

‘Troublemakers’ and ‘foreign agents’: The situation of corporate human rights defenders in Central Africa



Submission to the African Commission on Human and Peoples’ Rights Working Group on Extractive Industries, Environment and Human Rights Violations

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1. Introduction and overview

The International Service for Human Rights (ISHR) makes this submission to the Working Group on Extractive Industries, Environment and Human Rights Violations of the African Commission on Human and Peoples’ Rights (ACHPR), as a follow-up to its presentation at the Central African Sub-Regional Consultation, which took place from 13-15 July 2015 in Lubumbashi, Democratic Republic of Congo.

It is hoped that this document will spur conversation among government, civil society, and that it will develop through an iterative process into a full-length report to be presented to the Working Group at the 57th session of the ACHPR in November 2015.

Due to time and resource constraints, this report does not contain a detailed legal analysis of the legislative frameworks governing the extractives sector in the countries of central Africa. It would be anticipated that different regimes governing licencing, permits, and taxation in host countries on the one hand, and different profiles with regard to home countries of foreign investors on the other, would create very different legal environments for the operations of human rights defenders and corporate accountability NGOs. In this context the submission is also intended to suggest possible starting points for additional research by the Working Group.

This submission uses engagement with the Extractive Industries Transparency Initiative (EITI) as a common benchmark for transparency and multistakeholder engagement around extractives. However, it must be noted that a more extensive review of international multistakeholder or ‘CSR’ efforts, including with international financial institutions, may better reflect the attitudes and actions of extractives industries towards human rights defenders and host governments.

In addition to providing a broad overview of the situation of human rights defenders and the extractive sector in the central African sub-region, the submission contains case studies of the following countries:

- Cameroon;
- Chad;
- Central African Republic;

- Democratic Republic of Congo;
- Equatorial Guinea;
- Gabon; and
- Republic of Congo – Brazzaville.

For each country, the submission provides a brief overview of the nature and significance of the extractive sector and the EITI status of the country. It also provides a summary of the operating environment for human rights defenders working in the field of business and human rights in the country, illustrative examples of threats and attacks against defenders in this context, and a recap of recommendations made as to the protection of defenders working on corporate accountability and related issues by UN human rights mechanisms.

The submission concludes with concrete recommendations to the Working Group, Governments and corporations to promote corporate respect for human rights and a safe and enabling environment for human rights defenders working on extractive industry issues.

2. Overview: Human rights defenders and the extractive sector in the central African sub-region

The countries of the central African sub-region, including the Democratic Republic of Congo, are some of the most resource-rich countries on the continent. For example, the Bank of Central African States (BEAC) estimates that region-wide, nearly 70% of exports and 35% of GDP comes from petroleum alone.¹ However, these are also countries where poverty, conflict, instability and lack of good governance create barriers to the fulfilment of human rights, and constrain the ability of communities and individuals to benefit fully from the development of those natural resources.

The African Charter on Human and Peoples' Rights, in Articles 21 and 24, lays out the legal basis for protection of human rights in the context of natural resource exploitation and economic development. These articles define the legal expectation that development bring benefits directly to the people of that country; that recovery or adequate compensation be provided for individuals dispossessed of their property, for instance through the process of land concessions; and finally, the right of individuals to 'a general satisfactory environment favourable to their development' (which, when discussing natural resource exploitation, must be understood to include the rights to freedom of association, expression, and peaceful assembly as enabling rights).

In June of this year, the countries of the Central African Economic and Monetary Community (CEMAC) met to discuss means of better valuing and benefitting from natural resources. Representatives of the six countries engaged in debates and workshops around contract negotiation, mining governance, and management of mining projects. That CEMAC chose to prioritise these issues is a recognition of the serious capacity gaps in natural resource management, as well as the priority governments put on harnessing the revenues from these resources.

¹ <http://legriot.info/15733-cameroun-la-cemac-reflechit-sur-la-meilleure-utilisation-de-ses-ressources-minieres/>

Nonetheless, challenges to the effective regulation of natural resource exploitation, and to the direct engagement of affected communities in this context, are similar across countries in the region. They include:

- Low levels of awareness about international human rights, especially among rural or indigenous populations who are often the most affected;
- A high prevalence of corruption in both the public and private sectors and a lack of transparency in the generation and expenditure of revenues;
- The presence of multinational corporations and, in some cases, the more 'accommodating' legal framework in which they operate (e.g. legal loopholes related to concession contracts);
- Institutional and practical barriers to public participation in policy formulation and decision-making in the area of natural resource development;
- Lack of legislative and policy measures to recognise and protect human rights defenders and promote a safe and enabling environment for their work;
- Lack of common understanding of or approach to free, prior, and informed consent (FPIC) and environmental, social, or human rights impact assessments; and
- Lack of harmonised policies within the region and the risk of a 'race to the bottom' by companies in their efforts to identify low-cost investments.

In this context, human rights defenders (HRDs) play a critical role in preventing and mitigating violations and seeking accountability for human rights abuses linked to the extractive industry. They are key actors in bridging the gap between local communities, powerful companies, national governments, and regional and international bodies and human rights standards. Their work can complement government monitoring efforts, for example in the areas of child labour or environmental preservation, and can help fill in the gaps that arise due to the limited human and financial resources and massive geographic coverage characteristic of governments in the region.

