Chapter Three

Civil and Political Rights

I. Introduction

Universally recognized human rights are those enshrined in the so-called International Bill of Rights adopted by the United Nations (“UN”) General Assembly. The International Bill of Rights encompasses the Universal Declaration of Human Rights (“UDHR”) which, although not of a treaty nature, contains almost the whole range of human rights and constituted a major step forward in the advancement of international human rights law as adopted in 1948 and the two consecutive treaties which expand the rights proclaimed by the (technically non-binding) UDHR, i.e., the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). As of now, the ICCPR, together with the UDHR, is widely accepted as the “consensus of global opinion on fundamental rights,” and as such, are therefore highly reflective of customary international law.

This chapter addresses whether, and if yes, to what degree, civil and political rights are actionable under ATS. Again, so far, no TNC has been held liable for a violation of human rights under ATS. The issue whether the rights enshrined

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6. In respect of the UDHR, see Smith, supra note 1, at 38.
8. Again, so far, no TNC has been held liable for a violation of human rights under ATS. However, many cases are still pending. See infra II–VI. For strategic reasons, plaintiffs in these ATS cases targeting TNCs typically do not focus a priori in their allegations simply on one or two human rights but rely, in accordance with American litigation practice, on any
in the ICESCR and in other UN instruments adopted by the UN General Assembly are actionable will be dealt with in separate chapters.9

Part II examines the right to life. Part III explores the right not to be subjected to torture. Part IV scrutinizes the right not to be subjected to cruel, unusual, or inhuman treatment. Part V scrutinizes the right against arbitrary detention. Part VI focuses on the right not to be subjected to medical experimentation without informed consent. Part VII evaluates the right to free speech. It is exactly in this area of classic human rights law where non-corporate ATS litigation has proven quite successful in the past: victims of former and current oppressive regimes have celebrated a number of early legal victories in federal court with the notable support and advice of U.S.-based human rights activists.10

right which may have been violated. For example, in the still pending Wiwa case involving the use of force in the furtherance of Royal Dutch Shell’s oil extraction in the Nigerian Delta, plaintiffs allege that the defendants are liable for summary execution; crimes against humanity; torture; cruel, inhuman, and degrading treatment; and arbitrary arrest and detention. Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88 (2d Cir. 2000).

9 See infra Chapter Four: Labor Standards; Chapter Five: Environmental Destruction.

10 For example, in In re Estate of Ferdinand Marcos, Human Rights Litigation, 25 F.3d 1467, 1475 (9th Cir. 1994), involving claims against the estate of the former Philippine dictator, a jury awarded to individual plaintiffs and to a class of almost 10,000 victims of the Marcos Regime $766 million in compensatory damages and $1.2 billion in punitive damages. Id. at 348. Plaintiffs are still currently seeking to recover all awards. The following is an illustrative example of the damages (compensatory and punitive) awarded cited in Beth Stephens & Michael Ratner, International Human Rights Litigation in U.S. Courts, Appendix K: Summary of Damage Awards under the Alien Tort Claims Act and the Torture Victim Protection Act 343–48 (1996): Filártiga v. Peña-Irala, involving summary execution and torture, $385,000 in compensatory damages and $10 million in punitive damages; Xuncax v. Gramajo, for the victims of summary execution, $2 million in compensatory damages and $5 million in punitive damages and for the torture victims, $1 million in compensatory damages and $2 million in punitive damages; Forti v. Suarez-Mason, for arbitrary detention, torture, and summary execution, $3 million in compensatory damages and $3 million in punitive damages; Quiros de Rapaport v. Suarez-Mason, for torture, murder, and disappearance, $15 million in compensatory damages and $15 million in punitive damages; Paul v. Avril, for six victims of torture and arbitrary detention, each was awarded between $2.5 million to $3.5 million in compensatory damages and $4 million in punitive damages; Trajano v. Marcos, for torture and summary execution, $4,161,000 in total damages. However, actual recovery of damages was rare. This would be different if ATS cases results in awards against TNCs with huge financial resources.

The success achieved so far has led to an almost synonymous use of the terms “human rights litigation” on the one hand and “ATS litigation” on the other in contemporary U.S. legal and political literature. See Sarah Joseph, Corporations and Transnational Human Rights Litigation (2004).