Business & Human Rights
Resource Centre

BRIEFING: Rights Extracted

Toward transparency & respect for human rights in mining, oil & gas in Francophone Africa

About Business & Human Rights Resource Centre

Business & Human Rights Resource Centre is an independent non-profit organization that brings information on companies' human rights impacts, positive and negative, to a global audience. We have researchers based in Brazil, Colombia, Hong Kong, India, Japan, Jordan, Kenya, Mexico, Myanmar, Senegal, South Africa, UK, Ukraine and USA. Our International Advisory Network, comprising 70 experts from all regions, is chaired by Mary Robinson, former United Nations High Commissioner for Human Rights and former President of Ireland. The Resource Centre was named as recipient of the 2013 Dodd Prize in International Justice and Human Rights. For further information about the Centre, see the "About us" section of our website, and a profile of our work by the Financial Times entitled "A fair approach to human rights".

Follow our work in Francophone Africa

We will continue to track cases from the region and seek company responses to concerns. Visit the "Africa" sections of our website, and sign up for our Weekly Updates here.

1. Executive summary

The Organisation Internationale de la Francophonie is holding its second annual economic forum in Paris on 27 October, titled, “Call to Action”. This forum primarily aims to develop the community of Francophone countries as an important economic zone. But economic growth and integration will founder if they come at the expense of human rights and fail to benefit the poorest people and address stark inequality in this major global zone.

On the occasion of the forum, Business & Human Rights Resource Centre has prepared a briefing on human rights and the extractive industries in Francophone Africa. We have chosen the extractive industries after conducting our first-ever systematic analysis of over 170 cases in which civil society has raised human rights concerns about companies in all sectors in Francophone Africa since 2005, and we invited companies to respond. We found the following:

The greatest risks to human rights come when companies operate in conflict or weak governance zones: Four of the top five countries and territories in Francophone Africa where human rights concerns are raised about companies’ operations are Democratic Republic of Congo, Niger, Western Sahara, and Côte d’Ivoire – all the sites of current or recent conflicts and instability. This shows the importance of measures in multinationals’ home countries and at the international level to improve accountability for companies operating in weak governance zones.

Francophone countries, and La Francophonie itself, have an enormous opportunity to shape future investment and economic growth in Francophone Africa for better respect for human rights, and development that benefits all people in the region: Europe’s Francophone countries and Canada continue to be major investors in Francophone Africa, but this investment has a dark side – 44% of concerns about corporate abuses in Francophone Africa implicated companies from Francophone countries. This reality can be changed, starting now, by La Francophonie and its member states.

Extractive companies, specifically mining, oil & gas, predominate among those accused of involvement in abuse: This sector represents 42% of all responses we have sought to allegations of involvement in abuse in Francophone Africa – far greater than the next sectors: food, beverage & supermarkets (15%), followed by agriculture, biofuels and logging (10%).

Although extractive companies tend to respond publicly to civil society concerns, these responses do not yet correspond to effective prevention or remedy of abuses: Extractive companies do respond to concerns about their impacts at a high rate (90%), yet this continues to be the predominant sector of concern for civil society, with no reduction in the prevalence of complaints against extractive companies over time.

In none of the responses analysed did extractive companies commit to providing remedy. Only 5% of responses committed the company to improving its policies and practices, or showed openness to enter into dialogue with victims or civil society. Even if companies do not accept the allegations made by civil society, the persistent concerns indicate that the sector must do a better job of engaging with communities that raise serious issues about the companies’ impacts.

Key trends we found:

Extractive industry development in Francophone Africa has come at a high cost for people and the environment, often contributing to ecological crises. The full briefing includes illustrative case examples regarding:

- Pollution affecting human health and livelihoods, including a recent NGO report in Niger on radioactive contamination involving Areva and Somina/CNNC International, and toxic chemical pollution involving gold mining firm SML, formerly owned by Canada’s Semafo but now state-owned.
- Displacement, loss of farmlands, and destruction of homes to make way for extractive projects, in many cases with little or no compensation, for example the destruction of a village of artisanal miners near a mine operated by CMSK, which was owned by George Forrest International at the time (now state-owned), and displacement without adequate compensation for the Soraz oil refinery in Niger, operated by CNPC.
- Violence against those opposing extractive projects – such as the Guinean army’s 2012 massacre of villagers protesting the lack of benefits they received from a mine operated by Vale.
- Arbitrary arrest and detention of human rights defenders – for example those active on mining issues in Niger and oil and gas issues in Chad.
- Contribution to conflict, e.g., several companies in Central African Republic and Belgium have been sanctioned for their role buying diamonds that have financed the conflict in CAR.

In each case, to maintain objectivity and fairness, the briefing also cites the company’s position, where available.

Extractive industries in Francophone Africa are not transparent, and provide little benefit to most people. Socioeconomic conditions in many countries in Francophone Africa are woeful, despite the enormous natural resource wealth extracted, with the gaps between elites (often corrupt government officials who are bribed by companies in cash or are given shares) and the vast majority growing only larger as extractive companies grow. Citizens cannot understand what is happening to this wealth and hold companies and governments accountable without information – yet major contracts go unpublished, such as the revised contract between Areva and Niger concluded over a year ago, and Perenco's contract with DRC. Not coincidentally, DRC and Niger are at the very bottom of measurements of human development. In Gabon, a local NGO sued 15 extractive companies this year in an attempt to force greater transparency of natural resource revenues. As a result of this lack of transparency and oversight, experts including the Africa Progress Panel chaired by Kofi Annan and the UN Economic Commission for Africa estimate that African countries lose $50 billion per year in illicit financial flows. These losses make it impossible for these countries to meet health, education and other vital social needs.

Good practice initiatives already underway show a way forward. There is good news, with a range of actions by companies and governments showing the way to address many of these issues. Randgold and AngloGold Ashanti, joint owners of the Morila mine in Mali, are redeveloping the site following its closure to provide economic opportunities for the community in agriculture and aquaculture. Teranga Gold in Senegal, following complaints about poor housing it provided to displaced families and other impacts, engaged in a 25-year development plan for the area based on wide-ranging consultations with local communities. Tullow Oil, which operates in Gabon, was the first oil company in the world to respond to civil society demands for regular disclosure of amounts of oil extracted and payments made for each individual project.

In the most promising legislative development, the French Senate is currently considering a bill to require companies to carry out due diligence on human rights and environmental impacts, including in their operations abroad. The EU non-financial reporting directive now requires companies to monitor and report on their impacts on human rights, the environment and society. The Canadian Government now conditions its trade and investment support for Canadian extractive companies on their participation in Canadian government mechanisms to hear disputes with affected communities. National Action Plans on business and human rights, which the UN Working Group on business and human rights strongly encourages, have not yet been adopted by any Francophone countries, but Belgium, France, Switzerland, and, in Africa, Mauritius have committed to doing so.