However, across the region media, civil society, and international experts have pointed out the serious risks posed to human rights defenders generally, and to those working on corporate accountability and natural resource exploitation in particular. These risks increase both as a function of the discovery of natural resources, and in relation to the host government's reliance on natural resource exploitation as a primary source of government revenue.

In terms of legislation, none of the countries in the region have specific or comprehensive domestic legislation that protects human rights defenders in the conduct of their work. There is little recognition of the role or status of human rights defenders in the existing legal frameworks. Instead, defenders and their organisations face limitations on their ability to operate, including onerous registration processes; multiple and seemingly arbitrary tax demands; restrictions on funding for the activities of human rights defenders, and on provision of legal aid more broadly; and legal constraints to access to justice, such as the non-recognition of collective indemnities (e.g., class action suits).

In addition to a challenging operating environment, human rights defenders, including those working on issues related to extractive industries, are often targeted and defamed as criminals, anti-development or economic saboteurs by authorities. In a number of countries, it is common for defenders to risk prosecution under provisions of the national penal codes as a result of their activities. Defenders have reported being charged with crimes such as defamation, disturbing public order, incitement to hate, subversion of state authority, etc.

While there are a limited number of multistakeholder processes linked to natural resource exploitation, such as EITI or the Kimberly Process, companies themselves often feel they have little incentive to engage directly with human rights defenders. They may rely on government-aligned partners, or believe the demands for a meaningful consultation to be excessive, and so engage in a superficial or 'box-checking' exercise rather than a genuine due diligence which involves engaging fully and directly with human rights defenders and the communities they represent.

In the worst cases, extractive enterprises themselves can pose serious threats to human rights defenders. In some cases, this arises from intimidation and threats by companies directed at defenders and communities, including the co-optation of traditional community structures to oppose defenders; violence committed by security forces, both private and public, with the intention of preventing the activities of human rights defenders (such as peaceful protest); and pressure directly on governments to allow private sector actors to dictate terms, circumvent minimum standards or access favourable conditions (also known as 'corporate capture').

3. Country profiles and illustrative cases

Cameroon

In Cameroon, 40% of exports come from the extractive sector. In an effort to comply with EITI standards, the government began a process late last year of revising mining legislation with an eye to improving governance. In addition to oil, gas, and mining, agri-business has seen major growth in Cameroon. The government has put in place authorities comprised of public sector employees that help connect local communities to national policies, and that are intended to manage the revenues that go directly to communities and to public benefit projects, such as infrastructure.

Civil society has noted that all extractives industries – oil, gas, and mining – benefit from loopholes or exceptions in fiscal regulation. Initially adopted by the government to attract investment, activists worry that these measures now undermine the potential returns to the people of Cameroon.²

Although there are active civil society organisations engaged on environmental and development issues, this work can still be dangerous. Although all NGOs are required to register, many human rights NGOs never receive the approval of the authorities. Defenders working on issues ranging from domestic violence to LGBTI have faced defamation, serious attacks, and threats of violence and murder; some news media even accused the director of a regional HRD network of being an 'agent of foreign states'.³ Land rights are a major concern for rural and indigenous communities, and land rights activists have faced vexatious legal proceedings for their work with nomadic communities and to seek transparency in land disputes.⁴

On 26 April 2015, for example, authorities arrested environmentalist and human rights defender Christopher Achobang. Achobang wrote regularly about issues of housing, land,

² <http://www.publishwhatyoupay.org/wp-content/uploads/2015/03/CCPWYP-En-toute-transparence-n%C2%B007-2015-final.pdf>

³ <https://www.frontlinedefenders.org/node/28267>

⁴ <https://www.frontlinedefenders.org/cameroon>

and human rights, and had reportedly received threats of arrest and death for his work to protect land tenure rights of the Mbororo people. According to the NGO Centre for Environment and Development, on the day of his detention Achobang had offered to mediate a dispute among farmers and herders; he was arrested and charged with arson and destruction of property, as well as 'usurping the title of human rights defender.' NGO supporters argue that these charges are unfounded, and that the continued detention of Mr Achobang was a violation of national and international law. On 27 May, he was released on bail; his case was scheduled for review on 17 June.

UN human rights mechanisms have consistently raised concerns about the extractives environment, and defenders working on these issues. In 2012, the Committee on Economic, Social and Cultural Rights recommended that Cameroon 'take effective measure to protect the right of each group of indigenous people to its ancestral lands and the natural resources found there...'⁵ The situation of human rights defenders, including barriers to their work and risks of harassment, arbitrary arrests, and torture, was raised by the Special Rapporteur on Food (2012),⁶ the Committee Against Torture (2010),⁷ and in a UPR recommendation by Luxembourg which was accepted by the government.⁸

In her 2014 mission to Cameroon, the Independent Expert on Minority Issues, Rita Izsák, noted that civil society raised concerns about land-grabbing by large-scale agri-business and that indigenous human rights defenders had been shot, injured, and subject to judicial harassment.⁹ She recommended that current legal and administrative regulations on land use be amended to protect land rights of indigenous populations, and that the government consult with grassroots representatives and ensure free, prior and informed consent before making decisions about development projects.

