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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Global extractivism and racial equality*

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Tendayi Achiume, addresses the issue of racial equality and extractivism, explaining the pitfalls of an ahistorical, “colour-blind” approach to the issue. She explains why the racial equality and non-discrimination obligations enshrined in the international human rights framework must be central to reform, regulation and evaluation of the extractivism economy. She develops (a) a structural racial equality analysis at a global level that highlights the racially subordinating effects of unequal distribution of power among States and between such States and transnational corporations; and (b) a more localized racial equality analysis at the national level that underlines the racially discriminatory human rights violations experienced by communities living directly on or close to territories of extraction. Finally, she formulates recommendations addressed to all stakeholders to ensure human rights protection in the extractivism economy, especially in tackling global structural racial inequality, which is rooted in persisting sovereign inequality.

* The present report was submitted late to reflect the most recent information received in response to a call for submissions by the Special Rapporteur.



I. Activities of the Special Rapporteur

A. Country visits

1. The Special Rapporteur would like to thank the Governments of the United Kingdom of Great Britain and Northern Ireland and of Morocco for their invitations and the cooperation extended to her during her official country visits, which she conducted in 2018. She also wishes to thank the Governments of the Netherlands and Qatar for inviting her to conduct visits in the second half of 2019, and Brazil and Poland for accepting her country visit requests. She looks forward to the cooperation of Brazil and Poland in scheduling these visits for 2020. She urges Member States to respond positively to her outstanding requests.

B. Other activities

2. The activities of the Special Rapporteur between April and July 2018 are reflected in her report to the General Assembly at its seventy-third session (A/73/305). Between July 2018 and April 2019, the Special Rapporteur participated in various international conferences and filed a number of amicus curiae briefs elaborating the principles and obligations of racial equality and non-discrimination within the international human rights framework. At the multilateral level, she was invited to be a panellist at the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration in 2018 and, on 25 March 2019, she was a keynote speaker at the commemorative plenary meeting held by the General Assembly in New York to commemorate the International Day for the Elimination of Racial Discrimination.

3. In October 2018, the Special Rapporteur held two consultations on the margins of the seventy-third session of the General Assembly and participated in various meetings, including a meeting of the Groups of Friends on the Elimination of Racial Discrimination.

4. In response to her call for submissions to the present report, the Special Rapporteur received 22 submissions. She would like to mention the high quality of the submissions she received.

II. Racial equality and the global extractivism economy

5. The fundamental inequalities that characterize the global political economy are also present in the extractivism economy. Powerful States and their transnational corporations, and the political elites of weaker States that are territories of extraction, emerge as the clear winners. The populations of these territories of extraction bear the brunt of the extractivism economy, too often paying with their very lives. The purpose of the present report is to explain why the obligations concerning racial equality and non-discrimination enshrined in the international human rights framework must be central to reform, regulation and evaluation of the extractivism economy. The report also serves to explain why sovereign equality, the right to self-determination of peoples and the right to development are fundamental in achieving racial equality and non-discrimination, and must be understood as such in the elaboration of human rights standards and practices relating to all aspects of the extractivism economy.

6. In the report, the term “extractivism economy” refers to the industries, actors and financial flows, as well as to the economic, material and social processes and outputs, associated with the globalized extraction of natural resources. The extractivism economy includes mineral and fossil fuel extraction, and monocultural large-scale agricultural, forestry and fishery operations. The terms of this economy are set by a range of actors, the most influential of which include States, national and transnational corporations and their shareholders, international financial and development institutions, and multilateral governance bodies and institutions. Although possessing lesser influence than those

previously mentioned, civil society actors, including those involved in national and transnational trade unions, human rights advocacy and social movements, are also important in the extractivism economy. Even though entire populations of certain nations and regions are involved in the extractivism economy, the vast majority of such people have no direct control over it.

7. A defining feature of extractivism is that it typically involves the removal of raw materials from territories that were previously colonized, and the processing, sale and consumption of those materials in a global economy that disproportionately benefits nations, transnational corporations and consumers in the global North or so-called developed world. Since the colonial era, territories rich in natural resources have also experienced the most severe forms of underdevelopment, which Walter Rodney has explained is a condition of structural exploitation.¹ The negative consequences, both economic and otherwise, of an abundance of natural resources are often discursively framed as a mysterious resource “curse” or inescapable “paradox”, although in a proper historical perspective, it is clear that the socioeconomic and political devastation that characterizes many resource-rich nations in the global South is the product of a global extractivism economy that is deeply rooted in structural inequality.

8. Poverty and underdevelopment are the predictable result of centuries of economic structuring in which colonial powers have integrated colonial territories and their economies into the global markets under conditions of economic dependency,² in collaboration with national elites in the global South and at the expense of the vast majority of their populations. Extractivism, both now and in the past, stands at the centre of this dependency and inequality; it has profound implications for racial justice and equality. It is thus no surprise that the term “extractivism” has been used in general to refer to “the predominance of economic activities that are primarily based on resource extraction and nature valorization without distributive politics”.³ The term encompasses economic structures and an accumulation strategy “based on the overexploitation of ... natural resources, as well as the expansion of capital’s frontiers towards territories previously considered non-productive”.⁴

9. The political economy of the extractivism economy is complex, as are the regulatory and contractual arrangements that structure it, and differ depending on the resource. While acknowledging this complex political economy, it is beyond the scope of the present report to do more than highlight a select range of discriminatory or exclusionary features of this political economy, with its complex production-sharing agreements, licensing and other contractual regimes.

10. Extractivism is compatible both with conservative politics and the neo-liberal economic policies of transnationalization, deregulation and privatization.⁵ It is also compatible with left-leaning politics that advance more progressive social agendas and nationalist economic programmes. As a result, the global extractivism economy should be understood to encompass “neo-extractivism”, which refers to a mode of development that is based on natural resource extraction, although it is pursued by “national governments that use the surplus of revenue from extractive activities to fight poverty and enhance the

¹ Walter Rodney, *How Europe Underdeveloped Africa* (London, Bogle-L’Ouverture Publications, 1972), p. 14.

² See Adrián Groglopo, “Dependency theories and internal colonialism”, in *Social Science in Context – Historical, Sociological, and Global Perspectives*, Rickard Danell, Anna Larsson and Per Wisselgren, eds. (Lund, Nordic Academic Press, 2013); and Patrick Bond, “The political economy of Africa and dependency theory”, in *Dialogues on Development Volume I: Dependency*, Ushehwedu Kufakurinani and others, eds. (New York, Institute for New Economic Thinking, 2017).

³ Ulrich Brand, Kristina Dietz and Miriam Lang, “Neo-extractivism in Latin America – one side of a new phase of global capitalist dynamics”, *Ciencia Política*, vol. 11, No. 21, p. 129.

⁴ Maristella Svampa, “Commodities consensus: neoextractivism and enclosure of the commons in Latin America”, *South Atlantic Quarterly*, vol. 114, No. 1, p. 66, cited in Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 129.

⁵ Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 130.

material well-being of the masses”.⁶ Neo-extractivism is thus associated with leftist, popular Governments that reject neo-liberal policies such as privatization and deregulation. At the same time, neo-extractivism retains extractivist economic and political logics that reproduce inequality and regularly result in violations of human rights on a discriminatory basis.⁷ Although Governments promoting neo-extractivism often do so by arguing that their policies promote development, popular sovereignty and social redistribution, scholars have shown that the implementation of such a strategy shares many of the same pathologies as classical extractivism.⁸ Scholars have associated neo-extractivism with, among other things, authoritarian politics, a disregard for social, territorial and political rights,⁹ and the continuation of indigenous and Afrodescendent dispossession.¹⁰

11. As will be illustrated in the present report, the extractivism economy is not merely about the economic and material processes of natural resource extraction, it also has an impact on political and social relations (including race and gender relations) and advances particular cultural and normative world views that define the daily lives of many people and deeply influences their possible futures.¹¹

12. The international human rights system has firmly repudiated the concept of race as a biological category and ideologies and theories of racial supremacy that explicitly justified racial oppression and brutalization well into the twentieth century.¹² Instead, today, race is appropriately understood as a social construction, albeit it a social construction that for many determines their access to fundamental human rights, which can sometimes mean the difference between life and death.