These are promising steps, but they are isolated, while the challenges posed by the ways that the extractive industry operates in Francophone Africa are systemic. La Francophonie has recognised the major role it can play in economic affairs generally. Back in 2011, it recognised the importance of business and human rights when it published an innovative guide on the subject. This year's forum provides a perfect opportunity to integrate the vital principles of human rights into its emerging work on economic and business issues. This is essential if it is to stay true to its core mission of human rights promotion and support for sustainable development, and for its new orientation toward economic issues to make a difference to the most vulnerable people in the Francophone zone.

2. Introduction & context

The extractive industries represent a large share of the economies of Francophone Africa, and of foreign investment in the region. Historically a high proportion of investment in Francophone Africa has come from other countries in the Francophone region – with companies headquartered in France, Belgium, Canada and Switzerland all playing major roles. In recent years, companies headquartered in China and other emerging economies have increased their investments in Francophone Africa. La Francophonie now seeks to reinvigorate economic integration among Francophone countries.

Our work on the human rights impacts of business in Francophone Africa over the last 10 years has shown there is great potential for companies to drive growth that benefits the poorest people in the region, but also that companies can play a role in grave human rights abuses. During that time, we have engaged with companies over 170 times regarding their human rights impacts in Francophone Africa. Among these cases, concerns over involvement in abuses have been greatest regarding impacts of extractive companies, and companies in other sectors that source minerals from Francophone Africa. Natural resources have been extracted, in many cases, at the expense of communities and the environment in mining and oil-producing areas. Moreover, the governance of the extractive industries and the revenues they generate have been opaque, with the result that the vast majority of people in Francophone Africa have seen few, if any, benefits from the great wealth that the sector creates. But despite this often dire record, good practices in the sector can ensure respect for human rights and translate into real benefits for health, education and economic empowerment in Francophone Africa.

Current and recent policy initiatives in key Francophone countries show a way forward for better governance of the extractive industries in Francophone Africa. Given the continuing importance of French companies in Francophone Africa, perhaps the most important step now under consideration is the legislative proposal in France to require companies to exercise due diligence regarding their human rights and environmental impacts and to ensure that victims of abuse have access to remedies. This path-breaking bill, currently before the French Senate, is strongly supported by human rights, development, and environmental organizations such as Amnesty International, Catholic Committee Against Hunger and For Development, Friends of the Earth, and Sherpa. This law would complement and strengthen the existing, strong French legal framework for non-financial reporting on companies' impacts on society, the environment, and sustainable development. For other Francophone European countries, the 2014 EU directive on non-financial reporting now creates a parallel framework. The Swiss government has also recently considered adopting such measures. Integrating reporting on environmental, social and governance (ESG) issues with financial reporting is recognised as creating value for companies, as well as providing transparency on companies' operations for external stakeholders and government regulators.

Other Francophone countries have adopted or considered strengthening legal frameworks and policy incentives as well: Canada recently announced its clear policy expectation that extractive companies would abide by the UN Guiding Principles on Business and Human Rights and other norms – with penalties if companies refuse to participate in the government's mechanisms to resolve communities' and workers' complaints. The Swiss parliament considered but narrowly rejected a provision requiring companies to exercise due diligence regarding their human rights impacts in March 2015. A broad civil society coalition including Action de Carême, Greenpeace and Swissaid has organised a petition drive for a new law on corporate responsibility and due diligence. France, Belgium and Switzerland have all committed to or initiated processes to adopt National Action Plans on business and human rights.

In Francophone Africa, relatively few governments have engaged with questions of corporate impacts as human rights matters. Notably, Mauritius has committed to adopting a National Action Plan on business and human rights. The governments of Guinea, Niger and Senegal did respond to a survey from Business & Human Rights Resource Centre on the actions taken by their governments to protect human rights from business impacts. And the Senegalese Human Rights Committee has particularly undertaken to prioritise business impacts.

La Francophonie now has set itself a challenge of promoting economic development across all its members, and promoting Francophone countries as an integrated economic space. The organization itself recognised the necessity of respect for human rights in the development of business in its important guide, "Les droits de l'homme au cœur de la responsabilité sociale des entreprises" in 2011. The essential and historic commitment of La Francophonie to human rights must now be integrated into this prioritisation of economic and business-led growth, to ensure that it benefits those members of society in greatest need of development, and respects the rights of the most vulnerable.

3. Company responses in Francophone Africa

Since 2005, Business & Human Rights Resource Centre has invited companies to respond to human rights concerns from civil society, before posting the allegations on its website (when the company has not yet responded publicly). The Resource Centre takes this approach to ensure fairness, but also to encourage companies to publicly address criticisms about their human rights impacts that they have not yet responded to.

This section of the briefing identifies trends from these cases and company responses (and non-responses) relating to companies operating in and sourcing from Francophone Africa: we have sought responses from companies concerning Francophone Africa a total of 175 times, out of a total of 2,510 approaches globally (March 2005-September 2015). The overall response rate for companies regarding their impacts in Francophone Africa is 77%. This is slightly higher than our global response rate of 72.5%. As discussed further below, the largest sector by far facing accusations of negative human rights impacts is the extractive sector.

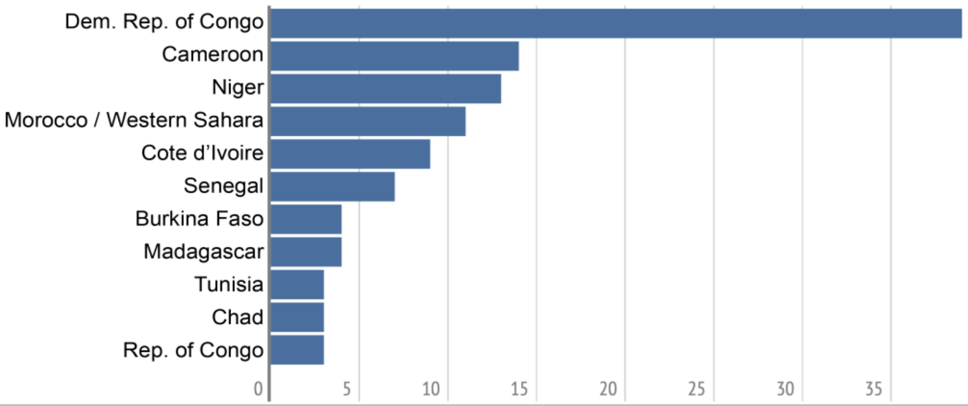
Where are abuses occurring?

The heat map at right and graph below[1] show where in Francophone Africa we have received the greatest allegations of abuse that we have raised with companies in all sectors.

These figures show that the **greatest risks to human rights come when companies operate in conflict or weak governance** zones: DRC, Niger, Western Sahara, Côte d'Ivoire – four of the top five countries and territories on the graph below – are all sites of current or recent civil conflict. But they also show that companies face the risk of involvement in human rights abuse – and need both to do better and to be provided better guidance and incentives – across the entire region.

