Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples’ Rights under the African Charter on Human and Peoples’ Rights
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PART I: Introduction

A. Background

During the past few decades, the extractive industries sector has witnessed a major expansion on the African continent. Driven by the global demand for natural resources, the oil, gas and mining industries have registered immense growth on the continent, resulting in a resource boom. The resource boom has even reached Eastern Africa, which historically had no or very little industrial extraction of natural resources, but has witnessed unprecedented surges in oil and natural gas discoveries, including in Kenya, Tanzania, Mozambique, Uganda and more recently Ethiopia. Presently about 22 out of the 55 African countries are regarded as “resource rich” because natural resource extraction accounts for more than 20 percent of their national GDP.¹

These resources attract the interests of various international actors including major powers and companies in the extractive industries sector. Chinese investment in African mining resources has been accompanied by simultaneous loans for infrastructure. On the one hand, the resources for infrastructure swaps can be for a single purpose. For instance, dam building and the construction of a power plant in the Republic of Congo and Sudan, respectively, have been financed in return for prospective oil production with loans channelled through Chinese banks. On the other hand, the swaps can have multiple purposes (e.g. transport infrastructure, education, health, energy, agriculture, and water). One of the impacts of the increase in the interest on African resources in recent decades has been the contribution of the investment in the extractive industries to infrastructural development. Angola’s government used the revenue from the extraction of oil and other resources into contracts for roads, housing, railways and bridges at a rate of $15 billion a year in the decade to 2012.

Admittedly, this resource boom has contributed to socio-economic development, and the period of the expansion of the extractive industries sector corresponds to two decades of strong economic growth registered in many African countries, prompting the ‘Africa rising’ narrative. Economic activity in Africa saw a remarkable upswing beginning in the mid-1990s. Growth of gross domestic product (GDP) across the region averaged 4.5 percent a year in 1995–2014, nearly double the pace in

¹ Africa supplies 83 percent of the world’s platinum, 73% of the world’s cobalt, and over half of the world’s manganese, chromium and diamonds. 55% of the world’s diamonds are supplied by African producers and nearly a quarter of all gold. It is a principal commodity exporter to China, Japan, the United States and Western Europe. Africa is home to five of the world’s top oil-producing countries, with an estimated 57% of Africa’s export earnings from hydrocarbons. Algeria, Angola, Cameroon, Chad, Republic of Congo, Egypt, Eritrea, Gabon, Ghana, Kenya, Libya, Nigeria, South Sudan, Sudan, Tunisia, and Mozambique are all rich in oil and gas. Proven oil reserves have grown by almost 150 %, increasing from 53.4 billion barrels since 1980 to 130.3 billion barrels by the end of 2012. The region is home to about 30% of the world’s mineral reserves, 10% of the world’s oil and 8% of the world’s natural gas. It boasts five of the top 30 oil-producing countries in the world, and nearly $2tn of investments are expected by 2036. Given these endowments, African extractive industries is critical to the region’s economies, and its mining companies have the potential to be world-class performers.
the previous two decades. While progress has been broad-based, with both resource-rich and non-resource-rich countries seeing brisk expansion, the surge in the demand of extractive resources and the resulting increase in the price of commodities enabled the region’s resource-rich countries to grow at an appreciably faster pace than non-resource-rich countries. The region’s growth performance since the early 2000s has matched that of the rest of the developing world. The spurt in economic activity also reversed the region’s declining trend in average income per capita, although population growth kept gains for this measure at modest levels, averaging below 2 percent.

Data from institutions such as the World Bank seem to suggest that the expansion in the operation of extractive industries in Africa has notably contributed to infrastructural development with positive spill over effects on the wellbeing of communities in the areas operation, although this does not mean that these operations are without their adverse socio-economic and environmental consequences. For example, a World Bank Study covering Ghana, Mali and Tanzania tracks the correlation between gold mining in these jurisdictions with welfare gains in and around mining communities. The data from all three countries shows that economic growth increases in the period surrounding the start of a mine.

However, despite its potential and, at times, actual contribution to improved living conditions of people, the extractive industries in many parts of the continent is fraught with major issues impacting on the environment and on the wellbeing of people living in their areas of operation, as well as issues at the national level related to financial opacity and illicit financial flows. In many instances, it has also exacerbated existing conflicts or contributed to the eruption of new conflicts and social instability and violence.

The African Commission on Human and Peoples’ Rights (African Commission) has a broad mandate to promote and protect human and peoples’ rights on the African continent. One of the early instances where it was called upon to deal with a case of human and peoples’ rights violations in the framework of the extractive industries, was in the context of its individual complaints procedure in the Communication of Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (the SERAC case). The Commission in its 2001 decision found the government guilty of a number of human rights violations, and appealed to the government to ensure protection of the environment, health and livelihood of the people of Ogoniland, who were affected by oil spills and violence resulting from natural resource extraction by Shell Oil Company. In 2006, the African Commission authorised a study into human rights violations in Africa by

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2 It should be made clear, however, that this growth was from a low base.
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non-state actors to determine the accountability of non-state actors for breaching human rights provisions in the African Charter. At the time that the report on the study was submitted for consideration and adoption, the African Commission also received complaints that some companies operating in the extractive industries in Africa were abusing human rights.

Whereas up to this point the approach of the African Commission to violations in the extractive industries sector was episodic, reactive and lacking an institutionalized framework, in recognition of the gravity of the adverse human and peoples’ rights impacts of extractive industries on the continent and the need for addressing them, in 2009 the African Commission established the Working Group on Extractive Industries, the Environment and Human Rights (WGEI).

Following the establishment of the WGEI there has been a more concerted effort to streamline the Commission’s engagement in the human and peoples’ rights issues arising in the context of the operation of extractive industries, including in responding to major incidents of human rights violations or abuses. The Marikana massacre in South Africa was one such example, where the WGEI undertook a fact finding mission and met with the Chairperson of the Commission of Enquiry set up to investigate the incident. Within the context of Article 62 of the African Charter, the Commission has also highlighted as part of the review of state reports various issues relating to the operation of extractive industries in reporting states.

The WGEI issued a number of statements on human rights violations in the extractive industries, and the Commission in 2017 adopted Resolution 367 on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector, which for the first time provided a comprehensive articulation of the Commission’s views on human rights in the context of extractive industries. The Commission in 2017 adopted a decision in IHRDA v DRC (the Kilwa case) in which the Commission acknowledged the role of a corporation that was implicated in human rights abuses by the national army in Kilwa, DRC. The WGEI Chairperson followed this up with a letter to the Director of the company concerned, requesting them to make reparations in line with the Commission’s finding of complicity. Most recently, in October 2018 the Commission launched State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter in the context of extractive industries.

The resolution of the Commission establishing the WGEI has set as the major deliverable of the Working Group the development of a background study on the extractive industries, environment and human rights in Africa. This study was sought to provide a comprehensive analysis of the state of affairs of human and peoples’ rights issues in the extractive industries sector in Africa and the factors that account for the diverse human and peoples’ rights issues in the extractive industries sector, as well as the appropriate measures and activities for the prevention and reparation of violations of human and peoples’ rights by extractive industries in Africa. The present report contains the findings of this Study. This report will also

5 Communication 373/10 - IHRDA v DRC.
serve as the lodestar for the strategic planning and identification of areas of engagement by the WGEI going forward.

B. Scope of the Study and Methodology

Whereas the extractive industries covers a wide range of activities (extraction of oil, metals, minerals, coal, stone and gas, large scale logging and massive agricultural undertakings for the production of biofuel, among others), phases (exploration and development of natural resources, extraction, and site closure and rehabilitation), and modes (shaft mining, open-pit mining, artisanal and small scale mining, industrial farming and logging) and takes different forms in each African State because of differing geographical, legislative and regulatory environments, it is not possible to consider each of these in detail.

The aim of the Study is thus to provide a broad overview of the main human and peoples’ rights challenges which are experienced on the continent because of the operations of the extractive industries sector, to identify the causes of these challenges, as well as the human rights framework provided by the African Charter in this regard, and specifically the role that the Commission can play in addressing these challenges. In this regard it can be distinguished from other seminal studies and reports adopted on this thematic area in recent times.6

Factors which limit this study include that the bulk of the fieldwork was carried out a number of years before the final report was drafted, and thus some of the information was dated and could not be included in this report. Furthermore, certain data which would have made this study more comprehensive is not readily available, and in addition information about national regulatory frameworks are not in all cases accessible. Areas in which sufficient information was not readily available have been identified for further study.

The field research for this Study started in 2013. From 2013 to 2015 the Centre for Human Rights supported the Working Group’s mandate, and facilitated country visits and sub-regional consultations in Southern, East, and Central Africa. The focus of the country visits and sub-regional consultations was to get input from a broad range of stakeholders that included impacted communities, civil society organisations, industry representatives and governments, on the impacts of extractive industries on human rights and the environment in Africa. The information gathered during these research activities resulted in the production of a number of unpublished reports, including:

- Zambian background country report and country visit report;
- Liberian background country report;

6 See for example the World Bank Extractive Industries Sourcebook; African Development Bank “Women’s economic empowerment in oil and gas industries in Africa” and “Governance of the Extractive Industries in Africa: Survey of donor-funded assistance”; Max Planck Institute, “Human Rights Risks in Mining: A Baseline Study”, among others.
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- Southern African Sub-regional consultation;
- East African Sub-regional consultation;
- Central African Sub-regional consultation; and
- Thematic studies done by Members of the WGEI, including on Climate change and the extractive industry in Africa, children’s rights in the extractive industries, and women’s rights in the extractive industries sector.

These reports formed the basis of the baseline study on the activities of the extractive industries, and their impact on the environment and the promotion and protection of human rights. This report on the baseline study further relies on desk-based research and focuses on the African Charter and the jurisprudence of the African Commission as the core framework of analysis. The context and critique is developed by the analysis of series of reports and materials on the extractive industries in Africa, and the findings demonstrate the central role of the African human rights system in providing a framework for the governance of extractive industries on the continent.

C. Defining Extractive Industries

A working definition of extractive industries is key to understanding the scope of this study. Literature on natural resources often limits "extractive projects" to those industries which are involved in the extraction of non-renewable, non-living resources, in particular gas, oil and mineral resources, such as gold, silver, copper, mercury, platinum, lead, tin, zinc, iron, arsenic, carbon, sulphur and antimony.7 In contrast, Article 21 of the African Charter protects the right to free disposal of wealth and natural resources by peoples. This provision has to be understood in light of its colonial context, which has been clarified by the African Commission:

The origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright andalienating them from the land. The aftermath of colonial exploitation has left Africa’s precious resources and people still vulnerable to foreign misappropriation. The drafters of the [African] Charter obviously wanted to remind African governments of the continent’s painful legacy and restore co-operative economic development to its traditional place at the heart of African Society (emphasis added).8

The African Commission has thus defined the purpose of Article 21(1), as principally protecting African communities against practices that occurred during colonialism

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and guaranteeing that these communities will avail themselves of the resources necessary for their livelihood. Therefore, the meaning of natural resources that emerges is not limited to minerals and oil, but rather is an expansive understanding of that term. Only a broad notion of "natural resources" is in compliance with the objective of Article 21 of the African Charter and will guarantee the rights of African communities as recognized by the Charter.

The decision by the African Commission in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (the Endorois Case) seems to give expression to such a reading. The ruling of the Inter-American Court on Human Rights in the Saramaka case is an important point of reference for the African Commission throughout its decision. In the latter judgment, the right of indigenous communities to use and enjoy natural resources under their property rights is confined to those resources that lie on and within the land, including subsoil natural resources, to the extent that they are traditionally used by the community concerned and necessary for the very survival, development and continuation of their way of life. Supported by this judgment, the African Commission holds that Article 21 of the African Charter protects all natural resources within the traditional lands of the community concerned, even if they have not traditionally used all of these resources.

In light of this jurisprudence, The African Commission’s State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries and the Environment (the State Reporting Guidelines) also endorse an expansive understanding of extractive industries equating the same to natural resources. Paragraph 13 provides:

> The term ‘extractive industries’ refers broadly to the operations by private or State actors, usually at a commercial scale, of mining or extraction of natural resources for economic gain.

Having regard to the provisions of the African Charter and the State Reporting Guidelines, this study adopts a concept of extractive industries that is expansive and includes all natural resources, whether renewable or non-renewable, living or non-living, which are or could be used by local communities to sustain their livelihood.

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10 Saramaka People v. Surinam, IACtHR (2007).


and culture.\textsuperscript{13} Such a wide rendering of extractive industries goes well beyond the traditional understanding of extractive industries, which is often limited to oil and gas and mining. Not only is such a definition in line with Article 21 but also retains a very strong connection to the concept of sustainable development, which is a key developmental aim of the African Union through the measures outlined in Agenda 2063 and the AMV.\textsuperscript{14}

D. Report outline

This report presents the African Commission’s background study on extractive industries in Africa in four parts. Part I presents the experience of the continent with respect to the operation of the extractive industries sector highlighting the actual or potential role of the sector for socio-economic advancement and the adverse impact of the operations of the extractive industries human and peoples’ rights. It further examines the major factors that account to the adverse impacts of the sector on human and peoples’ rights. In Part III the report offers an examination of the legislative framework under the African Charter for ensuring protection of human and peoples’ rights in the extractive industries sector and reviews the experience of the African Commission in addressing human and peoples’ rights in this context. Part IV seeks to articulate the strategy for the African Commission for an institutionalized, systematic and proactive response to the challenges prevalent in the extractive industries sector.

\textsuperscript{13} The addition of "could be" is necessary to guarantee the rights of local communities with regard to traditional extractive activities—i.e. mining, gas and oil.

\textsuperscript{14} Agenda 2063 is described as “A global strategy to optimize use of Africa’s resources for the benefits of all Africans” and as “an approach to how the continent should effectively learn from lessons of the past, build on the progress now underway and strategically exploit all possible opportunities available in the immediate and medium term, so as to ensure positive socioeconomic transformation within the next 50 years” (http://agenda2063.au.int/en/vision).
PART II: The challenges resulting from extractive industries on the African continent and main contributing factors

Despite some of the positive dimensions highlighted in the introduction above, Africa’s experience with the extractive industries have largely been negative. The extraction of natural resources has distorted the economies of resource-rich countries leading to excessive dependence on resources and the thriving of kleptocratic systems of government and grand corruption. This has resulted in significant subversion of the political, legal and economic systems, the illicit financial flows of funds from the continent, the destruction of the environment, the worsening of the living conditions of communities living in the areas of operation of extractive industries with vulnerable groups losing their livelihoods and land. Extractive industries have also fuelled existing conflicts or triggering new conflicts on the continent by disrupting power relations (vertically and horizontally) and injecting new actors, such as private military companies, into the territory.

As the extractive industries operate in a relative human rights vacuum, the negative dimensions of their operations invariably involve and manifest systemic disregard for and widespread abuse of human and peoples’ rights. This section provides an exposition of the various manifestations of these violations on the African continent, and then proceeds to identify the main underlying factors which result in extractive industries having been more of a burden than a benefit for the majority of resource rich countries on the continent.