13. One legal scholar has usefully defined race as “the historically contingent social systems of meaning that attach to elements of morphology and ancestry”.¹³ This approach rejects the notion of biological races but recognizes that the construction of race is informed by physical features and lineage, not because physical features and lineage are a product of racial variation but because societies invest them with social meaning.¹⁴ Everywhere in the world, physical features, including skin colour, shape the way that people are treated by other people, and by the law itself. At the same time, race is by no means merely about physical attributes, such as colour, nor is it merely about lineage. It is centrally about the social, political and economic meaning of being categorized as black, white, brown or any other racial designation.

14. Blanket denials of the existence of race (as a social construction) or the relevance of race in shaping day-to-day experiences, including the enjoyment of rights, are disingenuous. In fact, what is sometimes termed a “colour-blind” approach itself produces and sustains prohibited racial discrimination in the extractivism economy. A colour-blind analysis of legal, social, economic and political conditions professes a commitment to an even-handedness that entails avoiding explicit racial analysis in favour of treating all individuals and groups the same, even if these individuals and groups are differently situated, including because of historical projects of racial subordination. Colour-blindness

⁶ Ibid., p. 129.

⁷ Scholars identify Bolivia (the Plurinational State of), Brazil, Ecuador and Venezuela (Bolivarian Republic of) as countries that have experience of neo-extractivism. Ibid., p. 130.

⁸ Ibid., pp. 130–134.

⁹ Ibid., p. 133.

¹⁰ See Carolina Valladares and Rutgerd Boelens, “Extractivism and the rights of nature: governmentality, ‘convenient communities’ and epistemic pacts in Ecuador”, *Environmental Politics*, vol. 26, No. 6.

¹¹ As scholars note about neo-extractivism, although the same applies to extractivism generally, “the focus is thus not on policies alone, but also on the societal and political structures and the capitalist patriarchal, and imperial logics upon which they are based”. Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 150.

¹² See, e.g., the Preamble to the International Convention on the Elimination of All Forms of Racial Discrimination.

¹³ Ian Haney López, *White By Law: The Legal Construction of Race* (New York, New York University Press, 1996), p. 10.

¹⁴ Ibid.

is a mainstay of neo-liberal political economic analysis, and very often a human rights analysis of political economy, including as it relates to extractivism, adopts more broadly a colour-blind approach. Human rights analysis, especially in the business and human rights regime, is often ahistorical and colour-blind. As a result, such analysis fails to challenge the persisting structures of global racial inequality, which till this day keep formerly colonized nations and peoples subordinate to the interests of powerful nations. International human rights law and principles require a substantive approach to racial equality (discussed below in part IV) and, properly understood, they require rejection of a colour-blind approach to extractivism, because race, ethnicity, national origin and related categories continue to play a role in determining the winners and the losers in such an economy.

15. In her review of the engagement of the Human Rights Council special procedures with the equality and non-discrimination dimensions of the extractivism economy, the Special Rapporteur found that the most developed elaboration of human rights norms was in the context of the rights of indigenous peoples. Among others, the Special Rapporteur on the rights of indigenous peoples has carried out a vital analysis of how the extractivism economy subjects indigenous peoples to gross human rights violations on a discriminatory basis (see, for example, A/HRC/18/35, paras. 30–55; A/HRC/24/41; A/HRC/33/42; and A/70/301). Other special procedures mandate holders have also conducted significant human rights analyses of the different dimensions of the extractivism economy (see, for example, A/HRC/29/25 and A/71/281).

16. In the present report, the Special Rapporteur builds upon and further develops the existing human rights analysis by highlighting the racial, ethnic and national origin discrimination and inequality experienced by, among others, those who may not easily fit within the working definition of indigenous peoples within the United Nations human rights system. In order to do so, she develops: (a) a structural racial equality analysis at a global or international level that highlights the racially subordinating effects of the unequal distribution of power among States, and between States and transnational corporations (see part III below); and (b) a more localized racial equality analysis at the national level that highlights the human rights violations concerning racial discrimination experienced by communities living directly on or close to the territories of extraction (see part IV below).

17. Too often within the United Nations human rights system, global structural inequality rooted in the histories and political economies of colonial and other forms of imperial subordination receives limited attention. This neglect is at odds with the principles of equality and non-discrimination that must be at the core of the United Nations system, if this system is to maintain a commitment to universalism. To neglect the global structures of inequality and the global systems that promote or permit the consistent exploitation of certain nations and geographic regions at the expense of others is to endorse an “international” system that exists largely for the benefit of powerful nations and their transnational corporations.

18. As is the case in all contexts, discrimination and inequality within the extractivism economy is intersectional – it involves multiple intersectional social categories and structures of domination. The idea of intersectionality seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantage and other discriminatory systems contribute to the creation of layers of inequality that determine the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create obstacles that exist along the intersecting axes, contributing actively to a dynamic of disempowerment.¹⁵

19. The present report includes an analysis of the gendered nature of racial inequality and discrimination related to the extractivism economy, which is due in part to the manner in which patriarchy operates within and through such an economy. In part IV, the Special Rapporteur describes the unique risks and heightened exposure to racially discriminatory human rights violations experienced by women all over the world.

¹⁵ www.un.org/womenwatch/daw/csw/genrac/report.htm.

20. It is beyond the scope of the Special Rapporteur’s mandate, and not the objective of the present report, to condemn all forms of natural resource extraction as inherently unequal, unjust or discriminatory. In the report, the Special Rapporteur focuses on the contemporary, dominant modes of global extractivism and their historical antecedents, on which there is a scientific consensus that such modes are altogether environmentally unsustainable.¹⁶ The Special Rapporteur treats the existential environmental threat embodied in the dominant logics and processes of the extractivism economy as a fundamental and urgent human rights concern. In other words, the Special Rapporteur focuses on equality and non-discrimination concerns, but does so against the backdrop of the reality that without fundamental reform, the global extractivism economy will one day make our planet unliveable for humans.

21. Finally, in the report, the Special Rapporteur does not treat the different facets of the extractivism economy with the depth that is warranted by the complexity of each. Producing a single report that fully elaborates each of these facets and their racially unequal or discriminatory dimensions would be impossible. Furthermore, the Special Rapporteur does not address the issues of racial justice raised by the extractivism economy, including as they intersect with a human rights analysis of reparations, economic racism and justice and related considerations. As a result, the present report should be seen as opening the door for further, much-needed analysis of how race, national origin, ethnicity and gender influence the winners and the losers in the extractivism economy.

III. Colonial racial antecedents of the global extractivism economy

22. The contemporary political economy of global extractivism cannot properly be understood without reference to its colonial origins. This is especially the case as regards racial equality and discrimination. Some have noted, for example, that the history of Latin America “is inseparably linked to raw-materials extraction”.¹⁷ During each historical phase, specific forms of natural resource appropriation have been central to the distribution of political and economic power, and to structuring social and cultural relations. In the colonial phase between the sixteenth and eighteenth centuries, extractivism entailed European colonial and settler “forced appropriation of precious metals, especially gold and silver, and of land areas, and the establishment of a specific colonial system of domination”.¹⁸ This process, which made Latin America one of the world’s leading suppliers of raw materials, also made the region essential to the colonial regime of accumulation and capitalism.¹⁹ The other side of the coin for the peoples indigenous to these territories was their brutal decimation and dispossession. The Special Rapporteur on the rights of indigenous peoples made an extremely relevant observation when she said that it was safe to say that the attitudes, doctrines and policies developed to justify the taking of lands from indigenous peoples had been and continued to be largely driven by the economic agendas of States (E/CN.4/Sub.2/2001/21, para. 23).