Countries where alleged abuses occurred

(percentage of all cases where we sought responses from companies[1])



- *As a percentage of all responses sought regarding impacts in Francophone Africa.*
- *Total exceeds 100% because some reports concern multiple countries.*
- *Smaller number of responses also sought regarding impacts in Central African Rep., Gabon, Guinea, Rwanda.*

[1] For this and some other figures in this section (where noted), we exclude responses we have sought regarding companies' positions on laws and government policies directly affecting Francophone Africa, especially US regulations on "conflict minerals" from DRC. Inquiries about such policy positions account for about one-third of all company responses we have sought concerning Francophone Africa. Excluding these approaches allows these figures to accurately reflect trends among cases involving specific impacts on the ground in Francophone Africa.

What is the role of Francophone companies?

The historic cultural and political ties among the countries of the Francophonie also have produced important economic relationships, with companies headquartered in Francophonie countries being major investors in Francophone Africa. As a result, Francophone companies unfortunately also have a disproportionate role in cases where civil society has raised human rights concerns about companies' operations: Of all the company responses we have sought regarding Francophone Africa, 44% were from companies headquartered in Francophonie countries.[1] By comparison, these countries account for only 16% of the global economy. This indicates that **Francophone countries, and La Francophonie itself, have an enormous opportunity to shape future investment and economic growth in Francophone Africa for better respect for human rights, and development that benefits all people in the region**.

Responses sought from companies headquartered in:

Belgium
Cameroon
Canada
Dem. Rep. of Congo
France
Lebanon
Luxembourg
Madagascar
Niger
Senegal
Switzerland

44%

of responses sought from companies headquartered in Francophone countries*

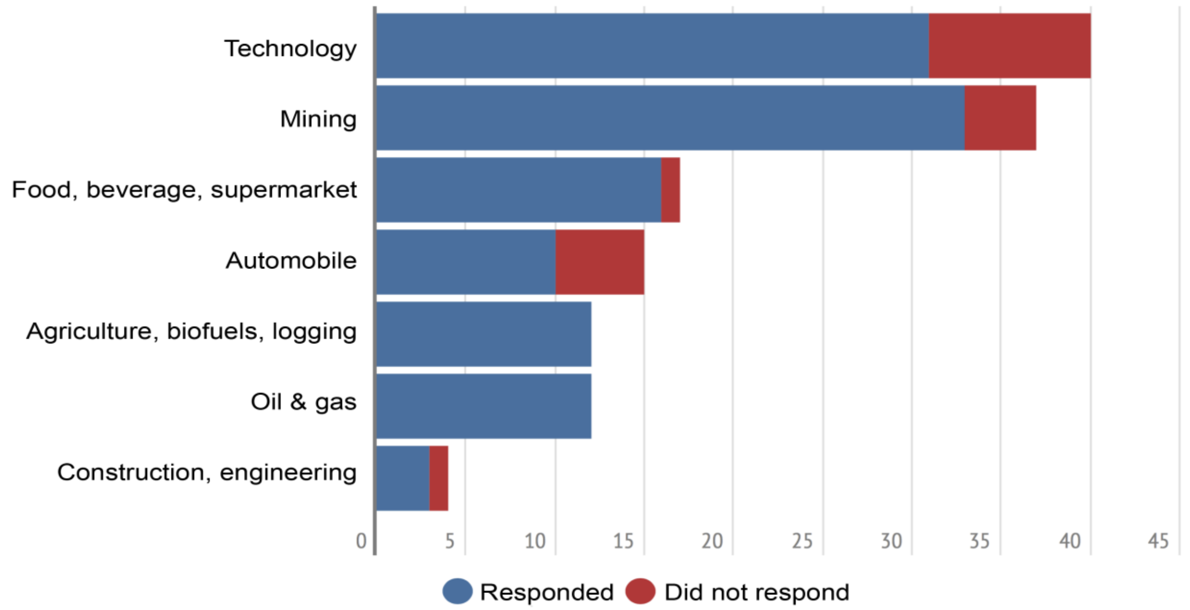
*excluding conflict minerals approaches

Which sectors face the most concerns about their human rights impacts?

Overall, civil society has raised the most concerns about mining, oil and gas, taken together – the extractive industries. In addition to direct impacts of mining, oil & gas companies, these include concerns about the automobile and technology sectors: Civil society's concerns about automobile and technology companies are primarily about the impacts of mining in Francophone Africa in these companies' supply chains, and these companies' policy positions on laws regulating minerals from conflict zones in DRC.

Company responses & non-responses, by sector

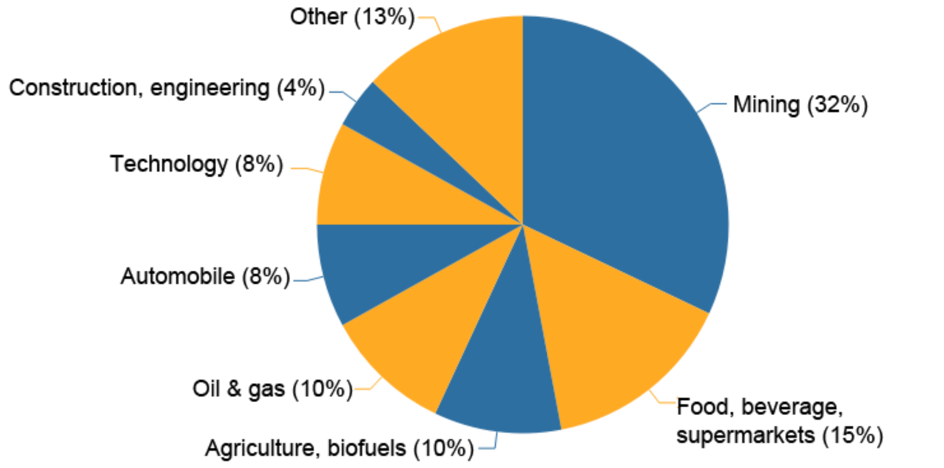
(includes responses sought to concerns about both direct impacts and lobbying/policy positions)



To focus more on cases involving specific impacts on the ground in Francophone Africa, we then excluded responses we have sought regarding companies' positions on "conflict minerals" regulation. The clearest conclusion from our resulting analysis is **the predominance of extractive companies (mining, oil & gas) among those accused of involvement in abuse**: The extractive industries (mining, oil & gas) represent 42% of all responses we have sought to allegations of involvement in abuse in Francophone Africa – far greater than the next sectors: food, beverage & supermarkets (15%), agriculture, biofuels & logging (10%), automobiles (8%), technology, telecoms and electronics (8%), and construction & engineering (4%). These statistics actually understate the direct role of mining in abuses: The concerns about automobile and technology firms' impacts in Francophone Africa relate to how minerals in their supply chain can fuel in conflict in the region – so are also in fact about impacts of mining. Extractive industries play a major role in economies across Francophone Africa, yet the high incidence of abuses related to this sector suggests that its contribution to national economies comes at a calamitous price for human rights, with very little benefit for people directly affected by the extraction.

