EXPLOITIVE EXTRACTION IN POST-COLONIAL AFRICA: HOW COLONIAL LEGACIES PERPETUATE ECONOMIC REGRESSION, MARGINALIZING AFRICAN COUNTRIES IN THE GLOBAL MARKET

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ABSTRACT

This Note focuses on the regression of economic development in Africa, specifically in the Democratic Republic of Congo ("DRC" or "the Congo") and Nigeria. A historical approach will be applied to analyze Belgium's and England's colonization of these two respective countries. The repercussions of colonialization are reflected in both the DRC's and Nigeria's legal infrastructures, which have dampened these countries' ability to successfully compete in the world market, therefore, causing them to be left behind in the global arena. This regression empowers foreign Western nations to extort these countries out of their resources by excavating raw materials and abusing the access to cheap labor. This allows for human rights, environmental, and economic violations to occur. The driving forces behind such exploitation are the theories of racism and white supremacy, which are enduring remnants of what colonization implemented and then left behind. This Note will examine the current legal structures of the DRC and Nigeria that have been provided through colonial imperialist practices, and the actual practices of extraction industries that contribute to the ongoing challenges within human, environmental, and economic rights. Lastly, it will analyze different solutions that could be implemented to better protect these countries and other countries on the African continent against corrupt Western foreign industries. This topic is incredibly relevant as whenever there is a vulnerable group or persons who are subject to exploitation, it demands attention and scrutiny.

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I. INTRODUCTION

The history of most African countries is plagued by the harrowing practice of colonialism. Imperialistic powers insidiously entrenched themselves within the very fabric of the cultures and identities of African nations, leaving an indelible mark on their essence.[1] This is especially so in economic terms for the countries of the Democratic Republic of Congo and Nigeria. Although colonized by different imperialistic powers – Belgium in the Congo and Britain in Nigeria – they both similarly struggle with corruption and political instability because of how colonization negatively impacts a country's infrastructure and its ability to stand on its own once winning independence.[2]

II. RACISM AND WHITE SUPREMACY

To fully comprehend how a system that seemingly has been out of fashion and practice for years has managed to still have an impact today, a discussion of racism and white supremacy is imperative. Both racism and white supremacy are what led to the idea that Europeans could colonize other nations and subjugate them to their own will.[3] Together they helped Europeans justify their actions behind the ideas of natural selection or divine intervention.[4] Racism is

[1] *Imperialism and Socialism in the Context of Africa*, S. AFR. HIST. ONLINE (Mar. 22, 2011), https://www.sahistory.org.za/article/imperialism-and-socialism-context-africa; *see Speeches and Statements Made at the First Organization of African Unity (OAU) Summit 1963,* AFR. UNION (May 08, 1963), https://au.int/en/speeches/19630508/speeches-and-statements-made-first-organisation-african-unity-oau-summit-1963.

[2] *Imperialism and Socialism in the Context of Africa*, *supra* note 1; *see Speeches and Statements Made at the First Organization of African Unity (OAU) Summit*, *supra* note 1.

[3] Shalini Mirpuri, *Racism, Systemic Racism, & White Supremacy: What's the Difference?*, NAT'L RECREATION & PARK ASS'N (May 1, 2022), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.nrpa.org/contentassets/f6a2fb863afc41e584e6b1f52cba3ba8/220602.racism_systemic_racism_and_white-supremacy.pdf.

[4] "*Expansion was Everything,"* FACING HIST. & OURSELVES, https://www.facinghistory.org/resource-library/expansion-was-everything#:~:text=Imperialists%20used%20ideas%20from%20eugenics%20and%20Social%20Darwinism%20to%20justify%20their%20conquests (last updated Aug. 2, 2016).

the belief that one race is superior to another race.[5] It is accompanied by prejudice and discrimination from the dominant race (in this case and most cases, white) towards a person or group based on their status as a racial or ethnic minority.[6] Historically, the dominant race has meant the race with the most resources, or the race believed to have the will of God on their side.[7] Racism is more than overt acts or words; social stratification and differential treatment — systematic racism—can give an advantage to the dominant group.[8] Systematic racism explains how long-standing institutions and laws support attitudes of superiority or inferiority between racialized groups.[9] On the continent of Africa, Europeans embedded systematic racism in society by using the military and economic power that they had to carry out discrimination through social institutions, thereby shaping cultural beliefs and values that support their racist policies and practices.[10] "Systematic racism is not a single rule or law, [it is an ideology] that is woven into the fabric of society and unfairly elevates white people over everyone else, whether … obvious or not."[11]

Another word commonly associated with colonialism is white supremacy. White supremacy describes a political or socio-economic system where white people, both collectively and individually, benefit from and enjoy structural advantages and rights not afforded to other racial and ethnic groups.[12] White supremacy excluded the African people from any voting rights, land ownership, labor protections, political representation, and the protection of courts both during colonial times and even today.[13] The illumination of both racism and white supremacy helps to better explain the colonial development that shaped the destinies of some African nations.

