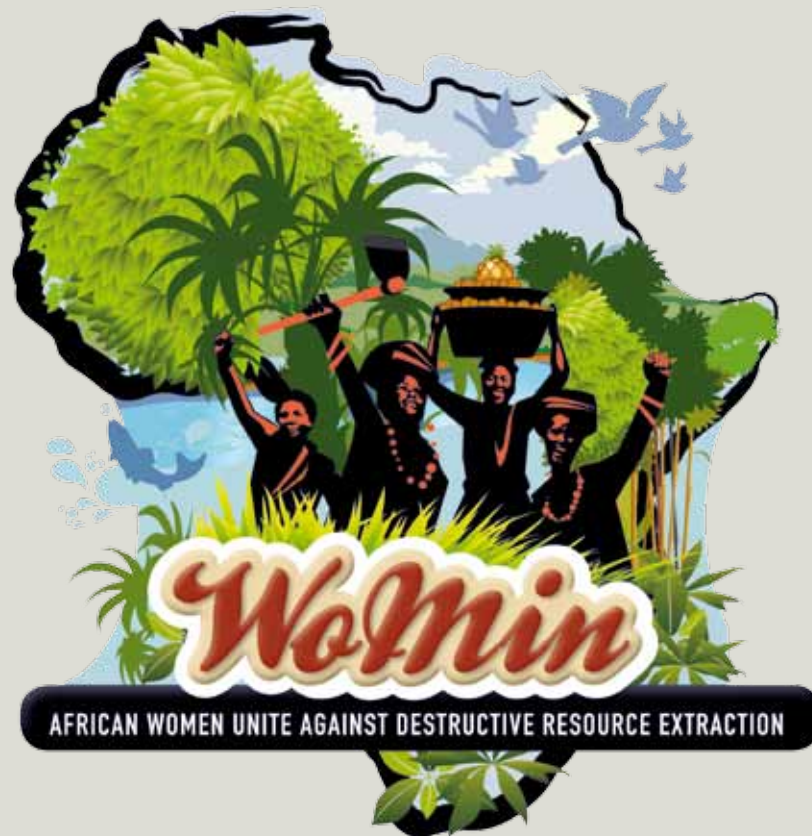


WOMEN, GENDER AND EXTRACTIVISM IN AFRICA
A COLLECTION OF PAPERS

PAPER ONE

A WoMin PERSPECTIVE ON INTERNATIONAL AND REGIONAL POLICY AND HUMAN RIGHTS FRAMEWORKS





THE WoMin COLLECTION OF PAPERS ON WOMEN, GENDER AND EXTRACTIVISM: A BRIEF NOTE

In this *starter* collection of six papers, which focuses on Sub-Saharan Africa, WoMin begins to explore some of the themes and questions that are raised by extractivism, and industrial mining¹ in particular, and its impacts upon, and 'relationship to' peasant and working-class women. By 'relationship', WoMin refers to the myriad ways – within the home, in the fields and in the workplace – in which women, in mainly invisible and unremunerated ways, participate in, shape and contribute to the ambitions and profits of the extractivist industries. The papers aim to make a modest contribution to supporting peasant women and their allies to counter the growing social and ecological crisis linked to the extractives industries in the region. Each paper has been written by a different set of authors, supported by various respondents who are specialists in the specific 'question/s' addressed by the paper, or have a general interest in the work of WoMin. WoMin is a programme of activism and research related to women, gender and extractivism in the Africa region and is housed in the International Alliance on Natural Resources in Africa (IANRA), a global alliance of organisations working on natural resource questions.

¹ See Glossary to this paper for definition of 'extractivism' and the Background Note to the collection for a fuller discussion of the concept. The major focus of this collection of papers is industrial mining, which is one form of extraction.

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ABOVE: *Living in the shadow of a mine dump, Ga Pila village, Mokopane, North-West province, South Africa.* **Photo:** ActionAid

*"... discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity ..."*²

1. INTRODUCTION

The obligation of states to protect, promote and respect women's human rights in regard to the extractives industries is created in two ways:

- a. Through broader human rights instruments that safeguard the civil, political, social and economic rights of women.
- b. Through extractives or mining-specific³ frameworks and documents. Various frameworks have been adopted by the United Nations (UN), the African Union (AU), as well as by sub-regional bodies like the Southern African Development Community (SADC), and the Economic Community of West African States (ECOWAS).

So far, there are no decisions (jurisprudence) that have been made by Treaty-monitoring bodies within the UN system, or by the African Commission on Human and Peoples' Rights (ACHPR, the body charged with the responsibility for ensuring the promotion and protection of **human and peoples' rights** throughout the **African** continent) on the subject of the violations of women's rights by the extractives industries. However, where applicable, this paper has drawn on general cases, particularly from the Sub-Saharan Africa region.

We have also included some key frameworks that have been crafted by social movements and global fora of affected peoples and which represent an alternative way of thinking about extractivism, including mining, and related questions such as food sovereignty, climate change, and the rights of indigenous peoples. While these frameworks do not have standing in terms of international human rights law, they carry tremendous political weight expressing as they do the viewpoints and vision of excluded peoples across the world.

This paper on International and Regional Policy and Human Rights Frameworks *read from a* WoMin perspective is meant to achieve three objectives. Firstly, to help people understand regional and international laws, policies and mechanisms relevant to women, gender and extractivism. Secondly, to assist the WoMin project to inform itself about limitations in international legal and policy frameworks to be addressed in the work going forward. Thirdly, to identify opportunities to make claims and seek redress for women using international and regional laws and policies.

Drawing on the overall themes addressed by this WoMin collection of papers on women, gender and extractivism, this paper focuses on the following key thematic areas:

- women's economic empowerment;
- women's right to adequate health;
- women's right to food and land; and
- protections against forced evictions and compensation for the loss of land and natural resource rights.

Under each of these themes we examine what rights, standards and protections are offered within firstly, the broader human rights frameworks, and secondly, extractives-specific frameworks. In line with the other papers in this collection, we approach these frameworks from the perspective of poor and marginalised women who are affected by mining from a labour or community perspective and not women who are interested in investing in or profiting from large-scale mining. The question of women's right to participate in decision-making and give their free prior and informed consent (FPIC) for development activities on land and natural resources they access and use is to be addressed in a separate, yet to be commissioned, paper on women, gender and FPIC.

² Extract from introduction to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979.

³ In this paper the term extractives or extractivism encompasses a very specific reference to mining.

These rights and standards reflect the outcome of negotiations between powerful actors usually within multilateral institutions about what rights are important, and what the content of these rights should be. The frameworks represent a balance of forces and interests at a particular moment in time. The content of some of the frameworks have been shaped by the struggles of affected peoples – women, indigenous people, landless peoples and so on – and since these struggles to define rights continue, the rights frameworks continue to evolve, incorporating new rights. The enjoyment of these rights, standards and protections by poor and marginalised women rests on their being organised and informed to interpret the rights and make their claims.

A summary of the different types of frameworks (such as Treaties, UN General Recommendations and Comments, African Commission Resolutions, Guidelines and Declarations) and how they can be used by marginalised women and their support organisations to claim rights or effect change is offered in parts across this paper. These are consolidated in a separate **Advocacy Tool** forming a part of this collection, which will be useful for organisers, campaigners and policy researchers working in the area of women, gender and extractives (as well as the related areas of women's health, land and natural resources, and women's economic empowerment).

BELOW: Ruins of a house after its inhabitants were relocated to make way for platinum mining, Mokopane, North-West province, South Africa. **Photo:** Bobby Marie



Table 1: Treaties

Governments that have ratified Treaties (also called conventions and protocols) are bound to discharge three obligations to respect, protect and fulfil. The obligation to protect requires states to take action to prevent violations of human rights by others, including corporations. A Treaty requires ratifying states to submit periodic reports outlining the human rights situation in their respective countries and their actions to fulfil their state obligations (Ipas, 2006). At the UN level these reports are submitted to several designated bodies that are tasked to oversee Treaty implementation. At AU level, they are submitted to the ACHPR.

DOCUMENT	LEGAL STATUS
Universal Declaration of Human Rights (UDHR) (1948)	This is an international instrument that was originally intended to only be a statement of human rights principles, but because states have treated it as a document that creates government obligations, the declaration has achieved the status of customary international law. This means that states must ensure that their citizens enjoy rights set out in it (Ipas, 2006).
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)	This is an international women's rights Treaty that imposes legal duties on member states to comprehensively protect women's rights. It came into force on 3 September 1981.
International Covenant on Economic Social and Cultural Rights (ICESCR) (1966)	This is an international legally binding instrument that advances the obligation of states parties to respect, protect and fulfil economic, social and cultural rights. It came into force on 3 January 1976.
International Covenant on Civil and Political Rights (ICCPR) (1966)	This is an international legally binding instrument that advances the obligation of states parties to respect, protect and fulfil civil and political rights. It came into force on 23 March 1976.
Convention on the Rights of the Child (CRC) (1989)	This is an international legally binding instrument that advances the obligation of states parties to respect, protect and fulfil the rights of children. It came into force in September 1990.
The Indigenous and Tribal Peoples Convention (1989) (No 169)	This is an international legally binding instrument, addressing the fundamental principle that indigenous and tribal peoples should be consulted and fully participate in all decision-making processes that concern them. It came into force on 5 September 1991.
African Charter on Human and Peoples' Rights (or the African Charter) (1981)	This is a regional legally binding instrument, which was ratified by all African states by 1999. It came into force on 21 October 1986.
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)	This is a regional legally binding instrument that was adopted on 11 January 2003 and came into force on 25 November 2005. All AU member states are expected to ratify this Protocol, and 36 countries had ratified it by 21 February 2013.
SADC Protocol on Gender and Development (2008)	This is a Southern African sub-regional legally binding instrument that aims to provide for the empowerment of women and is a tool used to set realistic, measurable targets, timeframes and indicators for gender equality and monitor and evaluate the progress made by member states (SADC, 2008). It came into force in November 2012.
SADC Protocol on Mining (1997)	This is a Southern African sub-regional legally binding instrument that came into force on 10 February 2000. Member States of SADC decided to establish a Protocol on Mining in order to adopt internationally accepted regional standards within the mining sector.
ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector (2009)	This is a sub-regional directive governing West African member states. The ECOWAS Council of Ministers adopted this Directive at its 62nd session in Abuja on 26 and 27 May 2009. ECOWAS Directives and their objectives are binding on all member states. However, the modalities for attaining such objectives are left to the discretion of states (ECOWAS, 2012).

HOW WE CAN MAKE USE OF THESE TREATIES

Since the UDHR and the various Treaties cited enshrine universal human rights standards, including those that can help to address gender injustices in regard to extractives, activists can use the instruments to:

- Develop position or issue papers on how extractives policies and laws can comply with human rights standards that protect women, and use these to advocate for improved laws and policies.
- Develop gender-sensitive model mining and other extractives laws and policies that adhere to minimum human rights standards.
- Use the human rights standards to advocate for the development of gender-sensitive Treaties related to the extractives industries; or for the development of gender-sensitive addendums to mining, other extractives or women-specific Treaties, where possible; or for the development of General Recommendations by Treaty-monitoring bodies like the CEDAW Committee and the ACHPR on how mining affects the enjoyment of various human rights by women.
- Monitoring mechanisms like the SADC barometer (which regularly monitors the implementation of the SADC Gender Protocol in each SADC country) can be used to carry analyses addressing gaps related to women and extractives.