A. Main challenges resulting from extractive industries in Africa

1. Bad governance, illicit financial flows and underdevelopment

Experience in many parts of the continent shows that countries that depend on extractive industries are generally subject to increased rampant corruption, higher probability of an authoritarian government and higher risk of civil war and human rights violations. With an excess of wealth coming from the extractive industry sector, the state is less incentivised to develop other parts of the economy, leading to what The Economist magazine in 1977 termed the ‘Dutch disease’. As Burgis observed, ‘In Africa, the Dutch Disease is chronic and debilitating. Instead of broad economies with an industrial base to provide mass unemployment, poverty breads and the resource sector becomes an enclave of plenty for those who control it.’

Counting only on income from extractive resources increases the risk that states become nothing more than rental fiefdoms – where the political elite buy support instead of investing in sound economic policies. With a fast-growing income from natural resources, multinational companies often align themselves with the government, establishing relationships of patronage. In such relationships of clientelism, intermediaries with special access to high-placed government authorities

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16 70.
and decision-makers are used by transnational companies operating in the extractive industries to circumvent the normal applicable procedures and policies, including through bribery and personal benefits to government officials. Less attention is consequently paid to sustainable development or human rights concerns attendant to extractive processes, and the concerns of those who will be most affected are almost completely ignored.

Box: Case Studies

The dealings of Mr. Dan Gertler in the DRC

Information came to light through the leaked ‘Paradise Papers’, a set of 13.4 million confidential electronic documents relating to offshore investments, particularly related to activities in African countries, concerning the role of Mr. Dan Gertler, an Israeli billionaire with close connections to the President of the DRC. The Paradise Papers reveal that Mr. Gertler negotiated a reduction of more than 75%, from $585 million to $140 million on payment due to the DRC by a foreign transnational mining company, Katanga, in which Glencore, one of the world’s largest commodities companies has a major stake.

Evidence of the questionable nature of Mr. Gertler’s activities in the DRC has been coming to light even before the Paradise Papers, including in a 2001 United Nations investigation which implicated him in a weapons deal in exchange for a stake in the extractive industries and the 2013 Africa Progress Panel Report which noted his role in concession deals which resulted in millions of dollars of loss for the DRC.

Contrary to public perception and the dominant narrative that the proceeds of corruption to corrupt officials account for most of Africa’s losses, the African Union/UNECA High Level Panel on Illicit Financial Flows found that while corruption is a factor it is not the biggest problem that impedes Africa’s progress; rather, Africa loses more money through illicit financial flows than it receives in aid, loans and investment combined.17 While there is no universally accepted definition of illicit financial flows, the term broadly includes conduct that is illegal, disguised as legal or concealed within a legal framework; the cross border movement of money that is illegally earned, transferred or utilised; flows that facilitate, effect or arise from aggressive tax avoidance and tax evasion; and untaxed and unregulated stocks and earnings from stocks which are derived from illicit flows. Trade mis-invoicing18 by multinationals operating in Africa, alone, is estimated to have resulted in an

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18 Trade mis-invoicing as defined by Global Financial Integrity includes “the falsification of the price, quality and quantity values of traded goods for a variety of purposes. These could range from the desire to evade customs duties and domestic levies to the intent to export foreign exchange abroad. The over-invoicing of imports has been practiced by a variety of importers for a number of years, which is why several African countries have introduced pre-shipment inspection to detect such practices.”
annual loss of $48.2 billion. The UNECA further suggests that revenue losses due to tax avoidance account for $35 billion in Sub-Saharan Africa, and estimates that annual losses through total illicit financial flows amounts to $100 billion. According to the UNECA High Level Panel, major perpetrators of illicit flows are multinational companies especially those operating in the extractive industries sector, mostly in oil, gas and mining. Some African states have also for a long time been serving as tax havens, the consequences of which was reinforced through the leaked Paradise Papers, and more recently the “Mauritius Leaks”.

Box: Case Studies

**IFF resulting from double tax agreements with Mauritius**

As a result of double tax agreements currently in place between Mauritius and fifteen (15) countries in Africa, coupled with very low corporate tax rates in Mauritius (in many cases an effective corporate tax rate of as low as 3 percent), corporations registered in Mauritius effectively pay almost no income tax, and are also able to reduce or entirely avoid common taxes received on cross-border payments, including interest, dividends and royalties. These agreements have had the consequence of depriving these African States of a basic tax base required for fulfilling the right to development of their peoples as well as delivering on obligations in relation to core socio-economic rights.

While the Government of Mauritius has taken initial steps to restrict the establishment of shell companies, including by requiring investors to have reasonable local staffing and to make certain minimum expenditures in Mauritius, and the institution of a rule that allows Mauritius treaty partners to deny tax-treaty benefits to multinational corporations that open in Mauritius with the “principal purpose” of exploiting those benefits, concerns remain about the low taxes, ease with which foreigners can register companies and the terms of tax treaties between Mauritius and other Africa countries.

Although Africa’s resource boom has underpinned growth in the region’s commodity producers, there is strong evidence that natural resource wealth has not improved living standards substantially. The statistics actually seem to suggest that in many of the resource rich countries the extractive industries stunt socio-economic development and exacerbate poverty. According to the data from World Bank and the consultancy firm McKinsey, more than 60 percent of people in extreme poverty

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19 Honest accounts 2017: How the world profits from Africa’s wealth, (2017) 4


21 Close to 200 000 confidential records of the Mauritius office of the offshore law firm Conyers Dill & Pearman which had been leaked in July 2019.

(currently defined as people living on $1.25 or less per day) live in countries where oil, gas and minerals play prominent role in the economy and that average incomes in those counties are overwhelmingly below the global average.

2. **Impacts of extractive industries on the environment**

Environmental impacts of extractive industries include the altering of the physical landscape to access the resources, the accumulation of enormous amounts of physical waste, as well as air, water and soil pollution. It can also have negative consequences on biodiversity in the areas that it affects and contributes to climate change through the release of greenhouse gases. These negative consequences continue throughout the life cycle of the extractive operations, and can have negative repercussions long after resource extraction has ended. While most countries have environmental legislation in place to ensure that environmental impact assessments are carried out before licences for extraction are granted, as well as environmental standards to ensure protection of the environment during operations, these are often not sufficiently enforced, and accidents also take place which can result in major environmental damage.

Mining and oil extraction can have adverse effects on surrounding surface and groundwater if protective measures are not taken. The result can be unnaturally high concentrations of some chemicals, such as arsenic, sulphuric acid, and mercury over a significant area of surface or subsurface. Runoff of mere soil or rock debris – although non-toxic – also devastates the surrounding vegetation. There is potential for massive contamination of the area surrounding mines due to the various chemicals used in the mining process as well as the potentially damaging compounds and metals removed from the ground with the ore. Large amounts of water produced from mine drainage, mine cooling, aqueous extraction and other mining processes increases the potential for these chemicals to contaminate ground and surface water. This is a challenge which arises both in the context of commercial mining as well as in artisanal and small-scale mining, the latter which is often unregulated or illegal and thus has no safeguards in place to protect against the destructive consequences. In this regard, “artisanal and small-scale gold mining is estimated to be the largest anthropogenic source of mercury emissions, contributing approximately 37 per cent of the annual emissions in 2010”. In terms of preventing water pollution, dumping of the runoff in surface waters or in forests has the most negative environmental consequences. Submarine tailings disposal is regarded as a

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25 Sibaud, n above.


better option (if the soil is pumped to a great depth).\textsuperscript{29} Mere land storage and refilling of the mine after it has been depleted is also a better option, if no forests need to be cleared for the storage of the debris.

Mining can further result in degradation of soil quality, thereby disturbing or destroying productive grazing and croplands. Pollutants and chemicals carried by water seeping into the soil are particular culprits in this regard and can result in heavy metal toxicity and acidity.\textsuperscript{30} Certain forms of mining, in particular opencast and coal mining can also affect the air quality of the surrounding areas. Coal and silica particles are very dangerous when inhaled, but dust resulting from drilling and blasting activities can also lead to respiratory problems.\textsuperscript{31} The release of greenhouse gases such as carbon dioxide and methane during mining processes also contributes to the exacerbation of climate change. According to the UN Environment (former UNEP) “the extraction and processing of metals from mined ores ... [i]n 2011, ... were responsible for 18 per cent of resource-related climate change and 39 per cent of [particulate matter] health impacts”.\textsuperscript{32}

The implantation of a mine is a major habitat modification, and smaller perturbations occur on a larger scale than exploitation site, such as mine-waste residuals contamination of the environment. Destruction or drastic modification of the original site and anthropogenic substances release can have major impact on biodiversity in the area. Destruction of the habitat, including through deforestation, is the main component of biodiversity losses, but direct poisoning caused by mine-extracted material, and indirect poisoning through food and water, can also affect animals, vegetation and microorganisms.\textsuperscript{33} Habitat modification such as pH and temperature modification disturb communities in the area. Endemic species are especially sensitive, since they need very specific environmental conditions. Destruction or slight modification of their habitat puts them at the risk of extinction. Habitats can be damaged when there is not enough terrestrial product as well as by non-chemicals products, such as large rocks from the mines that are discarded in the surrounding landscape with no concern for impacts on natural habitat.\textsuperscript{34} Some challenges also arise where there are no processes in place to ensure full rehabilitation following the end of the mining process, for example where steps to mitigate pollution stops, and pollutants leak into the surrounding environment.

Box: Case Studies

The Ogoni Case from oil and gas operations in the Niger Delta in Nigeria

A number of western oil companies, including Mobil, Texaco, Agip, Chevron, Exxon and Royal Dutch/Shell held oil production licences in the Niger Delta, one of the

\textsuperscript{29} As above.
\textsuperscript{31} United Nations Environment Global Resource Outlook 2019: Natural Resources for the Future we Want, 84.
\textsuperscript{32} United Nations Environment Global Resource Outlook 2019: Natural Resources for the Future we Want, 76.
\textsuperscript{34} As above.
biggest wetlands in the world. Shell Nigeria, a subsidiary of Royal Dutch/Shell, was the first of these companies to discover oil in the Niger Delta, in Ogoniland. In order to access the oil and gas resources, Shell Nigeria built a large network of oil wells and pipelines that criss-crossed the indigenous Ogoni villages and communities. Persistent oil spills from this network of pipelines and well affected most of the Ogoniland, polluting the ecosystem and poisoning the land, water and air. Layers of oil coming from wells and pipelines leaks covered the Ogoni fertile lands leaving many without subsistence means. It also affected fishing and other resources that the communities relied on for their livelihoods. Neither the government nor the company attempted to address affected populations of the Niger Delta following the environmental impact of these oil spills.

Uranium contamination caused by AREVA in Niger and Gabon

AREVA, a French nuclear group, hold licences to extract uranium in Niger and Gabon. In a report published in 2007, a group of non-governmental organisations denounced the negligence and the lack of precaution attendant upon AREVA’s operations. In particular, it was claimed and evidenced that the company was negligently exposing its employees and other populations living in the mining areas to a very high radioactivity rates through a lack of due care. According to the affected workers and local inhabitants, AREVA would not disclose the risks of working close to the radioactive ore from workers. Many workers developed various forms of cancer due to such exposure. Despite the risks, workers would be sent down uranium mines without appropriate safety equipment, exposing them to lethal doses of radiation. Many of these would later suffer from lung, dermatological, ophthalmological and cardiovascular pathologies. It was also claimed that the firm did not take sufficient care in its treatment of tailings and other mining waste. At operations in Niger, AREVA was accused of leaving radioactive residues on site by stocking it openly in the desert or a few kilometres from towns and areas often frequented by nomads.

Ghana arsenic pollution

A Ghanaian environmental impact assessment in 2008 of 61 major mines and several smaller-scale operations sites found that mining areas have relatively higher concentrations of arsenic, particularly within the areas of old, large mines such as Obuasi, Bibiani, and Prestea. For example, in Obuasi’s influence area, the mean arsenic concentration over one year of sampling was 25 millionths of a gram per liter, which is more than 50 times the World Health Organization’s guideline for drinking water. High concentrations of cyanide are infrequent in Ghana because most companies stick to stringent procedures.

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36 Déclaration de Bruno Chareyron, responsable de laboratoire à la CRIIRAD.
South Africa Blyvooruitzicht Mine environmental impacts after closure

South Africa’s Blyvooruitzicht Gold Mine in August 2013 initiated insolvency proceedings and operations stopped abruptly, resulting in environmental mitigation measures ceasing entirely. Acid water has continued to collect in the abandoned shafts, leading to a significant risk of water and soil pollution. Other environmental mitigation measures, such as dust suppression at the tailings storage facilities, ceased when liquidation proceedings started and have never been re-initiated, resulting in significant health risks to residents of the adjacent village and damage to the surrounding environment.

3. Extractive industries and conflicts in Africa

Another negative aspect of the extractive industries sector in Africa has been its association with conflicts. The control of natural resources is a main cause of conflict in resource-rich countries on the continent. This is sometimes referred to as the ‘resource curse’, where countries with a lot of resource wealth tend to have less economic growth, less democracy, and worse development outcomes than countries with fewer natural resources. Thus, while resources in themselves do not cause conflict, how resources are exploited, by whom and within which context are important factors which can contribute to conflict or crisis situations. The presence of extractive industries may play a role in fuelling or prolonging existing conflict.

The Armed Conflict Location & Event Data Project (ACLED) dataset, containing the highest quality, most widely used data and analysis source on political violence and protest in the developing world, shows increased conflict (higher prevalence of riots and protests) driven by extractive resources, resource-related clashes and instances of violence against civilians in countries such as Nigeria, Sudan, South Sudan, the DRC and Somalia. Socio-economic deprivation and inequality are often a root cause of conflicts and crises, and consequently there are close linkages between conflict and factors such as climate change, unemployment, and unequal access to land, water and wealth, among others.

The abuse of natural resources by one or all sides to a conflict is also both a human rights violation and a factor which leads to the protraction of conflict, as natural resources are often sold to fund and sustain conflict. In relation to the exploitation of resources by rebel and opposition groups, the international community has an important role to play in instituting bans on imports from such conflict areas. One success story in this regard was the end of trade in ‘blood diamonds’ which fuelled the conflict in Liberia/Sierra Leone. In response to the role of the diamond trade in financing Liberian warlord Charles Taylor, who invaded Sierra Leone, the UN Security Council imposed sanctions on diamond exports from Liberia in March 2002.

The awareness of the harmful consequence of resources used to fuel conflict has also resulted in the establishment of the Kimberly Process, a commitment to remove conflict diamonds from the global supply chain. Participants currently actively prevent 99.8% of the worldwide trade in conflict diamonds. In addition, in the context of resource-related conflict, there are some non-State actors which play a major role in perpetrating human rights violations. These include non-State armed groups (rebel and opposition groups, and terrorist and other criminal groups) and economic non-State actors (multinational corporations and private military and security companies). Where host communities are not sufficiently consulted during the negotiation process, or where there is a breach of the terms of agreement and their expectations are not met, this may result in conflict between the host community and companies, which can take the form of strikes, illegal artisanal mining or escalation into violent conflict. When situations of conflict arise, extractive companies often employ private security companies to protect their interests, which could result in an escalation of violence with resulting human rights violations.