Central African Republic

In CAR, armed groups have engaged in a number of profit-making activities, including the illicit sale of natural resources such as gold and diamonds.¹⁰ The ex-Séléka and the Anti-Balaka have used extortion, threats, violence, and murder as a means of maintaining control of these profit-making ventures to finance ongoing conflict. Exploitation of natural resources, including minerals and timber, accounts for the livelihoods of nearly one million residents.¹¹ The Special Rapporteur on Summary Executions noted that inclusive economic reforms, including responsible exploitation of the extractive industries, would be an important factor in eliminating the elements conducive to extrajudicial killings and in providing for accountability when they occur.¹²

⁵ E/C.12/CMR/CO/2-3 (CESCR, 2012)

⁶ A/HRC/22/50/Add.2 (SR Food, 2012), para 73(l)

⁷ CAT/C/CMR/CO/4 (CAT, 2010)

⁸ A/HRC/11/21 (UPR, 2009), No. 24, para 76

⁹ A/HRC/25/56/Add.1, paras. 17, 50

¹⁰The Enough Project. *Warlord Business: CAR's violent armed groups and their criminal operations for profit and power*. By Kasper Aggar, June 2015. Available online at: <http://allafrica.com/download/resource/main/main/idatcs/00091554:6138ad932a4ad3677b360aa72dbf116d.pdf>

¹¹ <http://www.journaldebangui.com/article.php?aid=8127>

¹² A/HRC/11/2/Add.3 (SR Summary Executions, 2009)

The Kimberley Process recently undertook a mission to the country, following their suspension of the sale of diamonds mined in CAR in 2013 as a result of linkages to warlords, especially in the eastern part of the country. The aim of the mission was to determine the feasibility of lifting, at least partially, the ban on the sale of diamonds from CAR. The EITI Board in April 2013 suspended CAR from participation due to political instability.¹³ Over two years later, the country has not been reinstated, but neither has the EITI board moved to delist CAR.

The situation of conflict and absence of rule of law has made it virtually impossible for NGOs to function, and has increased the vulnerability of HRDs to risks.¹⁴ In addition to wide-ranging impacts of conflict felt by the rest of the civilian population, HRDs are particularly targeted for raising concerns about human rights violations, including forced recruitment of child soldiers, sexual violence and torture, by armed groups as well as by government troops. Of these, women defenders are particularly vulnerable to gendered forms of harassment, including threat of rape. In light of these serious restrictions, many HRDs have gone into hiding or fled the country during the worst of the conflict.¹⁵

According to local news media, human rights activists recently called on the government to improve security for public infrastructure, namely the national radio station, which was attacked on 7 July, in the run-up to national elections.¹⁶ Radio stations and other media outlets used by civil society are regularly targeted by armed groups.¹⁷

The government of the CAR in 2009 accepted a UPR recommendation from Norway to 'give human rights defenders legitimacy and recognition through supportive statements and [to] ensure that they are protected...'.¹⁸ Similarly, the Human Rights Committee in 2006 urged the government to 'respect and protect the activities of human rights defenders'¹⁹ and 'ensure that any restrictions imposed on their activities are compatible with provisions of Arts. 21 and 22 of the ICCPR'.²⁰ In addition to his attention to the extractives sector, the Special Rapporteur on Summary Executions called for strengthening local civil society through funds and technical assistance.

Chad

In Chad, where 80% of overall government revenue comes from oil, good governance of oil revenues has proven to be challenging.²¹ Corruption is pervasive at all levels, and the IMF and World Bank in 2013 criticised the Chadian government for not ensuring that revenues improved the livelihoods of its citizens.²²

¹³ <https://eiti.org/news/central-african-republic-suspended-following-coup-d-etat>

¹⁴ <https://freedomhouse.org/report/freedom-world/2015/central-african-republic#.VZ4XsfmqpHw>

¹⁵ <https://www.frontlinedefenders.org/car>

¹⁶ <http://www.radiondekeluka.org/securite/item/22449-les-activistes-des-droits-de-l%E2%80%99homme-exigent-plus-de-s%C3%A9curit%C3%A9-pour-la-radio-nationale.html>

¹⁷ Frontline, *ibid.*

¹⁸ A/HRC/12/2 (UPR, 2009) Rec. 44, para. 74

¹⁹ A/HRC/8/3/Add.5 (SR Summary Executions, 2008)

²⁰ CCPR/C/CAF/CO/2 (HRC, 2006)

²¹ <https://eiti.org/Chad>

²² <http://www.lavoixdelamerique.com/content/le-petrole-ne-profite-pas-aux-populations-des-pays-de-la-cemac-selon-la-bm-et-le-fmi/1802281.html>

In October 2014, Chad became an EITI compliant country after improving revenue collection, transparency of payments, and committing to creating systems of accountability within the government. However, holding corporations accountable for corruption is still a challenge. Local organisations also note that affected communities are rarely consulted in the context of natural resource projects; they may face extortion and harassment; and compensation for land – when it is given – is often based on an arbitrary formula that includes illegal fees for companies.²³

A case against the China National Petroleum Company that was opened in 2013 concluded last year with an agreement that saw CNPC pay one third of the original fine imposed for violations of environmental standards, in return for the renewal of its title to five blocks, under new conditions.²⁴ The negotiations for this agreement happened in secret, and resulted in the abandonment of official judicial proceedings both domestically, under Chad’s law on the protection of the environment, and internationally in the International Court of Arbitration.²⁵

Freedom of assembly is guaranteed in the Constitution of Chad, but authorities often ban demonstrations by organisations they deem critical of government policies.²⁶ Since 2008, this has also included an effective ban on demonstrations denouncing weak governance.²⁷ Human rights defenders (HRDs) in Chad face threats, harassment, stigmatisation, physical assault, defamation, arbitrary arrests, incommunicado detention, judicial proceedings and ill-treatment and torture while in detention.²⁸ Especially when they speak out against government actions, defenders also risk being labelled ‘rebel supporters’ or ‘traitors’.²⁹ There is no legal restriction that explicitly hinders or constrains the work of human rights defenders, but nor is there a domestic law to protect them.