2. MINING AND WOMEN'S ECONOMIC EMPOWERMENT

The idea of women's economic empowerment is not uncontested. According to Naila Kabeer (2012) conceptualisations diverge on three axes: firstly, the extent to which economic empowerment is seen as an end in and of itself or a means to achieving other development goals. Secondly, the extent to which empowerment is defined in purely economic terms (as in the orientation of the World Bank) or whether there is an emphasis to ripple effects into other areas of women's lives. And lastly, there are differences in thinking about the market and its relationship to women's economic empowerment. By illustration, the World Bank is of the view that women's economic empowerment can be achieved by improving their 'competitiveness' in the market, whilst the Swedish International Development Agency (SIDA) maintains that women's economic empowerment must be achieved through women's "equal access to and control over critical economic resources and opportunities, and the elimination of structural gender inequalities in the labour market including a better sharing of unpaid care work" (Tornqvist and Schmitz, 2009: 9 in Kabeer, 2012). The position that women's economic empowerment cannot be achieved without addressing structural inequalities in resource access and control, and the fair distribution of paid and unpaid work is the starting point for the analysis that follows.

In respect of extractives, women's economic empowerment presents itself in two ways: firstly, the erosion of actually existing livelihoods or economic activities by extractives through displacements, loss of land and natural resources, and the pollution of water supplies⁴; and secondly, the potential for women to invest in industrial mining for profit-making purposes (an aspiration of the few and a dimension we have not prioritised in this collection) or to obtain employment in extractives companies and the businesses that support them in upstream or downstream economic activities. Women's employment as workers in industrial mines and as artisanal and small-scale miners (ASM) may, depending on circumstances and conditions of work, be considered a form of economic empowerment.

As is well pointed out in Paper 6 on artisanal miners and Paper 2 on women who work in industrial mines, the potential for women's economic and social empowerment is compromised by numerous challenges, such as unsafe working conditions, sexual harassment and discrimination, and gender-specific threats to health. The next section considers how these challenges are incompatible with provisions of three women-specific instruments that promote women's right to economic empowerment, namely the **1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, the **2003 Protocol to the African Charter on Human and Peoples' Rights (AU Protocol on the Rights of Women in Africa)** and the **2008 SADC Protocol on Gender and Development (SADC Gender Protocol)**. This is followed by an analysis of the extent to which women's economic empowerment is a visible theme in mining-specific frameworks at global and continental levels.

2.1 Protections under women-specific human rights related instruments

Under women-specific Treaties, the economic empowerment of women is guaranteed through the protection of their rights in formal employment as well as entrepreneurship. In Paper 2 we outline the many gender inequalities that exist in industrial-scale mining employment. Contrary to the current trend of women either being negligibly employed in the sector, or experiencing discrimination and unequal treatment when they are employed, legally binding Treaties like **CEDAW**, the **AU Protocol on the Rights of Women in Africa**, and the **SADC Gender Protocol** guarantee women's rights to equal access to employment, to equal opportunities and entitlements as those granted to men, and to occupational safety.⁵ It therefore follows that the diligent implementation of the respective obligations by states parties could help to address various forms of sex-based discrimination in the formal mining industry.

Though not legally binding, one useful global framework for women's economic empowerment is the

4 See Paper 3: Land and Food Sovereignty Undermined – Impacts on Peasant Women.

5 CEDAW Article 11(1)(b) & (d); AU Protocol Article 13(a)(b) & (d); SADC Gender Protocol Article 19.

Women's Empowerment Principles that were developed in 2011 by UN Women and the UN Global Compact in order to inspire businesses to intensify efforts to bring in women at all levels. Some of the principles include: ensuring that all business and corporate policies are gender-sensitive, that is, that they identify factors that impact women and men differently and that corporate culture advances equality and inclusion; ensuring that workplace policies and practices are free from gender-based discrimination; establishing a zero-tolerance policy towards all forms of violence at work; and expanding business relationships with women-owned enterprises, including small businesses, and women entrepreneurs (UN Women & UN Global Compact, 2011). These women-specific Principles are supposed to complement **UN Global Compact Principles**, which also focus on environmental issues and are discussed under section 3.1.

BOX 1: A NOTE ON THE UN GLOBAL COMPACT

The Global Compact (GC) was launched in 2000 as a strategy aimed at influencing business to align its activities with the UN's principles. It has been extensively critiqued by CSOs who maintain that (a) the compact does not have mechanisms through which member companies can be sanctioned for non-compliance with the Compact's principles; (b) that a corporation can continue to participate even if it has not demonstrated progress in meeting the principles; and (c) the GC has accepted members with highly questionable environmental and human rights in direct contravention of the Compact principles.⁶

In Africa, the **AU Protocol on the Rights of Women in Africa** and the **SADC Gender Protocol** also carry specific provisions relating to women's economic empowerment through entrepreneurship. Article 13(e) of the AU Protocol on the Rights of Women in Africa requires states parties to create conditions to promote and support the occupation and economic activities of women, in particular within the informal sector. Article 17 of the **SADC Gender Protocol** imposes obligations on member states to take specific action, by 2015, towards the economic empowerment of women by:

- Adopting policies and enacting laws that ensure equal access, benefit and opportunities for women and men in trade and entrepreneurship.
- Reviewing their national trade and entrepreneurship policies to make them gender sensitive.
- Introducing affirmative action measures that ensure that women benefit equally from economic opportunities, including those created through public procurement processes.

In November 2011, the SADC region developed the **Draft SADC Women's Economic Empowerment (WEEP) Strategy** to strengthen coordination and implementation of the region's commitments on women's economic empowerment.⁷ Though it is not a legally binding instrument, the strategy is significant because it re-emphasises that the pursuit of women's economic empowerment and gender equality will reduce poverty and promote development (SADC, 2013). The Strategy emphasises the need to focus on addressing challenges related to women's reproductive work in family and community, which work has been negatively impacted by cuts in budgets for and the privatisation of state services, and which substantively underpins inequalities between men and women within and across different social groups.

The provisions on women's economic empowerment in AU and SADC frameworks have a direct bearing on women's participation in artisanal and small-scale mining. The UN has identified this sector as a dangerous and often only marginally profitable one for women (UN, 2012). Paper 6 addresses the many barriers to women's benefit from artisanal mining: cultural stereotypes about women's place in society; women's concentration in processing activities, which involve dangerous materials such as mercury and arsenic; and pay discrimination. Women's

6 See Global Compact Critics for more information <<http://globalcompactcritics.blogspot.com/>>.

7 Draft WEEP Strategy, on file with author.



ABOVE: *Twice burdened* – a woman artisanal miner in Tanzania. **Photo:** Evans Rubara

challenges are compounded by the illegality of ASM in many contexts, resulting in little or no state regulation and support, and instead active repression by some states and corporations when the interests of artisanal miners collide with large-scale mining interests. The various economic empowerment related provisions under the women-specific Treaties could be drawn upon to make arguments for and challenge regional bodies and national states on their obligations to support women's entrepreneurship, including through artisanal mining by putting in place the needed supports (legislative, policy and finance) and protections (laws, regulations and institutional measures) to the artisanal mining sector. These should specifically address the gender-specific barriers and threats that women artisanal miners confront.

2.2 The response of mining-specific frameworks to the women's economic empowerment agenda

A review of different extractives and mining-specific instruments indicates that some care has been taken to incorporate women's economic empowerment at the UN and ECOWAS levels, but not at AU and SADC levels. UN frameworks like the **2002 Berlin II Guidelines for Mining and Sustainable Development (Berlin II Guidelines)**⁸ recognise that small-scale mining requires specific regulatory attention under which the special needs of women, who often represent up to 50% of the small-scale mining workforce, should be taken into consideration (Berlin II Guidelines, 2002: 47). This would demand addressing factors that inhibit poor women's economic success in the sector, which are discussed in Paper 6.

Out of all the instruments analysed under this section, the Berlin II Guidelines is the only document that looks beyond women's direct involvement in mining to address spill-over economic benefits or opportunities that may result from mining operations within mining communities. It is hard to imagine what these opportunities could be, as they are not very evident in most mining settlements with which the authors are familiar, but the procurement of very limited inputs and services (food for the canteens, or basic support services in maintenance and cleaning) may be possibilities. The Berlin II Guidelines point out that in mining areas, women may not necessarily share equally in economic benefits like direct employment, compensation and the provision of secondary services. They recommend that mine operators address gender inequalities in the economic benefits arising from their activities (Berlin II Guidelines, 2002: 40). However, an oversight of the provision under the Berlin II Guidelines is that it emphasises the responsibilities of mine operators and not the state. Yet, governments should carry the greatest responsibilities for putting in place and enforcing mining legal and policy frameworks, which ensure that the needs of women in the mining sector and mining settlements are appropriately addressed.

Still within the UN system, the **2012 Report by the UN Special Rapporteur on the Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste** focuses on the extractives industry, pinpointing that mining, one of the world's most dangerous occupations, may violate women's rights related to employment under CEDAW. He has noted that Article 11 of CEDAW underscores women's right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction for women in the field of employment. This is complementary to the obligation of state parties to take steps necessary for the improvement of all aspects of environmental and industrial hygiene, as well as the prevention, treatment and control of occupational and other diseases under Article 12 of the Convention. From a women's economic empowerment point of view, the Special Rapporteur's observations require that women involved in mining be guaranteed safe working conditions so that their economic empowerment is not undermined by ill-health arising from mining activities.

African frameworks related to mining are inconsistent in their protection and promotion of women's economic empowerment in the mining sector. While a few have specific provisions on the issue, they are still largely vague. For example, the AU has adopted a number of policy measures related to mining in the **2009 African Mining Vision (AMV)**⁹ and the **Action Plan for Implementing the AMV** that was adopted in December 2011.¹⁰ Aside from wider civil society organisation (CSO) concerns about the orientation of and some of the key proposals contained in the AMV (see Table 5 on Other African Frameworks in section 3.2), the integration of women's economic empowerment considerations in these instruments is noticeably loose. Under the AMV, states share the vision of having a sustainable and well-governed mining sector that effectively harnesses and deploys resource rents and is safe, healthy, *gender* and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities (AMV, 2009: 3). However, the concept of 'gender inclusiveness' is not

8 The Berlin II Guidelines build on the first edition of Environmental Guidelines for Mining Operations that were the outcome of the 1991 Berlin Round Table on Mining and the Environment organised by the UN and the German Foundation for International Development. They are intended to provide general guidance for sound and sustainable management in mining, and are to be amended and improved according to the specific needs of each country.

9 Adopted by the First AU Conference of African Ministers responsible for mineral resources development, held in Addis Ababa in October 2008. Its ultimate goal is to use Africa's mineral resources to meet the Millennium Development Goals (MDGs), eradicate poverty, and achieve rapid and broad-based socio-economic development.