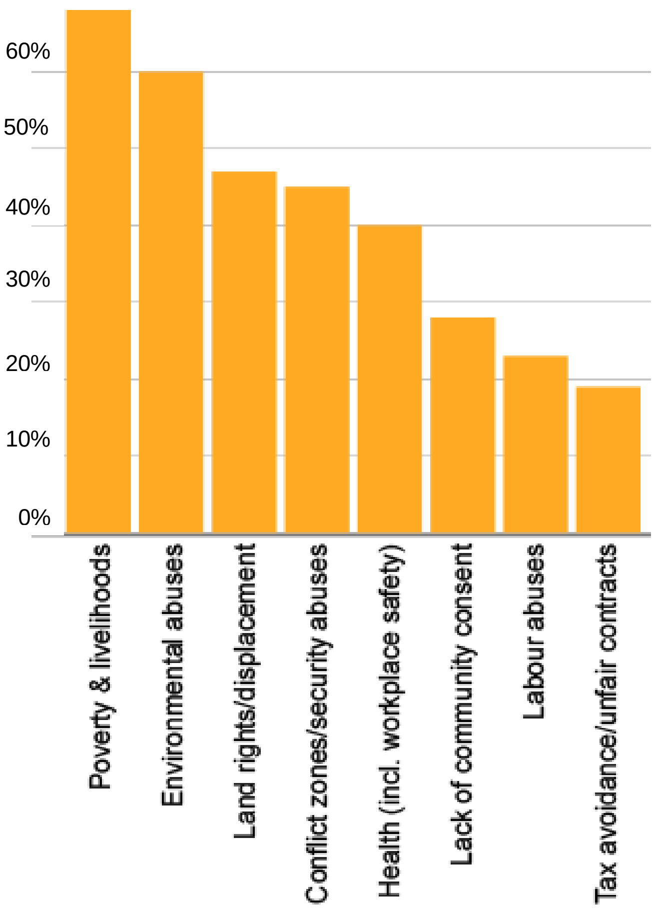
Company responses sought, by sector

(includes responses sought to concerns about companies' own operations & sourcing; excludes concerns about lobbying/policy positions)



Extractive companies do respond to concerns about their impacts at a high rate (90%), which reflects two key facts: 1) The sector has faced these issues for decades. 2) Local communities' opposition to projects due to their human rights impacts can be very costly for companies. Yet despite this willingness to speak publicly in response to these alleged abuses, this continues to be the predominant sector of concern for civil society: In the last two years, over half of the responses we have sought have been from the extractive sector. This strongly suggests that although extractive companies recognise the value of publicly responding to human rights concerns, **companies' responses do not yet correspond to effective prevention or remedy of abuses**.

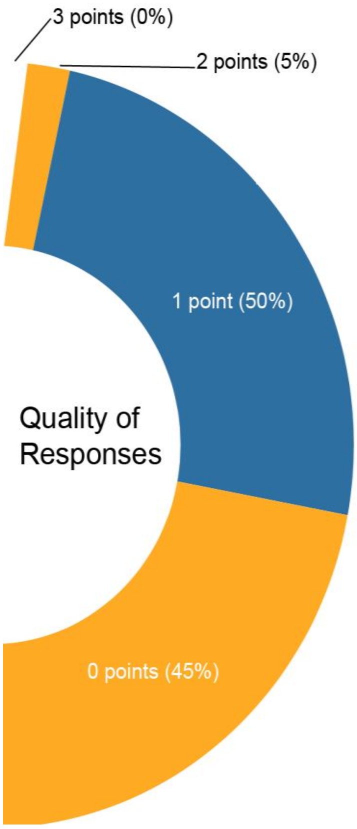
Human rights issues raised regarding extractive companies



Which human rights concerns are most often raised about extractives?

Our analysis of cases in which we approached extractive companies operating in Francophone Africa shows that allegations are often complex and raise a range of interconnected human rights issues.

Of the responses we have sought responses from extractive companies, 68% concerned companies' alleged role in impoverishment of communities and starving of national budgets to meet social needs; 60% concerned environmental damage affecting health and livelihoods, such as air pollution and depletion of water; 47% concerned land rights and displacement; 45% concerned conflict zones and abuses involving private or government security forces; 40% concerned harms to health, including workplace health and safety; 28% concerned lack of consultation with and consent from affected communities; 23% concerned workers' rights abuses; and 19% concerned tax avoidance and inadequate payments to governments. Other issues raised included impacts on the right to food, housing, and climate. **In many cases, concerns raised by the community are not only complex and interconnected, but have worsened over time, with complaints about lack of economic benefit, environmental harm and land rights escalating into violent conflict between companies and communities.**



Quality of responses

The response rate by extractive companies regarding impacts in Francophone Africa has been high (90%). However, although the response rate may indicate companies' willingness to engage on business and human rights issues, we also notice wide variation in the quality of responses. Some responses we receive are detailed, address each point raised, and show a genuine willingness to prevent abuse. On some occasions the response request has led to a genuine dialogue between the company and victims, resulting in real change on the ground. At the other end of the spectrum we have received one-line responses, or a brief, conclusory denial, or information that is irrelevant to the concerns raised. We graded the responses we have received from extractive companies operating in Francophone Africa.

0 points– failed to address concerns, or did so generally and in limited detail

1 point – addressed concerns point-by-point

2 points – addressed concerns point-by-point and (a) showed an openness to enter into genuine dialogue with civil society/victims; and/or (b) committed to improve its policies and practices to avoid recurrence of the abuses in question

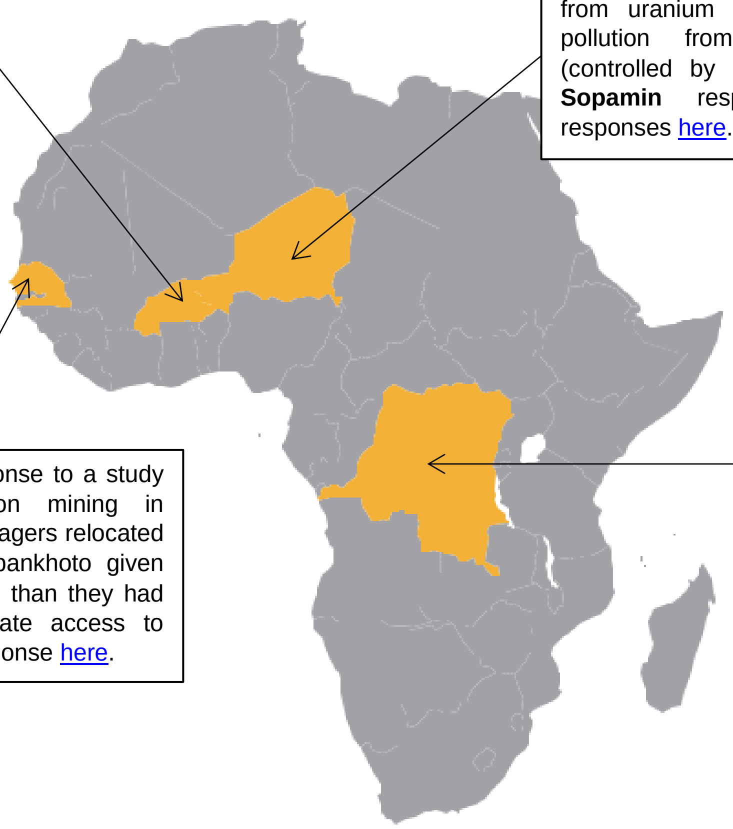
3 points– addressed concerns point-by-point and agreed to provide remedy