Defenders who speak out about corruption in the oil sector have also been the subject of reprisals. On 15 June 2015, according to Amnesty International, land rights activist Djeralar Minkeol was arrested for ‘insulting the judiciary’ (‘outrage à magistrature’) and sentenced, on 7 July, to two years in prison and a fine of 100,000 CFA, or 167 USD. Seventy-five supporters who sought to attend the trial were also detained for several hours, en route the court.³⁰ In an earlier case, Monsignor Michele Russo, a Catholic bishop of Doba, was expelled from Chad by the authorities on 14 October 2012 following a statements denouncing mismanagement by the authorities and unequal distribution of wealth from oil revenues.³¹

The government of Chad in 2009 supported a UPR recommendation from Norway to ‘publically support human rights advocacy and create a safe environment for all who promote human rights.’³²

²³ http://www.laltdh.org/pdf/rapport_dh_2014.pdf

²⁴ <http://www.jeuneafrique.com/5603/economie/litige-le-tchad-conclut-un-accord-avec-le-chinois-cnpc/>

²⁵ <http://legriot.info/12548-tchad-poursuites-judiciaires-contre-la-cnpc/>

²⁶ <https://freedomhouse.org/report/freedom-world/2014/chad#.VZ54zfmqPHw>

²⁷ http://www.laltdh.org/pdf/rapport_dh_2014.pdf

²⁸ <http://www.frontlinedefenders.org/chad>

²⁹ *Ibid.*

³⁰ <https://www.amnesty.org/en/latest/news/2015/07/chad-release-land-grab-campaigner-jailed-for-exposing-the-truth/>

³¹ <http://www.amnesty.org/en/region/chad/report-2013#section-27-11>

³² A/HRC/12/5 (UPR, 2009) – Rec. 11, Para. 82

Democratic Republic of Congo

The extraction of the abundant gold, copper, tantalum, tungsten, coltan and cobalt deposits of the Democratic Republic of Congo (DRC) has been linked to conflict, human rights abuses and corruption for more than a decade. Human rights abuses and corruption around natural resource exploitation, including both large-scale and artisanal mining, are central factors in the ongoing conflict in DRC, particularly in the Katanga and Kivu provinces.³³ Cases from the DRC have underpinned campaigns for progressive legislation such as the Dodd-Frank Conflict Minerals Rule in the United States and have led to emblematic investigations into the role of corporations in sustaining the conflict, for example allegations of corporate complicity with war crimes brought against Swiss gold refiner Argor-Heraeus in 2013 (the case was dropped by the Swiss government in June 2015).³⁴ Despite these conditions, the extractive sector accounted for 99% of DRC's exports and 64% of the government budget in 2012.³⁵

Recently, petroleum exploration has raised concerns for civil society organisations in the country. For example, the British oil company SOCO sought permission to carry out exploration in a World Heritage site and home to half the world's mountain gorillas, Virunga National Park in North Kivu. Activists concerned about conservation and the environment have requested that the DRC government revoke SOCO's permit and renounce any efforts to redefine the park's boundaries to accommodate the activities of SOCO and other petroleum companies.³⁶ Following allegations of corruption and other human rights abuses, and the continued interest of SOCO in Virunga National Park, a key shareholder divested its shares on 2 July 2015.³⁷

In 2013, the EITI temporarily suspended DRC's candidate status, finding non-compliance in its 2010 report, but determined in July 2014 that the DRC was 'EITI compliant'. Following this finding, a number of civil society organisations published an open letter acknowledging that while 'a significant step [was] made toward transparency', more work remains to be done to investigate mining and customs fraud. The organisations, which included the 'Publish What You Pay' coalition, the Réseau Ressources Naturelles, and the Plateforme des Organisations de la Société Civile Intervenant dans le Secteur Minier, called on the government to support continued EITI implementation with financial resources, and requested the judiciary and parliament to assist the government in that regard.³⁸

For its part, the government has stated it will revise the mining code to gain larger revenues, and has moved from a contract regime to a licensing regime when making initial determinations. Agreements are made public as a voluntary commitment under EITI implementation.³⁹ Nonetheless, tensions remain between the legal regimes resulting in

³³<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>

³⁴ <http://www.bbc.com/news/world-europe-24811420>

³⁵ <https://eiti.org/DRCongo>

³⁶ <http://radiookapi.net/environnement/2015/07/02/la-rdc-plaide-bonn-pour-la-sauvegarde-du-parc-national-des-virunga/>

³⁷<http://www.christiantoday.com/article/church.of.england.divests.from.oil.firm.over.allegations.of.corruption/57860.htm>

³⁸ <https://eiti.org/news/civil-society-calls-sustained-efforts-after-drc-achieving-eiti-compliance-status>