10 Co-developed by the AU Commission, African Development Bank (AfDB), and UN Economic Commission for Africa.

defined and made tangible in the substantive parts of the vision.

Though the AMV rightly notes that challenges related to the ASM sector include gender inequality (AMV, 2009: 30), it does not match this acknowledgement with a corresponding vision for addressing the challenge. For example, the AMV's tentative framework for action sweepingly intends to 'ensure gender equality' as one of the measures for fostering the establishment of resilient artisanal and small-scale mining communities (AMV, 2009: 35). Without more content on how gender equality could be ensured in the sector, the vision fails to give much direction. On a more positive note, one of the objectives of the AMV's tentative framework for action is to progress towards gender equity and the empowerment of women. It plans to achieve this by "initiating the empowerment of women through integrating gender equity in mining policies, laws, regulations, standards and codes" (AMV, 2009: 35). At least this provision is more specific and has the potential to address women's economic empowerment challenges in industrial and artisanal mining sectors but only if AU states, guided by a tangible Action Plan, are aware and mindful of purposefully addressing the challenges confronting women in these sectors. A gender mainstreaming commitment also holds the danger of merely 'integrating commitments to gender equity' into existing laws, policies, standards and codes that do little to protect the interests of communities and workers and may therefore hold little transformative potential for peasant and working-class women.

As the AMV is meant to be operationalised by the **2011 Action Plan for Implementing the AMV**, one would expect that the loose references to gender under the AMV would be concretised through concise action points under the Action Plan. Disappointingly, the Action Plan, which has nine programme clusters,¹¹ does not satisfactorily carry through and expand the gender-related actions related to women's empowerment under the AMV. For example, one of the Action Plan's expected outcomes is to improve the viability and sustainability of the ASM sector to contribute to growth and development. However, the earmarked activities to realise this outcome just mention "improved health, safety, environment and *gender* in ASM" (Action Plan, 2011: 22). The reference to gender here has no concrete substance. Further, there is no indication how the 'gender' aspect may be monitored. Similarly, the programme cluster related to environment and social issues (whose expected outcome is "a mining sector that is environmentally friendly, socially responsible, and is appreciated by communities") has no gender-specific intervention (Action Plan, 2011: 22).

At a sub-regional level, the **2009 ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector** is one instrument that has made an effort to progressively require its West African member states to make adequate provision for the realisation of economic, social and cultural rights as they relate to mining activities and women's empowerment (ECOWAS, 2009: Article 15(3)). However, the provision is framed very broadly, and assumes that member states would be fully cognisant of the need to take specific steps to address gender-specific issues that hamper the economic empowerment of women in mining, which may not always be the case. But in comparison with the **1997 SADC Protocol on Mining**, which is a binding Treaty governing Southern African member states and totally gender-blind, the ECOWAS Directive is nominally better.

If the interests of women working in or impacted by the mining industry in Sub-Saharan Africa are to be adequately protected, policy and legal frameworks have to move away from ignoring gender or treating it as an 'add-on', and start concretely confronting and addressing their challenges and needs. While noting the positive efforts made by the ECOWAS Directive, it appears that for now, most regional mining frameworks substantively fail to transform the mining sector to address the interests of women mine workers and community members. The primary interest of these frameworks seems to be the strengthening of regional economic integration and state benefits accruing from mining.

11 Programme cluster 1 – mining revenues and mineral rents management
 Programme cluster 2 – geological and mining information systems
 Programme cluster 3 – building human and institutional capacities
 Programme cluster 4 – artisanal and small-scale mining
 Programme cluster 5 – mineral sector governance
 Programme cluster 6 – research and development
 Programme cluster 7 – environmental and social issues
 Programme cluster 8 – linkages and diversification
 Programme cluster 9 – mobilising mining and infrastructure investment.



ABOVE: Rosemary Mvula, smallholder and market seller at Kankoyo, which has been devastated by copper mining and is considered the most polluted town in Zambia. **Photo:** ActionAid



Table 2: UN General Recommendations and General Comments

General Recommendations or General Comments are developed by bodies that have been assigned the role of monitoring how states are complying with major human rights Treaties. These Treaty-monitoring bodies produce the General Recommendations or General Comments to provide guidance to states on how to interpret the rights of the Treaty so that they are given meaning. General Recommendations or General Comments usually focus on a particular article of the Treaty, and articulate in more detail the standards that governments must live up to in implementing the right (Ipas, 2006).

DOCUMENT	LEGAL STATUS
<p>CEDAW Committee General Recommendation No 21</p> <p>CEDAW Committee General Recommendation No 24</p>	<p>The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendations were adopted by the CEDAW Committee, which monitors the implementation of CEDAW. The Committee is empowered to make General Recommendations based on the examination of reports and information received from states parties. General Recommendations are addressed to states parties and usually elaborate the Committee's view of the obligations assumed under the Convention (CEDAW, n.d.).</p> <p>Since the CEDAW Committee issuing the General Recommendations is the body established to enforce the Treaty, its interpretative guidance is highly authoritative (CEDAW, n.d.).</p>
<p>General Comment No 14 of the Committee on Economic Social and Cultural Rights (CESCR)</p> <p>General Comment No 4 (1991) of the CESCR</p>	<p>The CESCR General Comments are published by the Committee on Economic, Social and Cultural Rights (CESCR), which monitors the International Covenant on Economic Social and Cultural Rights in order to interpret on the content of human rights provisions in the convention. Since the CESCR issuing the General Recommendations is the body established to enforce the Treaty, its interpretative guidance is highly authoritative (Ipas, 2006).</p>

HOW WE CAN MAKE USE OF GENERAL RECOMMENDATIONS AND GENERAL COMMENTS

We can target the Treaty-monitoring bodies to influence the contents of General Recommendations or General Comments to bring in women's rights and gender issues as they relate to extractives. There are different ways to do this: (a) write shadow reports to assist committees consider state party reports; (b) attend committee sessions that are considering states party reports and personally meet with committee members between sessions; or (c) make presentations to the committees or pre-session Working Groups of the committees, where possible.

General Recommendations or General Comments can influence governments to implement similarly worded legal and policy provisions (Ipas, 2006).



Table 3: Commission Resolutions and Guidelines

The African Charter created the ACHPR as a body to monitor compliance with the Charter. One of the functions of the ACHPR is to provide guidance on the interpretation of certain rights in the African Charter.

DOCUMENT	LEGAL STATUS
<p>Resolution on a Human Rights-Based Approach to Natural Resources Governance (2012)</p>	<p>This was adopted by the ACHPR at its 51st Ordinary Session held from 18 April to 2 May 2012. This thematic resolution is similar to the General Comments of UN Treaty bodies. It elaborates in greater detail specific human rights themes or a particular substantive right covered in the African Charter (CHR & ACHPR, 2011). This implies that since the Resolution is produced by the body established to enforce the African Charter, its interpretative guidance is highly authoritative.</p>
<p>Principles and Guidelines on the Interpretation of Economic, Social and Cultural (ECOSOC) Rights in the African Charter (2010)</p>	<p>The Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter (adopted at the African Commission’s 47th Ordinary Session held in Banjul, the Gambia, from 12 to 26 May 2010) provide detailed guidance to states on drafting and implementing development policies on ECOSOC rights. Together with the state party reporting Guidelines below, they are supposed to guide states in developing state party reports. The Principles and Guidelines are highly authoritative since they are developed by a body that has been trusted to monitor compliance with the African Charter.</p>
<p>State party reporting Guidelines for ECOSOC Rights in the African Charter (2010)</p>	<p>Another function of the ACHPR is to issue guidelines for state reports. The 2010 State Party Reporting Guidelines assist states in their reporting on ECOSOC rights under the African Charter. They were adopted at the 48th Ordinary Session held in Banjul, the Gambia from 10 to 24 November 2010 (Interrights, 2011). They are to be used in conjunction with the 1989 Guidelines for National Periodic Reports under the African Charter. Though they are not legally binding, they are highly authoritative because they have been formulated by a body that has been trusted to monitor compliance with the African Charter.</p>

HOW WE CAN MAKE USE OF AU RESOLUTIONS AND GUIDELINES

Among other things, the Resolution can be used to press for gender-sensitive environmental impact assessments in countries.

The Principles and Guidelines can be used by advocacy and litigation NGOs to apply ECOSOC rights guaranteed under the Charter to obtain redress for women, and ensure the progressive development of standards related to women’s experiences in regard to extractives. This work can be done at national and regional levels.

CSOs may also find the Guidelines helpful in formulating alternative and shadow reports that focus on women and extractives-related issues. They can also use them as benchmarks against which national policies can be assessed (Ipas, 2006; Interrights, 2011).

CSOs can use the reporting guidelines to formulate alternative and shadow reports to expose violations of women’s rights in and due to extractives, and influence the ACHPR’s concluding observations that it issues after examining each state party report. The Guidelines can also be used to critique state party reports that have failed to integrate analysis related to extractives and women’s rights.

3. WOMEN'S RIGHTS TO ADEQUATE HEALTH

The extractives industries shoulder the obligation to protect women's health because of environmental standards that have been set at a global level. Broader human rights frameworks clearly protect women's health, which according to Papers 2 (women who work in industrial mines), 3 (land and food sovereignty impacts) and 5 (women's sexuality and autonomy) are put at risk by negligent mining practices. However, the role that mining-specific frameworks that have been developed at UN and AU levels are playing in protecting women's health is varied. Some positive examples are visible at the UN level, but not at the AU level. Some of the alternative frameworks developed by global fora and CSO bodies exhibit an interest to protect women's health especially in respect of corporate activities.

3.1 Women's health protections under general human rights related instruments

Women's ill-health in extractives-impacted communities is commonly provoked by environmental pollution, though Paper 5: Extractivism's Impacts on Women's Bodies, Sexuality and Autonomy has also indicated that sex work, different variants of transactional sex and violence impact on women's health and well-being. Environmental health as a human rights standard was set by the **1992 Rio Declaration on Environment and Development**.¹² Under the Declaration (Principle 1), all human beings are entitled to a healthy and productive life in harmony with nature. Further (Principle 3), the right to development of present generations must be fulfilled in ways that do not compromise the needs of future generations. Environmental protection is regarded as an integral part of the development process (Principle 4). The **UN Global Compact Principles**, which are based on and derive from the Rio Declaration and several other declarations and conventions,¹³ call upon businesses to support a precautionary approach to environmental challenges (Principle 7), undertake initiatives to promote greater environmental responsibility (Principle 8), and encourage the development and diffusion of environmentally-friendly technologies (Principle 9).

The **Earth Charter**,¹⁴ which was launched in 2000 by the Earth Charter Commission,¹⁵ proclaims that some of the common standards by which the conduct of all individuals, organisations, businesses, governments, and transnational institutions are to be guided and assessed include: respecting that alongside the right to own, manage, and use natural resources comes the duty to prevent environmental harm and to protect the rights of people (Principle 1: para 2(a)). This is in addition to preventing pollution of any part of the environment and avoiding the build-up of radioactive, toxic, or other hazardous substances (Principle II: para 6(d)). Though the Earth Charter is not a binding instrument, thousands of local, national, and international organisations, including hundreds of local governments, have endorsed the document and are using it as an educational tool and guide to a sustainable way of living (Rockefeller, n.d.).