23. Between the sixteenth and eighteenth centuries, Africa was the site of rapacious human extraction, which formed the core of the slave trade. Historians have described the period following the abolition of the slave trade as one of commercial transition in Africa, which – along with a commodity boom from 1835 to 1885 – paved the way for the full colonization of the continent.²⁰ Through the framework agreed at the Berlin Conference of 1884–1885, the colonial States collectively affirmed the processes of colonialism that

¹⁶ <https://wedocs.unep.org/handle/20.500.11822/27517>; and http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf.

¹⁷ Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 136.

¹⁸ *Ibid.*, p. 137.

¹⁹ *Ibid.*

²⁰ See Ewout Frankema, Jeffrey Williamson, and Pieter Woltjer, “An economic rationale for the West African scramble? The commercial transition and the commodity price boom of 1835–1885”, *Journal of Economic History*, vol. 78, No. 1.

secured commercial expansion across Africa,²¹ at the core of which was extractivism. The natural resources extracted from the African colonies supplied the colonial centres with the raw materials, minerals and food that the European powers needed to accumulate capital and fuel their development.²² African colonial extractivism also featured mass land dispossessions, environmental destruction and the exploitation of non-white labour using indentured servitude and enslavement.²³

24. Similar dynamics occurred over the course of colonial intervention in South-East Asia. As with Latin America, European colonization of South-East Asia began in the sixteenth century and continued through the eighteenth and nineteenth centuries. European powers set up several extractivist systems in South-East Asia. For example, the Dutch created a cultivation system that compelled Javanese villagers to produce export crops for the colonial Government.²⁴ One account holds that colonial intervention in South-East Asia left a legacy of domestic economies stratified into two largely insulated parts: a modern, export-oriented enclave and a large, backward and stagnant agricultural sector.²⁵

25. At the heart of European colonial domination, first in the Americas and then in Asia and Africa, was the concept of race as “a supposedly different biological structure that placed some in a natural situation of inferiority to others”.²⁶ Colonialism consolidated “race and racial identity as instruments of basic social classification”²⁷ and made the former “the fundamental criterion for the distribution of the world population into ranks, places, and roles in the new [colonial] society’s structure of power”.²⁸ For centuries, colonialism justified and relied upon brutal regimes of slavery and then indentured servitude to establish and sustain transnational extractivist processes in exploitation and settler colonies. In the settler-colonial territories of the Americas and Australia, indigenous extermination and land dispossession formed part of this picture, and indigenous peoples and people of African descent were commodified to ensure the supply of cheap labour. In African and Asian exploitation and settler colonies, Europeans murdered, forcibly displaced and indentured, all to ensure their economic prosperity. As European colonialism oversaw global capitalist expansion, the racial ordering it produced to achieve and sustain this expansion meant that “both race and the division of labor remained structurally linked and mutually reinforcing”.²⁹ This structural encoding of the racialized division of labour remains a defining feature of the global extractivism economy, in which labour remains racially stratified.³⁰

26. The preceding analysis focuses on racialized labour in colonial extractivism, but race and racial ordering permeated the global capitalist order, privileging the political, economic and cultural interests of Europeans and imposing them on colonized peoples and territories.³¹ The overwhelming material and social benefits of the colonial extractivism economy accrued along racial lines. One scholar makes the point, for example, that “slavery, in America, was deliberately established and organized as a commodity in order

²¹ See Mathew Craven, “Between law and history: the Berlin Conference of 1884–1885 and the logic of free trade”, *London Review of International Law*, vol. 3, No. 1.

²² See, e.g., Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (New York, Monthly Review Press, 1997).

²³ *Ibid.*

²⁴ At its peak, the cultivation system provided over one third of Dutch government revenues and 4 per cent of GDP. See Melissa Dell and Benjamin A. Olken, “The development effects of the extractive colonial economy: the Dutch cultivation system in Java”, *Review of Economic Studies*, forthcoming.

²⁵ See Douglas S. Paauw and John C.H. Fei, *The Transition in Open Dualistic Economies: Theory and Southeast Asian Experience* (New Haven, Yale University Press, 1973).

²⁶ Anibal Quijano and Michael Ennis, “Coloniality of power, Eurocentrism and Latin America”, *Nepantla: Views from the South*, vol. 1, No. 3, p. 533.

²⁷ *Ibid.*, p. 534.

²⁸ *Ibid.*, p. 535.

²⁹ *Ibid.*, p. 538.

³⁰ See, e.g., Hannah Appel, *The Licit Life of Capitalism: U.S. Oil in Equatorial Guinea* (Durham, Duke University Press, forthcoming), chap. 4.

³¹ Quijano and Ennis, “Coloniality of power”, p. 540.

to produce goods for the world market and to serve the purposes and needs of capitalism”.³² Not only did colonial extractivism plunder colonial territories and racially stratify labour globally, but it also forced territories of extraction into political and economic subordination to colonial nations (and, in the case of Latin America especially, subordination also to the Catholic Church).³³

27. During the colonial period, corporations – State-owned and otherwise – played a crucial role in establishing and maintaining colonial extractivism, and generally (though not invariably) derived great profit from it. For example, in 1511, Portugal was the first European power to establish a bridgehead in the trade market after the conquest of the Sultanate of Malacca. In the 1500s, Spain colonized the Philippines; and, in 1619, the Netherlands, acting through the Dutch East India Company, captured Sunda Kelapa (present-day Jakarta) for the purposes of trade and further colonial expansion. Later, in 1641, the Dutch took Malacca from the Portuguese. These acts set in motion a long history of colonization in South-East Asia.

28. International legal doctrines were central to embedding racial inequality and subordination into the colonial extractivism economy. International law denied sovereignty to colonized peoples and it did so on a racial basis. Indeed, sovereignty doctrine in the nineteenth century “is a history of the processes by which European states, by developing a complex vocabulary of cultural and racial discrimination, set about establishing and presiding over a system of authority by which they could develop the powers to determine who is and is not sovereign”.³⁴ The doctrine of discovery, which has been a subject of analysis by special procedures mandate holders, also offers an example of international legal doctrine that was pivotal for indigenous land dispossession and extractivism in colonial territories (see E/C.19/2014/3).

IV. Global structural racial inequality and the contemporary extractivism economy

Applicable equality framework

29. The Declaration on the Granting of Independence to Colonial Countries and Peoples is among the important statements that Member States have made to repudiate colonialism. In its first two articles, the General Assembly declares the following important principles of decolonization: the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation; all peoples have the right to self-determination; and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

30. The two treaties at the foundation of the international human rights system – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – both begin (in art. 1) by enshrining the equal right to self-determination of peoples, the equal rights of all peoples freely to dispose of their natural wealth and resources, the equal rights of all peoples not to be deprived of their respective means of subsistence, and the obligations of all States parties to promote and respect the realization of the right to self-determination. In the Declaration on the Right to Development, the General Assembly explains (in art. 1 (2)) that the right of peoples to self-determination includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. It further articulates the following duties of great importance in the context of extractivism: States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international

³² Ibid., p. 550.

³³ Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 137.

³⁴ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, United Kingdom, Cambridge University Press, 2012), p. 100.

economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights. The duty to promote the right to development also applies to transnational corporations (E/CN.4/1334, para. 109).