³⁹http://www.bgr.bund.de/DE/Themen/Zusammenarbeit/TechnZusammenarbeit/Politikberatung_SV_MER/Downloads/natural_resource_contracts.pdf;jsessionid=42F6FE02838377232DF6DE65BFF15C18.1_cid331?__blob=publicationFile&v=2

uneven enforcement; the government continues to circumvent the current Mining Code through thinly-veiled 'resources-for-infrastructure' agreements; and the government has not explicitly addressed other gaps in the legislation that can lead to human rights abuses.⁴⁰

The situation for human rights defenders in the country is very dangerous, and exacerbated in eastern regions still embroiled in conflict.⁴¹ There is no legal framework to protect individuals or organisations doing human rights work.⁴² Freedom of assembly and association are guaranteed in the Constitution, but demonstrations must be approved by the authorities; unregistered demonstrations, especially when linked to the political opposition, risk interference by security forces. Civil society organisations can function freely, under the auspices of a 2001 law that recognises non-profits, but their leaders may be vulnerable to human rights abuses.⁴³ Civil society activists hope that the new national human rights institution will include protection of defenders in its Plan of Action.⁴⁴

Attacks against defenders arise as a result of their professional work, and can be instigated by both the government and armed groups. The political climate is tense, and false accusations against defenders for being connected to armed groups, in some cases, have the effect of undermining their credibility.⁴⁵ In some cases, companies are complicit or even collaborate with these efforts to undermine defenders' work.⁴⁶ Provisions of the Penal Code, including 'defamation', are also invoked against defenders.⁴⁷ In DRC, threats and intimidation, as well as violence, can impact the safety and security of defenders' families, who are also seen as targets. Serious, transparent, and effective investigations of attacks are rarely undertaken by the government,⁴⁸ and defenders rarely benefit from fair and impartial trials that observe international norms of due process, for example in the case of the 18 March 2015 trial of defender Chrisopher Ngoyi Mutamba.⁴⁹

On 2 May 2011, according to the NGO Avocats sans Frontières (ASF), a group of sixty police and security forces entered the village of Bosanga and committed serious human rights violations. This operation was a reprisal against the villagers for seeking to have dialogue with a state-owned timber company, SIFORCO, who was not honoring its commitments to the community; allegedly, the attack came at the request and with the material support of SIFORCO. On 5 June 2015, the 'Yalisika trial' was finally begun. While this signals that human rights must be respected in the context of natural resource exploitation, ASF remains concerned about the scope of the trial to hold accountable all those responsible, and highlighted intimidation and threats against victims prior to the trial.⁵⁰

⁴⁰ Ibid.

⁴¹ <https://www.frontlinedefenders.org/democratic-republic-congo>

⁴² Frontline, *ibid.*

⁴³ https://freedomhouse.org/report/freedom-world/2015/congo-democratic-republic-kinshasa#.VZ6Mc_mqpHw

⁴⁴ Communication with ISHR partner organisation

⁴⁵ Communication with ISHR partner organisation

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Frontline, *ibid.*

⁴⁹ <https://www.fidh.org/La-Federation-internationale-des-ligues-des-droits-de-l-homme/afrique/republique-democratique-du-congo/rdc-craintes-serieuses-par-rapport-au-caractere-equitable-du-proces>

⁵⁰ <http://www.asf.be/fr/blog/2015/06/08/yalisika-trial-logging-and-human-right-in-drc/>

The government of the DRC was recommended by the then Special Rapporteur on Human Rights Defenders in 2010 that it ‘take concrete steps to give legitimacy to the work of human rights defenders, including women defenders, and to acknowledge it as human rights work.’⁵¹ It was also recommended to ‘fully involve human rights defenders in the monitoring of the forthcoming local and Presidential elections.’⁵² In 2010, during its UPR the government of the DRC accepted a recommendation by Slovakia to ‘adopt an effective legal framework for the protection of human rights activists in line with the Declaration on Human Rights Defenders.’⁵³

Equatorial Guinea

Oil and gas deposits were discovered in Equatorial Guinea in the mid-1990s, and it now follows only neighbouring countries Nigeria and Angola in terms of oil production. Crude oil and liquid natural gas exports now account for 95% of export income and 80% of government revenues.⁵⁴ However, while per capita income in the country is similar to Italy, living standards are generally quite low and child mortality rates have increased since the discovery of oil deposits.⁵⁵ The country ranks very low, 163 of 177, on Transparency International’s Corruption Index.

Equatorial Guinea was originally accepted as a candidate country for EITI in September 2007, but never completed its validation. EITI’s Board in 2010 refused to extend the deadline for validation, noting that it ‘did not consider that the circumstances in Equatorial Guinea [extending the deadline of the report] had amounted to “exceptional and unforeseeable”’⁵⁶. In November 2014, President Obiang announced his intention to re-join EITI. This has included announcing policies intended to meet and exceed compliance in auditing standards, transparency, and accountability. He has also made internal bureaucratic changes to ‘streamline’ operations of the management of revenues from extractives.⁵⁷

Freedom of association and assembly are very restricted, and registration for any association or political party is onerous.⁵⁸ According to local and international NGOs, human rights defenders and critics of the regime in Equatorial Guinea face arbitrary arrest and intimidation due to their work.⁵⁹ No proper investigations have been undertaken into these allegations, contributing to an environment of impunity, and due process rights are often flouted.⁶⁰

In response to the government’s interest in EITI, civil society has raised serious concerns about the management of the extractives industry and the concentration of power in the hands of the ruling family. Tutu Alicante, executive director of the NGO EG Justice, has

⁵¹ A/HRC/13/22/Add.2

⁵² Ibid.