III. HISTORICAL DEVELOPMENT OF THE DEMOCRATIC REPUBLIC OF CONGO

In 1885, King Leopold of Belgium established the Congo Free State, asserting absolute control over the region and transforming it into his personal domain.[14] Under his rule, the Congolese population endured egregious exploitation, being compelled to toil in harsh conditions for coveted resources

[5] Mirpuri, *supra* note 3.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Mary Crooks, *Feb 5, 1885 CE: Belgian King Establishes Congo Free Estate,* NAT'L GEOGRAPHIC SOC'Y (Nov. 1, 2024), https://education.nationalgeographic.org/resource/belgian-king-establishes-congo-free-state/.

such as rubber and ivory.[15] The King's oppressive policies led to widespread suffering, with approximately half of the population succumbing to the brutal consequences of punishment and malnutrition, while the remaining half perished due to disease and torture.[16]

King Leopold cleverly positioned himself as an opponent of the slave trade, whilst simultaneously implementing a system of forced labor that effectively domesticated slavery within the DRC.[17] For three decades, the indigenous people of the Congo were subjected to relentless overwork and mistreatment.[18] Colonial authorities forcibly held women hostage to coerce men into meeting imposed quotas, and brutally punished them with severe punishments such as amputating hands.[19] "The Butcher of the Congo" was a moniker that came to personify the King as millions of Africans suffered and died under his regime of a forced labor colony.[20] Even though the Congo Free State was not a Belgian colony, Belgium was its chief beneficiary, using the handsome profits to encourage trade, and architectural developments in Brussels, Ostend, and Antwerp.[21] Consequently, the Congo, once one of the least explored African countries, transformed into the most ruthlessly oppressed nation.

The imperialist goal was to use and expand the Belgian empire to bring fortune and an abundance of natural resources to the people of Belgium through the oppression of local Congolese people.[22] They did so with a method of colonialism called "direct colonial administration" which contrasted with the "indirect colonial administration" in Nigeria that will be discussed in the following section.[23] This colonial practice differed from those in other parts of the continent. It has led to significant post-independence difficulties including ethnic conflict, poor government, and stunted economic development.[24] "Direct colonial administration" allowed for the imposition of Belgian government and institutions to directly rule upon the Congo, without the participation of the Congolese people, paving the way for an infrastructure incapable of standing on

[15] *Id.*

[16] *Id.*

[17] Howard W. French, *Confronting Belgium's Colonial Legacy*, FOREIGN POL'Y (June 6, 2022, 2:45 PM), https://foreignpolicy.com/2022/06/06/belgium-congo-colonialism-leopold-ii-commodities/.

[18] *Id.*

[19] *Id.*

[20] MICHAEL APTT, THE LEGACY OF BELGIAN COLONIALISM IN THE DEMOCRATIC REPUBLIC OF THE LEGACY OF BELGIAN COLONIALISM IN THE DEMOCRATIC REPUBLIC OF THE CONGO AND THE REPUBLIC OF RWANDA 15 (2022) (B.A. thesis, Roger Williams University) (on file with the Roger Williams University Digital Commons) (last visited Mar. 16, 2025).

[21] *Id.* at 16.

[22] *Id.* at 2.

[23] *Id.*

[24] *Id.*

its own post-colonization.[25] Trading companies allowed for economic prosperity for the Belgians and the routes they developed were a large economic advantage. However, once independence was gained, Congo was left with an untrained populace whose only skill was resource extraction without the ability to properly manufacture products from these resources or even set up institutions for manufacturing.[26] This left Congo completely out of the global economic arena, both then and now. Toward the end of Belgium's colonial rule, people pushed for more civil rights; however, proponents of Eurocentric racism and white supremacy disfavored and barred such progress under the guise of political "stability".[27] Ironically, such stability has not been established since Belgian rule, nor since Congo gained independence, as tensions between different leaders and clans continue to fragment the populace.[28]

IV. HISTORICAL DEVELOPMENT OF NIGERIA

Nigeria was first claimed by the British Empire in the mid 1800's and formally colonized in 1886 following the partition of African countries in the Berlin Conference.[29] The colonizing of Nigeria was under the pretense that the British, who had outlawed slavery in 1807, were there to police the slave trade.[30] However, their true purpose, as was the purpose for most colonial presence on the African continent, was to finance the expenses of the colonizer's domestic society – in this case, the British people.[31] This was done through the commodification of natural resources, such as rubber, palm oil, palm kernel, and cocoa.[32] Unlike in the Congo, the British "indirect colonial administration" established manufacturing plants and employment for the Nigerian people.[33] This gave them the ability to pick up skills in the refinement of raw materials which left them in better standing to compete economically in the future compared to the Congo.