In none of the responses did extractive companies commit to providing remedy. Only 5% of responses committed the company to improving its policies and practices, or showed openness to enter into dialogue with victims or civil society. This included a response from Tenke Fungurume Mining (TFM, majority owned by Freeport-McMoRan) to accusations of its responsibility for the death of a resident of a nearby community, after he was beaten by a private security firm hired by TFM. TFM committed to ""continuing to develop our systems and processes to prevent an incident like this from occurring again". Another 50% met the 1-point standard, addressing concerns point-by-point, but without showing the company would engage constructively with those who had raised the concerns. Unfortunately a full 45% either only addressed the issues very generally or addressed some specifics but avoided the main concerns raised; or did not address the concerns at all, typically seeking to sidestep criticisms and promote positive steps the company had taken.

Illustrative examples of company responses by extractive companies in Francophone Africa

Jan. 2015: We invited **True Gold** to respond to concerns of a community in **Burkina Faso**, after violent protests sought to force the company out. Community members said the company had consistently ignored issues like displacement from their homes and threats to a holy site. Full allegations & response here.

June 2015: We sought responses to a local NGO's study of environmental impacts in **Niger** such as radioactive contamination from uranium mines and toxic chemical pollution from gold mines. **Somina** (controlled by CNNC Intl. of China) and **Sopamin** responded. Full report & responses here.



June 2014: We sought a response to a study by Amnesty International on mining in **Senegal**, which alleged that villagers relocated by **Teranga Gold** from Dambankhoto given much smaller accommodations than they had previously had, with inadequate access to water supply. Full report & response here.

June 2014: We sought a response from **Glencore** regarding its social and environmental impacts in the **Dem. Rep. of Congo**, including issues of access to water, impoverishment of communities, land rights, involvement in conflict and tax avoidance. Full report & response here.

4. Key trends

4.1. Extractive industry development in Francophone Africa comes at a high cost for people and the environment

The development of the extractive sector in Francophone Africa has entailed a range of negative environmental impacts[2]. Growth in oil drilling, and in mining of gold, diamonds and uranium has caused increases in pollution that harm neighbouring populations, in many cases, particularly to their health and means of subsistence.

A- Pollution

1) Niger

Areva, which has mined uranium in Niger for decades, has been repeatedly accused of pollution by the radioactive dust emitted by its mines. The company has consistently denied these accusations and insisted that, due to its efforts, there is no danger to neighbouring populations. A business & human rights study by local NGOs, focused on extractive industries, focused on the nagging question of pollution caused by gold, uranium and coal mining, and oil drilling. According to this report, millions of tonnes of radioactive and/or toxic waste and residue are disposed of in unprotected, open-air sites and are susceptible to leaking out from controlled areas operated by Areva and Somina (whose principal shareholder is a subsidiary of China National Nuclear Corp.). In addition, smoke from the Soraz refinery operated by China National Petroleum Corp. (CNPC) and from the Nigerien coal firm Sonichar; flaring of gas from CNPC's oil wells; dust from explosives used by mining and oil companies; the use of dangerous chemicals by Société des Mines du Liptako (SML)[3] to extract gold, all constitute additional areas of danger and concern for nearby communities. When we invited the companies to respond, they stated that they were operating within the law, and/or were taking adequate measures to mitigate and limit their pollution.

2) Chad

The Government of Chad cited CNPC over serious violations of environmental regulations in its exploratory wells. The government stated that the company had intentionally spilled thousands of litres of crude petroleum into ditches near the wells, with no containment. The government imposed steep fines, but the company refused to pay them. Following an arbitration proceeding in Paris, the government and the company ultimately reached a settlement, with CNPC paying US$400 million in penalties.

3) Democratic Republic of Congo (DRC)

A copper refinery owned by Glencore reportedly regularly dumps toxic waste – primarily metals – into the Luilu River, which nearby villages depend on as a water source. We invited Glencore to respond; in its response, Glencore stated that it had not yet been able to review the analyses that underpinned the report. In its nomination for the « Pinocchio Prize » in 2014, organised by NGOs to highlight corporate environmental and social abuses, Perenco, which has oil wells in Muanda, was criticised over crude oil leaks and gas flaring sited near homes; releases of pollutants and practices for storing and burying waste that contaminate the environment and ruin the subsistence agriculture and fishing on which the local population depends. In its response, the company cited its initiatives to support local development.

A number of NGOs including Global Witness are supporting local communities that are fighting the proposed activities of petroleum firm Soco International in Virunga National Park, over concerns of potential pollution of this UNESCO World Heritage Site and of Lake Edward, which thousands of fisherpeople in the area depend on. Soco has committed to refrain from any exploration or drilling within the park, unless UNESCO and the DRC Government agree that such activities would be consistent with World Heritage Site status. The park's defenders have seriously criticised the ambiguity of Soco's statement.

Mining companies have also been implicated in pollution of rivers in the mining region of Katanga. The DRC Government, Gécamines (state-owned mining company) and Compagnie minière du Sud-Katanga (CMSK)[4], for example, were found liable in court for environmental damage caused by toxic dumping in the Kafubu River in 2011 – but only ordered to pay US$6000 in damages to the victims of pollution. The victims' lawyers have appealed, arguing that the verdict severely underestimates the harm caused.

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[2] See for example: Pétrole : trente ans d'incidents environnementaux en Afrique, *Jeune Afrique*, 9 January 2015

[3] Previously a subsidiary of Canada-based SEMAFO (Société Minière de l'Afrique de l'Ouest), which sold SML to the Nigerien state-owned SOPAMIN in December 2013.

[4] CMSK was majority-owned by George Forrest International at the time, but is now a wholly-owned subsidiary of Gécamines.

B- Displacement and expropriation without adequate compensation

Displacement of communities to make way for natural resource extraction often occurs without compensation, or with grossly inadequate compensation.

1) Cameroon & Chad

Local communities along the Chad-Cameroon oil pipeline have raised a range of concerns about its social and environmental impacts. Those who were displaced have particularly complained about paltry compensation. With the support of local NGOs, they filed a complaint on this basis before the World Bank's Compliance Advisor/Ombudsman (CAO) against the ExxonMobil subsidiaries that operate the pipeline. Following its 2012 assessment report, the CAO has facilitated a mediation process between the affected communities and the company, now on-going.