The United Nations in its Report entitled From Conflict to Peacebuilding: The Role of Natural Resources and the Environment cites “preliminary findings from a retrospective analysis of intrastate conflicts over the past sixty years [which] indicate that conflicts associated with natural resources are twice as likely to relapse into conflict within the first five years.” It is thus crucial that natural resources should receive specific attention in peace processes, in order to ensure that there is an equitable sharing of the available resources and that a State does not revert to a situation of conflict.

Box: Case Studies

The Ogoni Case - oil and gas operations in the Niger Delta in Nigeria

The plight of the people of Ogoniland was brought before the African Commission in the case of SERAC v Nigeria. The Complainant submitted that the Nigerian Government has condoned and facilitated numerous human rights violations by an oil consortium in Ogoniland, by placing the legal and military powers of the State at the disposal of the oil companies, withholding from Ogoni communities information on the dangers created by oil activities, and responding to protests with massive violence and executions of Ogoni leaders. In its decision, the Commission called on the Government of Nigeria, *inter alia*, to stop all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory; and to conduct an investigation into the human rights violations and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations.

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38 United Nations Environmental Programme “From Conflict to Peacebuilding: The Role of Natural Resources and the Environment” (2009) 12.
4. Extractive industries and human rights violations in Africa

African States have for generations experienced the plunder of their resources. While the issue of natural resources and human rights violations has a long history in Africa, starting from slave trade and colonialism, unlike in the past when States were the most powerful role players in the context of globalization in the post-Cold War period the global power balance has shifted in favour of multinationals and other companies. The demise of the Cold War brought about a new global order premised on the triumph of liberalism, but the most prominent development has been the rise of corporations to unprecedented levels of economic and socio-cultural prominence. In the operations of these corporations there is little consideration to anything other than the golden rules of maximizing profit and limiting costs. A disproportionate amount and the most serious of violations involving the operations of corporations take place in the parts of the world like Africa, where governance challenges are the greatest, including in low income countries; countries that had just emerged from or still is in conflict; or where the rule of law is weak and levels of corruption high. In many parts of the continent corporations have thus undertaken their operations in a human rights vacuum, with little or no regard to human rights. In this context, not only have corporations taken advantage of low human rights protections, but have also directly participated or engaged in the perpetration of human rights violations.

The human rights violations that implicate extractive industries are diverse and cover all categories of human and peoples’ rights. These violations take two forms: direct and indirect.

i. Direct violations

The first form involves what may be called direct violations. These are the human rights violations that result directly from the activities of the extractive industries. Good examples of direct violations include those related to labour rights and environmental conditions.

As far as violations of labour rights are concerned, major violations include the use of child labour, poor safety procedures including the lack of provision of relevant safety gears, poor or highly inadequate remuneration. It may also take the form of discrimination in recruitment of employees.

Box: Case Studies

The Marikana massacre in South Africa

One of the best illustrations of the consequences of the disregard of the rights of mine workers is the Marikana massacre, the most lethal use of force by South African security forces against civilians since 1976, resulted in the death of 34 miners and numerous injuries. Approximately 3000 miners gathered to strike at the Lonmin mine on 16 August 2012 in demand of a tripling of their wages to R12, 500 41

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(approximately US$ 1375 at the time) a month. The event garnered international attention following a series of violent incidents between the South African Police Service, Lonmin security and members of the National Union of Mineworkers (NUM) on the one side and strikers on the other. The main reason for the strike was that the benefits of mining were not reaching the workers or the surrounding communities, while Lonmin kept its profits down through transfer-pricing, claiming that they were not able to pay higher wages. The Bench Marks Foundation, an independent organisation monitoring corporate performance in the field of corporate social responsibility in South Africa stated that “The concern is that private corporations, often with the support of government leaders, make very large profits while communities suffer high levels of inequality and poverty. The situation in Marikana testifies to this.” In addition to the challenge of low wages, the mining company also failed to comply with its commitments under the Social and Labour Plan, in particular in building houses for residents and other infrastructure provision.

Landmark outcome on silicosis case in South Africa

The Legal Resources Centre (LRC), Abrahams Kiewitz and Richard Spoor Attorneys, on behalf of thousands of mineworkers, reached a class action settlement with the Occupational Lung Disease (OLD) Working Group, which represents various South African gold mining companies, including Harmony Gold, Gold Fields, African Rainbow Minerals, Sibanye-Stillwater, AngloGold Ashanti and Anglo American. The out-of-court settlement signed between gold miners in South Africa and the lawyers of several thousands of mine workers who contracted fatal lung diseases silicosis and tuberculosis while working in the mines, resulted in the setting up of a trust of R5.2-billion to be distributed to the mineworkers in compensation, and an additional R845-million for the administration of the trust.

Often many of these violations might also result in the violation of other rights including education, health, and prohibition of cruel, inhumane or degrading treatment and even the right to life (when a miner is killed as a result of poor safety standards). The exclusion of women from employment in the extractive industries sector, could also produce conditions for other violations as when women are forced into prostitution to make a living. Contrary to the promises made by mining companies, the impacts of their presence on the local economies is also often negative, with commodity prices rising above that which the long-term residents can afford.

Another direct violation relates to the right to drinking water. Here, the use of existing sources of drinking water for mining purposes results in reduction of available drinking water for the local community.

In terms of environmental standards, violations include, but are not limited to, the release of toxic chemicals into the land and water of the territories in which they operate or the frequent spill of oil or related materials into the environment or the
discharge of sulphur dioxide, the emission of dust into the air and discharge toxic chemicals into rivers. These violations result in pollution of the air, water sources and the land on which local communities depend for their livelihood. Apart from spoiling the sources of drinking water and aquatic life for fish farming, the pollution also destroys the productivity of the land on which they rely on both for their physical survival through the production of food and their socio-economic and cultural survival. These environmental violations severely affect a wide range of other rights including the right to health, right to life, rights to adequate food and housing, minority rights to culture and access to clean water.

Direct violations also occur in conflict situations in which extractive companies rely on their own private security and such private security engages in human rights violations of various kinds.

**Box: Case Studies**

**DRC Kilwa case**

In 2010 a complaint was submitted to the African Commission by residents of Kilwa, a town in the Democratic Republic of Congo (DRC), regarding violations of their rights guaranteed under the African Charter on Human and Peoples’ Rights. These violations included arbitrary arrests, looting, massacres, summary executions as well as bombings by the 62\(^{nd}\) Infantry Brigade of the DRC Armed Forces (FARDC).

The Anvil Mining Company, operating in the region, was referred to as one of the actors that facilitated and supported the perpetration of the violations by FARDC through providing logistics, foodstuff and financial resources, including availing the aircrafts and vehicles that transported the security forces, took arrested civilians to detention centres and were used to bury the victims, loot and remove people’s property.

In its decision in *IHRDA and others v. DRC*, the African Commission established the role played by Anvil Mining Company in facilitating the perpetration of violations of the rights to life, property and protection from torture.

**ii. Indirect violations**

The second form of human rights violations involves what may be called indirect violations. These are the violations that, although not directly perpetrated by extractive industries, are connected to their operations. These could be cases in which a third party is involved in the violation and a company played a part either in contributing to or benefiting from such violation or it could be violations that result along the supply chain of the operations.

The violations in this category include disregard of the right to information, and the voice and interest of local communities in the prospecting, designing and implementation of projects. There are many instances in which extractive projects were launched either without informing the communities in the areas or without
their participation in the decision-making process. Related to these are also such violations as dispossession of land, displacement of communities from their land, lack of prompt and adequate compensation, inadequate or no development benefit for the host communities and disruption of the livelihood of host communities without alternatives. Dispossession of this kind may also result in violations of the right to culture, particularly where the identity of the community is closely related to the land, where there are ancestral graves on the land or where communities are divided or assimilated into other communities when they are displaced. This is also a clear violation of the right of peoples’ to dispose of their wealth and natural resources.

Other indirect violations include poor living conditions of employees in the areas of operation of extractive industries. As reported with respect to South Africa, miners lived in informal settlements or shacks with no access to sewage, electricity, or piped water, prompting allegations that the companies impacted the right to adequate housing. Where there is a mine closure this also usually heavily impacts on the socio-economic circumstances of the host community, as the main income is removed and usually is not replaced with other economically viable alternatives. In the case of the South African Blyvooruitzicht Mine, discussed above, following mine closure the basic services provided by the mine, including water, sanitation, rubbish collection, and security was interrupted, thousands of people lost their jobs and the residents were no longer able to maintain adequate standards of living.42

The protection that companies receive for avoiding damage to property or loss of profit due to disruption of their operations often involves the suppression of the exercise by their employees or affected communities of protesting against and challenging the human rights violations that arise from the activities of companies. State security forces have been used in the Niger delta of Nigeria to suppress community protests against major environmental pollution from oil. The Marikana massacre in South Africa arose in the context of protests of the mining community against the dismissal of miners for exercising their right to labour strike. In these contexts, various violations ensue including arbitrary or extrajudicial killings, unlawful detention, torture and inhuman or degrading treatment and violation of freedom of the press.

Box: Case Studies

Worker discrimination in Sierra Leone

On April 16, 2012, workers at African Minerals Limited (AML), an iron ore mining firm headquartered in London, went on strike in Bumbuna, a small town in northern Sierra Leone. The workers, frustrated by what they alleged to be discrimination and mistreatment on the job and the inability to form a union of their own choosing, refused to go to work and persuaded employees working for AML contractors to join the strike. The workers tried to prevent AML vehicles from refuelling for the uphill drive to the mine to extract the iron ore.

Officers at Bumbuna’s small and poorly equipped police station, alarmed by the protest, called for reinforcements from the district and regional police headquarters; an estimated 200 police officers descended upon the town the next day. Protesters, some armed with rocks, marched in the street, and in an apparent attempt to maintain order, the police opened fire on the market and town centre, killing a 24-year-old woman and wounding eight others. Police arrested at least 29 people who were held for a day before being released without charge; many alleged they were beaten during their arrest. Three police officers were also injured.

Indirect violations relating to supply chain cases arise where companies, despite not having direct operations on the ground, use resources produced by suppliers operating in violation of human rights standards. The case of the supply of cobalt from the DRC is a good example. A key component for rechargeable batteries for all kinds of new technologies, more than half of the world’s supply of cobalt comes from the DRC. Human rights violations in the cobalt industry in the DRC abound, including in particular child labour, lack of basic health standards and exploitative working conditions. Technology companies thus receive a significant percent of their supply from extraction of cobalt in conditions not in line with human rights standards.

As is clear from the above, because human rights and indivisible, it is not possible to draw a clear distinction between direct and indirect violations. Direct violations can have various indirect repercussions as well.

iii. Vulnerable groups

Women

Box: Key message

Women in communities where extractive industries take place bear the brunt of the industries’ negative social and environmental impact, including displacement, pollution of water sources and air, destruction and dispossession of land resulting in loss of livelihood, health-related problems, malnutrition, sexual exploitation, violence against women and conflict to gain access to minerals, among others.

In many mining communities, women undertake key tasks that sustain the very operations of mines that operate in the midst of their communities. Meaningful realisation of sustainable development thus cannot be achieved without addressing the unique challenges that women in extractive industry communities in Africa face while claiming their economic rights in their attempts to participate in the economy of their communities and countries.

The extractive industries sector has traditionally been male dominated. Historically, women were legally barred from engaging in mining on account of their physical incapability. For example, the 1935 ILO convention on underground work (women) prohibits women of whatever age from ‘underground work in any undertaking whether public or private, for the extraction of any substance from under the surface of the earth’. This was preceded by several national laws, including in the United Kingdom and its colonial territories to the same effect. While these laws have since been repealed and replaced by more inclusive ones, the culture of the industry is such that it remains masculine. Even in countries like South Africa, where mines are legally obligated to include a minimum ten percent in their workforce since the mid-90s, the figures currently do not go beyond fifteen percent.

To date, the extractive industries sector is still widely regarded as an occupation unsuitable for women. Because of this state of affairs, its effects on women have received less scrutiny and attention, contributing to making its impact on them less visible or considered as relating to or subsumed into other issues affecting women, such as their low social and economic status, pervasive in patriarchal Africa. Women miners make up a very small percentage of the workforce in large scale mining establishments. This record of exclusion has left women on the margins of the extractive industries sector, vulnerable to exploitation and abuse, historically experiencing the worst impact in the extractive industries sector, routinely subjected to dirtier and more dangerous jobs. Research states that ‘while the specificities of exploitation vary from context to context, women may typically be recruited on contract or through labour brokers, paid less than their male counterparts, predominate in the more dangerous tasks (such as cobbing work in the asbestos industry)’, and be treated as elastic and expendable.

Research undertaken on women in South African mines reveals that women are often accused of bringing bad luck, incapable of doing mine work, and often blamed when a team fails to meet its production targets. Management and male peers similarly construct women workers as “discontinuous labour”, contending that they are not committed to their jobs and hence less likely to be promoted. While sexual harassment is prevalent, in South Africa, women have also been raped and killed underground. Little is done to address women’s specific challenges. For example, research indicates that while men can stay in hostels at mining sites, women miners are still responsible for childcare and household duties and therefore find themselves having to commute to work daily using public transportation as mines

45 Jenkins, n above, 331.
47 Anja Tolonen, Extracting equality: Gender and the African mining industry
48 Cobbing is sorting ore by hand and using a hammer to separate the asbestos fibre from the rock.
49 Andrew Green, Surviving the underground: Women miners in South Africa.
50 As above.
typically do not make provisions for commuters.\textsuperscript{51} Thus, they spend a significant amount of their time commuting and their meagre wages on transport costs, in comparison with men. Trade unions are described as largely insensitive to women’s challenges, treating them as a natural consequence of their presence in a masculine environment. Women headed households, where women are the sole breadwinners are also particularly vulnerable to these additional burdens.

However, it is not only an issue of overt discrimination and/or harassment. The matter is deep-rooted, as the very culture of mines constructs the ‘ideal’ worker as a male performing mine work. In doing so, women are symbolically excluded - spawning broader impact and touching on diverse matters, including the design of machines and Personal Protective Equipment, which are designed for use by men. This is a significant because even if policies addressing harassment and discrimination were to be implemented, women mine workers may continue to feel excluded by the culture of a male-dominated work space.

While women share many of the same challenges as men in Artisanal or Small scale Mining (ASM), an often unregulated and highly dangerous sector, they face additional gender related impediments including limited access to capital and financing, heightened exposure to dangerous substances on account of their role in processing minerals, limited access to information and training, and lower wages. Further, women engaged in this sector typically have to balance several domestic responsibilities with their work in the mines. An example is that of six Ugandan ASM communities in which both men and women work seven to eight hours per day at ASM sites.\textsuperscript{52} Women then work an additional five to eight hours more than men in domestic responsibilities (child care, food preparation etc.) leaving zero to one hours per day for relaxation or socializing compared to four to seven hours for men. To meet their domestic demands women often carry out potentially hazardous mineral processing in their homes alongside regular domestic activities, putting themselves and their families at risk. For example, women in Eastern Uganda use grinding stones in the home to pulverize gold ore as they carry out activities related to child care, food preparation, digging, and other work.\textsuperscript{53}

Further, women often have higher health risks from contaminated soil and water on account of their domestic roles such as collecting water and doing laundry, and primary responsibility for agricultural production. Research undertaken in Tanzania concluded that the pollution of water sources by cyanide and mercury was particularly dangerous to the women and children who collected it for household and livestock use in rural communities.\textsuperscript{54}

Environmental changes associated with extractive industries have also been linked to decreased agricultural yields which in turn diminish food security and

\textsuperscript{51} As above.