It was a perfect storm for the British Empire, with the tropical climate that

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[25] *Id.* at 16.

[26] *Id.* at 15.

[27] *Id.* at 16.

[28] *Id.*

[29] DANIEL E. HARMON, NIGERIA: 1880 TO THE PRESENT: THE STRUGGLE, THE TRAGEDY, THE PROMISE (EXPLORATION OF AFRICA: THE EMERGING NATIONS 36, 39, 130 (Stephen Reginald ed., 2001).

[30] *Atlantic Worlds: Enslavement and Resistance: Part of the Fascinating Atlantic Gallery*, ROYAL MUSEUMS GREENWICH, https://www.rmg.co.uk/stories/topics/history-transatlantic-slave-trade (last visited Mar. 8, 2025).

[31] Stephan Heblich et al., *Slavery and the British Industrial Revolution,* VOXEU COLUMNS (Feb. 11, 2023), https://cepr.org/voxeu/columns/slavery-and-british-industrial-revolution.

[32] Frank Ikponmwosa, Colonialism and Industrial Development in Benin Province, Nigeria, 3 ROM. J OF HIST. STUDS. 21 (2020) (Ph.D. dissertation, University of Benin).

[33] *Id.* at 29.

produced an abundance of raw materials and foodstuffs that could not grow in the United Kingdom, and the preference for agricultural pursuits amongst the Nigerian people.[34] Cheap labor and valuable natural resources allowed for the furnishing of the needs of the "civilized" man.[35] The British "indirect colonial administration" method leveraged the existing local structures and implemented a system where local traditional leaders were used as intermediaries to govern on behalf of the empire.[36] This adaptation of ruling to best fit the region ensured more success for the populace of Nigeria, post-colonization. Though the trading companies were exploiting the colonies for economic prosperity, their use of indirect rule along with trading allowed for an infrastructure that would be able to keep up with the global economy, and stand on its own when Nigeria finally won independence.[37]

V. ENDURING LEGACIES OF COLONIZATION

Decolonization is more than the removal of a colonial empire from "its territories;" it also includes the removal of the repercussions of colonization.[38] Racism and white supremacy can be perceived to be the most significant consequence of colonization that, like a ghost of the past, continue to haunt and shape the economic realities of these two countries.[39] This paper posits that racism and white supremacy allow for certain countries to succeed in markets despite lacking the necessary resources, while simultaneously creating obstacles for resource-rich countries that prevent them from being able to enter and compete in the market on their own merit. Western powers cripple the African continent economically while simultaneously offering minuscule proposals of aid in an attempt to soothe their conscience. Although the DRC and Nigeria have since decolonized, they both continue to struggle with regulating their respective resource extraction industries.[40] Due to weak infrastructure and oversight, Western foreign nations have been able to encroach and extract resources, sometimes without the proper permits to do so, and often at the expense of the local communities and land they exploit.[41]

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[34] *Id.*

[35] *Id.* at 1.

[36] APTT, *supra* note 20, at 9.

[37] *Id.* at 10.

[38] *Id.* at 11.

[39] *See generally* Hema Georgina Biswas, *Colonialism, Imperialism and White Supremacy*, 1 INT'L J. POL'Y SCI. & L. 415 (2020) (discussing the remnants of colonial ideologies such as white supremacy and racism).

[40] Roger van Zwanenberg, *#92 Nigeria and the Democratic Republic of Congo,* WEALTH & POWER (May 27, 2022), https://www.wealthandpower.org/part-5/92-nigeria-and-the-drc.