31. The Declaration on Permanent Sovereignty over Natural Resources is also vital for understanding the baseline for equal relations within the extractivism economy. It is stated in article 1 of the Declaration that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and of the well-being of the people of the State concerned. It is stated in article 2 that the exploration, development and disposition of such resources, as well as the importation of the foreign capital required for these purposes, should be in conformity with the rules and conditions that the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities. It is stated in article 5 that the free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality. It is stated in article 7 that any violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace.

Inequity and inequality in the global extractivism economy

32. In important respects, the contemporary global extractivism economy differs from the colonial extractivism economy, for example, in that territories of extraction have generated national economic growth through participation in the extractivism economy. Recent decades have seen the expansion of the global extractivism economy, with countries of extraction in regions all over the world experiencing notable growth in extractive output and intensification of the social and political dynamics that attend the extractivism economy.

33. With respect to extractivist expansion, in Latin America, for example, gas production tripled in the Plurinational State of Bolivia between 2000 and 2008, and petroleum production in Bolivia (the Plurinational State of), Brazil, Ecuador, Mexico and Venezuela (the Bolivarian Republic of) rose between 50 and 100 per cent from 1990 to 2008.³⁵ In Colombia, the leading exporter of gold, the area mined grew from 1.1 million hectares in 2002 to 5.7 million hectares in 2015. In Peru, the area of land mined grew from 2.5 million hectares in 1991 to 27 million hectares in 2013.³⁶ Scholars have characterized Latin American countries as having undergone “reprimarization” of their economies.³⁷ As regards African nations, those with rich reserves of natural resources have export economies dominated by non-renewable resources such as fossil fuels, metals and non-metallic minerals. Between 1980 and 2008, non-renewable resource exports in Africa increased from 38 to 47 per cent, with the dominant drivers being crude oil, coal and natural gas as subcategories of fossil fuels.³⁸ In South-East and Central Asia, extractive industries have expanded rapidly in recent years, with some States relying heavily on them for revenue.³⁹ For example, in Mongolia and Papua New Guinea, the extractive sectors account for 86 per cent of total exports,⁴⁰ and Kazakhstan generates an estimated 50 per cent of its gross domestic product (GDP) in this way, too.⁴¹

³⁵ Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 131.

³⁶ www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-land-power-inequality-latin-america-301116-en.pdf, p. 32.

³⁷ Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 142.

³⁸ *Economic Development in Africa: Report 2012 – Structural Transformation and Sustainable Development in Africa* (United Nations publication, Sales No. E.12.II.D.10), pp. 38–44.

³⁹ https://resourcegovernance.org/sites/default/files/FrameworkExtractiveIndustriesGov_Full_20141202.pdf.

⁴⁰ <https://eiti.org/papua-new-guinea>; <https://eiti.org/mongolia>.

⁴¹ <https://eiti.org/kazakhstan#revenue-collection>.

34. Among the factors that have led to the growth of the extractivism economy are changes in the world market relating to an intensification in fossil fuel production and lifestyles, and the economic rise of emerging economies such as China. Relatedly, the South-South extractivism economy has also expanded. For example, 90 per cent of the exports of Latin America to Asia in 2011 were raw materials. Chinese foreign direct investment in Latin America has increased dramatically, with the vast majority devoted to raw material extraction.⁴² Exponential demand for primary materials in different parts of the world has been accompanied by corresponding increases in commodity prices. For example, while crude oil prices fluctuate slightly from year to year, the price of a barrel of oil has over time steadily increased from about \$30 in 2000 to more than \$66 in 2018. At times, there have been dramatic increases in the price of metals, minerals and ores.⁴³ However, high prices for resources do not solely result from increased demand. They are also a by-product of a general trend towards the “financialization of nature”, a process in which global financial markets, instruments (such as derivatives and mortgages) and other processes gain control over nature, particularly over food, crops and mining.⁴⁴ Relatedly, capital investments in these sectors have grown at an unprecedented pace in many areas in the global South, leading to a growth in resource rents and revenues and in larger shares of the primary sector in the national GDP of many countries.⁴⁵

35. Notwithstanding these shifts, colonial-era sovereign inequality persists, and models of extraction that rely upon or produce racial, ethnic and indigenous exploitation remain a reality. Despite the vision of a new international economic order based on sovereign equality, which the Declaration on the Right to Development identifies as essential, the international economic order that underlies and structures the extractivism economy retains colonial inequalities. This means that, although international law has formally repudiated sovereign inequality, persisting sovereign inequality and foreign and international constraints on self-determination remain at the core of the extractivism economy. Indeed, some refer to this dynamic as reflecting a “commodity consensus”, i.e. a global constellation in which, in spite of the global politicization of the ecological crisis and climate change, the extractivist form of the appropriation of nature has remained the dominant global dynamic.⁴⁶ Within this dynamic, territories of extraction remain politically and economically subordinate in a global political economy characterized by sovereign inequality.⁴⁷

36. During times of significant global growth, countries rich in natural resources can capitalize on their commodities, generating high domestic growth rates. For example, extractivism now accounts for 20 per cent of the national GDP of Nigeria and, since 2007, 65 per cent of the revenues it uses for its public budget.⁴⁸ An ecological-economic critique draws attention to natural capital wealth depletion, which occurs in the absence of sufficient returns to host countries or their communities. The World Bank concludes that: “especially for resource-rich countries, the depletion of natural resources is often not compensated for by other investments”.⁴⁹ One submission further highlighted that World Bank data showed that, as commodity prices had peaked in the 2007–2013 super cycle, resource depletion was a major factor in the reduction of wealth in Africa. The result is that, in many cases, peoples in the former colonial territories remain the losers in the global extractivism economy.

⁴² Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 143.

⁴³ *Ibid.*, p. 142.

⁴⁴ Bettina Engles and Kristina Dietz, eds., *Contested Extractivism, Society and the State: Struggles over Mining and Land* (London, Palgrave Macmillan, 2017), p. 2.

⁴⁵ *Ibid.*, pp. 2–3.

⁴⁶ Brand, Dietz and Lang, “Neo-extractivism in Latin America”, p. 144, citing Svampa, “Commodities consensus”.

⁴⁷ For an international legal analysis of contemporary sovereign inequality, see Anghie, *Imperialism, Sovereignty and the Making of International Law*, chap. 4.

⁴⁸ Holly Wise and Sokol Shtylla, *The Role of the Extractive Sector in Expanding Economic Opportunity* (Cambridge, Massachusetts, Harvard University, 2007), p. 7.

⁴⁹ <https://openknowledge.worldbank.org/bitstream/handle/10986/29001/9781464810466.pdf?sequence=4&isAllowed=y>, p. 82.

37. Within the extractivism economy, countries and peoples in the global South remain subject to foreign imperatives. For instance, in Latin America, between 50 and 70 per cent of all mining activity involves Canadian companies.⁵⁰ Relatedly, there have been various complaints about the undue influence of Canada in domestic policies and regulations surrounding mining operations and licensing.⁵¹ For instance, there is evidence that Canada actively participated in the drafting of the new mining laws in Colombia, mainly through Canadian technical assistance and experts.⁵² A submission received for the present report documented marginalization and exclusion of Haitians of African descent (especially in resource-rich rural areas) from the extractivist industry in Haiti. Government officials and foreign companies have concluded extractivist agreements without input from the affected communities, perpetuating the historical legacies of racialized exclusion of Haitians of African descent. In some contexts, external intervention is formalized. The Special Rapporteur received a submission in which attention was drawn to the institutionalized ethnic discrimination against Palestinians, whom Israeli authorities exclude from participating in the extractivism economy in the Occupied Territories.⁵³