\textsuperscript{53} As above.

\textsuperscript{54} World Bank (2012) n above.
consequently women’s economic empowerment and ability to provide for their families. In the SERAC case, the African Commission held that ‘the right to food is inseparably linked to the dignity of human beings’ and ‘the minimum core of the right to food requires that the Nigerian government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples’ efforts to feed themselves.’

In addition, women are also the hardest hit when there is displacement due to extractive industries. Dispossession of the land by the State or company often takes place without compensation, and women are the most affected in this regard as in many traditional communities women do not have the same strong ownership rights as men, and as women are mostly the ones that work the land, and provide the family with basic foodstuffs. Women are also often excluded from decision-making roles and thus are not involved in the negotiations around the extractive industries which would impact on them and their children.

**Children**

Children can be found working in mines in Asia, Africa, and Latin America and in parts of Europe.55 Due to the hidden nature of the problem, reliable statistics on child labour are difficult to come by. However, anecdotal information confirms the incidence of the problem in African extractive industries.56 The dangers of mine work are so obvious and extreme that there are no conditions – poverty included – under which child labour in mines should be tolerated. Mining exposes children to serious physical risks on account of heavy and awkward workloads, strenuous work, unstable underground structures, adult sized tools and equipment, and exposure to high levels of noise, toxic dusts and chemicals.57 Mining is therefore classified among the worst forms of child labour by the International Labour Organization.

Children who work in mining sites normally start at a very young age, accompanying a parent or older family member who initiate them to mining work. The work carried out by children varies according to age and gender.58 Younger children normally work in support functions such as transporting sand and gravel to the washing or crushing sites, collecting water, preparing food, petty trade, and running errands. The most physically strenuous work of mineral excavation is primarily done by boys over the age of fourteen.59 While older girls are increasingly getting involved in digging, most of their work is in panning for precious stones,  

59 As above.
transporting sand and gravel, sorting rocks, assisting in the amalgamation process, and crushing stone. Girls also often carry out domestic tasks such as food and water provision. In extreme cases, girl children have also been involved in prostitution and sexual exploitation, particularly where there were intersecting vulnerabilities, such as in the case of trafficked children and refugees.

Poverty is the main push factor for children working in mines. Children are often introduced to mining by a parent or older family member, although there are documented cases of child trafficking and forced labour in this sector, particularly in conflict zones. Research has shown that children often view mining as a temporary occupation - to contribute to the well-being of their families and provide an opportunity to pursue their education through their earnings from mining, which are relatively higher than in other sectors.⁶⁰

In addition to the direct negative consequences to their health and well-being which flow from their involvement in mining, children are also exposed to social risks on account of the lifestyle associated with mining communities which often involves high alcohol consumption, illicit sexual activity, criminality and violence, including domestic violence. Children who are engaged in labour often drop out of school and thus are not given the opportunity for further education, thereby limiting their future employment opportunities and contributing to a cycle of child labour.

Box: Case Studies

**Child Labour in Mines in Uganda**

Approximately fifteen thousand (15,000) children are currently working in small scale/artisanal mining in Uganda, in the districts of Moroto, Bugiri and Namayingo, and this number appears to be increasing. Some of the children working in the mines are as young as four years old, and while some are working in the mines either after school hours or during holidays, others work full time, up to eleven hours per day. On account of the poor conditions of work, the children are exposed to serious health risks and death as a result of exposure to dangerous chemicals such as mercury, which is used in the panning process, and bodily injury due to carrying heavy loads. Most excavation sites also lack sanitation, solid waste disposal, drinking water and shelter. According to statistics available in the public domain, 97.3% of the children employed in gold mining in the above-mentioned districts work without any protective gear and regularly operate equipment designed for adults.

**Other vulnerable groups**

Other groups which have particular vulnerabilities in the context of extractive industries include indigenous communities, human rights defenders, displaced persons, persons with disabilities and older persons. Indigenous peoples are particularly heavily impacted by extractive industries due to their direct reliance on

⁶⁰ ILO “Child Labour in Gold Mining: The Problem”, EPA [http://www.epa.gov/hg/effects.htm](http://www.epa.gov/hg/effects.htm) (accessed 5 July 2018.)
the land for their livelihoods and the cultural connection that they have to the land, which means that when they are displaced from the land their way of life, culture and often religious practices are all impacted. In the decision of the African Court on Human and Peoples’ Rights in Application 006/2012 – African Commission on Human and Peoples’ Rights v. The Republic of Kenya, the African Court acknowledged the close connection between indigenous people and the environment as follows: “The most salient feature of most indigenous populations is their strong attachment with nature, particularly land and the natural environment. Their survival in a particular way depends on unhindered access to and use of their traditional land and the natural resources thereon.” Clearly in such an instance the displacement of an indigenous people from their traditional land for purposes of extractive industries would result in a range of human rights violations, including loss of livelihood, right to culture, and the right to exist as a people.

A further group which is particularly vulnerable, is human rights defenders (HRDs), in particular environmental human rights defenders. The harassment against HRDs fighting for environmental protection includes verbal abuse, threats and physical abuse. In some cases, killings also take place in the stand-off between HRDs and those with vested interests in mining developments. Strategic lawsuits against public participation (SLAPP suits) is a strategy increasingly used by corporations to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.

Box: Case Studies

Murder of activist in Xolobeni, South Africa

The chairman of the Amadiba Crisis Committee (ACC), which has for more than a decade been fighting to prevent titanium mining from being carried out in Xolobeni in the Eastern Cape, was shot dead outside his house in March 2016. To date no arrests have been made. The murder followed after a year of threats against Mr. Sikhosiphi Bazooka Rhadebe and other activists opposing the development of the mine. Community members have stated that they continue to fear for their lives.

Execution of Ken Saro-Wiwa

As president of the Movement for the Survival of the Ogoni People (MOSOP), Saro-Wiwa led a nonviolent campaign against environmental degradation of the land and waters of Ogoniland by the operations of the multinational petroleum industry, especially the Royal Dutch Shell company. At the peak of his non-violent campaign, he was tried by a special military tribunal for allegedly masterminding the murder of Ogoni chiefs at a pro-government meeting, and was hanged in 1995. His execution provoked international outrage and resulted in Nigeria's suspension from the Commonwealth of Nations for over three years.

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This Study will not consider in detail the specific vulnerabilities of other groups such as migrants, displaced persons, persons with disabilities and older persons, which can be the subject of further study.

iv. Human rights impacts related to artisanal and small scale mining (ASM)

In the Gauteng Province of South Africa there are 30 000 artisanal miners, supporting approximately 250 000 people. In Sub-Saharan Africa ASM provides livelihoods to over 10 million people. Although essential in terms of poverty alleviation and rural development, ASM is rarely incorporated adequately in national legal and regulatory frameworks. The mining model which has been introduced over the last 30 years has systematically privileged mining in the industrial sector, contributing to the marginalisation and the disregard of ASM. The “prioritisation” of industrial mining introduced with the liberalisation of the sector goes a long way in explaining the persistence of the largely unregulated nature of ASM activities which may be seen as a central cause for the severe problems which have accompanied the sector. While ASM is only illegal in a number of African countries, in others it is largely unregulated. In only a few African States have efforts been made to formalise ASM, most notably in South Africa, where ASM diamond miners have been granted formal access to mine in specific areas, together with mining permits, which would enable the miners to trade their diamonds in the formal market.

Box: Case Studies

Artisanal miners risking their lives in the DRC

43 artisanal miners perished when a part of the wall of the Glencore-owned Kamoto Copper Company open pit mine (Kamoto mine) in the Democratic Republic of the Congo (DRC) collapsed on 27 June 2019. The government responded to the tragic deaths by ordering military intervention at the Kamoto mine to remove the over 2000 artisanal miners who operate there, after miners defied a government deadline to vacate the mine and clashed with police. The artisanal miners are asking for the creation of special artisanal mining zones. According to Amnesty International the areas set aside for ASM are often isolated spots that have not been surveyed by geologists, so people tend to flock to industrial sites that have proven mineral reserves.

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The lack of regulatory frameworks for ASM is in striking contrast to the call in the industrial sector for the introduction as of the early 1990s of clear rules and guarantees regarding exploration and mining rights, majority ownership for the private investor, taxation, foreign exchanges, escrow accounts, and profit and capital repatriation. Many negative consequences flow from the unregulated nature of ASM, including a lack of appropriate tools, resulting in the use of rudimentary, outdated and dangerous practices, which endanger their health, lives and the environment. As it is unregulated, there are also no health inspections, environmental impact assessments and other precautionary practices which accompany ASM. The unregulated and even illegal nature of ASM in many African countries further means that there is no protection for workers against exploitation, and they are often forced to sell their produce to middlemen, who pay them a small percentage of what the minerals are often worth.

A review into ASM in Africa demonstrates how the sector’s positioning exacerbates human rights violations and unsustainable practices. ASM often exploits minerals like gold, cobalt, or gemstones, which in many cases has been linked to the financing of armed conflicts and criminal networks. In rural and remote areas, ASM is often the only employment alternative for poor, uneducated people besides traditional subsistence farming. Economic shocks, such as loss of crops or arable land due to natural disasters or land grabbing, the closure of large-scale mining companies or civil wars drive additional people into ASM. Migrant ASM miners at times may not respect private, indigenous or corporate property or protected areas which can lead to severe conflicts among the different stakeholders. Moreover, ASM communities may suffer from social disruptions that accompany migration, corrupt local authorities, armed groups, and hostile mining companies.

Women also suffer specific impacts. A World Bank report estimates the percentage of the female workforce in artisanal mines in Africa as anything from 40 to 100 percent. Most women in the ASM sector are engaged in transporting and

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processing minerals (for example in the gold mining industry women often process gold ore in their homes, and work as porters at mining sites), and ancillary roles such as cooking and water provision. This division of roles is attributed to different social and traditional factors that limit women’s engagement in digging for minerals. For example, in certain areas of the DRC, women are considered to bring bad luck in the artisanal mining sites. Zambian women actively involved in the country’s gemstone mining sector as owners of mines and small-scale miners represent a continent-wide exception, rather than the norm.

B. Main factors underlying human rights violations in the extractive industries

Having considered the main challenges which arise from extractive industries on the continent, this section will attempt to provide an exposition of the main factors which have led to the deplorable situation, where natural resources are more of a blessing than a curse for most African countries.

1. Africa as origin but not beneficiary of its resources

Despite being a central player in the extractive industry, Africa does not consume the minerals that it produces.71 ‘Outsiders often think of Africa as a great drain of philanthropy, a continent that guzzles aid to no avail and contributes little to the global economy in return’ wrote Tom Burgis.72 ‘But look closely at the resource industry,’ he goes on to state, ‘the relationship between Africa and the rest of the world looks rather different. In 2010 fuel and mineral exports from Africa were worth $333 billion, more than seven times the value of aid that went in the opposite direction.’

Thus despite the natural resources having a clear African origin, it is other, mostly non-African players who benefit the most from trade in commodities with Africa. In fact, some non-African commodities traders specialising on Africa make more money from the extractive industries than the countries from which they obtain natural resources. For example, the income of Glencore International, a leader in raw materials trading, is higher than the GDP of Nigeria or South Africa.73 On a global scale, the total turnover of 40 main mining companies was higher than the GDP of

72 The Looting Machine: Warlords, Oligarchs, Corporations, Smugglers, and the Theft of Africa’s Wealth
150 of the world’s countries between 2007 and 2009. Furthermore, “90% of actions taken worldwide in the mining sector were managed by Toronto Stock Exchange (TSX)” which has become “the hub of funding the exploitation of mining resources all over the world.”

A further challenge in Africa not benefitting from its resources is that most resources are exported in a raw form, and often again imported by African States as finished products. There is thus very little beneficiation or upstream and downstream benefit from the extraction of Africa’s resources for Africa’s people. There is also no added value and no skills transfer in most cases. While there have been isolated incidents where African states have tried to improve this, it remains the exception rather than the norm. Some examples of added value include the planned development of a base-metal refinery for platinum in Zimbabwe, and in Tanzania, new legislation adopted in 2017 provides for the enforcement of local beneficiation of minerals and strict local-content requirements. In Ghana, the government was also considering passing legislation stating that at least 50% of Ghana’s gold output would be refined locally within five years.

Challenges experienced often also have historical roots. African States have for generations experienced the plunder of their resources. The plunder of African resources culminated in the Berlin Conference of 1885, which drew the colonial borders and resulted in foreign domination, occupation of land, looting of resources and forced labour. Even after the colonial administration came to an official end, former colonial masters in many African States continued to exercise inordinate control over resources and governance decisions, with a consequence that the benefits of Africa’s resources accrue to foreign powers, rather than to African citizens.

2. The power imbalances in the international political economy

More worryingly, although Africa’s resource boom has underpinned growth in the region’s commodity producers, there is strong evidence that natural resource wealth has not improved living standards substantially. Better than average GDP rises have not raised incomes or reduced poverty at a fast enough pace or at all. Beyond income poverty, non-income dimensions of poverty such as education and health have not improved in real terms. Sadly, the data shows that the conversion of growth into poverty reduction is much lower in Africa than in the rest of the

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76 Kwasi Kpodo Ghana to tighten controls on gold exports to protect revenues February 27, 2018 https://www.reuters.com/article/ghana-gold/ghana-to-tighten-controls-on-gold-exports-to-protect-revenues-idUSL8N1QH6EX
developing world. At \(-0.7\), Africa’s growth elasticity of poverty is one-third that of the rest of the developing world, excluding China, making Africa the only continent where poverty has actually increased during the past decade.\textsuperscript{78} These challenges are frequently attributed to natural resource-led or dependent growth, or the so-called natural resource curse.

The challenge that the corporations engaged in extractive industries present to human rights is not limited to their role or participation in or link with violations of human rights. The power of extractive companies means that their leverage and bargaining power is often bigger than that of the countries that host them. The resultant power imbalance between the industries and the state also tremendously affects the role and ability of the state in shouldering its human rights obligations vis-à-vis the operations of extractive industries. This begins with the capacity of the state both to negotiate with the extractive industries and actually implement beneficial terms that ensure that the people from whose territory natural resources are extracted are full beneficiaries of the project as per the requirements of Article 21 of the African Charter.

Box: Case Studies

\textsuperscript{78} As above.
The lobbying power of big business in Africa

Following the adoption by the Senate of new mining legislation in the DRC, a campaign of the biggest mining companies operating in the DRC, including Glencore, Randgold, China Molybdenum Co., Ivanhoe Mines, MMG, Zijin Mining Group Co. and AngloGold Ashanti was launched, first to prevent then President Joseph Kabila from sign the Mining Code into law, and after he did so, to try to negotiate ways in which they would not be bound by the new regulations. They further used the assertion that the Mining Code would discourage investment to try to pressure the government on relenting on its decision. This despite the fact that the Mining Code represents a positive and long overdue development in the protection of the rights of peoples in the DRC, and the increases in taxation which were envisioned under the new Mining Code were still far below the global averages.

