facilitate empowerment and engagement of Indigenous Peoples in decisions related to their resources and territories.⁸⁸ Studies of the use of customary redress mechanisms have recommended that the official role of traditional authorities in land conflicts should be strengthened.⁸⁹ The use of customary redress mechanism to address human rights violations in the context of conservation activities should be further explored.

Conclusions

4

What Would an Effective Redress Mechanism for Conservation Look Like?

There are many different kinds of redress mechanisms that Indigenous Peoples and local communities can access when their human rights are impacted by conservation initiatives including judicial and non-judicial mechanisms administered at the national as well as the international level.

State-based redress mechanisms can issue binding decisions that parties must abide by but local communities face many challenges in trying to engage with these processes, not least discrimination, weak rule of law, and non-recognition of collective rights. At the regional and international level, states have generally agreed on a more progressive approach regarding the rights of Indigenous Peoples and local communities, and many non-state based mechanisms have been created to protect those rights. Judicial non-state mechanisms, however, often have procedural requirements such as exhaustion of domestic remedies that make access by local communities a challenge. On the other hand, non-judicial non-state mechanisms are generally limited to reporting on human rights abuses and often face challenges in enforcement of their decisions.

In addition to these national and intergovernmental mechanisms, several kinds of redress mechanisms exist that revolve around non-state actors such as businesses. These are generally non-judicial in nature, with an emphasis on mediating between communities and other parties to reach an amicable settlement. Stakeholders have also come together to create mechanisms such as the Whakatane Mechanism that utilise a more bottom-up approach, where communities are involved from the outset, including in the design of the procedures that the mechanism uses. And crucially, the dispute resolution mechanisms of Indigenous Peoples and local communities are increasingly being recognised as a viable method of providing redress for human rights impacts.

Each of these mechanisms has its own advantages and drawbacks. While state-based judicial mechanisms can deliver binding, enforceable decisions, they are often inaccessible to communities due to issues of racism, cost or lack of recognition of collective rights. Non-state-based judicial mechanisms may operate under a more progressive rights regime, but their procedures can render them equally difficult to access. On the other hand, non-judicial mechanisms are often less procedurally complicated, but the decisions they issue often face challenges with regard to enforcement and implementation. Ultimately, the redress mechanism selected will depend upon the facts and circumstances of each individual situation.

Clearly, there are many different redress mechanisms that those impacted by conservation initiatives can access when their rights are violated. However, as the case of the Endorois community demonstrates, a number of challenges exist. These include lack of recognition of collective rights, the need to understand complex procedural rules, the backlog that many mechanisms face, the costs required to bring and follow through on complaints, and the lack of enforcement even when favourable decisions are reached. Mechanisms such as the Whakatane Mechanism or customary redress mechanisms show promise, but also face challenges in terms of being accepted by all parties.

These challenges raise an important question: should a redress mechanism focused specifically on conservation initiatives be formed? One model for such a mechanism is the roundtable approach that industries such as soy and palm oil have formed to certify their operations and in the case of palm oil to settle disputes. A roundtable for conservation could serve as a clearinghouse for states, NGOs and funders to ensure that the conservation initiatives they wish to undertake comply with human rights standards. The roundtable could also serve as a redress mechanism where those in charge of conservation initiative fail to comply with human rights standards.

The purpose of this paper is not to definitively answer that question but rather to raise it as an issue for debate. Creating a redress mechanism specifically for conservation-related disputes would require the collaboration of a broad group of conservation actors interested in addressing the serious challenges posed by current redress mechanisms. Nevertheless, a shift in the current status quo is needed, because injustice continues to occur in the name of conservation.

Join the debate

What do you think an effective redress mechanism should look like? Does the existing mix of state and non-state, judicial and non-judicial processes cover all that is needed? Or would a roundtable approach work better? We welcome your thoughts on the strengths and weaknesses of the mechanisms that currently exist and your suggestions for any further mechanisms that are needed.

Appendix 1:

Redress Mechanisms

UN Charter-Based Mechanisms			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
Special Procedures*	Non-judicial	Individuals and groups	No
Potentially relevant Special Procedures:			
<ul style="list-style-type: none"> ▪ Special Rapporteur on the rights of indigenous peoples ▪ Special Rapporteur on the human rights of internally displaced persons ▪ Special Rapporteur in the field of cultural rights ▪ Working Group on the issue of human rights and transnational corporations and other business enterprises 			
Complaint Procedure	—	Individuals and groups	Yes
Universal Periodic Review	Non-judicial	—	—

* Independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. For more details on the current mandate holders, see <http://www.ohchr.org/EN/HRBodies/SP/Pages/Currentmandateholders.aspx>.