38. In the global South, proceeds from the natural resource sector often accrue to the personal fortunes of the ruling elite instead of contributing to overall national well-being.⁵⁴ The informal functioning of a State's extractivism apparatus enables public officials to make use of their positions for personal financial gain.⁵⁵ For example, the State-owned Nigerian National Petroleum Corporation "failed to pay" approximately \$16 billion in revenue to the State's treasury.⁵⁶ Similarly, oil extraction in Equatorial Guinea has also resulted in severe corruption. A large scandal in the early 2000s involved the deposit of hundreds of millions of dollars into an account at Riggs Bank in the United States of America.⁵⁷ According to a human rights group in Spain, the current President of Equatorial Guinea maintained signatory authority over many of the Riggs accounts and was later accused of siphoning off \$26 million.⁵⁸ Transnational corporations have been centrally implicated.⁵⁹

39. The scale of corporate benefit from the extractivism economy is staggering and, when compared with the economic conditions of the territories of extraction, clearly illustrates where the power lies. Six major international oil companies – British Petroleum, ExxonMobil, Shell, Chevron, ConocoPhillips and Total – account for approximately two thirds of the world's production.⁶⁰ Data show that the revenues of the largest extractive corporations significantly eclipse the national GDP of many countries.⁶¹ In Latin America, even as export shares in mining and other industries in territories of extraction have risen, so has control and ownership of extractivist enterprise by transnational corporations.⁶² Although, by and large, Africa has not experienced the same leftist turn as the one seen in Latin America, Governments on the continent have promoted an approach that largely

⁵⁰ www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf, pp. 3–4.

⁵¹ *Ibid.*, p. 26.

⁵² *Ibid.*

⁵³ <http://documents.worldbank.org/curated/en/137111468329419171/pdf/AUS29220REPLACOEVISION0January02014.pdf>.

⁵⁴ www.international-alert.org/sites/default/files/Uganda_GenderOilGas_EN_2014.pdf, p. 44.

⁵⁵ See Gordon Crawford, Coleman Agyeyomah and Atinga Mba, "Ghana – big man, big envelope, finish: Chinese corporate exploitation in small-scale mining in development, in Engels and Dietz, *Contested Extractivism*. See, e.g., www.international-alert.org/sites/default/files/Uganda_GenderOilGas_EN_2014.pdf, pp. 44–45.

⁵⁶ www.theatlantic.com/international/archive/2016/03/nigeria-oil-corruption-buhari/473850.

⁵⁷ www.hrw.org/sites/default/files/reports/bhr0709webwcover_0.pdf, pp. 21–26.

⁵⁸ *Ibid.*, p. 19.

⁵⁹ See, e.g., Appel, *The Licit Life of Capitalism*.

⁶⁰ <https://openknowledge.worldbank.org/bitstream/handle/10986/26130/9780821396582.pdf?sequence=2&isAllowed=y>, p. 48.

⁶¹ www.globaljustice.org.uk/news/2016/sep/12/10-biggest-corporations-make-more-money-most-countries-world-combined.

⁶² See Gavin Bridge, "Global production networks and the extractive sector: governing resource-based development", *Journal of Economic Geography*, vol. 8, No. 3; and Jody Emel and Matthew Huber, "A risky business: mining, rent and the neoliberalization of 'risk'", *Geoforum*, vol. 39, No. 3.

creates a “foreign controlled large-scale mining economy in the continent”.⁶³ According to the International Alliance on Natural Resources in Africa, a continental network of 51 non-governmental and community-based organizations, communities in mining areas are often left worse off by mining operations, which are typically conducted by transnational corporations. The Alliance notes that “entire villages across Africa have been forcibly removed from their ancestral land, in many cases with no replacement. Members of communities on mineral-rich land, including traditional leaders, women, children, and the elderly, have been arrested and imprisoned for protecting the only land they have, which is often their only source of livelihood, and for exercising their right to protest. Rivers, land, and crops have been contaminated from mining processes and communities have lost access to water sources.”⁶⁴

40. Although some countries in North-East Asia, such as the Republic of Korea, undertook radical land reforms, most South-East Asian countries inherited “extractive colonial institutions” that perpetuated income inequality.⁶⁵ Even in Asia, commentators identify State preferences for transnational mining corporations, and the dominance of legal and policy frameworks that privilege the interests of these corporations over those of small-scale, artisanal mining. One result of this structure has been territorial conflicts involving small-scale and artisanal miners, who face death, injury and loss of property. One scholar argues that the physical infrastructure and modern bureaucracy created by colonial regimes remain largely intact in South-East Asian countries and have allowed income inequality to persist today.⁶⁶

41. Corporations are subject to due diligence, transparency and human rights requirements and some have admirably supported such standards and pledged to support the rights of indigenous peoples. At the same time, the status quo does not yet place a meaningful check on the global reach of transnational extractive companies. Corporations remain able to extract resources at rates that disproportionately benefit shareholders over local communities. Unlike States, these corporations are often better positioned to weather the fluctuations of the market, and typically escape any form of meaningful accountability.

42. The dominance in the extractivism economy of countries in the global North and hegemonic countries from the global South benefits such countries and their transnational corporations at the continuing expense of most countries of extraction in the global South. This is a racial equality concern because those who bear the greatest cost of the extractivism economy are those peoples who were formerly colonized on the grounds of false claims of their racial inferiority. In other words, it is those people who, under the colonial extractivism economy, were socially constructed as non-white or non-European that today remain subordinate, excluded and marginal within the global extractivism economy.

43. This global picture of political economy steeped in sovereign inequality should be understood as, in some respects, similar in operation to ongoing indigenous sovereign subordination, which is the root of the human rights violations confronting indigenous peoples in situations in which extractivism is concerned. Their persisting vulnerability to abuse and exploitation is based on their precarious sovereignty in the face of State and non-State actors willing to use military force, if necessary, to impose putative development projects that undermine indigenous self-determination and world views and fuel gross human rights violations in indigenous groups. Historical legacies persist, as even the doctrine of discovery continues to facilitate the mass appropriation of the lands, territories and resources of indigenous peoples (E/C.19/2010/13).

⁶³ See Gavin Hilson, “Small-scale mining, poverty and economic development in sub-Saharan Africa: an overview”, *Resources Policy*, vol. 34, Nos. 1–2.

⁶⁴ <https://ianra.org/images/images/PDFs/Case-Studies.pdf>, introduction.

⁶⁵ See Wonik Kim, “Rethinking colonialism and the origins of the developmental State in East Asia”, *Journal of Contemporary Asia*, vol. 39, No. 3.

⁶⁶ *Ibid.*

V. Women and racial, ethnic and indigenous communities on the front lines

44. The following section contains a localized racial equality analysis that highlights the racially discriminatory human rights violations experienced by communities living on or close to territories of extraction, including regions of extraction located in both the global North and the global South.

Applicable equality framework

45. In the Declaration on the Right to Development, the General Assembly makes clear that, in fulfilling their national development obligations and duties, States should ensure equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income, and that women should have an active role in the development process. At a more fundamental level, the Special Rapporteur recalls that international human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds. The principles of equality and non-discrimination are therefore codified in all core human rights treaties.⁶⁷ Differences in treatment or human rights outcomes on grounds of race or ethnicity are not permitted as the prohibition of racial discrimination has been recognized as part of customary international law, imposing immediate and absolute obligations from which no derogation is permitted, even in a state of emergency (see, for example, A/HRC/7/23, para. 35).

46. The most comprehensive prohibition of racial discrimination can be found in the International Convention on the Elimination of All Forms of Racial Discrimination. In article 1 (1) racial discrimination is defined as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. While the provision does not mention discrimination on the basis of religion, the Committee on the Elimination of Racial Discrimination has found that the Convention may apply in cases in which discrimination on religious grounds intersects with other forms of discrimination specifically prohibited under article 1 (1).⁶⁸

47. The prohibition on racial discrimination in international human rights law aims at much more than a formal vision of equality. Equality in the international human rights framework is substantive, and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat de facto or unintentional racial discrimination. Indeed, in its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee clarifies that the prohibition of racial discrimination under the Convention cannot be interpreted restrictively. It not only aims to achieve formal equality before the law, but also substantive (de facto) equality in the enjoyment and exercise of human rights. The Committee emphasizes the fact that the Convention applies to purposive or intentional discrimination, as well as discrimination in effect⁶⁹ and structural discrimination.⁷⁰ This substantive, non-formalistic approach to equality applies even to the extractivism economy.