Similarly, Zambia in January 2019 introduced new mining royalties as part of efforts to ensure that the country benefits more from its natural resources, prompting warnings from the mining industry that the increase could render more than half the mines unprofitable.

As Joe Oloka-Onyango observes, owing to the scale of their footprint, the activities of these companies have numerous implications for the observation and protection of human rights, particularly economic, social and cultural rights, and the so-called third generation rights, including the right to self-determination, to a healthy environment, and to economic, social and cultural development.

The political economy of extractive industries in Africa is also a major factor that produces the conditions for human rights violations involving extractive industries. The negotiation and the granting of licenses are often tied with the ruling elite or political party. Consequently, the lucrative revenue that is derived from the extractive industries becomes a major source of rent (corruption) and key political instrument in the quest for expanding and sustaining the ruling elite’s or party’s control of power. In this context, while extractives projects get caught up in the power politics of the host country rather than relying on the guarantees of rule of law and observance of human rights, they also create the conditions that reduce the accountability of security forces and political elites to their people and promote corruption. Apart from the human rights violations that they occasion, these violations additionally precipitate social tension and violence involving communities and state security forces.

Major human rights challenges also arise from the operation of extractives in countries affected by conflicts. As the former Special Representative of the UN Secretary General observed, some of the most egregious human rights abuses, including those related to corporations, occur in conflict zones. There are various experiences in Africa of extractive industries contributing to, and/or benefiting from, conflict situations and the attendant human rights violations, as discussed briefly in the section above. The violations in these situations present some of the most serious challenge to the protection of human rights because they happen in a
context where the State is not in a position to ensure their vindication and accountability.

Another challenge relates to the power imbalances between developing and developed states. Often developed states that are directly or indirectly involved in extractive industries in Africa at the same time give aid the countries in which their extractive industries operate. While this is usually not overtly stated, the continuance of aid in such instances is often bound up with beneficial terms and concessions and low levels of regulation of their extractive operations. One such case is the example of uranium mining in Niger, which is done by the majority state-owned French company Areva, and which has resulted in uranium pollution of the surrounding community, with no benefits shown for it. In 2014, Niger attempted to re-negotiate the agreement, but “Areva insisted this would make its activities unprofitable and suspended operations for two weeks during negotiations, officially for maintenance reasons”.79 This while the French President Emmanuel Macron in 2017 promised €400 million in aid to Niger.80

3. The lack of effective regulatory frameworks at the level of African States

The violations that arise in the context of extractive industries are also attributable to the fact that many African states lack the institutional capacity to enforce national laws and regulations against transnational firms doing business in their territory even when the will is there, or they may feel constrained from doing so by having to compete internationally for investment or in what the Mbeki Panel on illicit financial flows called the “race to the bottom”.

Like other profit driven companies, extractive industries seek to avoid the costs and burdens of heavy regulations. Major violations occur where extractive industries operate in weak or poor developing countries. Indeed, most of the violations involving extractives almost invariably take place where governance challenges were greatest: disproportionately in low income countries; in countries that often had just emerged from or still were in conflict; and in countries where the rule of law was weak and levels of corruption high.81

Apart from the power imbalance and the pressure of attracting investment, there are also legal hurdles that create the conditions for the violation of human rights, labour and environmental standards in the extractive industries. There are various legal protections extended to these operations. These protections are provided either through bilateral investment treaties or/and host government agreements or

80 Macron promises €400 million in aid to Niger http://en.rfi.fr/africa/20171224-macron-promises-400-million-aid-niger
undertakings. International arbitration, which is the usual manner in which disagreements over extractive industries are settled, are highly skewed in favour of the extractive corporations which have superior legal and technical knowledge, and where cases are often decided in highly legalistic fashion, without regard to human rights and other considerations.

Often the African states also do not have the necessary capacity and institutions for enforcing and monitoring compliance with the various standards by multinational corporations.

The result is that the application of human rights or the enforcement of human rights standards in the sector is highly restricted or non-existent. They are made to operate or they believe to operate in a human rights free legal realm. Such a human rights vacuum together with the view of companies that human rights concern only the state and they bear no or little responsibility makes the violation of human rights in the course of the operation of extractives in many of our countries almost inevitable.

C. The mandate of the WGEI

The continued challenge of negative impacts of the extractive industries indicates that the regulatory model is still ineffective. This is why women, children and other disadvantaged groups continue to suffer violations from the operations of extractive industries. One key reason for this lack of alignment is the failure to correctly police the activities of non-state actors. Indeed Resolution 148 establishing the Working Group focuses on the regulatory aspects and the role of non-state actors by calling on the Working Group not only to examine the impact of extractive industries in Africa within the context of the African Charter on Human and Peoples’ Rights and research the specific issues pertaining to the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favorable to their development but also to:

- Undertake research on the violations of human and peoples’ rights by non-state actors in Africa;
- Request, gather, receive and exchange information and materials from all relevant sources, including Governments, communities and organizations, on violations of human and peoples’ rights by non-state actors in Africa;
- To inform the African Commission on the possible liability of non-state actors for human and peoples’ rights violations under its protective mandate.

There is therefore a strong recognition within the mandate of the Working Group that state as well as non-state actors need to be regulated effectively if the extractive industries are to contribute to the development of African states. Empirical studies
have shown that competition over land use, rights to consultation and access to compensation are central themes in conflicts between mining affected communities and the extractive industries. Although it is clear that the state plays a central role as the regulatory authority, the interaction at the sites of operations is often between individuals, communities and non-state actors involved in the extractive industries. Evidence from Sierra Leone\textsuperscript{82}, the DRC\textsuperscript{83}, Senegal and Tanzania\textsuperscript{84} proves that access to land for artisanal mining has been considerably limited by state policies that directly or indirectly grant priority to industrial mining. Furthermore, mining and land laws are often unspecific with regard to the rights of artisanal miners. This encourages forced resettlement and inadequate compensation, which in turn lead in many cases to conflicts. Typical of this is the weak participation and representation of local land users and villagers in the processes of granting exploration permits and mining concessions, and the lack of institutional channels for these groups to assert their interests and rights. The result of this has often been conflict that restricts the space for the promotion and protection of human rights.

Tackling these gaps requires deploying the full potential of the African Human Rights system in order to promote and protect human rights in the context of extractive resources. This requires having recourse to the full range of tools of the institutions of the system and their working methods.

However, despite this, the extractive industries have enormous potential to drive Africa’s progress. This potential has been thwarted by a lack of robust governance frameworks at the domestic level deliberately designed and deployed to ensure that extractive industries deliver their developmental promise. As the impacts discussed above show, the potential of extractive activities to contribute to sustainable development and the protection of human rights is held back by gaps in the implementation of the normative framework for the governance of extractive industries. In particular, it is critical that interventions shine a light on the activities of non-state actors and formulate regulatory solutions that not only ameliorate state action but also those of non-state actors. There is therefore, an urgent need to strengthen the linkages between natural resource policies and reinforcement of African states’ implementation of the African Charter’s imperatives with a view to achieving the sustainable development of the extractive industries. This requires a broader look at the institutional and governance arrangements for extractive industries at the domestic level. In this context, a broad definition of governance includes hard rules such as regulations, monitoring, and enforcement mechanisms,


and soft rules such as norms, standards, expectations, and social understandings.\textsuperscript{85} Resource governance in this context is defined as the hard and soft rules which shape and constrain the way extractive industries contribute to sustainable development and poverty alleviation within host countries. A multi-scale, multi-actor spatial structure is implicit in the discussion of how spaces of resource governance may emerge.

PART III  The African human rights system: The normative framework for the governance of the extractive industries

The African human rights system provides a robust normative and institutional framework for governing extractive industries. This section highlights key regional instruments, in particular the African Charter on Human and Peoples’ Rights (African Charter) as the core human rights instrument on the continent, as well as the jurisprudence and soft law normative developments of the African human rights system. It also showcases how the institutions that hold the mandates within the system are giving force to the normative standards. It analyses how these sources contribute towards the governance of extractive industries in Africa and in particular how the normative framework at the regional level can be applied to address some of the challenges and the accountability vacuum highlighted in the previous section. Finally, this section aims to place the regional framework within the broader international framework governing the extractive industries, to identify the unique contribution of the regional system to the broader discourse, as well as how these systems can function in synergy.

A. The African Charter on Human and Peoples’ Rights

This section lays out some key rights in the African Charter and the main jurisprudence of the African Commission in relation to the promotion and protection of human rights and the protection of the environment in the context of extractive industries.

Box: Key messages

| The African Charter contains a comprehensive range of rights that are impacted by the activities of extractive industries. |
| These normative provisions form the basis for the proper governance of the industry through the promotion and protection of human and peoples’ rights and the protection of the environment. |
| The key provision for the regulation of extractive industries is Article 21 which guarantees the right to free disposal of wealth and natural resources. |

Peoples’ Rights

Peoples’ rights as set out from Articles 19 to 24 of the African Charter is a unique characteristic of the African human rights system. Peoples’ rights are collective rights, which are exercised and vindicated in terms of groups of people. The African Commission in its State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter in relation to Extractive Industries (Guidelines and Principles on Extractive Industries) provides a working definition of the term “peoples”. It should be noted that “peoples” was intentionally not defined in the African Charter. The Guidelines and Principles on Extractive Industries provide as follows:
[A]part from its reference to the entire population of a State, the term ‘peoples’ under Articles 21 and 24 of the African Charter refers to a group of individuals having a common identity on account of objective markers of shared language, racial or ethnic makeup, historical experience, religious, cultural or ideological affinity, connection to a particular territory and the subjective manifestations of self-identification and awareness as a distinct group possessing of shared identity. Peoples are therefore not to be equated solely with ‘Nation’ or ‘State’, but include subnational groups including communities of a particular region exhibiting the above characteristics, or people whose resources are exploited under foreign occupation. Local communities or individuals who are most immediately affected by activities of extractive industries can claim the rights guaranteed in these articles to ‘peoples’. ‘Communities’ in this context refers to residents of a locality which is organized either as part of an administrative or self-governing unit of a state or on the basis of the customary or religious law/s of the area.

Having identified who can be classified as a “people”, this section considers the relevance of the various peoples’ rights expounded in the African Charter, as they relate to extractive industries.

1. **Article 21: Right to free disposal of wealth and natural resources**

The peoples’ right to freely dispose of their wealth and natural resources is enshrined in Article 21 of the African Charter. It is the key provision for regulating extractive industries in Africa. It provides as follows:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.

State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Case note: **SERAC Case**, para 56

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The origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa’s precious
resources and people still vulnerable to foreign misappropriation. The drafters of the [African] Charter obviously wanted to remind African governments of the continent’s painful legacy and restore co-operative economic development to its traditional place at the heart of African Society”

The State Reporting Guidelines and Principles on Extractive Industries are a good source for understanding the content of the right and the state obligations attendant thereto. For example, they note that the essence of this right entails that people have secure access to, use of and benefit from their wealth and natural resources. ‘Peoples’ are thus entitled to live on, access, develop and use the land, vegetation, water sources and the aquatic resources on which they depend for their survival and livelihoods. Integral to the right to property, which is guaranteed under Article 14 of the Charter, such entitlement to live on, develop or use land and such other resources does not depend on whether such entitlement arises from custom and hence historically acquired or through the formal laws of the country. This right also entitles peoples and individuals to be provided with requisite support that enables them to access, develop and use these resources in a way that is sustainable and improves their standard of living.86

Article 21(5) imposes a pre-emptory obligation on the State to ensure the protection of their people from all forms of foreign economic exploitation. States should thus prevent the abuse of natural resources by foreign or international economic actors. The implication of this is that the terms between a State and extractive industry investors on financial revenues arising from exploitation of natural resources should not be much lower than international standards and hence exploitative. Similarly, the terms on the tax break and duty-free privilege benefits to extractive industries, as well as concessions arising from joint-ventures, should not be of such a nature that it deprives the people of the benefits to which they are entitled.87

Article 21 also entails procedural guarantees for its effective realization. The first procedural guarantee is effective and genuine consultation and rich and rigorous participation in decision-making on plans regarding the exploration and extraction of natural resources. This entails that affected people living in the territories where such exploration and extraction works are planned are provided with all the information on all aspects of such plan, including the findings of environmental, human rights and social impact assessments, ahead of the finalization of the plan, and ideally from the inception of the project and throughout its life span. It further requires that in determining whether a project would be beneficial to affected people, the measure would be that all their conditions of life should be improved, and such improvement should be verifiable both objectively and on the basis of the subjective assessment of the affected people.88

These principles are an affirmation of the principles set out in the SERAC case, where the African Commission held that a State Party should not act arbitrarily in

86 State Reporting Guidelines, para 30.
87 State Reporting Guidelines, para 36.
88 State Reporting Guidelines, para 38.
exercising the right to freely dispose of its wealth and natural resources. The Commission further held that the non-participation of the Ogoni people and the absence of any benefit accruable to them in the exploitation of the oil resources by the Nigerian government and the oil companies, were undoubtedly contrary to Article 21 of the Charter. The Nigerian government was therefore in breach of its obligation under the Charter to exercise this right in the “exclusive interest” of the people and the obligation to eliminate all forms of foreign economic exploitation, particularly that practiced by international monopolies. The government had therefore failed to enable its people to fully benefit from the advantages derived from their natural resources.

2. **Article 24: The right to a satisfactory environment**

The African Charter guarantees in its Article 24, the right to a satisfactory environment favourable to their development. The right focuses on the protection and wellbeing of both peoples and their environment. It is a programmatic right, which requires African states to balance their development ambitions with the stewardship over the environment issues that have a bearing on peoples’ health, among other rights.\(^89\)

In the SERAC case, the African Commission had the opportunity to decide on the content of the right to a satisfactory environment. It held that Article 24 sets obligations for governments to “take reasonable decisions and other measures to prevent pollution and ecological degradation”.\(^90\) The right to a satisfactory environment includes a procedural right to participate in decisions affecting one’s environment.\(^91\) The Commission took inspiration from the provisions of the Aarhus Convention on access to information, public participation in the decision-making process and to justice regarding environmental matters,\(^92\) whose normative content reflects the evolution of states’ practice. The Commission held further that the right to a satisfactory environment as guaranteed in Article 24 of the Charter includes the following attributes:

- The obligation for the states to guarantee an ecologically sustainable development and use of natural resources;
- The obligation to allow an independent scientific body to monitor environments under threat, to demand and publish social and environmental impact assessments reports;

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\(^92\) Adopted on 25 June 1998 and entered into force on 30 October 2001, this instrument can reveal consistent evolution of State practice and some of its provisions have customary law character.
• The obligation to monitor and provide appropriate information to peoples and communities that are exposed to materials and hazardous activities;
• Avail mechanisms where peoples and communities can be heard and can participate in decision-making processes affecting their environment; and
• Guarantee of effective appeal processes leading to reparations in the case of violations against the environment.

In its State Reporting Guidelines and Principles on Extractive Industries, the Commission further expounded on the right to a healthy environment, and indicated that “Central to this right is the recognition of the importance of a clean and safe environment to the quality of life of people. As its terms make clear, what is guaranteed under Article 24 is not the right to an ideal environment that is completely unaffected or completely clean. It is rather an environment that is clean enough for a safe and secure life and development of individuals and people.”  