UN Treaty-Based Mechanisms			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
Committees of Human Rights Treaties	Quasi-judicial	Individuals and groups	Yes
Potentially relevant treaty committees:			
<ul style="list-style-type: none"> ▪ Committee on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights) ▪ Human Rights Committee (International Covenant on Civil and Political Rights) 			

Other Mechanisms Within the UN System			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
UNDP Accountability Mechanism	Non-judicial	Individuals and groups	No
Global Environment Facility Accountability Systems	Non-judicial	Individuals and groups	No

Inter-American System			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
Inter-American Commission on Human Rights (I-A Commission)	Quasi-judicial	Individuals and groups	Yes
Inter-American Court of Human Rights	Judicial	I-A Commission and States Parties	Yes

African System			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
African Commission on Human and Peoples' Rights (African Commission)	Quasi-judicial	Individuals and groups	Yes
African Court on Human and Peoples' Rights	Judicial	African Commission, States Parties, individuals if defendant State has submitted to African Court's jurisdiction	Yes

European System			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
European Court of Human Rights	Judicial	Individuals and groups	Yes

Financial Institutions			
	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
Independent Accountability Mechanisms (IAMS) of International Financial Institutions*	Non-judicial	Individuals and groups	No
Relevant IAMs:			
<ul style="list-style-type: none"> ▪ World Bank: Inspection Panel ▪ International Finance Corporation: Compliance Advisor Ombudsman ▪ Inter-American Development Bank: Independent Investigation Mechanism ▪ Asian Development Bank: Accountability Mechanism ▪ European Bank for Reconstruction and Development: Independent Recourse Mechanism ▪ African Development Bank: Independent Review Mechanism 			

* Some national financial institutions that operate internationally have also established accountability mechanisms, including the Japan Bank for International Corporation and the United States Overseas Private Investment Corporation.

Corporate Accountability

	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
Organisation for Economic Co-operation and Development National Contact Points	Non-judicial	Individuals and groups	No
Operational Level Grievance Mechanisms	Non-judicial	Individuals and groups	No

Other Kinds of Redress Mechanisms

	Nature	Who Can Access	Requirement to Exhaust Domestic Remedies
Whakatane Mechanism	Non-judicial	Individuals and groups	No
Customary Redress Mechanisms	Non-judicial	Individuals and groups	No

Notes

1. <http://naturaljustice.org/library/our-publications/legal-research-resources>
2. <https://community.iucn.org/cihr/Pages/default.aspx>
3. Samson Pedragosa, *An Analysis of International Law, National Legislation, Judgments, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities*, Report No. 16: The Philippines (2012), at 20.
4. International Union for the Conservation of Nature, IUCN to review and advance implementation of the "new conservation paradigm", focusing on rights of Indigenous Peoples (2011), available at http://www.iucn.org/news_homepage/news_by_date/?7399/IUCN-to-review-and-advance-implementation-of-the-new-conservation-paradigm.
5. Cynthia Morel, *Defending Human Rights in Africa: The Case for Minority and Indigenous Rights*, 1 *Essex Hum. Rts. Rev.* 54, 56 (2003).
6. Cynthia Morel, *supra* note 5 at 56
7. CEMIRIDE on behalf of the Endorois Community v. Kenya, (Submissions on Admissibility), Comm. No. 276/2003, at para. 16.1, *Afr. Comm'n on Human and Peoples' Rts.* [hereinafter *Admissibility Submissions*].
8. Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Kumaraswamy, 13 January 1999, E/CN.4/1999/60, at para. 112.
9. Sitatelia et al. v. Baringa County Council et al., Miscellaneous Civil Case No. 183 of 2000 (High Court of Kenya, 2002), at 4.
10. Sitatelia et al. v. Baringa County Council et al., at 5.
11. *Admissibility Submissions* at para. 18.2.
12. *Admissibility Submissions* at para. 17.2.
13. *Ctr. for Minority Rights Dev. (Kenya) v. Kenya*, Comm'n No. 276/03, *Afr. Comm'n H.P.R.* (Feb. 10, 2010) (hereinafter "Endorois Decision") para. 23.
14. African Charter Article 56.
15. Endorois Decision para. 59, 60. The procedural hurdles that the community needed to overcome to have its Communication considered by the African Commission were quite complex. For more details see Abraham Korir Sing'Oei and Jared Shepherd, 'In Land We Trust': The Endorois' Communication and the Quest for Indigenous Peoples' Rights in Africa, 16 *Buff. Hum. Rts. L. Rev.* 57, 66 (2010).
16. Endorois Decision para. 162.
17. Human Rights Watch, *Kenya: Landmark Ruling on Indigenous Land Rights* (4 February 2010), available at <http://www.hrw.org/news/2010/02/04/kenya-landmark-ruling-indigenous-land-rights>.
18. This is not the case with all mechanisms, and the procedural requirements of nonjudicial mechanisms are generally much less stringent than those of judicial or quasi-judicial mechanisms (whether state or non-state) as discussed further below.
19. Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 of 21 March 2011 (*Guiding Principles*).
20. See *Guiding Principles commentary* to para. 25.
21. See *Guiding Principles commentary* to para. 25.
22. See *Guiding Principles commentary* to para. 25.
23. Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, 26 January 2004, E/CN.4/2004/80 (hereinafter *2004 Stavenhagen Report*), at para. 9.
24. See UN Human Rights Council, Study by the Expert Mechanism on the Rights of Indigenous Peoples: Access to justice in the promotion and protection of the rights of Indigenous Peoples, 29 April 2013, A/HRC/EMRIP/2013/2, para. 36. For example, in Brazil a company now known as Aracruz Cellulose – supported by the military dictatorship at the time – invaded the lands of the Indigenous Tupunikim in 1967. When the Tupunikim tried to reclaim their lands in 2006, armed policemen evicted them and Aracruz bulldozers were used to destroy their villages. Victoria Tauli-Corpuz and Parshuram Tamang, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*, E/C.19/2007/CRP.6, at para. 34.
25. Commission on Human Rights, Report of the Representative of the Secretary-General on the