⁶⁷ For an overview of international human rights instruments that specifically prohibit discrimination against certain groups, see A/HRC/32/50, paras. 10–14. The report also contains an overview of the prohibition of racial discrimination at the regional level (paras. 15–25).

⁶⁸ See, e.g., its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, para. 7; and *P.S.N. v. Denmark* (CERD/C/71/D/36/2006), para. 6.3.

⁶⁹ General recommendation No. 32, paras. 6–7.

⁷⁰ See, e.g., the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent, paras. 5–7.

Manifestations of racial discrimination

48. Within territories of extraction, indigenous peoples, small-scale farmers, rural communities, women, displaced persons, artisanal miners and fisherfolk, pastoralists, migrant workers, and poor and working-class communities experience the most acute human rights violations as a result of State and corporate conduct in the extractivism economy. For members of these groups, their race, national origin, ethnicity, nationality and gender are important factors in their political, economic and social marginalization in territories of extraction. Politically marginalized groups have few means of protection against extractivist projects that violate their rights or interests when confronted with the militarized States and corporate actors that are a mainstay of the extractivism economy.

49. The circumstances of indigenous peoples and people of African descent in different parts of the world are illustrative of the extreme human rights violations that racially or ethnically specified communities can experience in the extractivism economy, where these violations are fundamentally connected to their broader national political and socioeconomic marginalization. The Special Rapporteur received submissions from indigenous peoples from all over the world, all drawing attention to the examples of human rights violations discussed in this part of the present report.

50. In a comprehensive report on the human rights of indigenous peoples and people of African descent, the Inter-American Commission on Human Rights highlighted the politically and economically marginal status of these groups as important in understanding the human rights impact of the extractivism economy on them.⁷¹ The Commission documents the prevalence of extractivist projects in territories traditionally inhabited by indigenous peoples and people of African descent, with far-reaching human rights consequences for these groups. Through the extractivism economy, host Government and private corporate actors oversee the destruction of ecosystems, including through water pollution (e.g. mercuric and cyanide pollution), explosions, dust emissions, deforestation, the destruction of biodiversity and food security, and soil pollution.⁷² Extractivist projects can threaten the very physical and cultural existence of these groups as peoples⁷³ and, on account of their devastating environmental impact, also result in gross violations of the rights to health and life, by causing illness and death. The recent collapse of a dam owned by an iron ore mining corporation, Vale S.A., in Brazil, in addition to killing hundreds and releasing almost 12 million cubic metres of mining waste,⁷⁴ also threatens the very existence of indigenous groups in the area.⁷⁵

51. The Commission highlighted frequent violations of the right to consultation and to free, prior and informed consent in the implementation of extractivist projects in the region,⁷⁶ some of which are approved in direct opposition to the development of indigenous peoples and people of African descent.⁷⁷ These projects profoundly affect the cultural identity and religious freedoms of these groups, including cases in which these projects cause the breakdown of the social fabrics of entire communities. When these communities lose effective control of their lands and territories due to extractivist encroachment and displacement, they lose their main sources of livelihood. Extractivist projects undermine and, in some cases, destroy traditional subsistence activities, including hunting, fishing and agriculture, violating, among other things, the right to food of affected groups.⁷⁸ This can be the product of restrictions imposed by Governments or corporations on land use, forced displacement or contamination of natural resources. It can also be the result of agricultural

⁷¹ www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf, paras. 16 and 249 (highlighting the marginalization, poverty and extreme poverty of indigenous and Afrodescendent communities, which then find themselves subject to the extractivism economy).

⁷² *Ibid.*, para. 17.

⁷³ *Ibid.*, para. 251. The Commission notes that “in the most severe cases, impact can reach a total loss of their ethnic and cultural identity, as well as a serious deterioration of their institutions” (para. 264).

⁷⁴ www.nytimes.com/interactive/2019/02/09/world/americas/brazil-dam-collapse.html.

⁷⁵ www.aljazeera.com/news/2019/02/brazil-pataxo-depended-river-turned-mud-190212165216265.html.

⁷⁶ www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf, para. 250.

⁷⁷ *Ibid.*, para. 251.

⁷⁸ *Ibid.*, para. 288. Submissions from the Sami on Norway and Finland raised these concerns, too.

practices, such as the introduction of transgenic seeds, including against the will of indigenous peoples and people of African descent. Extractivist projects also result in contamination and overexploitation of water, which deprive these groups of this essential resource.

52. The environmental and health consequences of fundamental extractivist processes are well documented. In the mining context, the case of gold extraction using mercury and other chemicals is illustrative. One submission received for the present report highlights the environmental devastation in French Guiana caused by mercury poisoning, which results in cases of indigenous children being born with developmental disabilities. Another submission highlighted how a racially divided labour regime in South Africa, which protected whites but exposed non-whites to more dangerous jobs during the colonial era and apartheid, continued to be unjust even today. Non-white gold miners who had contracted silicosis under discriminatory conditions remain uncompensated to this day, and mining companies refuse to address fully the human rights violations for which they are responsible in this context.

53. A common method of extracting oil and natural gas from the ground – hydraulic fracturing or fracking – by its very nature alters the environment, and risks environmental harm.⁷⁹ Despite claims that fracking is a safe method for extracting natural gas, there is evidence of its harmful effects on the environment and the health of local populations.⁸⁰ Fracking threatens human rights through air pollution, groundwater contamination and surface water pollution, all of which can lead to health problems.⁸¹ For example, in 2011, a fracking well in the United States malfunctioned and spewed thousands of gallons of contaminated fracking water into the environment.⁸² Also in the United States, a study found that drinking water near fracking wells had dangerous levels of methane.⁸³ As regards oil extraction, oil spills and other forms of oil contamination can be devastating. Consider the 2008 Royal Dutch Shell oil spill that poured tens of thousands of barrels of crude oil into the water around Bodo in Nigeria.⁸⁴ Fishing, which the local population in Bodo had relied upon heavily as a source of income, dried up for many families after the oil spill.⁸⁵ Even alternative ways to earn money, such as farming or cutting firewood, were affected, as the oil spill had polluted the farmlands and forests, preventing normal growth.⁸⁶ In the 10 years since the oil spill, research has found that the average surface soil contamination has tripled.⁸⁷ In 2015, Shell reached a settlement that resulted in a payout of approximately 600,000 Nigeria naira (about \$3,000 at the time) to most claimants.⁸⁸ Sums of that size cannot come close to remedying the devastating effects of the spill on the affected communities.

54. Artisanal mining is a common practice in extracting gold, which is a flourishing industry in certain African, Asian and Latin American and countries. About half of the world's estimated 30 million artisanal and small-scale miners are dedicated to gold-mining, and approximately 20 per cent of the world's gold is produced through artisanal and other

⁷⁹ www.greenpeace.org/usa/global-warming/issues/fracking/environmental-impacts-water; and www.livescience.com/34464-what-is-fracking.html.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² https://pennenvironment.org/sites/environment/files/reports/PA_Close_Fracking_scrn.pdf, p. 21.

⁸³ See Stephen G. Osborn and others, "Methane contamination of drinking water accompanying gas-well drilling and hydraulic fracturing", *Proceedings of the National Academy of Sciences of the United States of America*, vol. 108, No. 20.

⁸⁴ See Scott Pegg and Nenibarini Zabbey, "Oil and water: the Bodo spills and the destruction of traditional livelihood structures in the Niger Delta", *Community Development Journal*, vol. 48, No. 3; and www.amnestyusa.org/files/afr440182011en.pdf.