The right to a healthy environment is also tied to sustainable development, with the Guidelines and Principles providing that “the environment should be used in a sustainable manner, which fulfills the needs of the present generation, without compromising the ability of future generations to meet their own needs.”

3. Article 22: The right to development

The peoples’ right to development is guaranteed by Article 22 of the African Charter. It is a collective right which grants peoples the prerogative to freely organise their economic, social and cultural development. It includes the rights of people to manage their wealth and natural resources from their land, and to not be deprived of their means of subsistence. In addition to its economic dimensions, the right to development also contains a social and cultural dimension, which implies the right to determine and establish the cultural regime or the system under which people want to live. It implies the recognition of the right to recover, enjoy and enrich their cultural heritage and the right for all their members to education and culture.

In the context of the extractive industry in Africa, the definition by peoples of their choices and political, economic and social identities has often been exposed to violations given the fact that the management and the exploitation of natural resources and wealth are generally far from local peoples’ knowledge or participation. In many cases, extractive companies’ activities negatively affect the right of peoples to development, when the presence of extractive companies and

95 Article 22 of the ACHPR reads as follows:
1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.
their activities jeopardise, directly or indirectly, peoples’ prerogative to be and to remain the sole master of their destiny, politically, economically, socially and culturally.

In the SERAC case\textsuperscript{96} the African Commission held that Article 22 of the African Charter related to the right of a people to freely choose the type of development they desired. The SERAC decision emphasised the responsibility of a state party to the African Charter to regulate the actions of a non-state actor (Shell Corporation), which violates human rights in a community.\textsuperscript{97}

The African Commission held that “governments have the duty to protect their citizens, not only by adopting appropriate legislations and by implementing them efficiently, but also by protecting those citizens against detrimental activities that private third parties can perpetrate”, and furthermore, that failure to involve local people in the decision-making process about the exploration or the exploitation of its territory constitutes a negation of the people’s right to freely dispose of their natural resources, and hence their right to economic self-determination.

Case note: SERAC Case, para 46

\begin{quote}
...[T]he state is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the state to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realise their rights and freedoms. This corresponds to a large degree with the third obligation of the state to promote the enjoyment of all human rights. The state should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures.
\end{quote}

This position is affirmed in the Endorois Case\textsuperscript{98} where the African Commission held that the Charter sets obligatory standards that states cannot bargain away, or negotiate. The right to development is thus a legal right which should be respected, protected and fulfilled by State Parties.

Case note: Endorois Case, para 277

\begin{quote}
The African Commission is of the view that the right to development is a two-pronged test, that it is both constitutive and instrumental, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development. Fulfilling only one of the two prongs will not satisfy the right to
\end{quote}

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\textsuperscript{97} These dimensions come out clearly from the above-referred to paragraph of common 1 to the two Covenants. See also General Comment 12 (Article 1 of the International Covenant on Civil and Political Rights), Human Rights Committee (21\textsuperscript{st} session, 1984), para 5.  
\end{flushright}
development. The African Commission notes the Complainants’ arguments that recognizing the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development.

Individual rights

The Charter also contains individual rights which are relevant in the context of extractive industries:

4. Article 16: The right to health

The African Charter provides to each individual the right to enjoy the best attainable state of physical and mental health state. States shall take necessary measures to prevent, treat and control diseases, to reduce infant mortality and to allow a healthy development of children, to improve all aspects of environmental and industrial hygiene, and to create conditions which will guarantee universal access to appropriate medical services and to necessary healthcare in the event of illness. Individuals must have access to basic elements of a good health, including appropriate nutrition, adequate accommodation, clean drinking water, appropriate sanitation, medical supply, an environment free from excessive pollution and sanitary working conditions.

It is expected from companies to make sure that their operations and their products do not affect the rights to health of people, including those of their workers, consumers and members of local communities. It is also expected from them to comply with the national legislation, including health, safety and labour standards. In contexts where regulation is weak, extractive industry players must ensure that they adopt necessary measures to protect any person involved in their supply chain against any health and security risks at work irrespective of the nature of their contracts of employment.

In the SERAC case, the African Commission decided that “the right to nutrition is inextricably associated with human beings’ dignity and it is therefore essential to the realisation of other rights such as the rights to health, to education, to work and to political participation…the right to nutrition requires that the Nigerian government does not destroy or contaminate food sources.”

Case note: SERAC Case, para 52

The right to enjoy the best attainable state of physical and mental health enunciated in article 16(1) of the African Charter and the right to a generally satisfactory environment favourable to development (article [24]) already noted, obligate governments to desist from directly threatening the health and environment of their citizens. The state is under an obligation to respect these rights and this largely entails non-interventionist conduct from the state; for example, to desist from carrying out, sponsoring or tolerating any practice,

99 See SERAC case, paras 57 et 65.
5. Articles 2 and 3: The right to non-discrimination and recognition as a person before the law

This right guarantees equality before the law and the same protection from the law, without discrimination. Individuals must be protected against any discrimination based on race, colour, gender, language, religion, political opinions or other, social or national origin, property, birth or any other status. This last motive is open and has been interpreted as including for example health status (HIV/AIDS, for instance), disabilities, marital status, age and sexual orientation. Discrimination implies any distinction, exclusion or preference based on one or many motives above mentioned and which lead to the reduction or the suppression of the right to equal opportunities or to equal treatment for the victim.

Companies’ activities can affect the right to non-discrimination of labour and of trade partners, for instance during hiring processes, salaries or employees’ training, or during the selection of suppliers. Potential motives of discrimination covered by international norms but which are still not presently included in most African legislations are sexual orientation, disability, HIV/AIDS status, age, social origin and minority status. Generalised discrimination towards women is also very widespread. However, in a national context where sexual and ethical discrimination is strongly common and where there is insufficient legal framework, there is a risk for employees, women and ethnic minorities in particular to not be adequately protected against discrimination.

The lack of protection against discrimination is likely to be more common to contractors’ employees who could not benefit from policies and mechanisms in place for a systematic protection of this right. Contractors could also violate the right to non-discrimination through their hiring practices which could for instance exclude women or favour one ethnic group over another. In addition, in the absence of specific controls, employees could show discrimination against one another according to their gender or their ethnicity.

Duty to respect, protect, promote and fulfil

Under the African human rights system, states have the duty to respect, protect, promote and fulfil the rights in the Charter. The State Reporting Guidelines and Principles elaborate these duties in relation to the extractive industries, in particular as it relates to Articles 21 and 24, but its application could also be extended to other affected rights. In this regard, the duty to respect imposes negative obligations on the State to refrain from interfering in or causing interference in the rights. This means that State agents or anyone acting on behalf of the State or exercising public authority should avoid actions restricting or curtailling these rights.

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100 SERAC Case, para.
101 State Reporting Guidelines, para 56.
According to the State Reporting Guidelines and Principles, the duty to protect entails that States should adopt measures for monitoring and enforcing the fiscal, environmental, labour, health and human rights observance standards by third parties including business establishments particularly in the extractive industries and joint-ventures where the State is a partner in the economic activity. There must also be legislative provisions for penalties and other deterrents for non-compliance, and judicial and non-judicial mechanisms should be in place for its enforcement. The fundamental right of individuals and communities to access effective remedy when their rights have been adversely impacted by business activities must be protected. When a business enterprise abuses human rights, States must ensure that the people affected can access an effective remedy through the court system or other legitimate non-judicial process.

The duty to promote involves enabling stakeholders’ access to all the relevant information on natural resources and the environment. It also entails that the relevant regulatory bodies are equipped with and duly mandated to disseminate such information, and undertake awareness creation and public education activities. Further, States are accordingly required to ensure that the public is availed adequate opportunities for consultation about and rich and rigorous participation in decision-making processes on plans for both industrial exploration and extraction of natural resources and other large-scale activities with potential environmental and social impacts.

Whilst states are the primary duty bearers under the Charter, the State Reporting Guidelines make it clear that non-state actors in the extractive industries are also bound by a number of obligations. This is in line with Article 27 of the African Charter, which requires individuals including legal persons to accord due regard to the rights of others. One of the foremost duties for extractive industries is to ensure that their actions or operations do not result in or trigger the occurrence of harm or the curtailment or deprivation of the rights guaranteed under the African Charter. According to the State Reporting Guidelines, “they should not only refrain from deliberate acts that constitute or result in such violations but also ensure continuously that their acts or operations are in full compliance with internationally accepted human and peoples’ rights, labour and environmental standards to avoid any incident producing harm or curtailment of rights of people, including in conflict situations.”

This duty to “do no harm” mirror closely the duties that states and business have been held to assume under the UN Guiding Principles on Business and Human Rights. Under this framework, states have the duty to protect everyone within

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102 State Reporting Guidelines, para 60.
103 State Reporting Guidelines, paras 64 &65.
104 State Reporting Guidelines, para 69.
105 State Reporting Guidelines, para 57.
their territory and/or jurisdiction from human rights abuses committed by those engaged in extractive industries. This duty means that states must have effective laws and regulations in place to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused.\(^{108}\) The obligations on States under these principles do not amount to duties.

However, under the African human rights system, concomitant to this duty is the responsibility of business enterprises engaged in the extractive industries to respect human rights wherever they may be operating in Africa. This responsibility exists independently of their host states’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Thus where damage occurs on account of failure to observe the duty of care, extractive industry actors should remedy those breaches.\(^{109}\) In order to ensure that they limit the extent of harm caused, there is further a duty on corporations operating in the extractive industries to undertake “with the participation of local communities, human rights impact assessments and ensure that these assessments are appropriately consultative and take account of the rights of vulnerable persons and groups.”\(^{110}\) These duties accrue to companies whether or not there are sufficient legislative control by the State to enforce them.

The Commission has also cautiously started to expand the scope to responsibilities of corporations to also include certain positive obligations, such as complying with all applicable fiscal responsibilities and transparency obligations; adequately inform and substantively consult with the affected people on any of their activities or on decisions that may materially affect the people; and contribute to the development needs of the host communities.\(^{111}\)

In this context, the normative framework for the governance of extractive industries in Africa is not only sufficiently robust norms to protect the rights of peoples to freely dispose of their wealth but also builds on the best international standards. As the work of the Working Group and the African Commission emphasises, one principle way of guaranteeing this compendium of rights is to ensure the peoples’ right to participation in decision-making about the implantation of extractive industries in their territory through effective and genuine consultation and rich and rigorous participation in decision-making

**B. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa**

Article 18 of Maputo Protocol states that women have the right to live in a healthy and sustainable environment. Article 19 of the Protocol guarantees that women should fully enjoy their right to sustainable development and enjoins states to

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\(^{108}\) As above.

\(^{109}\) State Reporting Guidelines paras 70 &71.

\(^{110}\) State Reporting Guidelines para 58.

\(^{111}\) State Reporting Guidelines paras 63 to 65.
introduce a gender perspective in national development planning procedures. Further, Article 15(a) provides that states shall take measures to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.

The 2012 State Party Reporting Guidelines for Economic, Social and Cultural (ECOSOC) Rights in the African Charter provide that progress on the fulfilment of the right to health should indicate the legislative and other measures taken to protect individuals and peoples against environmental, industrial and occupational hazards; and to prevent air, land and water pollution. It further provides that State Parties should take care to supply statistics disaggregated by gender, age, ethnic origin, urban/rural population and other relevant factors, particularly with reference to vulnerable or marginalized groups.

Extractive industries have been known to cause inflation, harming other industries. This too can have gender implications. For example, a UNDP strategy paper on the extractive sector notes that a short-term surge in construction related to mining activities generates employment opportunities for males, at the expense of reduced competitiveness in an export oriented industry, such as textiles, that typically employs relatively more women. More focus on extractive industries also usually comes at a cost to the national agriculture industry, where many African women are employed. The result can be increased unemployment of women, and greater gender segregation and wages in the workforce, particularly, as seen above, the limited role which continues to prevail for women in the mining industry.

Article 13(e) of the Maputo Protocol provides that states should create conditions to promote and support the occupations and economic activities of women, in particular within the informal sector. Further, Article 19 (f) enjoins states to ensure that the negative effects of globalization and any adverse effects of the implementation of trade and economic policies and programs are reduced to the minimum for women.

Women are inadequately represented in consultation and decision-making processes and have very little say and even less control regarding exploitation of natural resources, despite the fact that extractive industries bring a complete change in their livelihoods and social life. Women in host communities often live under patriarchal structures that limit their ability to participate in these processes. Further, because of several domestic responsibilities, women are often unable to participate even when invited. As a result, these processes and any subsequent policy recommendations often lack a crucial gender perspective, especially in circumstances where their consent for an extractive industries project can only be obtained through adequate consultation right from inception.

113 As above.
Article 9 (2) of the Maputo Protocol provides that States Parties should ensure increased and effective representation and participation of women at all levels of decision-making. Article 7 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) commits States parties to ensure equality between women and men in political and public life. The rights are also supported by Article 2 of the African Charter, providing for non-discrimination in the enjoyment of all rights under the Charter. It is clear that in relation to the protection and promotion of rights of women in the context of extractive industries, the Maputo Protocol, if read together with the African Charter provides substantive and extensive protection to women to not only ensure their participation in decision making, but also to ensure that their right to environment and economic potential are protected. The challenge for the human rights system is to ensure that these rights are implemented in practice.

C. Assessing the potential of the African Commission’s mechanisms and normative frameworks

1. Individual Complaints Procedure

In furtherance of its mandate to promote and protect human rights and people’s rights, the African Commission has produced jurisprudence specifically addressing the issues relating human and peoples’ rights to the environment and extractive industries. This jurisprudence is key to understanding the application of the normative framework in relation to the extractive industries.

The seminal case of the Commission on extractive industries is its decision in the SERAC case, which has been analysed in detail above. Another crucial decision of the African Commission in relation to extractive industries, and which has already been alluded to above, is the Endorois Case. This case, which came before the Commission in 2003 concerned a Kenyan community that was removed from its ancestral lands and resources in 1973 by government of the day. The community argued successfully that the removal violated their rights to property, development, culture and to freely dispose of their natural resources. The African Commission found that the Endorois community’s right to development was violated because:

Community members were informed of the impending project as a fait accompli, and not given an opportunity to shape the policies or their role. Furthermore, the community representatives were in an unequal bargaining position, […] being both illiterate and having a far different understanding of property use and ownership than that of the Kenyan Authorities. The African Commission agrees that it was incumbent upon the Respondent State to conduct the consultation process in such a manner that allowed the representatives to be fully informed of the agreement, and participate in developing parts crucial to the life of the community.

The connection established by the Commission between the right and implementation of effective and genuine consultation and rich and rigorous participation in decision-making and the customary law of the community
concerned is of crucial importance in the African context. It highlights the historical and present-day injustice of the continued non-recognition of customary tenure as equal to common law forms of tenure based simply on racist colonial prejudices. As the victims of such continued discrimination, local communities whose customary land and resources are threatened deserve the right to effective and genuine consultation and rich and rigorous participation in decision-making not only because their own customary law requires it, but because the African Charter’s vision of overturning colonial oppression in every form, demands it.

In 2017 the African Court on Human and Peoples Rights issued its first judgment in an indigenous rights case. In *African Commission on Human and Peoples Rights v Republic of Kenya* (the Ogiek Case), being another case focusing on the expulsion of indigenous peoples from their ancestral lands, the Court condemned the Ogiek eviction in two respects, in relation to the right to development, due to the lack of effective consultation, and in relation to the right to property, which was ‘against their will and without prior consultation’.