- human rights of internally displaced persons, Walter Kälin, 31 December 2004, E/CN.4/2005/84, at para. 72.
26. Principles Relating to the Status of National Institutions, A/RES/48/134, 4 March 1994 (Annex) (Paris Principles) No. 3.
 27. Paris Principles, Additional Principles.
 28. ICC, Chart of the Status of National Institutions (January 2014), available at www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.
 29. International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions (2005) at 39.
 30. Many other kinds of redress mechanisms exist at the international level. These include arbitration under bilateral investment treaties (BITs) and the dispute settlement system of the World Trade Organization. However, these mechanisms are not typically accessed by Indigenous Peoples for a variety of reasons, including for example a reluctance on the part of BIT arbitration tribunals to address issues of human rights. See European Center for Constitutional and Human Rights, Human Rights inapplicable in International Investment Arbitration? (Berlin, 2012). Whether those fora should be viable options for Indigenous Peoples to raise claims is beyond the scope of this paper.
 31. See, e.g., Rachel Davis and Caroline Rees, Non-Judicial and Judicial Grievance Mechanisms for Addressing Disputes between Business and Society: Their Roles and Inter-relationships (March 2009), prepared for the Special Representative's consultation on grievance mechanisms. Available at www.business-humanrights.org/Documents/Non-judicial-and-judicial-mechanisms-Mar-2009.doc. This resource provides tables setting forth various pros and cons of judicial and non-judicial mechanisms.
 32. See Emma Wilson & Emma Blackmore, Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms (2013), at 31, available at <http://pubs.iied.org/16529IIED.html>.
 33. See, e.g., *Mirmehdi v. U.S.*, 689 F.3d 975, 985 (9th Cir. 2012) (noting, in regard to the US federal system, that "[a] federal administrative hearing counts as a 'quasi-judicial proceeding' if: the administrative body is vested with discretion based upon investigation and consideration of evidentiary facts, that body may hold hearings and decide the issue by the application of rules of law; and that body has the power to affect the personal or property rights of private persons) (internal quotation marks and citation omitted).
 34. See *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883 (1990).
 35. James Crawford, *Brownlie's Principles of Public International Law*, 8th ed., Oxford University Press: Oxford, 2012, at 181. United Nations organs (such as the General Assembly or Security Council) and specialized agencies (such as the Food and Agriculture Organization or World Health Organization) can request advisory opinions on legal questions. See the International Court of Justice, *How the Court Works*, available at <http://www.icj-cij.org/court/index.php?p1=1&p2=6>.
 36. Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
 37. Human Rights Council, Report to the General Assembly on the Fifth Session of the Council, A/HRC/5/21, 7 August 2007, at para. 85.
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Despite the wealth of international law that confers rights on Indigenous Peoples and local communities, and responsibilities on a wide range of conservation actors it is often difficult for communities to find effective mechanisms to obtain redress when injustices occur. This paper is intended to help clarify which official redress mechanisms exist and how they can be used. It forms the final part of a series of three papers that aims to serve as a foundation for developing an accessible *Guide to Human Rights Standards for Conservation*.

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