The **Cochabamba Declaration**, an inspiring non-binding framework adopted by thousands of the world's citizens in Bolivia on 8 December 2000, takes a stand against the capitalist system which has converted Mother Earth "into a source of raw materials, and human beings into consumers and a means of production" (para 6). This system has led to global warming and if this exceeds a 2 degrees Celsius increase, there is a 50% probability

12 Which emerged out of a UN Conference on Environment and Development held at Rio de Janeiro from 3 to 14 June 1992.

13 The Universal Declaration of Human Rights; the ILO's Declaration on Fundamental Principles and Rights at Work; and the UN Convention Against Corruption (Global Compact Network, n.d.).

14 The Earth Charter is a product of a decade-long, worldwide, cross-cultural dialogue on common goals and shared values. First proposed in "Our Common Future" (1987), the report of the UN World Commission on Environment and Development, the drafting of the Earth Charter was part of the unfinished business of the 1992 UN Rio Earth Summit. Following the Summit, two NGOs, the Earth Council and Green Cross International, joined forces to advance the development of an Earth Charter (Earth Charter Initiative, 2012).

15 In May 1995, the Earth Council and Green Cross International co-sponsored a meeting at The Hague to discuss elements of an Earth Charter and to initiate the next stage in the drafting process. An Earth Charter Commission of eminent persons with representation from all regions of the world was then formed to oversee the project.



ABOVE: Filled with despair – one of the more than 4 000 farming families evicted from Geita, Tanzania to make way for the controversial mega Gold Mine. **Photo:** Evans Rubara



ABOVE: *This is my home now – the makeshift home of a family forcibly relocated for mining, Tanzania.* **Photo:** Evans Rubara

that the damages to Mother Earth will be irreversible. The Declaration makes the call for a radical systems change which “recognizes Mother Earth as the source of life” and is based on the following principles:

- “harmony and balance among all and with all things;
- complementarity, solidarity, and equality;
- collective well-being and the satisfaction of the basic necessities of all;
- people in harmony with nature;
- recognition of human beings for what they are, not what they own;
- elimination of all forms of colonialism, imperialism and interventionism;
- peace among the peoples and with Mother Earth” (Cochabamba, 2000).

Paper 3: Land and Food Sovereignty Undermined – Impacts on Peasant Women has indicated that natural resources (specifically land and water) contaminated by mining waste have specific impacts on women’s health because of their leading role in food production, water harvesting and natural resource management. These impacts include increased rates of cancer, decreased cognitive function and the development of skin lesions.¹⁶ That these impacts are rarely, if at all, mitigated violates the specific right of women to health, which is firmly secured by Treaties, as well as Treaty-monitoring bodies. Within the UN human rights framework, the **International Covenant on Economic and Social Cultural Rights (ICESCR)** and **General Comments of the Committee on Economic Social and Cultural Rights (CESCR)** are pertinent to women’s health.¹⁷ While the ICESCR has asserted the right of everyone to enjoy the highest attainable standard of physical and mental health (Article 12(1)), the CESCR has interpreted this right to apply to the impacts of mining on women, including those in indigenous populations.

The CESCR has pronounced that the provision on “the improvement of all aspects of environmental and industrial hygiene” under Article 12(2)(b) of the ICESCR comprises the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health (CESCR, 2000: para 15). With regard to women, the Committee has stressed that to eliminate discrimination against women, there is a need for states to develop and implement comprehensive national strategies to promote women’s right to health, whose major goal should be reducing women’s health risks (CESCR, 2000: para 21).

The CESCR has connected the issue of health to the infringement of land rights. It has argued that in indigenous communities the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a harmful effect on their health (CESCR, 2000). This statement, while gender neutral, is of particular relevance to peasant and indigenous women who enjoy a deep and symbiotic relationship to land and natural resources because of their reproductive responsibilities, and very specifically their pivotal role in food production.¹⁸

Under the **Universal Declaration of Human Rights (1948)**, motherhood and childhood are entitled to special care and assistance (Article 25(2)). Similarly, **CEDAW** upholds the right of women to protection of health and to safety in working conditions, including safeguarding the function of reproduction (Article 11: para 1(f)). In mining environments, these rights are violated through women’s exposure to substances that can harm their reproduction, particularly in the ASM sector. The 2012 report of the **Special Rapporteur on the Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste** has elaborated on this risk and recommended that in accordance with their obligation to respect, protect and fulfil human rights, states should develop a comprehensive, legally-binding regime to ensure chemical safety throughout the lifecycle of all chemicals, with particular attention to the needs of the most vulnerable (para 69(a)). Further, states should move towards the establishment of international standards regarding the amount of allowable negative impacts of extractive industries on health and the environment so as to address the disparate impacts on communities in nations with weak regulations (para 69(d)).

16 Recent studies conducted by the South African Council for Geosciences (CGS) concluded that AMD in some of the areas contains high levels of radioactivity (Coetzee et al, 2005), which may increase the risk for cancer.

17 The Treaty-monitoring body of the ICESCR.

18 This is addressed in Paper 3, which focuses on land and food sovereignty.

BOX 2: A NOTE ON THE LANGUAGE OF VULNERABILITY

While the authors have 'respected' much of the text and language used in the frameworks reviewed here, we do note that the language of 'vulnerability' when applied to women does not match our analysis and political orientation. Women in poor communities, by virtue of their class, gender and ethnic status, may have limited or no control over resources, few or no educational opportunities and less decision-making power. But this does not detract from their ability to act to transform their situation. In this respect they cannot be equated with minors or with people who are severely disabled or with the very elderly, all of whom are extremely dependent on able-bodied adults of sound mind. One often finds these different social groups lumped together as 'the vulnerable'. The language of 'vulnerability' infantilises women, strips them of their power, and undermines the powerful contribution women make as care givers, workers and managers of community resources. The notion of women as 'vulnerable' and in need of protection denies them their very human power to act to transform the world around them.

Under **General Recommendation No 24** of the CEDAW Committee, countries that have ratified CEDAW are encouraged to include in their states party reports information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible interventions to address these risks and conditions affecting women (para 10). Working-class and peasant women suffer particular exposure to mining-related hazardous wastes due to their roles as farmers, managers of natural resources (like water), and processors of ore in ASM. In Africa, Article 14(1) of the **AU Protocol on the Rights of Women in Africa** enshrines women's right to health, which is accompanied by an obligation on states parties to ensure that this right is promoted and respected. Under the Protocol, women's right to live in a healthy and sustainable environment includes the responsibility of states parties to ensure that proper standards are followed for storage, transportation and disposal of toxic waste (Article 18(2)(e)). The reckless use and disposal of harmful chemicals and mining wastes that lead to acid drainage and other forms of environmental pollution that are particularly harmful to women because of their social and economic roles are clear violations of this right.

Beyond the Protocol, the African continent has made advances in articulating the content of various economic, social and cultural rights under the African Charter in a way that directly responds to health issues affecting women working in or impacted by extractives operations. For example, the ACHPR **Principles and Guidelines on the Interpretation of ECOSOC Rights in the African Charter on Human and Peoples' Rights**, which was adopted in November 2010. The Principles and Guidelines explain that the right to health under Article 16(1) of the African Charter imposes a core obligation on African states to protect people against environmental, industrial and occupational hazards, and prevent air, land and water pollution (para 67(xix)). And as part of the protection of people's right to water and sanitation, member states have the obligation to ensure that water resources are protected from pollution, including through extractive industries in rural areas (para 92(xiv)). The Principles and Guidelines confer a clear duty to member states to implement these core obligations by paying particular attention to members of vulnerable and disadvantaged groups in order to ensure effective equality in the enjoyment of ECOSOC rights (para 32).

In 2012, the ACHPR adopted **State Party Reporting Guidelines for ECOSOC Rights in the African Charter on Human and Peoples' Rights (Tunis Reporting Guidelines)**, which give more weight to the protection of women's health. The Guidelines, which are supposed to be applied when African governments are submitting their states party reports to the African Commission,¹⁹ prescribe that progress on the fulfilment of

¹⁹ Every two years in compliance with section 62 of the African Charter.

the right to health should indicate the legislative and other measures taken to protect individuals and peoples against environmental, industrial and occupational hazards; and to prevent air, land and water pollution (para 7(c)(v)) (ACHPR, 2012a). Further, member states should take care to provide statistics disaggregated by gender, age, ethnic origin, urban/rural population and other relevant factors, particularly with reference to vulnerable or marginalised groups (para 3).

The failure of African states to adopt the needed protective policies and standards is therefore a failure of states to fulfil their obligations to protect women's health under both regional and international conventions.

3.2 Mining-specific instruments and women's health rights

From the frameworks reviewed, women's health is partially protected in mining policy instruments developed by the UN, while such protection is lacking within equivalent policy frameworks in the AU. A review of selected alternative frameworks outside of official UN and AU human rights mechanisms also demonstrate a lack of attention to women's health rights. The review was approached from two angles: (a) an examination of mining frameworks that address women's health more generally; and (b) a study of frameworks that focus on impact assessments, prevention of risks and damage, and rehabilitation.

It should be noted that the frameworks that support women's health more generally were scanty. The one document that came closest was the **2012 Report of the UN Special Rapporteur on the Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste**. This report made special mention of the impact of hazardous substances from extractive industries on women's maternal health, especially during pregnancy and breast-feeding (para 31). The Special Rapporteur has also identified ASM as a particularly dangerous sector for women because they are mainly found in processing jobs that expose them to mercury and other harmful chemicals. He has emphasised that international human rights law like CEDAW requires states parties to put in place preventive measures and programmes to protect women of child-bearing age from mercury exposure (para 35).

The extent to which the health of community members, including and more specifically women's health, is protected in mining-specific instruments can, in part, be inferred from the requirement of mining companies to conduct environmental and/or social impact assessments, and by provisions related to the prevention of risk and damage, and rehabilitation. The review found that international frameworks that prohibit dumping of wastes²⁰ do not deal with the prevention of hazardous waste risks by industries at domestic level, but focus on the deliberate disposal of wastes at sea, or in other countries. The **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)** is relevant nationally, because it mandates states parties to ensure that, where they meet any criteria laid down in national law, members of the public must have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment (Article 9(3)) (UNECE, 1998). However, the effectiveness of the Treaty still rests on countries developing and enforcing legislation that punishes corporations for damaging health effects related to environmental pollution or degradation.

The **UN Berlin II Guidelines**, which progressively mainstreams gender, endorses the need for Social Economic Impact Assessments (SEIA) to precede mining operations. They propose that SEIAs should integrate a gender analysis that systematically examines the roles of and relations between women and men in communities to be impacted by the mining operations. This is out of recognition that there may be very specific social and environmental impacts of mining operations on women and children (as a result of already existing power inequalities) that may necessitate specific measures in mitigation plans. The gendered impacts of mining on women's health can include significant increases in sexually transmitted diseases, sexual harassment and increased levels

20 These are the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1975); Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (Bamako Convention); Convention on the Prevention of Dumping of Wastes and Other Matter (London Convention); Convention to Ban the Import into Forum Countries of Hazardous Waste and to Control the Transboundary Movement and Management of Hazardous Wastes within the Pacific (Waigami Convention); Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal.

of violence against women in local communities due to the concentrated presence of male migrant workers (Berlin II Guidelines, 2002: 40).