2) Democratic Republic of Congo

A report by Action Contre l'Impunité pour les Droits de l'Homme singled out several companies in Katanga province for having displaced communities and destroyed their homes without adequate compensation or new lodgings[5]. The Belgian company George Forrest International, accused of having bulldozed the village of Kawama, denied any responsibility while condemning the destruction, which it blamed on government security forces.

3) Niger

With the rise of the extractive industries, displacement and expropriations have also increased, with those displaced often stating that the compensation they receive is far inferior to the value of their land. For example, since 2010, communities have been seeking justice before Nigerien courts for expropriations without fair value, to make way for the Soraz refinery (Société de raffinage de Zinder, owned by CNPC); the case is pending.

4) Senegal

A study by Amnesty International on mining in Senegal revealed a lack of protections for the rights of people living in the Kédougou mining region. According to the report, for families relocated by Teranga Gold from Dambankhoto village, for example, "the relocation…was not carried out in line with Senegal's legal obligations to protect human rights … [People] were moved to a location where accommodation was inadequate, water supply was limited and access to livelihoods has been compromised." In response to the report, Teranga Gold laid out its compensation process and claimed it was adequate.

C- Violence related to extractive industries

The enormous economic and financial issues involved in the extractive industries partly explain the violence that frequently accompanies mining, oil and gas operations. The violence and threats can be physical, verbal or psychological, and often are carried out against local communities directly impacted by these companies' operations, and that may seek to express their dissatisfaction with these impacts through protest. Other victims of this violence can include civil society and human rights defenders working on natural resource issues.

1) Democratic Republic of Congo

The director of Virunga National Park has been shot at and wounded in the course of seeking to protect the park. Soco, which holds rights to drill in the park, rejected accusations any suggestion of involvement in the attack. Suspicions in the attack on the park's director were heightened, however, because Soco has separately been accused of violence, threats, and illegal payments to remain and continue exploration and drilling in the park – allegations that the company denies.

This violence has carried over from the period of generalised civil war in DRC. Most notably, in the case of massacres in Kilwa (Katanga province, 2004) Anvil Mining, which has since become a subsidiary of China Minmetals, was implicated in providing planes and other vehicles to the FARDC (DRC's army) in an offensive where the army carried out summary executions, torture, and other human rights violations against civilians. The families of victims sought remedy from Anvil in multiple venues – first a Congolese military proceeding, then in court in Anvil's home country of Canada, but despite credible reports by the UN and others of Anvil's role in the massacres, the victims have not obtained any remedy in the 11 years since the massacre.

In another case in DRC, a death involving security guards implicated Tenke Fungurume Mining (TFM, of which Freeport-McMoRan is majority shareholder) and the private security firm Delta Protection. According to local NGOs, a nearby villager crossing the TFM concession was detained and beaten by Delta Protection guards in 2012, and died of his injuries a few days later. The two companies responded to the NGOs' statement, denying responsibility for the attack, although TFM also committed to "continuing to develop our systems and processes to prevent an incident like this from occurring again". The victim's family sued TFM and Delta Protection in DRC court in September 2012; the case is still

[5] For further details on this issue, see our 2014 Francophone Africa briefing: http://business-humanrights.org/sites/default/files/media/documents/francophone-afr-briefing-bus-human-rights-mar-2014.pdf

pending, according to the family's lawyer. According to Congolese NGOs, such violence against communities neighbouring mining operations occurs frequently.

2) Guinea

In 2012, residents of the village of Zogota in Guinea, who were protesting against the lack of jobs for them in a nearby mine operated by the Brazilian firm Vale were attacked by the military, who killed at least five protesters.

3) Burkina Faso

Residents of villages near a mine operated by True Gold (headquartered in Canada) who opposed its operations in their area set fire to some buildings and machinery belonging to the company. Their main concern was that they would be removed from their village, and that a mosque that is an important pilgrimage site would be moved. Despite attempts by the company to reassure the village, residents did not trust the company and insisted on a halt to the project and the company's departure from the area. When we invited it to respond, True Gold stated that it was open to dialogue, and believed that a mutually satisfactory outcome could be reached. A tripartite agreement between True Gold, local communities and the national government ultimately resolved the situation with protections for the village and its mosque, allowing the company to restart activities.

D- Harassment of human rights defenders working on extractive industries, and shrinking civic space

In recent years, we have observed a growing number of cases of human rights defenders subjected to harassment, intimidation, and arbitrary arrests and detention, because of their work on issues related to the extractive industries. The two important cases below illustrate a disturbing trend occurring across the region, including in DRC and Cameroon.

1) Niger

In July 2014, leaders of several major NGOs advocating for transparency in governance of natural resources, especially uranium, were arbitrarily arrested, then released, during a visit to Niger by French President François Hollande. These human rights defenders were protesting for greater transparence and a fairer share of revenues in relations between the Niger Government and extractive firms operating in the country, particularly Areva. Business & Human Rights Resource Centre partnered with other NGOs to launch an urgent appeal to draw attention to this arbitrary arrest of civil society leaders and insist on full respect for their freedom of speech, assembly and protest.

2) Chad

In June 2015, Djeralar Miankeol, a member of the Chadian League for Human Rights and founder of local NGO Ngaoubourandi, which fights to protect pastoralists' land rights and for transparency in the oil sector, was arrested and charged with "contempt of the judiciary", "false accusations", and "incitement to hatred". Mr. Miankeol had recently given a radio interview in which he had denounced judicial corruption, particularly in cases where expropriations and land grabs affected pastoralists. Mr. Miankeol was initially condemned to two years of prison without possibility of parole and a fine of FCFA 100,000, but the conviction was completely reversed on appeal. Although he was freed, International Federation for Human Rights and the World Organisation Against Torture stated, "much remains to be done in this country where, with elections approaching and in the guise of fighting terrorism, the authorities are increasingly harassing [human rights defenders]".

E- Contribution to internal conflict

In countries with serious governance gaps, revenues from natural resources can exacerbate internal conflict. Some companies effectively fuel conflicts through their purchases, typically without meaning to do so.

1) Democratic Republic of Congo

The issue of "conflict minerals" is closely tied to DRC, given the important role of natural resources in the country's civil war, especially in the east of the country. Numerous reports have tied the millions who have died in DRC's conflict in part to financing for armed groups from mines in eastern Congo. A 2010 report by the UN Group of experts on DRC explained how revenues from informal mines helped finance armed groups responsible for mass rapes and killings. The UN Group of experts' final report, in 2014, cited specific companies for their role in smuggling minerals sold by armed groups out of DRC. According to the Group of experts, smuggling is on-going, with groups within the army as well as some remaining rebel groups involved in this illegal trade. Some, however, have contested the narrative that minerals are responsible for the conflict in eastern DRC. A group of 70 experts publicly challenged the campaign against "conflict minerals", saying it "fundamentally misunderstands the relationship between minerals and conflict in the eastern DRC… [While] the minerals help perpetuate the conflict, they are not its cause." This group of activists, academics, civil society leaders, parliamentarians, and journalists argue that international measures against conflict minerals have "yet to lead to meaningful improvement on the ground, and [have] had a number of unintended and damaging consequences" for people in eastern DRC. The authors cite an internal UN assessment that allegedly showed "that only 8% of the DRC's conflicts are linked to minerals". NGOs that support laws on "conflict minerals" from eastern DRC admit that traceability of these minerals is still far from complete or perfect, and that neither improvements in traceability nor reductions in revenues from minerals reaching armed groups will suffice to establish lasting peace in the region. But they do insist that controls on these minerals have had significant impact by beginning to limit the presence and influence of armed groups in the region.