⁸⁵ Ibid.

⁸⁶ www.amnestyusa.org/files/afr440182011en.pdf.

⁸⁷ David I. Little and others, "Sediment hydrocarbons in former mangrove areas, Southern Ogoniland, Eastern Niger Delta, Nigeria", in *Threats to Mangrove Forests: Hazards, Vulnerability, and Management*, Christopher Makowski and Charles W. Finkl, eds. (Cham, Springer, 2018), p. 342.

⁸⁸ www.leighday.co.uk/News/2015/January-2015/Shell-agrees-55m-compensation-deal-for-Nigeria-Del.

small-scale mining operations.⁸⁹ A submission from South Africa commended certain affirmative action measures that had been taken to empower artisanal miners who were historically and racially excluded from formal mining protections. The submission nonetheless highlighted that registration for small-scale farming permits was prohibitively expensive for artisanal miners in South Africa, de facto confining these miners to illegality. This results in the maintenance of an apartheid-era status quo in which racial and ethnic groups at the bottom of the power hierarchy remain excluded.

55. For indigenous and Afrodescendent communities and other ethnic and racial communities, especially those in rural territories, colonial legacies and traditional forms of relating to land expose such groups to insecurity of land tenure and thereby exacerbate their exposure to human rights violations. For example, in 2012, the Special Rapporteur on the rights of indigenous peoples found that, in addition to millions of acres of lands lost, often in violation of treaties, a history of inadequately controlled extractive and other activities within or near remaining indigenous lands, including nuclear weapons testing and uranium mining in the western United States, resulted in widespread environmental harm, and caused serious and continued health problems among Native Americans (A/HRC/21/47/Add.1, para. 41). Another Special Rapporteur provides the example of Brazil, where indigenous peoples, Quilombos and *Cigano* face enduring discrimination. She noted that, without clear, formal, title to land, thousands of Quilombo communities continued to struggle for economic, social and political viability. The National Institute for Colonization and Agrarian Reform had reported that the increasing economic importance of land in Brazil, including for agribusiness, biofuel production and extractive industries, had put additional pressure on the Quilombo demarcation process (A/HRC/31/56/Add.1, para. 63).

56. The vulnerability of rural ethnic, racial and indigenous communities in the extractivism economy is greatly exacerbated by land grabs.⁹⁰ Land grabs usually entail a change in land use and ownership from local food production to other corporate and industrial purposes, so land grabs can “exclude the local population from the access to potentially highly productive agricultural land that, even without major investments, could produce enough food to sustain about 190–235 ... million people”.⁹¹ Sub-Saharan Africa is the most targeted region for land grabs, with more than 10 million hectares of land deals having been concluded since 2000, despite serious concerns about decreasing arable land.⁹² In Latin America, land is becoming increasingly concentrated in fewer hands, exacerbating inequality in resource extraction and hindering the growth of local economies. While some land is directly purchased, it is not uncommon for peoples to be displaced from their homelands involuntarily. For example, in Paraguay, certain communities that have been surrounded by soybean plantations have been forced off their land due to the harsh chemicals used in processing the beans. In other cases, displacement is the result of violence. For example, people in Colombia, Guatemala and Honduras have been forced to leave their land after facing threats, coercion and violent evictions to make space for soybean, oil palm and sugar cane plantations.⁹³

57. Extractive projects involve dangerous working conditions that frequently threaten and violate workers’ rights to life, safety, health and fair working conditions.⁹⁴ Extractive industries frequently abuse workers by demanding long hours, paying unfair wages, subjecting individuals to dangerous working conditions and even employing child

⁸⁹ www.epa.gov/international-cooperation/reducing-mercury-pollution-artisanal-and-small-scale-gold-mining; and www.eda.admin.ch/dam/deza/en/documents/publikationen/Diverses/216063-artisanal-gold-mining_EN.pdf, p. 7.

⁹⁰ www.un.org/esa/socdev/documents/unpfii/IDWIP2015/MessageSR.pdf.

⁹¹ Ted Schrecker, Anne-Eamuelle Birn and Mariajosé Aguilera, “How extractive industries affect health: political economy underpinnings and pathways”, *Health and Place*, vol. 52, p. 141.

⁹² *Ibid.*

⁹³ www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-land-power-inequality-latin-america-301116-en.pdf, p. 37.

⁹⁴ See, e.g., <https://doi.org/10.17226/18250>.

labourers.⁹⁵ The human rights violations in the mines in the Democratic Republic of the Congo exemplify the violations experienced by extractive industry workers around the world.⁹⁶ Companies employ both adults and children as cobalt miners.⁹⁷ These miners typically work upwards of 12 hours a day and do so without gloves, face masks or other basic protective equipment.⁹⁸ Working under these conditions affects miners' long-term health.⁹⁹ In addition, the country's cobalt miners also face a high risk of fatal accidents.¹⁰⁰ Such brutal working conditions are particularly detrimental to the rights of children. Children have the right to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.¹⁰¹ Labour-related human rights violations also exist beyond the African continent, and have been regularly documented in the Americas, Asia, Europe and the Pacific.¹⁰²

58. The combination of the highly technical nature of the work and the small number of positions available in certain forms of extraction often leads to an oversupply of local labour and competition for jobs.¹⁰³ Oil firms, for example, mostly employ expatriates and migrant contract workers. According to the AIDS and Rights Alliance for Southern Africa, half a million men travel across the Southern African region in order to work in mines in South Africa every year.¹⁰⁴ Only a minority of skilled workers are typically drawn from local communities. In Nigeria, for example, expatriates and migrant contract workers receive better pay than the local workers, which, research has shown, fosters sharp ethnic and racial divisions between extremely wealthy foreign nationals and underpaid locals.¹⁰⁵

59. Among the most alarming human rights violations in the extractivism economy are killings and deaths, especially of human rights defenders fighting on behalf of indigenous and Afrodescendent communities.¹⁰⁶ The assassinations of human rights defenders of racial and ethnic communities have been documented in territories of extraction all over the world. Just one example is Berta Cáceres, the Lenca human rights defender who was murdered following a lifetime of advocacy, including against extractivist projects that endangered the lives of many.¹⁰⁷ In 2016, the Special Rapporteur on the situation of human rights defenders found that the most dangerous countries for environmental human rights defenders were Brazil, Cambodia, Colombia, Guatemala, Honduras, India, Mexico, Peru, the Philippines and Thailand. In these countries and elsewhere, the targeted communities and defenders are racially and ethnically specified because of the historical ties that ethnic and racial communities have with the territories that are the prime targets of extractivism. The Special Rapporteur on the situation of human rights defenders found that, on the basis of the communications that he had received over a period of five years, the extractive

⁹⁵ www.amnesty.org/en/latest/news/2016/01/child-labour-behind-smart-phone-and-electric-car-batteries.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ www.npr.org/sections/goatsandsoda/2015/10/22/450312266/gold-miners-breathe-the-dust-fall-ill-they-did-not-give-me-nothing.

¹⁰⁰ "At least 80 artisanal miners died underground in southern DRC between September 2014 and December 2015 alone. The true figure is unknown as many accidents go unrecorded and bodies are left buried in the rubble." See www.amnesty.org/en/latest/news/2016/01/child-labour-behind-smart-phone-and-electric-car-batteries.

¹⁰¹ Convention on the Rights of the Child, art. 32. See also the International Covenant on Economic, Social and Cultural Rights, art. 10 (3).

¹⁰² See, e.g., www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21888&LangID=E; www.hrw.org/report/2015/09/29/what-if-something-went-wrong/hazardous-child-labor-small-scale-gold-mining; www.ilo.org/global/about-the-ilo/multimedia/video/video-news-releases/WCMS_067902/lang--en/index.htm; and www.hrw.org/report/2012/09/10/striking-oil-striking-workers/violations-labor-rights-kazakhstan-oil-sector.