The Berlin II Guidelines further recommend that compliance with environmental standards and legislation should be enforced through mechanisms such as: imposing civil liability on mining operators; compulsory insurance or payment into an environmental guarantee fund to cover damages and compensation; financial surety; and incentive measures to maintain environmental standards in the absence of specific regulations. The Guidelines even provide suggestions for rehabilitation plans. However, being Guidelines, these provisions are framed as suggestions and countries do not face penalties for non-compliance (Berlin II Guidelines, 2002: 9). Unlike the Berlin II Guidelines, the **1998 UN Environmental Guidelines for Mining Operations**²¹ missed the opportunity to consider gender dimensions when it analysed the effects of environmental problems on miners in the ASM sector.

The **2011 Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (Ruggie Framework)** introduces the notion of 'gender-sensitive human rights impact assessments', which may be carried out in addition to environmental and social impact assessments. The Ruggie Framework requires business enterprises to assess the human rights context prior to a proposed business activity. They should identify various groups whose human rights may be adversely affected by the proposed activity, and bear in mind the different risks that may be faced by women and men (HRC, 2011: para 18). Such an approach to a human rights impact assessment could direct attention to health-related vulnerabilities of women, amongst other gender issues. However, to be relevant, such assessments would have to be routine, and not simply carried out as a 'once-off' activity prior to the commencement of an extractives project. And more attention would have to be paid to rehabilitation measures to avoid probable risks to women's health upon mine closures.

On the African continent, women's health is not considered in AU mining-specific frameworks, though the need for African countries to ensure independent social and human rights impact assessments that guarantee women's rights has been endorsed by the **2012 Resolution on a Human Rights-Based Approach to Natural Resources Governance** adopted by the ACHPR.²² The **2011 Action Plan for Implementing the AMV** has omitted gender-specific strategies to achieve its goal of creating "a sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities" (AMV, 2009: 3). It broadly targets the "mainstreaming of the principles of impact assessments including strategic, environmental, social, human rights, health into national mining policies, laws, and regulations".²³ This action is extremely vague and unhelpful.

The first report of the **AU Working Group on Extractive Industries, Environment and Human Rights Violations in Africa** (under the ACHPR) presented in October 2012 acknowledged impacts of the extractives industry on the right to health, but not specifically women's health. In this regard, it highlighted the African Commission's decision in the *Ogoni case*, in which the exploitation of oil reserves on *Ogoni* land in Nigeria had no regard for the health or environment of the local communities, resulting in the contamination of water, soil and air.²⁴ Since the report was issued during the early stages of the Working Group's mandate, it can only be hoped that the terms of reference of the Working Group, also gender-blind, will be purposefully fulfilled with an awareness of the need to encompass gender questions.

Mining frameworks that touch on the need for environmental and social impact assessments to cover specific environmental issues that [also] affect peasant women in mining contexts have been produced by independent institutions outside the UN and AU. For instance, the **International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability** became effective on 1 January 2012 to guide projects

21 Compiled by the UN Department of Economic and Social Affairs (UNDESA) & the UN Environment Programme (UNEP) ST/TCD/20.

22 Adopted at its 51st Ordinary Session held from 18 April to 2 May 2012 in Banjul, The Gambia (ACHPR, 2012b).

23 AMV Programme Cluster 7: 31.

24 Communication 155.96 against the Federal Republic of Nigeria. The Commission held that, "Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts which may be perpetrated by private parties", and found the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 & 24 of the African Charter.



ABOVE: Sterkwater resettlement area, to which the residents of Ga Pila village were relocated to make way for a mining dump. Residents are fighting the Amplats mining company for services that have not been rendered, for the balance of compensation due, and because their farming fields are located at a great distance away from the settlement. **Photo:** ActionAid

that are financed by the IFC, which may include mining. Projects are required to identify individuals and groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status – and this includes sex.²⁵ Projects are also required to avoid the release of pollutants or, when avoidance is not feasible, minimise and/or control the intensity and mass flow of their release to air, water, and land.²⁶ Connected to this is the obligation of projects to avoid or minimise the potential for community exposure to diseases that could result from project activities, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups.²⁷ However, the IFC leaves it to clients to establish their own procedures to monitor and measure the effectiveness of environmental management programmes, as well as monitor their own compliance with any related legal and/or contractual obligations and regulatory requirements.²⁸ This makes the established standards potentially rhetorical. Still, the IFC standards could be contrasted to the **2008 OECD Guidelines for Multinational Enterprises**, which do not highlight the relevance of a gender perspective in the carrying out of environmental impact assessments.

Guidance on how to concretely mainstream gender in impact assessments can be drawn from a gender-impact assessment framework for mining projects produced by **Oxfam Australia** in 2009. This document outlines key steps for a well-guided gender-impact assessment, including gender considerations that should be made during data collection; context analysis; issue identification; an examination of the project responses to women's needs; making recommendations and developing a gender-risk awareness strategy; and the undertaking of community-based gender audits or reviews to monitor how a company is addressing gender issues (Oxfam, 2009). The application of such a framework to environmental and social impact assessments could therefore guarantee that the specific impacts of projects on women's health and other women's rights by mining and other extractives projects are identified and addressed in project design. What is greatly needed for communities, and for women in communities, is for impact assessments to be fully independent, for results to be shared in ways that are accessible to local communities, and for such assessments to feed into open and democratic decision-making processes in which communities, and women in particular, are empowered to give or withhold consent for extractives activities. The current practice of environmental and social impact assessments being undertaken, and the results managed, by mine operators must be rejected.

25 Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts: para 12.



26 Performance Standard 3 – Resource Efficiency and Pollution Prevention: para 10.

27 Performance Standard 4 – Community Health, Safety, and Security Community Exposure to Disease: para 9.

28 Ibid: para 22.

Table 4: Declarations

A Declaration is a document stating agreed norms or principles. It is not legally binding and cannot be enforced in courts. However, it still expresses agreed rules of conduct that have an impact on international relations that may later crystallise into custom or become the basis of a binding instrument.

DOCUMENT	LEGAL STATUS
<p>Rio Declaration on Environment and Development (1992)</p> 	<p>This document was adopted at the 1992 UN Conference on Environment and Development (UNCED), also known as the Earth Summit. It has 27 principles aimed at guiding future sustainable development around the world. It is not a legally binding document.</p>
<p>Beijing Declaration and Platform for Action (1995)</p> 	<p>This was adopted by 187 UN member states at an international human rights conference specifically addressing the human rights of women (1995 Fourth World Conference on Women). It is not a legally binding document. However, over the years, Treaty-monitoring bodies have raised many of the concerns addressed in the Beijing Platform.</p>

HOW CAN WE MAKE USE OF DECLARATIONS?

Activists have typically applied provisions of declarations to processes of formulating new laws and policies, and holding governments accountable to their moral obligations.



Table 5: Other African Frameworks

DOCUMENT	LEGAL STATUS	HOW CAN WE MAKE USE OF OTHER AFRICAN FRAMEWORKS?
African Mining Vision (AMV) (2009)	The AMV is not a legally binding instrument. It was adopted by Heads of States at the February 2009 AU summit following the October 2008 meeting of African Ministers Responsible for Mineral Resources Development. The starting point of the AMV is that mining must be pursued 'as the royal road to growth' with greater attention to retaining the benefits of such growth nationally through the negotiation of fair contracts (and resource rents), establishing requirements and capacity for enjoying a greater share of the backward and forward linkages, and ensuring that local communities enjoy a part of the mining revenue (AMV, 2009).	There are some elements of the AMV which CSOs should support and lobby their governments to translate into national law and policy. The AMV, however, has some critical shortfalls, the most significant of these being its 'growth obsession' and the failure to therefore engage the question of unsustainable national and inter-generational wealth loss through natural resource extraction, and the social and environmental impacts which, even if better managed, cannot be sustained by rural communities and the eco-systems with which they and other citizens co-exist (AMV, 2009). Efforts to build an alternative community-driven and women-centred extractives vision and policy for the region should critically engage the AMV and many of its shortfalls.
Action Plan for Implementing the AMV (2011)	This is not a legally binding instrument. However, it signals concrete commitment by African states to take deliberate steps to realise the AMV. It was considered and adopted by the Second AU Conference of Ministers Responsible for mineral resources development held in Addis Ababa, in December 2011.	Aside from the brief critique presented above, the Action Plan has weak gender content and CSOs can submit specific recommendations to the clusters and the body of African ministers responsible for minerals and agitate for their adoption. It would seem that the clusters can be revised, as the Plan of Action itself notes that ministers directed the creation of a currently missing cluster on policy and regulations, and their harmonisation.
AU Framework and Guidelines on Land Policy in Africa (2009)	These are not legally binding, and only aim to assist member states to undertake land policy reforms that align to their national development objectives. They articulate some of the principles that should inform the development, content and implementation of land policies in African member states (AU et al, 2009).	CSOs can work to challenge some of the weak provisions of the Guidelines, or at the minimum work for a more progressive interpretation of some of their contents. In addition, work can also be done to ensure that the development and reform of laws and policies which relate to extractives pay due regard to the land rights situation of poor peasant women.

4. WOMEN'S RIGHT TO LAND AND FOOD SOVEREIGNTY

The right of women peasant farmers to adequate food and tenure security is protected under binding human rights Treaties, Declarations and Voluntary Guidelines. Some mining-specific frameworks within the UN system have made an effort to concede the negative impact of extractives on women's right to adequate food. At an AU level, mining frameworks are silent on this protection, though a recent resolution offers space for a more expansive interpretation of women's rights in the context of natural resource extraction.

4.1 Protections under general human rights related instruments

International instruments have been unequivocal in their defence of women's right to adequate food, which cannot be safeguarded without the right to land. This right must be protected from threats arising from development projects like mining and other forms of natural resource extraction. Indeed, women's food sovereignty is the main reason that Paper 3 has subjected industrial mining and its impacts to such close scrutiny. In terms of the UN human rights system, CEDAW specifically safeguards the right of rural women to equal treatment in land matters (Article 14(2)(g)). Under **CEDAW General Recommendation No 21**, the CEDAW Committee²⁹ has emphasised that the right of women to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, as well as her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family (para 26).