2) Central African Republic

In 2010, a report by International Crisis Group had already identified diamonds from CAR as a source of funding for the nascent conflict there, and had urged the Kimberley Process to take measures to prevent rebel groups from profiting from diamond mining or sales. The Kimberley Process did suspend certification of diamonds from CAR in May 2013. Still, this suspension has not stopped the sale of conflict diamonds from CAR, but only driven it underground, causing smuggling to neighbouring countries to explode, especially to Cameroon. As a result, diamonds from CAR to continue to stoke the conflict, as recently reported by Vice News following field research. The CAR Government is nevertheless currently seeking to be reinstated, arguing that the effective embargo on CAR diamonds is, somewhat paradoxically, driving the illegal trade. But the Kimberley Process recently decided to maintain CAR's suspension. In August 2015, the UN Security Council extended its sanctions to two companies, Bureau d'achat de diamant en Centrafrique (BADICA) and its Belgian subsidiary Kardiam, for their role in the illegal diamond trade, which has financed armed groups.

4.2. Extractive industries in Francophone Africa are not transparent, and provide little benefit to most people

Poor governance, corruption and tax avoidance pervade the extractive industries in Francophone Africa, even though a number of countries in the region have joined the Extractive Industries Transparency Initiative. Gaps between the amounts that companies state that they have paid to governments (as royalties, taxes, etc.) and the revenues that governments declare they have received from the same companies are often left unexplained. Worse, civil society is unable in most cases to verify company disclosures of payments made to governments.

A- Lack of transparency and corruption in the extractive sector

Lack of transparency of mining and petroleum contracts, as well as of revenues generated by companies in these sectors, have long been decried by civil society in Africa. Unscrupulous companies exploit favourable tax regimes and lax state enforcement to avoid paying taxes as far as possible – legally or illegally.

Civil society and the public in African countries are very aware of the issue of poor management of natural resource revenues. At a high-level roundtable organised in Dakar in 2014, the participants emphasised, "multinationals slyly pillage Africa's natural resources…with the complicity of African governments…to the detriment of the people, who seek into deepening poverty despite the riches below ground."

In June 2014, on the occasion of a Washington summit between US President Barack Obama and the leaders of 47 African countries, the Network of Francophone African Civil Society Actors wrote President Obama an open letter denouncing poor governance of natural resources in Africa. The letter stated, "We…find that your criteria are very weak, and fail completely to reflect the reality of our daily lives with those who supposedly lead our countries. All of the countries colonised by France share an egregious lack of democracy, calamitous management of their resources, endemic poverty among the people, while most of these countries' subsoils are packed with natural resources that command top dollar, and a flagrant absence of transparency in the management of public goods."

1) Burkina Faso

Environmental defenders have shown that local people do not benefit from mining revenues; on the contrary, they suffer from the harms caused by mining companies responsible for violating the public's right to a healthy environment, and other human rights. The public has denounced opacity in the extractive sector and demanded greater transparency.

2) Niger

After several months of negotiations, the government and Areva finally concluded a new uranium mining agreement in 2014. Facing pressure from domestic civil society, acting with the support of international NGOs, the Nigerien government obtained new tax arrangements from Areva that would mean greater revenues for Niger than under the previous agreement, and succeeded in righting a commercial relationship that had long been seen as favouring the company. Or at least, this was the government's claim at the end of the negotiations. But today, one year later, the agreements have still not been published. For Ali Idrissa, the coordinator of ROTAB and of Publish What You Pay-Niger, all of the government's and the company's pronouncements have been no more than a bluff.

3) Gabon

A local NGO brought a lawsuit in early 2015 against 15 oil & gas, mining and logging companies, including Comilog (part of Eramet), Shell and Total, accuing them of responsibility for "the visible split between the revenues that could be gained from the extractive industries and the level of poverty in the Gabonese people are stagnating ".

4) Guinea

On the recommendation of the government's Technical Committee for the Review of Mining Titles and Conventions (known as CTRTCM, its French acronym), in 2014 the government cancelled mining titles and permits that had been granted to VBG (a joint venture of BSG Resources and Vale) for the Simandou iron deposits. The CTRTCM said it had uncovered "the existence of corrupt practices" that had infected the grant of these titles. This case joins other scandals the in Guinean mining sector, which, despite its wealth, has not improved the socioeconomic conditions of the people.

5) Republic of Congo

A progress report on public investments in the health sector revealed poor utilisation of petroleum revenues. The report concluded that widespread dysfunction within public administration as well as failure of corporate partners to meet their commitments act as the principal impediments to the development of a decent medical system.

6) Dem. Rep. of Congo

According to a group of NGOs, "Perenco…[exempts itself] from accountability to public opinion and the citizens of the country whose resources it exploits… Perenco's contract with the Congolese government…is not published, despite legal obligations to do so. It is therefore impossible to know what the company's obligations are, particularly on social, tax and environmental issues." Perenco defended itself, citing its commitments to EITI principles and against corruption, and its contributions to government revenues.

B- Tax avoidance

According to Africa Progress Panel, chaired by Kofi Annan, tax avoidance by oil, gas, mining and other companies deprives Africa of huge sums in potential revenues, and as a result governments are unable to meet the basic needs of their populations. For example, according to a 2012 NGO report, an independent audit showed that Tenke Fungurume Mining (TFM) and its principal auditors, Ernst & Young, did not make its accounts accessible to Congolese auditors as required by law, leading local NGOs to suspect that it was overvaluing its costs and investments, in order to minimise its tax payments. When we sought responses from the companies, TFM denied this, but Ernst & Young did not respond, citing client confidentiality. A separate report by the DRC Government, leaked in 2014, estimated that mining companies operating in Katanga province owed approximately US$3.7 billion in unpaid customs duties and fines – although some officials in Katanga and companies disputed aspects of the report.

According to the High Level Panel on Illicit Financial Flows from Africa (jointly convened by the African Union and UN Economic Commission for Africa), over the last 50 years, Africa has lost over one trillion US dollars due to illicit financial flows. This figure is broadly equivalent to the total amount of public development assistance received by African countries during this same period. The report also stated that Africa continues to lose over US$50 billion per year due to illicit financial flows – and these estimates may be well below actual figures because of precise data is not available for all African countries.