¹⁰³ www.international-alert.org/sites/default/files/Uganda_GenderOilGas_EN_2014.pdf, p. 23.

¹⁰⁴ www.dw.com/en/south-africas-sick-miners-take-gold-mines-to-court/a-18777363.

¹⁰⁵ www.ghwatch.org/sites/www.ghwatch.org/files/c6.pdf, p. 176.

¹⁰⁶ www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf, para. 268.

¹⁰⁷ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17153&LangID=E.

industry was the sector with the most violations (A/71/281, paras. 36–37). He underscored that increasing conflicts over the environment stemmed from resource exploitation, which failed to address the legitimate concerns and demands of local communities, and highlighted the central role played by corporations and private security firms in restricting the legitimate activities of human rights defenders (*ibid.*, paras. 41 and 45).

60. Racialized criminalization of indigenous peoples and people of African descent is now a commonplace strategy that Governments and corporate actors use to suppress and eliminate opposition to extractivist projects that are pursued without consultation or consent from the affected communities, and which violate their rights in the manner described above. The Inter-American Commission on Human Rights condemned cases of such criminalization in Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Peru and Venezuela (the Bolivarian Republic of), among others.¹⁰⁸ One submission received from the Philippines reported torture, harassment, rape and murder of indigenous peoples by military and paramilitary forces tasked with protecting investment projects, seemingly at all costs.

61. Unsurprisingly, the extractivism economy has gendered effects, imposing and interacting with patriarchal power arrangements that marginalize and oppress women, in violation of their human rights. The Special Rapporteur received a number of submissions that highlighted the increased workload for women, diminished access to education for girls, greater risk of impoverishment for women, political marginalization, exclusion from consultations on extractive projects, and violations of sexual and reproductive health rights.

62. One submission highlighted that, within African countries, the communities in territories of extraction were often dominated by women peasant farmers who experienced the worst forms of land dispossession and were subject to the effects of pollution, violence and the deleterious effects on health associated with extractivist processes.¹⁰⁹ Submissions from Latin America highlighted, among other things, the political marginalization and exclusion of women. In Guatemala, for example, indigenous Mayan women, despite their leadership in defence of their territories, have been excluded from negotiations concerning extractive activities by male community leaders, as well as State agents and company officials.¹¹⁰ In another example, a mining company in La Guajira, (Colombia), did not acknowledge the indigenous woman who had been elected community representative and instead initiated talks with men from the same community. The local Government continued to ignore her even after community members complained.¹¹¹ Denial of access to formal education and language barriers also prevent indigenous women from participating in decision-making, including the use of technical language by corporations and State actors in their communication with communities. In Latin America, for example, indigenous women are more likely than their male counterparts to speak only their native language and not Spanish.¹¹²

63. Gender is also a salient axis of subordination and exclusion where labour rights are concerned. For example, women are responsible for about 80 per cent of the food crop production in Uganda.¹¹³ Women in the Albertine Graben Region of Uganda have indicated that access to agricultural land and crops had been affected by oil exploration activities.¹¹⁴ Women face even more barriers than men in entering the workforce in the oil sector. Very few women have benefited from job opportunities in oil extraction, partly due to stereotypes that women are not capable of working in a physically strenuous industry. Oil companies themselves have reported that their contractors typically prefer to hire men over

¹⁰⁸ www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf, para. 297.

¹⁰⁹ www.womin.org.za/images/WoMin_Newsletter_IssueSeptember_2018_English.pdf.

¹¹⁰ www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf, p. 15; and <https://urgentactionfund.org/in-our-bones>.

¹¹¹ www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf, p. 14.

¹¹² https://fondoaccionurgente.org.co/site/assets/files/1175/b81245_6cc6d3d7edd447d0ab461860ae1ae64f.pdf, p. 37.

¹¹³ www.international-alert.org/sites/default/files/Uganda_GenderOilGas_EN_2014.pdf, p. 18.

¹¹⁴ *Ibid.*, p. 21.

women. As a consequence, women are relegated to positions such as catering and maid services in the oil compounds, but even these positions require previous experience or other qualifications. Local women who have spent their lives working in the agricultural industry are thus disadvantaged from securing these roles as well.¹¹⁵

64. The Special Rapporteur on violence against women, its causes and consequences reported that extractive industries had led to increased sexual violence against women (A/HRC/23/49/Add.2, paras. 48–50).¹¹⁶ While on mission to Papua New Guinea, she received reports that the influx of extractive industries employees (most of whom were men) into poor and isolated communities had resulted in increased cases of sexual exploitation and abuse of women.¹¹⁷ The expanding extractive industries strained policing resources, especially because the focus on the mines drew police away from the villages.¹¹⁸ This shift in resources left isolated villages unequipped to respond adequately to calls for help.¹¹⁹ Accordingly, the presence of an extractive site can present a danger to the enjoyment of human rights by indigenous, Afrodescendent and other historically racially/ethnically discriminated against women, by increasing the likelihood of violence and decreasing governmental protection.¹²⁰

VI. Recommendations: incorporating racial equality and non-discrimination obligations and principles in reform, regulation and assessment of the extractivist economy

65. **Substance over form: States, multilateral actors and transnational corporations must anchor governance, oversight and evaluation of the extractivism economy in the principles of sovereign equality, the right to self-determination of all peoples and the right to development.** There is a complex governance regime that exists in the extractivism economy, and within the human rights framework, this centrally includes the business and human rights regime anchored in the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Global, regional and national initiatives to guarantee human rights protections in the extractivism economy must ensure that they account for the global structural racial inequality that is rooted in persisting sovereign inequality as discussed in the present report. This means that corporate due diligence, State and corporate transparency and duties to consult and ensure prior, informed consent must all be evaluated against a substantive benchmark of how well they promote self-determination, development and sovereign equality. Procedural mechanisms should not be untethered from the substantive norms these mechanisms are designed to serve. Furthermore, States in the global South must take seriously their sovereign responsibilities to ensure the permanent sovereignty over natural resources of their peoples by rejecting corrupt practices and undue foreign intervention. Powerful States – including those that have yet fully to reckon with their colonial extractivism legacies – must commit to undoing the structures of subordination and inequality that persist. In addition, human rights actors within the global system and elsewhere must ensure that all of their work meaningfully confronts global structural racial inequality in the extractivism economy

66. **No should mean no: permanent sovereignty over natural resources should be understood to include the right of peoples, especially those most negatively affected by the extractivism economy, to say no to extractivism, its processes and its logics.** State

¹¹⁵ Ibid., p. 24.

¹¹⁶ See also Rebecca Adamson, “Vulnerabilities of women in extractive industries”, *Indian Journal of Women and Social Change*, vol. 2, No. 1; and <https://womin.org.za/images/papers/paper-five.pdf>, p. 18.

¹¹⁷ Adamson, “Vulnerabilities of women in extractive industries”, p. 24.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

and non-State actors should take seriously community-based resistance to extractivism and should understand this opposition and resistance as human rights-based resistance to global neo-liberal economic structures that continue to reinforce racial, ethnic and gender inequality. Rather than criminalize resistance, State and non-State actors should work with affected communities to develop sustainable and just alternatives to the status quo.

67. **Reject colour-blindness and gender blindness:** all participants in the extractivism economy should reject a colour-blind or gender-blind approach that ignores the persisting structural and individualized racial discrimination in the operation of such an economy. States, corporations, multilateral organizations and human rights actors must all take seriously the substantive approach to racial equality articulated in the present report and work to diminish the impact that race, ethnicity, national origin and gender have on the human rights situation of many within the extractivism economy.