[41] *Id.*

VI. THE DEMOCRATIC REPUBLIC OF CONGO CURRENT LEGAL STRUCTURE

To fully understand how colonialism continues to shape African nations today, one must look at their individual legal systems. While the DRC has its own legal and regulatory framework, it is not fully functioning and is therefore unable to conduct complex business and protect investments.[42] The DRC is a civil law country whose main provisions of private law are based on the Napoleonic Civil Code.[43] The general legal landscape and characteristics of the DRC resemble the Belgian legal system as remnants of the Belgian "direct colonial administration."[44] The legal system is divided into three branches of law: public, private, and economic.[45] However, the judicial process in the DRC is procedurally inconsistent because sometimes it is adhered to while other times it is not.[46]

The oversight of business standards falls under the jurisdiction of the Congolese Office of Control, which closely monitors the foreign enterprises operating within the country.[47] Although the Government of the Democratic Republic of the Congo ("GDRC") does not systematically employ tactics to obstruct foreign investment, it lacks universally applied procedures to actively support such ventures.[48] The main challenges are often administrative and bureaucratic, with reforms and enhanced laws facing inconsistent implementation.[49] Because proposed laws and regulations are seldom made available in draft form for public review, feedback, and scrutiny, discussions between the public and the governmental entities or parliament proposing legislation are limited.[50]

The 2002 Investment Code predominantly governs Foreign Direct Investments ("FDI") in the DRC, with sector-specific investment laws also regulating mining, hydrocarbons, finance, and other industries.[51] The Agence National pour la Promotion des Investissements or ANAPI, a DRC agency, is tasked with streamlining the investment process, enhancing transparency, assisting foreign investors, and bolstering the country's image as an investment

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[42] *Congo, Democratic Republic – 4 Legal Regime*, PRIVACY SHIELD FRAMEWORK, https://www.privacyshield.gov/ps/article?id=Congo-Democratic-Republic-Legal-Regime (last visited Mar. 8, 2025).

[43] *Id.; see generally GlobaLex – Democratic Republic of the Congo*, N.Y.U. SCH. L. (2023), https://www.nyulawglobal.org/globalex/democratic_republic_congo1.html.

[44] *Congo, Democratic Republic – 4 Legal Regime, supra* note 42.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*; *see* also, U.S. Dep't of State, *2024 Investment Climate Statements: Democratic Republic of the Congo* (2024), https://www.state.gov/reports/2024-investment-climate-statements/democratic-republic-of-the-congo/ (last visited May 11, 2025).

[49] *Congo, Democratic Republic – 4 Legal Regime, supra* note 42.

[50] *Id.*

[51] *Id.*; *see* Investment Code, 2002 (Law No. 004/2002) (Dem. Rep. Congo).

destination.[52] However, despite some progress, businesses persistently voice concerns about widespread corruption and business challenges within the country.[53]

In an attempt to fortify the legal framework, especially in the areas of contracts, company, and bankruptcy law, the GDRC embraced the Organization for the Harmonization of Business Law in Africa ("OHADA").[54] Simultaneously, an internal coordination committee was instituted to oversee the implementation of OHADA and ensure alignment with international standards, including a more robust accounting system.[55] Recognizing that there must be transparency in the extraction industries, the DRC actively engaged in the Extractive Industry Transparency Initiative ("EITI") by joining it in 2007.[56] As the DRC is highly economically dependent upon the extraction sector, with 46% of the government's revenues and 99.3% of exports being in relation to the sector, the DRC needed to implement EITI for their own protection.[57] The country's history of conflict, political instability, corruption, and rampant mineral smuggling has resulted in the near collapse of the mining sector and substantial liabilities for state-owned enterprises.[58] Despite the DRC's abundant natural resources, two-thirds of its population lives below the poverty line, pivoting the government to commit to the EITI as a hopeful catalyst to attract foreign direct investment, rejuvenate the mining sector, and ensure judicial management of revenues for the overarching benefits of its citizens.[59]

VII. NIGERIA CURRENT LEGAL STRUCTURE

Nigeria operates under a mixed legal system that incorporates English common law, Sharia, and Customary law.[60] The supreme legal authority is the 1999 Constitution, which takes precedence over all other sources of law.[61] Any laws conflicting with the constitution are deemed void to the extent of the inconsistency.[62] Legislation is primarily enacted by the National Assembly at the federal level and by state legislatures; it is considered a secondary source of

[52] *Congo, Democratic Republic – 4 Legal Regime*, *supra* note 42.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*; *Democratic Republic of the Congo*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVES, https://eiti.org/countries/democratic-republic-congo (last visited Mar. 8, 2025).

[57] *Democratic Republic of the Congo*, *supra* note 56.

[58] *Id.*

[59] *Id.*

[60] *Introduction to the Nigerian Legal System*, LEARN NIGERIAN L. https://www.learnnigerianlaw.com/learn/legal-system/introduction (last visited May 4, 2025).