⁵³ A/HRC/13/8 (UPR, 2010)- Rec. 106, Para, 94

⁵⁴ <http://africanbusinessmagazine.com/country-reports/equatorial-guinea-the-economy/>

⁵⁵ <http://business-humanrights.org/sites/default/files/media/documents/africa-oil-week-briefing-note-nov-2013.pdf>

⁵⁶ https://eiti.org/files/2010_04_29_letter_he_president_obiang_equatorial_guinea.pdf

⁵⁷ <http://www.africalink.ch/index.php/news/top-stories/138475-moves-to-strengthen-equatorial-guinea-oil-sector>

⁵⁸ <https://freedomhouse.org/report/freedom-world/2015/equatorial-guinea#.VZ6ZgPmqpHw>

⁵⁹ <https://www.amnesty.org/press-releases/2015/03/equatorial-guinea-release-human-rights-defender-and-opposition-leader/>

⁶⁰ <https://www.hrw.org/news/2015/04/14/equatorial-guinea-group-should-investigate-abuses>

pressed for concrete steps to ensure protection and support for civil society to carry out accountability work without the risk of reprisals.⁶¹

Even foreigners in the country are not immune to abuse for seeking accountability for abuses linked to extractives. In 2004, the US Justice Department accused a son of the President, and former minister, 'Teodorín' Nguema Obiang Mangué of 'bribes, kickbacks, embezzlement, and extortion... on an astounding scale'.⁶² Although the two parties eventually settled for 30 million USD in October 2014, there is no clear protection secured in the agreement for whistleblowers, witnesses, and others who might suffer reprisals. As of the conclusion of the settlement, Teodorín's business partner, Italian Roberto Berardi, remained in prison after more than 18 months, under trumped up charges and subject to torture and ill-treatment.⁶³

The government of Equatorial Guinea in its UPR in 2014, accepted a recommendation by France to 'allow journalists and human rights defenders to work in a safe environment, notably by prosecuting all those responsible for intimidating or making threats against them.'⁶⁴

Gabon

The economy of Gabon relies heavily on the extractives sector; over 50% of the national budget, and 75% of total exports, come from petroleum alone.⁶⁵ For this reason, they are sensitive political and economic issues for the government.⁶⁶ Agri-business is increasingly another area of focus among extractive industries; the controversy over the 2012 reform of the Land Law, which appeared to facilitate access to land for agricultural investors, is one example.

Corruption is widespread, but there have been some efforts by the government to address the issue, including the prosecution of a government officials for profiting from illegal logging.⁶⁷ Gabon was accepted as a candidate country by EITI in 2007, a status which was renewed in 2011. However, Gabon became a delisted country in 2013, after the country's failure to submit a second validation report by the agreed deadline of 9 December.⁶⁸

In Gabon, freedom of assembly and association are generally respected, and NGOs are able to carry out their work. Public protests must be submitted for government approval, and there have been cases of harsh tactics by security forces.⁶⁹ Contrary to many of the countries in the region, unions are also a powerful organising force in Gabon.⁷⁰ However, critics of the government and particularly the role of extractives face challenges. In 2008, for example, 22

⁶¹ <http://allafrica.com/stories/201408070792.html?viewall=1>

⁶² <https://www.hrw.org/news/2014/10/15/kleptocracy-case-lifts-veil-rights-abuses>

⁶³ <http://www.hrw.org/news/2014/07/30/equatorial-guinea-halt-prisoner-torture>

⁶⁴ A/HRC/27/13 (UPR, 2014) – Rec. 67, Para. 134

⁶⁵ http://www.gabonco.com/nouvelles_africaines_35103.html

⁶⁶ <https://eiti.org/files/2011-EITI-evaluation-report.pdf>

⁶⁷ <https://freedomhouse.org/report/freedom-world/2013/gabon#.VZ6qPPmqpHw>

⁶⁸ <https://eiti.org/Gabon>

⁶⁹ <https://freedomhouse.org/report/freedom-world/2014/gabon#.VZ6jMvmqpHw>

⁷⁰ Freedom House, *ibid.*

NGOs were suspended for one week for criticising the government's management of natural resource revenues.⁷¹

In practice, many defenders still risk intimidation and harassment, and prosecution under ambiguous or trumped-up charges. In some cases, NGOs have noted that fear of reprisal, and an environment characterised by opacity and extreme politicisation, has prevented affected communities from fully engaging to protect their rights vis-à-vis corporations.⁷² On 29 March 2013, environmental rights defender Marc Ona Essangui was found guilty of defamation for comments made about the activities of a Singaporean agri-business company, and sentenced to a six-month suspended sentence and 5 million CFA (7600 EU) fine.⁷³

In June 2015, the government announced a nationwide audit of petroleum companies to get a full picture of the volume of production and the trustworthiness of company reporting, and to improve visibility of activity in the sector in general.⁷⁴ The results of the audit have not yet been made public. However, petroleum companies remain a concern in terms of environmental and human rights standards, transparency, and corruption.