Given the various challenges to peasant women's food rights as discussed in Paper 3, it is commendable that the **2012 Report of the UN Special Rapporteur on the Right to Food** has taken a special interest in women's right to food. The Special Rapporteur has noted that discrimination against women food producers is not only a violation of their rights, but also has society-wide consequences because of the considerable productivity losses entailed (para 6). This implies that it is discriminatory when peasant women [and their households] have to suffer hunger due to their lack of full access to, control and ownership of land; and when development-related interventions like extractives further exacerbate women's fragile situation. The **Beijing Platform for Action (1995)**³⁰ particularly calls on governments to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to own land (para 61(b)). Several other gender equality declarations at both UN and AU levels have made similar recommendations.³¹

Binding Treaties like the **AU Protocol on the Rights of Women in Africa**³² consider women's access to land as one of the critical measures that states parties must adopt to ensure that women enjoy the right to nutritious and adequate food (Article 15(a)). Under the **AU Principles and Guidelines on the Implementation of ECOSOC Rights in the African Charter (2010)**,³³ the AU Commission has stated that the implied right to water under the African Charter should be interpreted as imposing an obligation on African states to ensure that disadvantaged and marginalised farmers, including women farmers, have equitable access to water (para 92(xx)); and that there is adequate access to water for subsistence farming and for securing the livelihoods of peoples, including indigenous communities/populations (para 92(xxi)). The competition for water between mining and women's subsistence agriculture discussed in Paper 3: Land and Food Sovereignty Undermined – Impacts on Peasant Women should be seriously addressed by African countries in light of these obligations.

The **Tunis Reporting Guidelines** that the ACHPR adopted in 2012 directs that when states parties are reporting on the implementation of the right to property under the African Charter, they should indicate measures that they have undertaken to ensure that members of vulnerable and disadvantaged groups have independent access to and use of land, and are adequately compensated for the alienation of wealth and resources (para 7(a))

29 The Committee that monitors the implementation of CEDAW.

30 An outcome of the Fourth UN World Conference on Women held in Beijing, China.

31 These are the Ministerial Declaration of the 2010 High-Level Segment: Implementing the internationally agreed goals and commitments in regard to gender equality and empowerment of women: para 61(b); and the 2004 Solemn Declaration on Gender Equality in Africa: para 7.

32 Adopted on 11 January 2003 and entered into force on 25 November 2005. All AU member states are expected to ratify this Protocol, and 36 countries had ratified it by 21 February 2013.

33 Adopted by the ACHPR.

(iv)). The Guidelines further suggest that states party reports should emphasise gender equality (para 6), and should indicate how the right to health has been fulfilled through legislative and other measures taken to ensure food security (Article 7(c)(v)).

Under the **SADC Gender Protocol**, there is a specific obligation on states parties to review, by 2015, all policies and laws that determine access to, control of, and benefit from productive resources like land (Article 18(a)). Such reviews should address all factors that lead to the land rights of peasant women being undermined, thus making them more susceptible to extractives related land grabs.

When extractives industries interfere with peasant women's agriculture, as they do in many parts of the continent, it makes visible African governments' low prioritisation of women's rights to food and land.

In recent times, land and agriculture related voluntary guidelines have also been a mechanism for reinforcing women's rights to land and food sovereignty. For example, the **2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security (Voluntary Guidelines)**³⁴ require states to efficiently use legal and policy frameworks to address particular obstacles faced by women and girls with regard to tenure and associated tenure rights (para 5.4). They further recognise the need for secure customary tenure systems, in which special attention has been given to equitable and sustainable access for women, including in indigenous settings (para 9.2).

The **2009 AU Framework and Guidelines on Land Policy in Africa (Continental Land Framework and Guidelines)**³⁵ stresses the need for African countries to develop and/or implement comprehensive land policies that address the serious problem of gender discrimination in access to land resources (para 3.1.4). The Continental Land Framework and Guidelines even acknowledge some development challenges related to mining, though not from a gender perspective. They recommend that land policy reforms should comprehensively address questions relating to compensation for land lost, and the resettlement of displaced people (para 3.4.3). However, the continental land framework fails to establish a clear position on whether mining should trump existing land rights and uses. Its unfortunate and flawed starting point is that mining will always take place and that compensation and resettlement is therefore necessary.

Declarations that have emerged from global forums are also a useful indicator of a shared global vision to safeguard women's rights to both food and land, and to challenge activities that threaten these rights. For instance, the **2006 International Conference on Agrarian Reform and Rural Development (ICARRD) Declaration**³⁶ argues that women's secure access to land is essential to eradicate hunger and poverty and contribute to sustainable development and should therefore be an inherent part of national policies (paras 5 & 6). The **2007 Nyéléni Declaration** is a significant instrument that affirms women's right to food sovereignty. Developed by representatives of women farmers, and their allies at the global Forum for Food Sovereignty, the Declaration outlines key principles of food sovereignty that are substantively built around the interests of women farmers, and include the call for agrarian reforms to give equal rights to women and men (Nyéléni, 2007).

Via Campesina, a global alliance of peasant farmers, has defended women's right to food sovereignty. The **Via Campesina Food Sovereignty Principles** (Local Food Local Rules, 2011) call on all countries to declare access to food a constitutional right and guarantee the development of small-scale agriculture as the vehicle to concretely realise this fundamental right (para 1). Ownership and control over land is integral to this right, and

34 Developed by the UN Committee for World Food Security and its partners through different sessions and consultative processes that occurred between 2009 and 2011.

35 The continental framework and guidelines were developed through the joint initiative by the AU, the AfDB, and the UN Economic Commission for Africa (ECA). The process started in 2006, and included regional assessments and consultative workshops of different groups of stakeholders and experts from the five regions of Africa. The AU Heads of States and Governments adopted the continental framework and guidelines on 3 July 2009 in Libya through a Declaration on Land Issues and Challenges in Africa. Under the Declaration, the Heads of States and Governments particularly undertook to strengthen security of land tenure for women as an issue requiring special attention.

36 FAO, Final Declaration of the International Conference on Agrarian Reform and Rural Development, ICARRD 2006/3 held from 7 to 10 March 2006. About 1,400 participants including 450 NGO observers, delegations from 96 FAO member countries, international experts and representatives from over 130 farmer organisations and CSOs met in Porto Alegre. The participants reviewed different experiences of agrarian reform around the world; analysed impacts, processes and mechanisms; reviewed the roles of the different actors involved; and then discussed proposals for future action. A Final Declaration was adopted at the end of the Conference inviting all governments to adopt policies that promote agrarian reform and rural development to benefit the poor and most marginalised (RDFS, 2006).

must be free of discrimination, including on the basis of gender (para 2). And in reinforcing democratic control of food, rural women, in particular, must be actively involved in all decision-making on matters related to food and rural transformation (para 3).

Via Campesina's food sovereignty principles are in conflict with the **Comprehensive African Agricultural Development Programme (CAADP)**, a key vehicle through which African governments seek to revitalise agriculture for economic growth (AU & NEPAD, 2003). CAADP does acknowledge that women, who are the principal users of land, must be supported to achieve stronger rights over the land that they work as an enabling condition for African agriculture development (AU & NEPAD, 2003). However, CAADP's orientation is towards the commercialisation of agriculture, which may well displace 'inefficient' peasant and subsistence farmers, most of whom are women. Indeed, a 2011 review of the implementation of CAADP in six countries reveals that country plans lack a poverty focus, and pay very little attention to the needs and rights of peasant women farmers (Action Aid, 2011).

4.2 The response of mining-specific instruments to women's land and food rights

Women's right to food in UN documents that focus on mining and/or extractive industries can be deduced from the **2012 Report of the UN Special Rapporteur on the Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste** (HRC, 2012: 10–1) and the **Berlin II Guidelines** for mining and sustainable development. The Special Rapporteur has confirmed the experiences of peasant women farmers outlined in Paper 3 on land and food rights, and taken issue with the contamination of agricultural soils by extractives activities even after production stops. This is established as a violation of the right to adequate food (in terms of quantity, quality, and safety) recognised in ICESR and other human rights Treaties (para 34). The infringement is further extended by the damage that is done to soil by acid rain, which can negatively impact agricultural productivity by local communities (para 35).

Additional encroachments on the right to adequate food occur when the pollution from toxic waste impacts on agricultural productivity, contributing to a rise in food and commodity prices in mining (and other) communities. In this regard, the Special Rapporteur recommends the need to develop multi-sectoral food and nutrition strategies, which give special attention to the needs of vulnerable groups (para 36). The Special Rapporteur has also recognised the particular vulnerability of women's land rights by noting that more often than not, it is women who tend the gardens or plots of land and grow the food, and so women are disproportionately impacted by land displacements. While alternative land may be provided, it is often at a distance away and of lower quality, adding to women's workload (para 32).

The Berlin II Guidelines agree that women are crucial actors in biodiversity management in their multiple roles as farmers, herders, forest gatherers, primary health care givers, market vendors, selectors and preservers of seeds, soil conservationists and keepers of the natural and built environment. The Guidelines note that steps should be taken to identify how mining operations may potentially affect women's multiple roles in biodiversity management (Berlin II Guidelines, 2002: 40). This would need to include an examination of how the increase in food-related pressures that accompany dispossessions by and impacts of mining activity effect the overall capacity of women to manage biodiversity.

The promotion of women's rights to food and land in relation to extractive industries has not been spelt out by AU mining-related documents like the **AMV** and the **Plan of Action for the implementation of the AMV**. However, some leeway is found under the African Commission's **2012 Resolution on a Human Rights-Based Approach to Natural Resources Governance of the ACHPR**, which finds that natural resource governance in Africa is gravely hampered by, for example, the misappropriation of land; and that rural communities in Africa continue to struggle to assert their customary rights of access and control over various resources, including land, vis-à-vis natural resource extraction (ACHPR, 2012b). The Resolution therefore places a responsibility on African states to ensure that independent social and human rights impact assessments guarantee women's rights (para 4), which in this context could include ensuring that the food and land interests of peasants are not interfered with by mining developments. Connected to the violation of women's rights to adequate food and land is the issue of forced evictions and the quality of compensation for land-related losses, which is discussed next.



ABOVE: Village grazing land stolen by mining activity near Rustenburg, North-West Province, South Africa.
Photo: Bobby Marie

Table 6: Special Mechanisms: UN Special Rapporteurs and AU Working Groups

DOCUMENT	LEGAL STATUS	HOW CAN WE MAKE USE OF THESE SPECIAL MECHANISMS?
<p>Report of the Special Rapporteur on Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste (2012)</p> <p>Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (2011)</p> <p>UN Guiding Principles on Internal Displacement (2001)*</p> <p>UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007)**</p>	<p>UN Special Rapporteurs are independent experts appointed by the UN Human Rights Council (formerly the UN Commission on Human Rights). They may be assigned different titles like Independent Expert or Special Representative. They have a mandate to monitor, advise and publicly report on human rights situations in specific countries (country mandates) and on human rights violations worldwide (thematic mandates) (ACLU, 2007).</p> <p>A report and recommendations of a Special Rapporteur are not legally binding. However, they still carry moral authority and obligation in terms of country commitments to universal human rights standards. In the conclusions and recommendations provided by the Special Rapporteur, pressure may be applied on governments to rectify the situation and meet universally recognised standards of fairness, due process and minimum respect to human rights in a specific context (adapted from ACLU, 2007).</p> <p>Regardless of their non-binding nature, Guidelines developed by Special Rapporteurs/ Representatives have been known to be applied by UN bodies, intergovernmental organisations, NGOs, regional organisations and individual states by incorporating them into resolutions, recommendations, reports, policies and laws (IDMC, n.d.).</p>	<p>Country visits by a Special Rapporteur are a good opportunity for NGOs to raise national awareness and to shine the international spotlight on human rights, including women's rights violations, arising from extractives industries.</p> <p>CSOs can use conclusions and recommendations of a Special Rapporteur to sustain pressure on a government to adopt policies and practices that address challenges encountered by women in extractives-impacted environments (adapted from ACLU, 2007).</p> <p>CSOs can also use the reports of a Special Rapporteur to highlight 'good practices' in other parts of the world and to advocate for the adoption of needed Guidelines and Policies to protect and safeguard women's interests.</p>
<p>AU Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (under the ACHPR)</p>	<p>This is a Special Mechanism under the African human rights system established under the African Charter mandating the ACHPR to: employ any method of investigating human rights violations; research human rights issues; and undertake promotional activities through country visits. This particular Working Group was created in 2009 to investigate the impact of extractive industries in Africa within the context of the African Charter (CHR & ACHPR, 2011). Like other Special Mechanisms, the reports of the Working Group form the basis of the African Commission's resolutions (CHR & ACHPR, 2011).</p>	<p>CSOs can lobby the Working Group to make its terms of reference gender-sensitive, and encourage missions specifically oriented to investigating gender aspects of the extractives industry.</p> <p>They can also lobby for the participation of women's rights CSOs in the work of the Working Group.</p>

* Developed by the Representative on Internally Displaced Persons.