[61] *Id.*

[62] *Id.*

Nigerian law.[63] In coherence with English law, judicial precedents handed down by the Supreme Court play a crucial role in the legal system.[64] However, the application of certain rulings and legislation is not uniform.[65]

Customary law, along with the Sharia legal system sanctioned by the Qur'an, has yet to be ruled upon by the Supreme Court.[66] Judiciary independence is guaranteed by the Nigerian constitution and the court system is comprised of the Supreme Court, Court of Appeal, High Courts, and Customary-Sharia Courts of Appeal and District Courts.[67] Despite constitutional safeguards, the judiciary faces challenges, including interference from other branches of government, perceived understaffing, underfunding, and inefficiency.[68] Reports of bribery among judges further contribute to concerns.[69] However, Nigeria as an active member of international arbitration fora such as the International Center for Settlement of Investment Disputes and a signatory of the 1958 New York Convention, allows for disputes to be resolved in international courts outside of Nigeria.[70] These agreements thereby aid in mitigating concerns about Nigeria's judiciary by allowing disputes to be resolved in neutral forums.

To encourage both domestic and foreign investment, despite Nigeria's complex legal landscape, Nigeria has implemented several legal reforms to modernize their regulatory frameworks. Several major acts enacted by Nigeria relate to commercial life, including the Companies and Allied Matters Act of 1990 ("CAMA") and the Nigerian Investment Promotion Commission Act of 2004 ("NIPCA").[71] The CAMA aides by regulating the formation of companies while the NIPCA permits foreign ownership in most industries, excluding specific sectors such as oil, gas, and private security.[72] Other acts enacted related to labor, like the Labor Act of 1990, which applied protection to both foreign and Nigerian employees.[73] And some acts enacted by Nigeria related to

[63] *Nigeria Legal System Overview*, PROELIUM L. LLP, https://proeliumlaw.com/nigeria-legal-country-profile/ (last visited Apr. 18, 2025).

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*; *Judicial System of Nigeria*, COMMONWEALTH GOVERNANCE, https://www.commonwealthgovernance.org/countries/africa/nigeria/judicial-system/ (last visited Apr. 18, 2025); *see* CONSTITUTION OF THE FED. REPUBLIC OF NIGERIA May 29, 1999, Ch. 2, art. 17(2)(e). (e) the independence, impartiality, and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

[68] *Nigeria Legal System Overview*, *supra* note 63.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] CONSTITUTION OF THE FED. REPUBLIC OF NIGERIA May 29, 1999, Ch. 1, art. 18; Udo Udoma & Belo-Osagie, *Foreign Direct Investment Regimes: Nigeria,* INT'L COMPAR. LEGAL GUIDES (2024), https://iclg.com/practice-areas/foreign-direct-investment-regimes-laws-and-regulations/nigeria; *Nigeria Legal System Overview*, *supra* note 63.

[73] *Nigeria Legal System Overview*, *supra* note 63.

corruption, such as the establishment of the Criminal Code of 1990 and the Corrupt Practices and Other Related Offenses Act of 2000.[74] Although the enforcement of these corruption measures remain weak,[75] the Foreign Judgements Act helps in making sure that foreign judgments are able to be enforced in Nigeria.[76] So although Nigeria may not recognize some international treaties they are signatories of, because the constitution specifies that no treaty holds force of law unless enacted domestically, the constitution does not prohibit foreign judgements from being enforced within Nigeria.[77] Therefore, these legal and regulatory reforms demonstrate Nigeria's ability and desire to create a stable legal landscape that will be more attractive and safer for foreign investments as well businesses.

Nigeria, being the 12th largest producer of oil in the world and the largest in Africa,—with the continent's largest gas reserves—also joined the EITI in 2007.[78] 65% of the government's revenue comes from the extraction economy and contributes to 85% of total exports.[79] However, the extractive sector has not had a significant impact historically on the country's socio-economic development due to poor governance and corruption.[80] The implementation of EITI has helped improve the transparency of the sector's management and also illuminate specific areas that are in need of reform.[81] In 2021, Nigeria built upon these efforts by enacting the Petroleum Industry Act to introduce new frameworks for the governance, administration, and management of the sector, including stronger oversight of host communities.[82]

In summary, both the DRC and Nigeria grapple with legal complexities, corruption concerns, and challenges in attracting foreign investment. While the DRC's legal framework is incomplete, Nigeria's mixed legal system and diverse sources of law contribute to a multifaceted legal landscape. Both nations recognize the need for transparency, as evidenced by their participation in EITI, reflecting a shared commitment to reform within their respective extractive sectors.

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[74] *Id.*

[75] *Id.*

[76] *Id.*; Federal Ministry of Justice (Nigeria), *Foreign Judgment (Reciprocal Enforcement) Act 1961* (Feb. 1, 1961).