The effective and genuine consultation and rich and rigorous participation in decision-making standards outlined by the African Commission in *Endorois* as well as in the Natural Resources Resolution and those referred to by the African Court in *Ogiek* not only mirror, but build on the standards of “free and prior consent” which have been adopted at the international level. In the case of *Mary and Carrie Dann v US* (2002) the Inter-American Commission on Human Rights held that the US had failed to ‘fulfil its particular obligation to ensure that the status of the Western Shoshone traditional lands was determined through a process of informed and mutual consent on the part of the Western Shoshone people as a whole’.

A much more recent decision of the Commission was in the Communication 373/10: IHRDA v DRC (the Kilwa case). The facts of the case were that Anvil Mining, an Australian mining conglomerate, operated a copper and silver mine at Dikulushi, 50 kilometres from Kilwa, provided logistical support to soldiers who indiscriminately shelled civilians, summarily executed at least 28 people and disappeared many others after a small group of lightly armed rebels tried to take control of the town. While the Kilwa case is not primarily about the impact of extractive industries on the community, the context of a mining community within which the case plays out, as well as the central role of the Anvil mining company in the atrocities committed, makes it an interesting case from the perspective of extractive industries, particularly as it relates to the obligations of non-State actors. The Commission found a violation of Article 1 of the African Charter, inter alia because the State “failed […] to investigate and punish the involvement of the Anvil Mining Company”. While the Communications procedure of the Commission remains limited to making findings of violations of provisions of the African Charter by State Parties to the Charter, the Commission spoke out strongly against the involvement of corporations in these

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115 See paras 210 and 131 of the decision in the Ogiek case.

atrocities and gave clear directions as to the minimum obligation on companies not to actively violate or support the violation of human rights, thus going further than previous decisions in defining the duties on non-state actors, particularly in the context of extractive industries. Commission went further than the SERAC case by explicitly calling for the government to hold the company accountable, by requesting the State “to take the necessary steps to prosecute and punish State employees and personnel of the Anvil Mining Company involved in the said violations”.

It is clear from the foregoing examples that African peoples, whether they are women, children, workers or indigenous peoples, possess the opportunity to enforce their rights using the processes laid out in the Charter particularly by invoking the individual complaints mechanism under the Charter or approaching the African Court.

2. Norm-setting functions of the Commission

One of the core functions of the African Commission is “to promote human and peoples’ rights through undertaking studies and research on African problems in the field of human and peoples’ rights”, as provided for in Article 45 (1) (a) of the African Charter. In this regard the Commission has an important norm elaboration role. Following the establishment of the WGEI, a number of important soft law instruments have been developed by the Commission through the WGEI, to expound on the rights and duties of different stakeholders in the context of the extractive industries.

Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector (Resolution 367)\(^\text{117}\)

This resolution reaffirms the centrality of the African Charter in the governance of extractive industries in Africa. It addresses the need for compliance with human rights standards throughout the lifecycles of extractive industry activities, from exploration to closure of projects, ensuring that throughout such activities, constant and consistent human rights audits are done under the supervision of states parties to ensure that not only are the rights in Article 21 upheld but also the whole range of protections available through the Charter.

Resolution on a Human Rights-Based Approach to Natural Resources Governance (Resolution 224) (the Natural Resource Governance Resolution)\(^\text{118}\)

This resolution calls upon states to establish clear legal frameworks for sustainable development as it impacts on natural resources, thereby ensuring that the realisation of human rights is a prerequisite for sustainability. Further, states are encouraged to strengthen regional efforts aimed at establishing natural resources legislation that respects the human rights of all and requires transparent, maximum and effective community participation in a) decision-making about, b) prioritisation, and c) benefits from any development on their land or other resources. Finally, the

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\(^{117}\) ACHPR/Res. 367 (LX) 2017.

\(^{118}\) ACHPR/Res.224(LI)2012.
resolution also calls upon states to set up independent monitoring and accountability mechanisms that ensure that human rights are justiciable and extractive industries and investors legally accountable in the country hosting their activities and in the country of legal domicile.

The African Commission has not only understood the vulnerability of local African communities faced by the extractive industries, but has explicitly linked their protection to meaningful consolation with communities and to the recognition of their ownership to their land and resources. In the Natural Resource Governance Resolution, the Commission opined thus:

Mindful of the disproportionate impact of human rights abuses upon the rural communities in Africa that continue to struggle to assert their customary rights to access and control of various resources, including land, minerals, forestry and fishing...calls upon State Parties to....confirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision-making related to natural resource governance; ...and to promote natural resource legislation that respect human rights of all and require, transparent, maximum and effective community participation in a) decision-making about, b) prioritisation and scale of, and c) benefit from any development on their land or other resources, or that affects them in any substantial way.

**State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries and the Environment**

The State Reporting Guidelines have been largely discussed under the substantive discussion of the provisions of the African Charter above. The State Reporting Guidelines explicitly acknowledge the importance of extractive industries in the development of African states. Given this importance the Guidelines seek to entrench the benefits of extractive industry activities whilst locking out the negative impacts through a robust framework of state reporting for articles 21 and 24. The Guidelines outline the core content of these rights as well as the state obligations attendant thereto. Read with Resolution 367 above, the Guidelines are a key plank in outlining the governance framework for extractive industries in Africa. As discussed, it also seeks to formulate clearly the duties that the provisions of the African Charter impose on States as well as on non-state actors operating in the extractive industries.

Practically, the State Reporting Guidelines is used by States in preparing their Periodic Reports to the Commission, and is also used by the Commission to formulate questions to States, thereby highlighting the areas in which further information is needed by States, or areas where the existing national legislative provisions are inadequate. The State Reporting Guidelines also make it clear that participation in the state reporting process is welcomed by the Commission\(^\text{119}\) by all stakeholders, including through the submission of shadow reports by civil society organisations with observer status before the Commission as well as National Human Rights Institutions which can submit alternative reports. The Commission

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\(^{119}\) State Reporting Guidelines, para 20(f).
during its Public Sessions also provide the opportunity for civil society organisations with observer status to take the floor and provide updates to the Commission and other participants on particular human rights situations. This thus creates alternative pathways for monitoring the protection of human rights in the context of extractive industries.

3. Other mechanisms of the Commission for promotion and protection of human and peoples’ rights

In addition to those already discussed, the African Commission has a range of other mechanisms for the promotion and protection of human and peoples’ rights, activities which are undertaken by Country Rapporteurs and the Commission’s various thematic Special Mechanisms, including State Promotional Missions, Urgent Letters of Appeal, Resolutions, as well as information dissemination through seminars, symposia, conferences and other awareness-raising activities in collaboration with NGOs and other partners.

These mechanisms have been used, particularly since the establishment of the WGEI to engage in particular States, but also non-state actors on their obligations under the African Charter. Apart from being used as part of the State Reporting Process, the Guidelines and Principles on Extractive Industries, have also informed the questions which have been discussed during Promotion Missions to States undertaken since its adoption. The WGEI also regularly use letters of appeal, letters of concern and letters of appreciation to communicate with States on issues of concern in relation to its extractive industries. For example, a letter of concern was sent to Uganda in relation to the incidents of child labour in the mining industry, whereas a letter of appreciation was sent to the DRC in relation to the signing into law of the new Mining Code. Following the adoption of the Commission’s decision in the Kilwa case, discussed above, the WGEI also took the opportunity to write to the Anvil Mining Company which had been implicated in the violations, to bring to its attention the decision of the Commission as well as the reparations which it should contribute to. The WGEI also issues statements on matters of concern, for example in relation to the leak of the Paradise Papers, which identified certain states as tax havens and which placed the spotlight on corrupt practices, the WGEI issued a statement calling on States to comply with their obligations under the African Charter in this regard.

D. Frameworks for realizing the rights under the African Charter in relation to Extractive Industries

The traditional methods for implementing the rights in the African Charter have resulted in an extractives industry governance framework that is strong in norm setting but quite weak and patchy with regard to enforcement. Fortunately, Africa has home-grown development policy processes that are capable of complementing the processes under the African Charter in order to deliver better outcomes. There is thus an unexplored opportunity to amplify the effectiveness of the tools by actively contributing to the processes and priorities of Agenda 2063 alongside those of the African Mining Vision. There are also global efforts, such as the Sustainable
Development Goals of the UN, and the Extractive Industries Transparency Initiative (EITI), with which the Commission can engage in protecting and promoting the rights under the Charter, in the context of extractive industries. This section introduces key elements of these frameworks, and the role that they can play together with the African human rights systems to provide a more robust governance framework for the extractives industries.

1. Agenda 2063

The African Union has championed a development blueprint known as Agenda 2063. An ambitious, Pan-African people-centred vision and action plan, Agenda 2063 aims to position Africa for growth over the next 50 years, incorporating lessons and experiences from the past. The ultimate goal is to secure three ideals – unity, prosperity, and peace – for all its citizens. It is a global strategic rolling plan with short (10 years), medium (10–25 years), and long-term (25–50 years) perspectives. Put simply, Agenda 2063 is aimed at getting Africa to do things differently (people-centred), bigger (scaling and scoping up), and better (governance, performance outcomes, impact on citizens, etc.). Critical success factors for Agenda 2063 include the participation of multiple stakeholder groups at all stages, a results-based approach with measurable objectives, and inculcating the right set of African values in line with the African Renaissance which suggests the transformation of attitudes, values, and mind sets.120

Agenda 2063 is a participatory, people-driven process centred on a series of consultations and “conversations” with various stakeholder groups across sectors and society. Particular attention is paid to young people, women and Africans in the diaspora.”121 Agenda 2063 consists of three integrated parts: the Strategic Plan, the Implementation Plan, and the Monitoring and Evaluation Framework. The Framework document (adopted by AU policy organs in January 2015) introduced 12 flagship projects to be given priority in the execution of Agenda 2063. One of the key projects introduced by this document is the formulation of a commodities strategy in which the extractive industries will feature strongly.

The Aspirations of Agenda 2063 which are of particular relevance to a human rights approach to resource governance are Aspiration 1: “a prosperous Africa based on inclusive growth and sustainable development” and Aspiration 3: “An Africa of good governance, democracy, respect for human rights, justice and the rule of law”. One topic which is crucial to Agenda 2063 and also the fulfilment of socio-economic rights is the need for ensuring a good standard of living for all people, the eradication of extreme poverty and the provision of affordable housing, education, and health care for all. With the enormous mineral wealth on the continent, it is

possible that the sustainable and responsible development of these resources can contribute positively to Africa’s development, thereby doing away with the present resource curse which characterises most resource rich countries in Africa at present. It is thus necessary that the various aspirations of Agenda 2063 be viewed through the prism of a human rights based approach to resource governance, to identify the areas in which resources can contribute to Africa’s development agenda and the ways in which resource governance has to be adapted to bring it in line with a human rights based agenda.

2. The African Mining Vision

Africa’s flagship policy on mining, the African Mining Vision, fits very well into Agenda 2063 aspiration for a prosperous Africa based on inclusive growth and sustainable development. The Africa Mining Vision, endorsed by the African Union (AU) in February 2009, is a regional policy framework that seeks to address the paradox of a resource-rich continent that continues to see enduring poverty. In order to encourage a context-specific domestication process of the AMV, AU member states are expected to develop a Country Mining Vision (CMV). CMVs facilitate national ownership of the AMV process, with the ultimate aim of yielding an equitable, inclusive and beneficial use of mineral resources in African countries.

The AMV seeks to transform mineral sectors in an inclusive, sustainable way. As such, its ambitions are consistent with other Pan-African development initiatives such as the AU Agenda 2063. In particular, the Agenda 2063 proposes that extractive sectors will play an important role in domestic resource mobilization by capturing a greater share of resource rents. The AMV is based on six major areas of intervention that guide the use of Africa’s mineral endowments for sustainable development.

The AMV is based on six major areas of intervention that guide the use of Africa’s mineral endowments for sustainable development, that include improving the capacity to manage mineral wealth; improving contract negotiation capacity; improving the quality of geological data; addressing Africa’s infrastructure constraints; improving the capacity for mineral sector governance; and elevating artisanal and small-scale mining (ASM).

The Mining Vision is formulated as encompassing “[t]ransparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”. It envisions “[a] sustainable and well-
governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities,” as well as linking into mineral beneficiation and manufacturing.

Formulated in those terms, the aims of the Africa Mining Vision overlap with that expressed in the Commission’s Guidelines and Principles on Extractive Industries. As noted in the explanatory note to the State Reporting Guidelines on the Contents of the Rights and Obligations under Articles 21 and 24 of the African Charter, the right of peoples to freely dispose of their wealth and natural resources under Article 21 entails that peoples and individuals ‘have secure access to, use of and benefit from their wealth’ and ‘to access, develop and use these resources in a way that is sustainable and improves their standard of living.’

In addition, the Mining Vision notes that one of the challenges to the responsible development of Africa’s natural resources is the lack of basic geological mapping in many areas, which increases the risk for investors who consequently demand extremely favourable tax regimes. The Mining Vision thus proposes an extensive survey to map the natural resources. The Guidelines similarly require States to be aware of the resources that are available within their jurisdictions. Both are also concerned with resources tax regimes, to ensure that States get the maximum benefit from its resources.

Another area of overlap is in relation to the specific challenges posed by artisanal mining. Unregulated and ill-equipped artisanal mining results in environmental degradation, health implications, and social ills including child labour. The Mining Vision thus states the need to improve the understanding of ASM issues on the policy, regulatory, environmental, health, cultural, society, and economics domain, and to address these issues through, inter alia, provision of specialized training to miners and dissemination of technology, establishing financial schemes for ASM miners, enhancing the formalization of the sector and addressing environmental and human health issues. Similarly, the WGEI State Reporting Guidelines require that States have in place provisions for regulation, monitoring and providing support for persons engaged in artisanal and small-scale mining particularly in applying minimum environmental, health and safety standards, as well as steps taken to formalize the sector.

In relation to complementarity, the Africa Mining Vision is in the first place aimed at economic development in Africa. While the aim is to ensure that such development is to the benefit of the people of Africa, it is not formulated in terms of rights. In this regard the Guidelines elevate the Mining Vision’s aspirational formulation to a legally enforceable right. As such, it situates the principles of the Mining Vision not only as aspirations for States, but as human rights obligations. As articulated in paragraph 4 of the Explanatory Note one of the principles is the use of natural resources and principles in the exclusive interest of the peoples of a state. Elaborating on this it states, ‘Underlying the right of peoples to freely dispose of
their wealth and natural resources is the principle that the use of natural resources should be for the exclusive interest and benefit of the citizens of a State in general and host communities in particular.

Additionally, while the Mining Vision lumps together “provisions that safeguard transparency and good governance as well as enforce internationally acceptable safety and health standards, environmental and material stewardship, corporate social responsibility, and preferential recruitment of local staff”, the Guidelines unpack each of these in much more detail and provides guidance to States on what is required of them from a human rights perspective in relation to each of these. In formulating these same principles in terms of rights and obligations, it provides a much more rigorous framework not only for the implementation of the provisions in the Mining Vision but also for the elaboration of effective national regulations and enforcement mechanisms.