In April 2015, Total Gabon was accused of polluting a beach near Port-Gentil, the second largest city in the country. According to local news, corporate communications officials denied all allegations.⁷⁵ Similarly, in 2010, NGOs raised concerns about water pollution by Chinese petroleum company Addax in the southwest part of the country. The government requested the company take measures to mitigate the pollution, but soon entered into a dispute with Addax over licencing and failure to pay customs duties arising from official audits. The dispute, which involved countersuits by Addax, was resolved in January 2014 with the approval of contracts for three oil fields in the same region.⁷⁶

The CESCR Committee in its review of Gabon in 2010 regretted the 'absence of any specific regulatory or legislative framework that would make it possible to systematize practice in implementing the right to prior informed consultation of indigenous peoples in decision-making processes concerning the exploitation of natural resources in traditional territories.'⁷⁷

Republic of Congo – Brazzaville

The oil sector accounts for an estimated 80% of government revenues and 90% of total exports, making Congo one of the countries in the region most reliant on petroleum. While there is some mineral exploitation, namely gold and diamonds, most are produced by small

⁷¹ <https://eiti.org/files/2011-EITI-evaluation-report.pdf>

⁷² http://www.brainforest-gabon.org/braingest/publication_fichiers/35-etude_impact_plantations_ph_gabon_fr.pdf

⁷³ <https://www.frontlinedefenders.org/node/22241>

⁷⁴ GabonEco, *ibid.*

⁷⁵ <http://info241.com/pollution-les-populations-de-port-gentil-en-alerte-total-gabon,894>

⁷⁶ <http://www.reuters.com/article/2014/01/16/gabon-china-oil-idUSL5N0KQ33B20140116>

⁷⁷ E/C.12/GAB.CO/1 (CESCR, 2013)

or artisanal mines.⁷⁸ Timber accounts for an estimated 14% of exports,⁷⁹ while the potential for agri-business exists – although agricultural leases (effectively land grabs) are a major concern and often lead to demonstrations.⁸⁰

The Republic of Congo ranks as a middle-income country, it is estimated that over a quarter of children suffer from malnutrition, indicating a failure in the ability of the government to effectively distribute revenues from petroleum for the public good.⁸¹

Republic of Congo is an EITI compliant country, following a review in February 2013 and significant improvements in timeliness and quality of reporting.⁸² The government publishes production sharing agreements and relevant legislation on the EITI-Congo website. Civil society has argued that this should be expanded to include greater transparency of trade agreements, in particular with China, and agreements on construction of power plants.⁸³ As of April 2015, a long-awaited law creating national obligations in line with EITI commitments, especially with regard to accountability mechanisms in the collection of the budget, is still in draft form.⁸⁴

Freedom of association and assembly is recognised in national legislation, but strict limits are enforced by the government, including the requirement of official authorisation for public assemblies.⁸⁵ There is no law explicitly providing recognition or protection to human rights defenders. Leaders of civil society organisations risk interrogation and arrest, especially when their work challenges a ruling elite.⁸⁶ Corruption, which is a major concern for civil society, is considered a sensitive issue; defenders working on corruption often face harsher treatment, the threat of closure of their organisations, and in some cases criminal charges of ‘destabilising the state’.⁸⁷

According to one local NGO, in March 2015 efforts to organise a workshop among government officials, NGOs, faith-based groups, and media to introduce EITI was prevented by local authorities in the city of Nkayi. The mayor, who made the decision, accused the groups of engaging in ‘subversive activities’ that would ‘threaten public order’.⁸⁸

Human rights defenders in the country face a range of risks, including death threats, for their work on a range of issues, including corporate accountability and the extractive sector. Family members of defenders were also targeted, to increase the pressure on defenders

⁷⁸ <https://eiti.org/Congo>

⁷⁹ http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1699:oil-for-development-chinas-investments-in-angola-and-the-republic-of-congo-&catid=58:asia-dimension-discussion-papers&Itemid=264

⁸⁰ <http://www.heliosglobalinc.com/world-trends-watch/?p=322>

⁸¹ <http://business-humanrights.org/sites/default/files/media/documents/africa-oil-week-briefing-note-nov-2013.pdf>

⁸² EITI, *ibid.*

⁸³ <http://www.publishwhatyoupay.org/pwyp-news/pwyp-congo-b-an-opportunity-to-strengthen-the-eiti-process/>

⁸⁴ PWYP, *ibid.*

⁸⁵ https://freedomhouse.org/report/freedom-world/2014/congo-republic-brazzaville#.VZ6wy_mqpHw

⁸⁶ <https://www.frontlinedefenders.org/congo>

⁸⁷ Frontline, *ibid.*

⁸⁸ <http://www.rpdh-cg.org/news/2015/03/26/atteinte-aux-libertes-dassociation-et-de-reunion-au-congo-la-rpdh-interdite-de>

themselves. For example, during the January 2014 government crackdown on independent trade unionists, in at least two cases the siblings, spouses and children of the union leaders were arrested or detained.⁸⁹ In this, and other cases of harassment or arbitrary detention, there has been little or no official investigation or accountability.