[77] Foreign Judgment *(Reciprocal Enforcement)* Act 1961, *supra* note 76.

[78] *Democratic Republic of the Congo*, *supra* note 56.

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] *Id.*; Petroleum Industry Act, No. 6, Fed. Republic of Nigeria Official Gazette, Aug. 27, 2021, https://pia.gov.ng/wp-content/uploads/2022/08/PIA-2021_compressed-1.pdf. (last visited May 11, 2025).

VIII. EXTRACTION INDUSTRY

Africa's resources could have been a powerful tool for countries to use in trade negotiations with other nations, helping to boost them into the world market during the age of globalization. However, this advantage is most likely what made them such a coveted target of colonial powers, whose seemingly only priority was to enrich their own elites rather than protecting the well-being of the people and lands they controlled. Such exploitive intentions and historical foundations shaped and ultimately led to the development of extraction industries that continue to operate today.[83] Currently, most extractive industries are established and incorporated by former colonial powers, who continue to benefit from the legal infrastructures and societal norms they once put in place.[84] By establishing such frameworks, former colonial powers have created a foundation that allows extractive industries to operate in a manner with minimal accountability, while public reaction is reduced to passive acknowledgment of the harm.[85] As a result, many of the struggles the DRC and Nigeria currently face are continuations of the systematic abuse established in the colonial era, but now repackaged in a modern and creative way. This reinvention allows for the influence of colonialism to be masked by a lack of accurate news coverage, which enables exploitation to go on unchecked.[86]

In 2017, the Natural Resources Governance Institute created the Resource Governance Index and Report ("RGI").[87] This report was designed to indicate how many African countries continue to struggle when governing their natural resources by ranking how well each country is able to govern their extractive resources through three key measures: value realization, revenue management, and enabling environment.[88] The resources specifically evaluated by this index and report are the sectors of oil, gas, and mining.[89] This index documents the

[83] *See generally* Leila Kazemi & Ricardo Soares de Oliveira, *Supporting Good Governance of Extractive Industries in Politically Hostile Settings: Rethinking Approaches and Strategies,* COLUMBIA CTR. ON SUSTAINABLE INV., (Aug. 2022), https://ccsi.columbia.edu/content/executive-session-politics-extractive-industries.

[84] *See generally* Janyl Moldalieva, *Localizing Transparency and Accountability in Extractives*, 8 EXTRACTIVE INDUS. & SOC'Y 100991 (2021), https://doi.org/10.1016/j.exis.2021.100991.

[85] *Id.*

[86] *Id*.

[87] Amy Copley, *Figure of the Week: Extractive Resource Governance in Africa*, BROOKINGS INST. (July 6, 2017), https://www.brookings.edu/articles/figure-of-the-week-extractive-resource-governance-in-africa/.

[88] *Id.* Value realization refers to the quality of governance around exploration, production, environmental protection, revenue collection, and state-owned enterprises. Revenue management includes national budgeting, substantial resource revenue sharing, sovereign wealth funds. Enabling environment, evaluates broader governance indicators such as voice and accountability, government effectiveness, regulatory quality, rule of law, corruption control, political stability, and absence of violence.

[89] *Id.*

disparity between the trillions of dollars in natural resources assets that countries possess and the high poverty per capita rates.[90] It intends to address these disparities by assessing the country's institutions, rules, and practices to aid in implementing improvements in extractive resource governance.[91] However, it warns against blanket assessments based on these rankings saying "Generalizations about the performance of a whole region can be misleading since there is significant variation across countries – but the better performers show others in the vicinity that good governance in extractives is possible."[92]

IX. EXTRACTION IN THE DRC: MINING SECTOR

According to the RGI, the DRC mining sector was ranked 36 out of 100 in 2021.[93] This is a slight progression from their 2017 ranking of 33.[94] This development is due to the revision of the DRC's mining codes and mining regulations in 2018.[95] Although there is progression, the remaining deficiency stems from the country's lack of consolidation of information on reserves, production, and exports, as well as a lack of numerical fiscal rules and implementation of rules governing the mining fund.[96] The value realization score stands at 65, which is a combination of the subcomponent scores of licensing (68), taxation (69), local impact (67), and state-owned enterprises (55).[97] This score is a result of a lack of transparency and limited public access to information.[98] There have been promises of improvement: the 2018 Mining code created a more solid foundation for transparency, particularly regarding the local impact of mining, and further strengthened both the DRC's Mining Code and its Framework Law. The 2018 Mining Code contains a variety of stipulations to improve transparency and fairness including publishing summaries of reports and compensating indigenous groups for displacement or

[90] *Id.*

[91] *Id.*

[92] *Id.* The RGI ranks the countries between 0 and 100. A ranking below 30 is seen as having a "failing" governance framework, while a ranking between 60-74 is considered as having "satisfactory" governance procedures, and any ranking greater than 75 is considered to have "good" laws and practices.