**Formulated by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living.



ABOVE: *Slimes waste dam encroaches upon community land and natural habitat, North-West Province, South Africa.* **Photo:** Bobby Marie

5. PROTECTING WOMEN FROM FORCED EVICTIONS AND INADEQUATE COMPENSATION FOR THEIR LAND

Human rights frameworks that protect women (and their communities) from forced evictions and discrimination related to compensation for loss of property have been developed by both the UN and the AU, though the latter has fewer references. However, the documents that have been reviewed, which specifically address mining or the extractive industries more broadly blatantly lack direct protections for women in relation to eviction and compensation.

5.1 Protections under general human rights related instruments

Mining-related displacements of communities, including women, from land they use for livelihoods typically violate “the obligation of States to refrain from, and protect against, forced evictions from land and homes under several international human rights instruments” (UN, n.d.). These obligations are well established in instruments that protect the human right to adequate housing, standard of living and food.³⁷ For instance, the **Universal Declaration on Human Rights** and the **International Covenant on ECOSOC Rights** are two of the instruments that guarantee persons, including women, the right to an adequate standard of living (Articles 25(1) and 11(1) respectively). Further, the **Universal Declaration on Human Rights**, the **International Covenant on Civil and Political Rights** and the **Convention on the Rights of the Child** have provisions against the arbitrary deprivation of or unlawful interference with property, privacy, family and home.³⁸ All these obligations are flouted when communities are dispossessed of their land and natural resources by extractives developments. **The African Charter to Human and Peoples’ Rights** specifically guarantees every person’s right to property, and adds that this right may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws (Article 14). Arbitrary relocations are clearly neither performed to meet public need nor community interests, and therefore contradict provisions of the Charter.

According to international human rights standards, movements of people off their land generally qualify as ‘arbitrary displacements’ and ‘forced evictions’. Under the **UN Guiding Principles on Internal Displacement (2001)**, arbitrary displacement includes displacement in cases of large-scale development projects that are not justified by compelling and overriding public interests (Principle 6(2(C))). The **2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement** that were formulated by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living also align with this position and specify that *development-based evictions* include evictions often planned or conducted under the pretext of serving the ‘public good’, such as those linked to development and infrastructure projects (including mining and other extractive industries) (para 8: 4). Governments have the responsibility to protect citizens against arbitrary displacements from their homes or places of habitual residence (Principle 6 (1)).

Relocations of communities due to mining developments will typically fall under the definition of ‘forced evictions’ because even if compensatory/alternative land is provided, it does not make the exercise voluntary and almost all evictions contain an element of coercion. States must ensure the equal right of women and men to protection from forced evictions (para 15), which can be achieved by ensuring that titles to housing and land are conferred on all women (para 26). While titling is the focus of the UN Basic Principles, WoMin is of the view that the need is for tenure security which can be guaranteed through, for example, the reform and strengthening of communal tenure systems, the issuing of secure lease rights to state land and so on. The **UN 2007 Basic Principles and Guidelines on Development-Based Evictions and Displacement**, together with the **2010 AU Principles and Guidelines on the Interpretation of ECOSOC Rights in the African Charter**, share a common interpretation of ‘forced evictions’ as:

37 Ibid.

38 UDHR Article 17(2); ICCPR Article 17(1); CRC Article 16(1).

*acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.*³⁹

According to this definition, forced evictions have to be both illegal (not carried out in accordance with the law) and not in conformity with the provisions of international human rights Treaties.⁴⁰ Paper 3: Land and Food Sovereignty Undermined – Impacts on Peasant Women suggests, on the basis of available research and case studies, that the forced relocations of peasant women farmers and their communities to make way for extractives industries is not usually compatible with international human rights standards due to the absence of FPIC, proper gender-sensitive consultations and fair and adequate compensation.

The **UN Committee on ECOSOC Rights**, through its **General Comment No 4 (1991) on the Right to Adequate Housing**, underscored that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Therefore, states parties should take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection (para 8(a)). In the African context, the **2010 AU Principles and Guidelines on the Interpretation of ECOSOC Rights in the African Charter** confirm that the right to housing exerts, amongst others, the obligation on states parties to ensure the equal rights of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure (para 79(xvii)). African governments need to give this guidance due weight as women are most vulnerable to relocations because they lack tenure security and are the primary users of some common property resources (water, forests, woodlots etc.) which are generally not recognised and compensated for in deals with mining companies.

One population group that is particularly vulnerable to relocations or forced evictions are indigenous people, including indigenous women. The **Indigenous and Tribal Peoples Convention, 1989 (No 169)** adopted by the International Labour Organization (ILO), does not have specific gender-sensitive provisions, but generally requires that the relocation of indigenous peoples should only be considered as an exceptional measure (Article 16(2)). Further, the state is compelled to safeguard the interests of indigenous peoples before undertaking or permitting any programmes for the exploration or exploitation of natural resources pertaining to the people's lands (Article 15(2)). The protection of indigenous communities from forced evictions has been assured even within the African human rights system, when the African Commission's **Endorois Decision** (2006) overruled the decision of the Kenyan government to forcibly evict the Endorois community in order to accommodate mining and tourism interests. This decision did not specifically defend women's interests as it related to the community at large. The question of Women's Rights, Gender and FPIC is to be addressed in a separate forthcoming paper in this series.

In the event of relocation, several human rights frameworks outline what is required in terms of compensation. The **2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement** have established as an irregularity the tendency not to offer compensation to people who do not have title to the land they are using (and women mostly fall in this category). The Basic Principles and Guidelines protect women that have weak land rights by providing that:

all those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process.
(para 61)

³⁹ Para 4 of the UN Basic Principles and Guidelines on development-based evictions and displacement: 3; Para 1 of the African Commission Principles and Guidelines on the Interpretation of ECOSOC Rights in the African Charter. Please see my earlier comment.

⁴⁰ Para 4 of the UN Basic Principles and Guidelines on development-based evictions and displacement; Para 79(xix) of the African Commission Principles and Guidelines on the Interpretation of ECOSOC Rights in the African Charter.

The Basic Principles and Guidelines also challenge the practice of offering communities cash compensation (often inadequate) or poor quality and inadequate substitute land. They have declared that in cases of land loss, cash compensation should never replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better (para 60). The state must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property (para 60). A fair application of this provision could ensure that women's loss of natural resources is taken into account in awarding compensation, an aspect not currently addressed. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalised sectors of society. All such assessments should be based on the collection of disaggregated data, allowing for the identification of differential impacts (para 33).

5.2 The response of mining-specific frameworks to forced evictions and inadequate compensation for land

The review found that mining-specific documents do not generally have particular provisions relating to women and the issues of forced evictions and compensation. Though the **Special Rapporteur on the Rights of Indigenous Peoples** dedicated a section to the impact of extractive industries on indigenous communities in his 2012 report, a gender perspective was not adopted. And so while the Rapporteur recommends special guarantees of compensation in the form of other land when indigenous communities and peoples are removed from their lands, women's specific concerns for recognition and compensation of their tenure rights are not addressed.

Frameworks that recommend the adoption of a gender perspective in environmental and social impact assessments could also apply to identify and address women's interests regarding compensation. Relevant UN and AU frameworks here include: the UN Berlin II Guidelines; the Ruggie Framework; and the AU Resolution on a Human Rights-Based Approach to Natural Resources Governance (2012). Alternative frameworks include: IFC Performance Standards on Environmental and Social Sustainability (2012) and the gender-impact assessment framework for mining projects produced by Oxfam Australia in 2009.



ABOVE: Elizabeth Mogale demonstrates the village's water source since the borehole was purposefully broken to force the community to resettle for Anglo Platinum's mining waste dump, Ga Pila village, Mokopane, North-West province, South Africa. **Photo:** ActionAid

Table 7: International Frameworks

DOCUMENT	LEGAL STATUS	HOW CAN WE MAKE USE OF THESE INTERNATIONAL FRAMEWORKS?
Berlin II Guidelines for Mining and Sustainable Development (2002)	These Guidelines are not legally binding, and are intended to provide general guidance for the sound and sustainable management of mines to regulators, practitioners, managers, government officials, mining companies and others with an interest in the mining industry.	Activists can draw on these to campaign for guidelines and programmes to ensure that regulation, administrative control and mine management achieve an acceptable level of environmental performance, which can in particular address women's needs.
UN Global Compact Principles	These principles are not legally binding, but they derive from the Rio Declaration and several other declarations and conventions and set standards for businesses to be environmental conscious and responsible (among other issues). They were developed under the Global Compact, which was launched in 2000. The Global Compact asks companies to embrace universal principles so that business "can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere" (Global Compact Overview, n.d). Over 7,000 companies based in more than 135 countries have signed the Global Compact. See Box 1 in section 2.1 for a critique of the Global Compact.	Given legitimate critique about the Global Compact, CSOs could add their voice to calls for the Compact to build in monitoring and sanction mechanisms, and for the exclusion of those companies whose practices do not align with the principles. The principles may have some utility at national level where CSOs could use the 'moral authority' of the UN to call on governments to build these principles into regulatory frameworks that are monitored for compliance, with suitably onerous penalties applied when corporates flout these standards.
Women Empowerment Principles (2011)	The WEPs are not legally binding, and were developed by UN Women and the UN Global Compact. They complement the UN Global Compact Principles by bringing a gender lens to business practice. The same critiques of the Global Compact apply – see Box 1 in section 2.1.	A similar strategy to the one outlined above would apply to the WEPs too.
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security (2012)	These Voluntary Guidelines are not legally binding. Their purpose is to serve as a reference and guide to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realisation of the right to adequate food in the context of national food security (FAO et al, 2012).	Since the Guidelines draw on international and regional instruments, including the MDGs that address human rights and tenure rights, CSOs can use them in advocacy interventions aimed at improving state practices that impact on women's land rights, including extractives.
ICARRD Declaration (2006)	This is a non-legally binding framework that was adopted by member states that gathered at the International Conference on Agrarian Reform and Rural Development (ICARRD) of the UN Food and Agriculture Organization (FAO), hosted by the government of Brazil.	It can be used as an advocacy tool guiding states to address the extractives industries and the challenges they issue in relation to agriculture and sustainable development, in particular: the realisation of women's human rights, food security, poverty eradication, and the strengthening of social justice.
Cochabamba Declaration (2010)	In April 2010, approximately 30,000 of the world's citizens gathered at the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia to present a people's and planet Earth alternative to the failed Conference of the Parties (COP 15) climate meeting in Copenhagen.* The Universal Declaration on the Rights of Planet Earth calls for the forging of a "new system that restores harmony with nature and among human beings" (Cochabamba, 2000), for developed countries to commit to quantifiable goals of emission reduction that will return the concentrations of greenhouse gases to 300 ppm**, and for developed countries to honour their climate debt to the rest of the world.	The Cochabamba Declaration is an inspiring document that speaks directly to the experiences and perspectives of indigenous people, peasants and poor women across the developing world. It can serve as a rallying point for organising and solidarity-building between excluded peoples, and inform the development and promotion of a radically different development model, which promotes equity and justice between all peoples, protects the planet and supports the reproductive labour, particularly of women, so critical to the restoration of the planet and the well-being of humanity etc.
The Earth Charter (2000)	This is a non-binding instrument that was launched by the Earth Charter Commission to set common standards for the conduct of individuals, organisations, businesses, governments, and transnational institutions with regard to the environment.	Thousands of local, national, and international organisations, including hundreds of local governments, have endorsed the document and are using it as an educational tool and guide to a sustainable way of living.