Finally, the « SwissLeaks » scandal over large-scale tax evasion arranged by HSBC's Swiss subsidiary revealed many Swiss bank accounts belonging to diamond merchants who operate in Africa.

4.3. Good practice initiatives already underway show a way forward

Some important initiatives on business and human rights, and specifically in the extractive industries, seek not only to address these major concerns, but also to enable the sector to contribute fully to society.

A- Africa regional initiatives

1) African Charter on Human and People's rights and African Commission Working Group

The African Charter includes rights linked to natural resources, e.g., Article 21: "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." Article 24 adds, "All peoples shall have the right to a general satisfactory environment favourable to their development."

In 2009 the African Commission on Human and People's Rights established a Working Group on Extractive Industries, Environment and Human Rights Violations, whose mandate includes research and reporting on the role of extractive industries in fulfillment or violations of Charter rights (including articles 21 and 24) as well as making recommendations "for the prevention and reparation of violations of human and peoples' rights by extractive industries". The Working Group most recently conducted a consultation on extractive industries and human rights in Lubumbashi, Democratic Republic of Congo, in July 2015 with representatives of government, civil society and industry; its principal objective was to "evaluate and strengthen the implementation of Articles 21 and 24 of the African Charter".

2) African Development Bank Integrated Safeguards System

Like other multilateral development banks, the African Development Bank now has an Integrated Safeguards System (ISS) as part of "the Bank's strategy to promote growth that is socially inclusive and environmentally sustainable". The AfDB stated in 2014, following the adoption of the Safeguards, "Safeguards are a powerful tool for identifying risks, reducing development costs and improving project sustainability, thus benefiting affected communities and helping to preserve the environment…[The System] upholds the voices of people who are affected by Bank-funded operations, especially the most vulnerable communities, by providing, for example, project-level grievance and redress mechanisms." The System includes measures on social and environmental impact assessment; involuntary resettlement; environmental issues including pollution and hazardous materials; and working conditions including health and safety. The Bank has just completed a review of the implementation of its involuntary resettlement policy (adopted in 2003, now part of the ISS) in projects it has financed. It concluded that in many countries, implementation of resettlement practices tend "to be selective, arbitrary, and subject to the whims of the administrative officials"; that in treatment of people affected by projects, no "special attention [is given] to vulnerable groups…[and] little or no priority is given to livelihood restoration." It also found that "funding for resettlement activities is inadequate and sporadic" and "resettlement supervision and monitoring [are] weak or entirely lacking." It made a number of recommendations including greater involvement of civil society organizations in resettlement planning, and inclusion of environmental safeguards in resettlement programmes. People affected by AfDB projects, NGOs that support them, and other international observers will now be closely watching to assess whether the report's recommendations, and other aspects of the ISS, are fully implemented.

B- International initiatives

In addition to the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the EITI,[6] a number of other international initiatives specifically concern extractive industries in Francophone Africa.

1) Conflict minerals measures in Europe and USA

In addition to the US law on conflict minerals,[7] the European Parliament recently approved mandatory surveillance procedures on the sourcing of gold, tantalum, tungsten and tin from conflict zones; the measure must now be negotiated with the European Commission, which has favoured a voluntary system.

2) OECD guidance

OECD has produced Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, aiming to give companies concrete and practical tools to respect human rights and avoid complicity in conflicts, gross violations of human rights, and instability via their supply chains.

C- Sectoral initiatives

1) Oil & gas sector

The Institute for Human Rights and Business and Shift published an "Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights" in 2013, with the support of the European Commission.

IPIECA, the "global oil and gas industry association for environmental and social issues", published "Human rights due diligence process: a practical guide to implementation for oil and gas companies" in November 2012. IPIECA has also published a number of other tools and briefings aiming to help oil and gas companies to better integrate human rights into their activities.

2) Mining sector

International Council on Mining & Metals (ICMM), a mining industry association aiming to improve sustainability performance, published a guide on "Integrating human rights due diligence into corporate risk management processes" (2012). ICMM also publishes other documents that are relevant to the sector's human rights impacts, such as "Human Rights in the Mining & Metals Industry: Handling and Resolving Local Level Concerns & Grievances" (2009).

D- Company actions

Randgold and AngloGold Ashanti, joint owners of the Morila mine in Mali, are redeveloping the site following its closure to provide economic opportunities for the community in agriculture and aquaculture. Teranga Gold in Senegal, following complaints about poor housing it provided to displaced families and other impacts, engaged in a 25-year development plan for the area based on wide-ranging consultations with local communities. Tullow Oil, which operates in Gabon, was the first oil company in the world to respond to civil society demands for regular disclosure of amounts of oil extracted and payments made for each individual project.

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[6] See above, section 4.2.
[7] See above, section 4.1.E, page 10.

QuickCash in Côte d'Ivoire is one of the only companies in the region to commit to adopting a human rights policy, and 60% of its management team is women. Although QuickCash is not in the extractive sector, its actions show how companies in all sectors can respect human rights, and is particularly relevant for other small and medium-sized enterprises in Africa.

5. Recommendations

The International Organisation of La Francophonie should:

- Intégrate respect for human rights into all forums, actions, reference documents and other publications related to its emerging priority area on "Francophonie Economique"
- Promote policies and actions by its member States to protect human rights from harms involving business

Extractive companies should:

- Adopt and implement a commitment to human rights in their operations and business relationships, including commissioning independent and community-driven human rights impact assessments
- Commit to seeking free, prior and informed consent of communities affected by projects
- Take steps to follow decisions of the African Commission on Human and Peoples' Rights (ACHPR) and other regional bodies such as the ECOWAS Court of Justice, even if they are not directly binding on companies
- Adopt and implement policies on local employment and sourcing from local suppliers
- Join the Extractive Industries Transparency Initiative (EITI); disclose payments to & contracts with governments, including non-members of EITI; commission and publish independent audits of quantities of minerals extracted

Companies and governments should:

- Cooperate with the ACHPR Working Group on Extractive Industries, Environment & Human Rights Violations
- Join and implement the Voluntary Principles on Security & Human Rights

Governments of Francophone countries should:

- Draft, adopt and implement National Action Plans to apply the UN Guiding Principles on Business and Human Rights
- Join EITI and fully implement its requirements, including through open auctions and similar transparent processes for concession, tax and royalty agreements with extractive companies
- Avoid treaties and agreements with companies that shield firms from compliance with improved protection of human rights, workers and the environment
- Ensure that judicial and administrative procedures provide effective, timely remedies that are accessible to workers and to communities affected by extractive companies
- Among governments in Africa, adopt and enforce laws, in line with African and international human rights principles, to protect human rights, workers' rights and the environment, and protect human rights and environmental defenders and trade unionists

Governments of Francophone countries whose companies invest in Africa should:

- Link incentives in aid, trade and investment to respect for human rights by business
- Take steps to ensure access to remedies for victims of abuse involving these companies, if adequate remedies are not available in the countries where the companies operate