[93] *Democratic Republic of Congo; Mining,* NAT. RES. GOVERNANCE INST., https://www.resourcegovernanceindex.org/country-profiles/COD/mining?years=2021 (last visited May 19, 2025).

[94] *Id.*

[95] *Id.*

[96] *Id.*; *see generally* IMF, *Democratic Republic of the Congo: 2024 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for the Democratic Republic of the Congo,* IMF Country Rep. No. 2025/023 (Jan. 2025), https://www.elibrary.imf.org/view/journals/002/2025/023/article-A001-en.xml.

[97] *Democratic Republic of Congo; Mining*, *supra* note 93.

[98] *Id.*

resettlement.[99] Yet, the score still remains in the "weak" category.[100] This is due to the gap between the law itself and the application of it.[101] The inability to adequately implement and enforce the laws and frameworks already put in place undermines the governments legal efforts and, therefore, adversely affects them.[102]

The revenue management score stands at 26, which is a combination of subcomponent scores of national budgeting (35), sovereign wealth funds (17), and normally subnational resource revenue sharing (however the DRC has no data on this subcomponent).[103] This score is also a result of lack of transparency.[104] Although new rules have created the Mining Fund for Future Generations ("FOMIN"), the rules are not effectively implemented.[105] This is due to the significant lack of transparency about how FOMIN is supposed to operate, as it is not under the Control of the National Assembly.[106] Within FOMIN there are no clear publicly stated or available rules that govern the deposits and withdrawals from the sovereign wealth fund, which is a vital state-owned fund designed to manage the wealth from non-renewable resources like mining.[107] The lack of clarity and the absence of direct oversight from the National Assembly[108] over this institution creates a lack of transparency that in turn undermines the budget, the sovereign wealth fund and, therefore, the revenue management score.[109]

The enabling environment score stands at 17, a combination of the subcomponent scores of voice accountability (24), government effectiveness

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[99] *Id.*; *See generally The Democratic Republic of Congo's Revised Mining Code,* HERBERT SMITH FREEHILLS (Apr. 25, 2018), https://www.herbertsmithfreehills.com/insights/2018-04/the-democratic-republic-of-congos-revised-mining-code (last visited May 12, 2025).

[100] *Democratic Republic of Congo; Mining, supra* note 93.

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.*; Jocelyn Kelly & Xavier Mitana, *Taxation and Public Financial Management of Mining Revenue in the Democratic Republic of Congo*, INST. OF DEV. STUD. (Oct. 8, 2021), https://opendocs.ids.ac.uk/articles/report/Taxation_and_Public_Financial_Management_of_Mining_Revenue_in_the_Democratic_Republic_of_Congo/26428750/1/files/48182188.pdf.

[106] *Democratic Republic of Congo; Mining*, *supra* note 93.

[107] *Id.*

[108] *Id.*

[109] *See generally* Andrew Bauer, *Sovereign Wealth Funds: Guidance for Policymakers,* NAT. RES. GOVERNANCE INST. (June 25, 2014), https://resourcegovernance.org/articles/sovereign-wealth-funds-guidance-policymakers (last visited May 12, 2025).; Martin A. Weiss, *Sovereign Wealth Funds: Background and Policy Issue for Congress,* CONG. RSCH. SERV. (Jan. 15, 2009) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.everycrsreport.com/files/20090115_RL34336_a7ea655551d2435a8e05992d4ac1b1367b3e3635.pdf (last visited May 12, 2025).

(7), regulatory quality (11), rule of law (5), control of corruption (56), political stability and absence of violence (10), and open data (53).[110] This score reflects the same lack of transparency as seen within the other scores. The low scores within each of these categories contribute to the overall unfavorable circumstance of low transparency and poor governance accountability.[111] Although the score has increased by 5 points, without significant improvement within these individual factors this score will be unable to advance.[112]

Here, the mining sector in the DRC can be characterized by a failure to implement rules and laws that are followed and adhered to, both by foreign countries and nationals.[113] The rules are not put into practice and there is no disclosure of environmental reports or management plans.[114] Therefore, people are operating unaware and without oversight whilst also making no record to inform those who come after them.[115] On the positive side, the DRC's laws and regulations encourage "local content" by using Congolese firms and service providers in the mining sector.[116] The government believes that local content at all levels of the country's economic life is a benefit, an obvious difference from the past colonial counterpart's direct colonial influence.[117] However, the DRC's limited history and practice of independently regulating their own economy has continued to challenge their ability to implement rules that are adhered to by citizens.