In 2011, the Special Rapporteur on Indigenous Rights recommended that the government of the Republic of Congo 'ensure that all administrative practices and the application of all laws related to lands and natural resources align with the indigenous rights law, interpreted in light of international standards concerning indigenous peoples' rights to lands, territories and resources.' He requested that the government establish a mechanism to review and improve the legislative and policy framework for engagement on natural resources.⁹⁰

4. Recommendations

This submission is intended to be a useful tool for engagement with, and discussion among, the full range of relevant stakeholders. In that regard, ISHR proposes three sets of mutually reinforcing but different recommendations to the key actors in the extractives space – namely, the Working Group on Extractive Industries, Environment and Human Rights Violations; national and sub-national governments; and business enterprises working in the extractives sector (to include large-scale or plantation agriculture).

Recommendations to the Working Group:

The Working Group has a unique ability to convene and to analyse important information from across the continent, to bring that information to the attention of the African Commission and, indeed, to spur action by Member States. In that regard, ISHR urges the Working Group to:

- Continue efforts to consult as broadly as possible with civil society organisations and human rights defenders to understand the legal and practical challenges they face when working on human rights violations in the extractive sector. Where accessibility for NGOs may pose financial or logistical challenges, the Working Group is encouraged to find alternate means of soliciting inputs and recommendations.
- Raise awareness about the ability of corporate accountability activists to send submissions to the Working Group, including where government complicity in corporate human rights violations has occurred.
- Ensure that defenders and other members of civil society do not face retaliation or reprisals for participation in the activities of the Working Group and, if reprisals occur, address the issue directly to the country concerned to facilitate accountability and follow-up.
- When undertaking country trips, engage with and publicly support defenders and NGOs working on human rights abuses in extractive industries, as well as affected communities.

⁸⁹ <https://www.fidh.org/IMG/pdf/congonote626aa4-ang2013bassdef.pdf>

⁹⁰ A/HRC/18/35/Add.5

- Continue and deepen coordination with relevant UN and other international mechanisms working on pertinent issues, including but not limited to human rights defenders, business and human rights, and corruption.
- Seek to incorporate defenders' concerns into other fora where extractives industry concerns are discussed, for example in any engagements between the Working Group and EITI.

In line with the range of concerns outlined above related to effective consultations with affected communities, and following on the perspectives raised by many local defenders, ISHR encourages efforts by the Working Group to harmonise policies across the sub-region and the continent as regards the promotion and implementation of FPIC, both in national legislation (for example, related to land tenure) and in 'model' contracts.

- ISHR strongly urges the Working Group to pay particular attention to the role of defenders in working with representatives of affected communities, and to clarify and empower the potential role of defenders in any guidelines or other output.

Recommendations to Governments of the Sub-region:

Member States need to act with urgency to protect human rights defenders working on corporate accountability issues, and to ensure that no defenders or communities face retaliation or reprisal for their efforts to engage with companies in the extractive sector. ISHR calls on them to:

- Adopt laws that explicitly recognise and protect human rights defenders and facilitate their work in line with the UN Declaration on Human Rights Defenders.
- Respect, protect and facilitate the exercise of the rights to freedom of expression, association, peaceful assembly and protest.
- Guarantee due process to detained human rights defenders and reform those laws which are used arbitrarily against them, in particular the abuse of defamation laws and ambiguous or broad provisions of penal codes.
- Ensure that all threats and attacks against human rights defenders working in the field of business and human rights are fully and promptly investigated, perpetrators held accountable, and victims provided with access to effective remedy.
- Support publicly, through official statements or other means, the legitimacy and value of human rights defenders, especially in the area of natural resource exploitation.
- Improve human rights awareness among communities directly affected (or at risk of being affected) by the extractives sector and other large-scale development projects.
- Hold companies accountable for violations of domestic law, and renounce the use of investment agreements to circumvent domestic legal obligations or weaken the ability of the host state to enforce its laws.

- When embarking on major development projects, ensure that defenders and affected communities are consulted; have access to information; and can fully participate in monitoring the implementation and impacts of the project.
- In the same inclusive manner, develop National Action Plans for the implementation of the UN Guiding Principles on Business and Human Rights, using this as an opportunity to reinforce existing commitments (e.g., related to EITI compliance) and ensuring that such National Action Plans include specific measures and commitments to support and protect human rights defenders.

Recommendations to extractive industry companies and associations:

There is an important role for the extractives industry to play as well. We strongly encourage extractives companies, including state-owned, joint venture, multinational, private and wholly-owned subsidiary companies among others, to:

- Ensure that communities and defenders are fully consulted before business operations begin, and periodically throughout the project, without preconditions and in line with international norms and best practices.
- Facilitate access for human rights defenders, both to work sites and to information.
- Refrain from interfering with, or in any way supporting or facilitating direct or indirect interference with, the work of human rights defenders, including in relation to their exercise of the rights to freedom of expression, association, peaceful assembly and protest.
- Strengthen efforts to combat corruption, and publicly condemn the use of bribery, intimidation or other measures that could advance work in the sector to the detriment of respect for human rights.
- Institutionalise and empower efforts to promote and protect human rights within the company's country operations, for example by appointing an ombudsperson or human rights 'team' that is trusted by civil society.
- Encourage host governments to create an enabling environment for investment **not** by easing legal regulations or offering favorable tax regimes, but by protecting human rights and fundamental freedoms, especially freedom of expression, assembly, and association.
- Speak out when governments or other companies violate those rights – especially, though not exclusively, in the context of natural resource exploitation.