*For the full Cochabamba Declaration see PWCCC (2004).

** Parts per million (ppm) refers to the amount of carbon dioxide in the Earth's atmosphere. Carbon dioxide is the most common greenhouse gas, which is what creates global warming. Carbon dioxide and other heat trapping gases are emitted into the atmosphere when fossil fuels like coal and oil are combusted (or burnt) to generate energy for cooking, heating, cooling, propelling vehicles etc. Global warming disturbs the fragile balance that supports life on the planet, and as temperatures rise whole species, including humanity, are threatened (350.org, n.d.).

6. CONCLUSION AND RECOMMENDATIONS

This review and analysis of select 'general' international human rights and policy documents has confirmed that there are some strong existing provisions that can protect the rights of peasant and working-class women to economic empowerment, adequate health, food, land rights, and fair and just compensation when relocation is absolutely unavoidable. The *mining-related frameworks more generally and in the Africa region specifically substantially neglect the perspectives and interests of just over half of Africa's citizens (women)* whose labour in mining, in food production and in reproductive care are essential to the livelihoods and well-being of both themselves and the majority of the rest of its citizens. *These frameworks are gender-blind and conflate women and men's experiences, needs and interests, thereby violating women's rights.* The African frameworks must work to incorporate international standards and protections for communities whose rights to land, water, health, food, cultural practices and ways of living are threatened by large-scale extractivist industries. And within this, the frameworks should explicitly incorporate a women's rights perspective that privileges the views and needs of poor and marginal women, representing as they do the majority of Africa's people who are most affected by poverty and inequality.

While advocacy and campaigns to adjust existing frameworks and build new policies and documents at regional and national levels that will safeguard the rights of poor communities and marginal women in particular are important, we (CSOs, activists and movements) should take care not to overly invest in these as outcomes that will guarantee transformation. As seasoned CSO workers, activists and members of social movements we are well aware that:

- a) These frameworks may likely only be open to review and new guiding documents accepted by political decision-makers if there is significant political pressure from organised movements of affected peoples, from the public more generally or from key institutions outside of the country/region.
- b) Even if revised or new policy and legal documents could offer new protections and standards for poor communities and marginal women within them, their translation into practical programmes of action and supportive budgets by governments is the very next barrier to these rights being enjoyed by affected citizens.

Rights can only be enjoyed, claimed and demanded for when women and affected peoples are organised, informed and confident to engage power. Our first focus as CSOs is therefore to support wide community and women-led advocacy and campaigns for transformation. These processes can, at one and the same time inform and build new analysis and knowledge, create new skills, deepen or foster new organisations, alliances, networks and movements and start to shift the balance of power between state and citizenry. This work must be undertaken at regional level (and there are a few opportunities highlighted below) and at national level, with appropriate context-specific strategies and tactics defined by leading CSOs.

A few key recommendations for coordinated action at regional level through WoMin in partnership with other regional bodies and movements are as follows:

- The International Alliance on Natural Resources in Africa (IANRA), which hosts WoMin, has entered into partnership with continental oversight bodies to research and develop model Pan African Legislation and Policy related to Extractives. This work plans to bring in a strong gender perspective, which strategy should be nurtured and supported by key gender and women's rights CSOs with the necessary capacity and knowledge at regional and national levels.
- A range of African CSOs are working with the *AU Working Group on Extractive Industries, Environment and Human Rights Violations in Africa* to map out the scale, extent and impact of extractives industries in the region. WoMin, through IANRA and in concert with key gender and women's rights CSOs regionally and nationally, should work to influence and support this process to lift out the gender-specific impacts and challenges created by extractives industries. As part of this scoping effort, the Working Group could be encouraged to form a multi-country mission to understand the gender-specific dimensions of industrial extraction. In addition, through this process of engagement, we should work to influence the AU Working Group on extractives, including making its terms of reference more gender responsive and encourage the involvement of women's rights and gender CSOs in its work.

- Build a *coordinated regional effort to monitor key women's rights standards and protections related to the extractives industries and their impacts*, which are already provided for in global frameworks. This should be undertaken within and across countries through wide alliances, including grassroots women's organisations and movements. This should link into existing monitoring (such as the SADC Barometer) of Declarations, Treaties and other human rights provisions so as not to duplicate efforts. The results of this monitoring should be publicised on an annual basis, and reported on through shadow reports and presentations to relevant Treaty and other monitoring bodies. In addition, campaigns and other influencing work will be needed to press for the adoption of relevant standards and protections in regional frameworks, for their translation into national law, and for their adequate support through state programmes and budgets.
- *Target the CEDAW Committee and the CESCR*, as key supporting institutions for advancing women's rights related to the extractives industries by submitting parallel reports, attending committee sessions and personally meeting with committee members between sessions, and making presentations to the committees, if feasible. The objectives underpinning this engagement would be to influence the drafting of General Recommendations or General Comments, and possibly advocating for the development of a gender-sensitive Treaty or addendum to an existing mining or women-specific Treaty that would address women's rights violations arising from extractivism. Some elements of this influencing strategy could be taken up with the ACHPR.
- Finally, IANRA in alliance with women's rights organisations should submit well-researched and strategic complaints on women's rights violations by the extractives industries to domestic (national) and AU oversight mechanisms.



ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AfDB	African Development Bank
AMD	acid mine drainage
AMV	African Mining Vision
ASM	artisanal and small-scale mining
AU	African Union
CAADP	Comprehensive African Agricultural Development Programme
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CSO	civil society organisation
ECA	Economic Commission for Africa
ECOSOC	Economic and Social Council (UN)
ECOWAS	Economic Community of West African States
FAO	Food and Agriculture Organization
FPIC	free prior and informed consent
IANRA	International Alliance on Natural Resources in Africa
ICARRD	International Conference on Agrarian Reform and Rural Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IFC	International Finance Corporation
ILO	International Labour Organization
MDGs	Millennium Development Goals
NGO	non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
PWCCC	Peoples World Conference on Climate Change
RDFS	UN System Network on Rural Development and Food Security
SADC	Southern African Development Community
SEIA	Social Economic Impact Assessments
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNECE	United Nations Economic Commission for Europe
WEP	Women Empowerment Principles

GLOSSARY

Artisanal and small scale mining

ASM refers to extractives activities which are informal, and often ‘illegal’, usually carried out by the rural poor to supplement subsistence farming activity, and typically performed using fairly rudimentary methods and tools (World Bank, 2012; miningfacts.org, n.d.; Hruschka & Echavarria, 2011). These definitions are not universal, for example, in Tanzania distinctions are often made between ASM on the basis of different levels of mechanisation and legality (Fisher, 2007: 743). Across contexts, artisanal miners may often operate without a mining licence and formal land allocations, both of which are usually financially prohibitive, and it is from this that the label ‘illegality’ may arise.

Extractivism

The term ‘extractivism’ refers to the extraction of minerals, oil and gas, and in the understanding of the writers, water, forest products, new forms of energy such as solar and hydro, and industrial forms of agriculture, which grab land and extract vast quantities of water in the production process.⁴¹ But extractivism also importantly refers to the conditions under which these resources are extracted and whose interests they serve, speaking to a dominant and highly unequal model of development which “organizes – on the basis of the exploitation and marketing of resources for export – the political, socio-economic and cultural relations within the respective country or region: the economy and class structures, gender relations, the state and public discourse.”⁴²

Food sovereignty

A term, first used by La Via Campesina (the global movement of peasants) in 1996, which asserts the right of peoples to define and control their own food systems. The Declaration of Nyeleni adopted at the Forum for Food Sovereignty in 2007 asserts that: “Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations. It defends the interests and inclusion of the next generation. It offers a strategy to resist and dismantle the current corporate trade and food regime, and directions for food, farming, pastoral and fisheries systems determined by local producers. Food sovereignty prioritises local and national economies and markets and empowers peasant and family farmer-driven agriculture, artisanal fishing, pastoralist-led grazing, and food production, distribution and consumption based on environmental, social and economic sustainability. Food sovereignty promotes transparent trade that guarantees just income to all peoples and the rights of consumers to control their food and nutrition. It ensures that the rights to use and manage our lands, territories, waters, seeds, livestock and biodiversity are in the hands of those of us who produce food. Food sovereignty implies new social relations free of oppression and inequality between men and women, peoples, racial groups, social classes and generations” (Nyeleni Declaration 2007, para. 3).

Legally binding instrument or framework⁴³

A legally binding instrument is a Treaty or a Protocol, which must be *ratified* if a country is to be bound by it; merely signing the Treaty is insufficient. In some countries, even if parliament has ratified the Treaty, it must still be ‘domesticated’ (translated into national law) for it to have force and effect in local courts. In general terms, however, if a country has ratified a Treaty it is then generally considered to be part of national law and rights holders can agitate for the enforcement of the provisions of the Treaty, as they would any other national law. Once a Treaty is ratified, a country is duty bound to periodically submit state party reports that outline measures being taken to implement each provision. CSOs may also submit what are called *shadow reports* to offer an alternative assessment on country performance to the relevant Treaty-monitoring body in the hope that their concluding observations on state party reports would make specific recommendations to compel specific actions by government, although this outcome is not guaranteed.

41 The value of natural resources, such as water and land and mineral resources are ‘embedded’ in the agricultural outputs, but are not valued and acknowledged in the setting of market prices. We refer to this as ‘embedded value’.

42 Ulrich Brand, Austria & Germany: Energy policy and resource extractivism: resistances and alternatives, RLF reader for WSF, Tunis

43 Skype interview, Tinyade Kachika, 16 July 2013.

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