Additionally the Mining Vision does not address itself sufficiently to the duties on companies. While it acknowledges the importance of balancing the varying interests of local communities, the people of the State generally and companies, it largely relies on the goodwill of companies, the ability of States to negotiate more beneficial contracts and corporate social responsibility to effect this change.

The Guidelines on the other hand acknowledges that there are both positive and negative legal obligations not only on states but also on companies operating in the extractive industries, that go beyond the voluntary and often vaguely applied standards of corporate social responsibility. In so doing, the State Reporting Guidelines not only bring the right holders and beneficiaries to the centre but also accord due recognition to the place of extractive companies in the legal relations of actors involved by attributing to them such minimum standards of legal obligations corresponding to the magnitude of power they wield, the share of benefit that accrue to them and the scale of the impact of their operations in the country of their operation.

In terms of the scope of application, there is also another notable difference between the norms elaborated by the WGEI and the African Mining Vision: while the latter focuses only on the mining industry, the former is broader in its scope in that it covers the extractive industries sector, hence covering the oil, gas, minerals and other extractable natural resources sector.

3. United Nations Sustainable Development Goals

In 2015 the UN Sustainable Development Summit, building on the legacy of the UN Millennium Development Goals, agreed upon a new set of 17 Sustainable Development Goals (SDGs) to be achieved by 2030.\(^2\)\(^2\) Officially launched on 1

January 2016, these goals aim to reduce poverty, hunger and inequalities by improving health, well-being, education, gender equality, work conditions, economic growth, peace, justice, institutions and partnerships, and, by increasing the availability of clean water, improving sanitation, and providing affordable and green energy. The goals relate to themes of industry, innovation and infrastructure, sustainable cities and communities, responsible consumption and production, climate action, as well as life below water and on land. Although the SDGs focus on national level development priorities requiring country-based leadership, business and industry are encouraged to contribute to the fulfilment of these goals through partnerships, private investment and market-based solutions.\(^\text{124}\) Indeed, multi-stakeholder partnerships and collaborations, where public and private parties mobilise and share resources, expertise and technology, are seen as a solution to complex challenges. The public, private and not-for-profit sectors are encouraged to set common policy agendas and share accountability.\(^\text{125}\)

This approach is very much in line with the African Commission’s understanding of human rights as a “collective responsibility”, which cannot be achieved by one sector alone. In particular, it would require that States in attempting to implement the SDGs, the Agenda 2063 and the African human rights framework for resource governance, should not do so in isolation, but should bring together all relevant stakeholders. Furthermore, in developing their country level strategies for implementing the SDGs, states should be cognisant of their obligations under the African Charter, in particular as it relates to peoples’ rights, which is not a universal principle, so would not receive the same emphasis at the UN level, but which is core to the African conception of human rights and the right to development in particular.

At the global level, business and industry are recognising their role in sustainable development and beginning to devise initiatives and standards that address development, and social and environmental challenges within the sphere of business operations. For instance, the World Business Council for Sustainable Development (WBCSD) launched the SDG Business Hub, which aims to connect businesses with the SDGs and develop guidance for companies to align their strategies with the new sustainable development agenda.\(^\text{126}\) Along with the Global Reporting Initiative (GRI) and the UN Global Compact, the WBSCD has also released a step-by-step guide that
makes recommendations to companies to embed the SDGs. Similarly, at the global level, the contribution of the extractive sector to sustainable development has been promoted by a number of organisations and initiatives such as the International Council for Metals and Minerals and the Mining, Minerals and Sustainable Development Project. At the regional level, the African Commission can play a role in advising State Parties on how the right to sustainable development and related rights as protected in the Charter and discussed above, should be operationalised within the African context to ensure that full effect is given to the African human rights system and the obligations of States arising therefrom.

Agenda 2063 and the 2030 Agenda broadly converge on social development (people), inclusive economic development (prosperity), on peaceful and inclusive societies and responsive institutions (peace), and on a number of environmental sustainability issues (planet). UN Member States’ (including African Member States) affirmation that Africa’s Agenda 2063 is integral to the universal agenda indicates that while the continental agenda articulates Africa’s specific aspirations and responds to the continent’s specific development challenges, its implementation is also guided by the spirit and principles of the global Agenda 2030. Thus both the SDGs and Agenda 2063 provide a strong mandate for the sustainable stewardship of mining in Africa.

An Africa specific approach to the SDGs could therefore allow extractive companies to contextualise their sustainable development strategies according to regional economic, social and institutional challenges as well as local developmental needs and the existing human rights framework. In collaboration with parties from the public and not-for-profit sectors, companies can seek to develop long-term solutions in the specific areas of sustainable development. In sub-Saharan Africa, country-level leadership may be in need of investment, technology and expertise that extractive companies can share within such collaborative initiatives. Such an approach is especially needed in Africa because many countries with extensive extractive industries still fail to secure the basic right rights for their citizens.

4. Extractive Industries Transparency Initiative

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In terms of global frameworks governing extractive industries, the EITI is probably one of the most notable. It is characterised as “the global standard to promote the open and accountable management of oil, gas and mineral resources,” and is established through an international protocol. While 24 African States have been part of the EITI, two have been suspended, Liberia for missing a reporting deadline and CAR for reasons of political instability. A number of African States have also indicated their intention to join the EITI mechanism.

The EITI Standard requires countries and companies to disclose information on the key steps in the governance of oil, gas and mining revenues, including: contracts and licencing, production, revenue collection, revenue allocation and social and economic spending. While there is overlap between the EITI and the norms elaborated under WGEI, namely the State Reporting Guidelines and Resolution 367 on extractive industries, the EITI focuses on a much narrower scope. The State Reporting Guidelines and Resolution 367 of the ACHPR are concerned with the whole cycle of extractive industries from exploration to closure, and with the whole range of affected human rights. Unlike the EITI, these norms of the ACHPR deal with not only in respect of transparency and accountability in natural resource governance but also how these benefit the people and the economy.

Because it is much more focused in its approach, the EITI goes deeper into these areas, and can be used to supplement and expand on the requirements of the Guidelines. In addition, as the EITI’s principles on transparency and accountability are aligned to the principles in the Guidelines, compliance with EITI standards can be used by the Commission to assess compliance with its own standards, without doing double work.

Also, because EITI standards require states to make public certain important information about spending and payments related to extractive industries, it is also an important source of information to the Commission to engage with specific States, for example during promotion missions and State Periodic Reporting. In this regard, for example, the fact that most African States that are part of the EITI have made “meaningful progress” in fulfilling the EITI standards, is a positive development that can be a point of departure for engaging on other challenges related to resource governance. The Commission has also in the past during its State Reporting Processes raised questions with States about aspects of their compliance and intentions to accede to the EITI protocol.

As the Commission found during its promotion mission to Nigeria in December 2016, the EITI’s focus is on public disclosure of all financial information relating to the operation of the extractive industries sector. It does not concern itself with the determination of enforcement measures when it is established that the whereabouts of revenues collected could not be accounted. The ACHPR norms under the State Reporting Guidelines and Resolution 367 on the other hand cover the accountability
measures required. Thus Resolution 367, for example, stipulates that ‘criminal and administrative accountability’ are imposed on ‘all those involved in corrupt practices and misappropriation of public funds accruing from the operations of extractive industries.’

5. **Regional Economic Communities**

Important advances have also been made at the sub-regional level in Africa. These include the adoption by the Southern African Development Community in 2004 of the Harmonization of Mining Policies, Standards, Legislative and Regulatory Frameworks in Southern Africa and the 2009 Economic Community of West African States (ECOWAS) Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector, which is currently being followed by a draft ECOWAS model mining and minerals development Act. Such sub-regional initiatives can help build consensus at a smaller scale, which can then be scaled up to the continental level. This role of regional economic communities (RECs) as “building blocks for continental unity” has also been recognised in Agenda 2063.\textsuperscript{130} In addition, it is important that in the development of such policies, the RECs are aware of the best standards and practices adopted at the continental level, to ensure that their policies are on par with the standards set by continental bodies such as the African Commission.

It is clear that there are many interlinkages which already exist between the various sub-regional, regional and international initiatives for the governance of resources for sustainable development which are aimed at ensuring the best attainable standard of living for present and future generations. Taken together, these processes have the potential to deliver the governance framework that Africa needs: that is, a governance framework that is responsive to human rights imperatives, acknowledges and delivers sustainable development and adds value to livelihoods.

Part IV: The way forward

A. Conclusions

It is clear from the content of this Study that the African human rights system and in particular the African Charter has a lot of potential to create a robust and extensive framework for the protection of human rights in the context of extractive industries governance on the African continent. There have already been a number of substantial elaborations of the principles in the African Charter through the Commission’s Communications procedure as well as through knowledge development work done by the WGEI, which have expanded the understanding of the role and responsibilities of States as well as non-state actors within the governance of extractive industries, and particularly in ensuring that human and peoples’ rights are complied with. Norm elaboration is one of the key functions of the African Commission, which contributes to setting the agenda for the continent and ensuring that development on the continent is human rights based. The WGEI should thus continue with its efforts in this regard, and can also collaborate with other Special Mechanisms of the African Commission which are concerned in this regard. Possible areas of collaboration include on women’s rights, socio-economic and cultural rights, the right to access to information and freedom of expression, among others. The Commission can also consider developing General Comments on specific provisions such as the right to development in the African Charter, as well as the right to sustainable development in the Maputo Protocol, thereby also situating the Agenda 2063 and SDGs within a human rights framework.

Areas in which the Commission and the WGEI in particular should strengthen its engagement include in building of capacity of States to apply the standards that exist, as well as sensitizing workers, communities and vulnerable groups who are the most affected by extractive industries operations on their rights and the ways in which the work of the Commission, including the Communications procedure can be used in relation to extractive industries. The Working Group has produced exceptional literature on the linkages between human rights and the extractive industries. Special efforts should be made to make these resources known and available to all stakeholders. In particular the Commission could have an important role in preparing, from the principles which it has already established, practical Guides for States to ensure that their legislation on resource governance is in line with the African Charter, as well as the other frameworks discussed above, for example the Agenda 2063 and African Mining Vision.

The Working Group’s mandate on enhancing accountability and transparency within the extractive industries has both direct and indirect operational implications for the sector. In addition to creating awareness surrounding governance issues in the extractive industries, it is critical that the work of the Working Group is aimed at
strengthening the capacities of formal and informal governance institutions, such as parliaments, courts, traditional leaders, and community-based organization, who serve as enablers for turning natural resources into human development. The WGEI in this regard could assisting individual states in the review of their national legislation towards greater compliance with these standards.

The lack of expertise in negotiating extractive industry contracts has the effect of limiting the development potential of natural resources to African economies and increasing the risks to human rights from the development of mining assets. The Working Group should therefore consult on the potential for developing model laws and contracts that have an explicit focus on human rights, natural resource governance and sustainable development. Recognising that governments are often misrepresented in negotiations over big mining and oil contracts, the development of model forms would provide timely technical support in the negotiation phase as well as allow capacity development for monitoring contract implementation. Such an initiative would allow the identification of best practice and assist in rebalancing the asymmetries in bargaining power so that African countries obtain a fairer share of the revenues from their extractive sectors.

The work of the Commission should not take place in a vacuum. It is thus important that the Commission collaborates with other institutions engaged with extractive industries and resource governance, at the national, sub-regional, regional and international levels. This is particularly important in addressing the underlying factors which have led to the present situation of a resource curse in relation to natural resources on the continent, towards not only strengthening the legislative frameworks within individual states, but to build the capacity of, for example the African Union, in line with Agenda 2063, to address the power imbalances in the international political economy through strong regional ties, thereby ensuring that “Africa will take her rightful place in the political, security, economic and social systems of global governance”.  

B. Recommendations

**Member States of the African Union should:**

- Ensure that they comply with their human rights, labour, financial, fiscal and environmental obligations under the African Charter, and have the relevant legislative, monitoring and accountability mechanisms in place to ensure that extractive companies comply with their obligations;
- Follow the State Reporting Guidelines and Principles on Extractive Industries when preparing State Reports to the African Commission;

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• Do a thorough review of their extractive industries legislative framework, and identify the areas which are not in line with their obligations under the African charter and take steps to amend it, including through requesting for technical assistance from the WGEI;

**The African Commission and the WGEI in particular should:**

6. Areas for further research which emerge from this Study include the specific impacts of extractive industries on certain vulnerable groups; the role of non-state actors in exacerbating the negative human and peoples’ right consequences of extractive industries and particularly how the accountability vacuum can be addressed - this should be the subject of a further in-depth research project; and further research is also needed on how the extractive industries sector impacts on sustainable development aims, and the extent to which it can have a positive role;

7. Develop a database of national legislation, policies, instances of human rights violations in the extractive industries, which it can use to identify trends of violations and gaps on the continent in order to address it, and which can also serve as a repository of information;

8. Given the negative consequences that arise from the unregulated or illegal nature of artisanal mining, the WGEI could develop a model law on artisanal mining;

9. Further explore the ways in which the existing mechanisms at regional and international level can be used to support the implementation of the African human rights based principles of natural resource governance;

10. Continue to use the various mechanisms, including Communications processes, review of State Reports, missions, resolutions and the other mechanisms at its disposal to promote human rights in the extractive industries and address violations that occur;

11. Strengthen its relationship with other institutions working on extractive industries and resource governance on the continent, in particular the African Minerals Development Centre, the body responsible for the implementation of the Africa Mining Vision, as well as working with RECs;

**African civil society should:**

12. Proactively engage with the WGEI’s policy and advocacy, research and analysis of the linkages between human rights and the extractive industries, focusing on improving civic space and social participation, women’s rights and gender justice, and environmental sustainability, in order to elicit policy reforms by African governments and the Pan-African policy institutions to address the shortcomings in the operations of extractive industry players;

13. Monitor the compliance of governments, private sector and multilateral actors in the mineral sector in adopting genuine consultation and rich and rigorous
participation for mining-affected communities, in accordance with the African Charter on Human and Peoples’ Rights, the AMV and Agenda 2063;

14. Lobby for the adoption, in the CMVs and AMGF, of national laws that support free, public access to information on mineral revenues, contracts and geological data such as Freedom of Information Acts and Public Interest Legislation, in order to improve transparency and accountability in the national implementation of the AMV. The Working Groups Guidelines should inform this work;

**African Union**

15. The Pan African Parliament should develop a model law on beneficiation and local content for the African continent, as well as on sustainable mining and minerals development;

16. The African Minerals Development Centre should ensure that all their activities for promoting extractive industries on the continent comply with the African Charter based approach to natural resource governance;

17. Policy organs of the AU should ensure that the African system operates in synergy, and that good practices at the level of RECs is scaled up to the continental level;

**Companies operating in Extractive Industries in Africa should:**

18. Contextualise their sustainable development strategies according to regional economic, social and institutional challenges as well as local developmental needs and the existing human rights framework;

19. Ensure that they comply with their human rights, labour, financial, fiscal and environmental obligations under the African Charter;

20. In collaboration with parties from the public and not-for-profit sectors, companies should develop long-term solutions in the specific areas of sustainable development;

21. Should place their expertise in investment, technology and development at the disposal of national governments through collaborative initiatives.