X. EXTRACTION IN THE DRC: COBALT INDUSTRY

Such inability to self-regulate also affects the DRC's cobalt industry, which is crucial as the cobalt industry plays a significant role in their economy. The DRC's cobalt industry is a leading producer in the world with 50% of the global reserves.[118] Cobalt, and therefore the DRC, is indispensable for the manufacturing of strategic technologies including advanced batteries, jet engines, rare-earth magnets, petroleum catalysts, and tool parts that enable construction, manufacturing, and mining.[119] In 2018, the DRC declared cobalt a

[110] *Democratic Republic of Congo; Mining, supra* note 93.; Kelly & Mitana, *supra* note 105.

[111] *Democratic Republic of Congo; Mining*, *supra* note 93.

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*; *see* TDI SUSTAINABILITY, *IMPACT OF NEW MINING TECHNOLOGIES ON LOCAL PROCUREMENT IN THE DEMOCRATIC REPUBLIC OF THE CONGO,* (2023), https://rue.bmz.de/resource/blob/100580/new-tech-new-deal-congo.pdf.

[117] *Democratic Republic of Congo; Mining*, *supra* note 93.

[118] *Id.*

[119] Andrew L. Gulley, *One Hundred Years of Cobalt Production in the Democratic Republic of the Congo,* 79 RES. POL'Y 1 (2022).

strategic mineral which increased the royal rate from 3.5% to 10% in sales /payment per unit.[120] To gain control of the cobalt sector Gecamines, a privately owned commercial company wholly owned by the DRC, created a new subsidiary called Enterprise Generale du Cobalt with the purpose of purchasing, processing, and marketing cobalt that was mined artisanally in the DRC.[121] The Cobalt industry is the major contributing factor to the DRC's overall mining sector score of 36 because of the lack of adherence to regulatory and legal frameworks that govern cobalt mining.[122] The inability to govern such an industry combined with the absence of management, oversight, and environmental disclosures undermines its efforts to capitalize on its resources effectively.[123] Therefore, this impacts the overall performance and management score of natural resources.

XI. EXTRACTION IN NIGERIA: OIL AND GAS SECTOR

Nigeria is the largest oil and gas producer on the continent underscoring the importance of why the effectiveness of governance within the extraction industry is deeply significant for Nigeria.[124] According to the RGI, Nigeria's oil and gas sector scored 53 in 2021.[125] This places them in the weak performance band, but still progressing since their 2017 ranking of 42.[126] Despite this 11-point score increase, the petroleum resource governance has largely stagnated in that time, with the bulk of the point increase being driven by the Nigeria Sovereign Investment Authority.[127] However, Nigeria's failing score and inability to govern its own petroleum resources stem from several factors: the lack of public reports and rules governing licensing and contract procedures, the

[120] *Democratic Republic of Congo; Mining*, *supra* note 93.

[121] *Id.*

[122] *See generally* Oluwole Ojewale, *Rampant Cobalt Smuggling and Corruption Deny Billions to DRC*, INST. FOR SEC. STUD. (June 18, 2024) https://issafrica.org/iss-today/rampant-cobalt-smuggling-and-corruption-deny-billions-to-drc.

[123] *See generally* David Manley, Patrick Heller, & William Davis, *No Time to Waste: Governing Cobalt Amid the Energy Transition,* NAT. RES. GOVERNANCE INST. at 1 (2022), https://resourcegovernance.org/publications/no-time-waste-governing-cobalt-amid-energy-transition.

[124] GlobalData Energy, *Nigeria Exploration and Production Outlook,* OFFSHORE TECH. (Dec. 14, 2021), https://www.offshore-technology.com/comment/nigeria-exploration-and-production/?cf-view; *Nigeria: Oil & Gas,* NAT. RES. GOVERNANCE INST, https://www.resourcegovernanceindex.org/country-profiles/NGA/oil-gas?years=2021 (last visited Mar. 16, 2025).

[125] Chukwuemeka Ayomide, *Resources Governance Index: Nigeria's Oil and Gas Sector Placed in 'Weak' Performance Band*, PEOPLES GAZETTE (Sept. 30, 2021), https://gazettengr.com/resources-governance-index-nigerias-oil-and-gas-sector-placed-in-weak-performance-band/.

[126] *See* GlobalData Energy, *supra* note 124.

[127] *Id.*

lack of public disclosure by officials about their financial interest or beneficial ownership in extractive companies, and the extremely "poor" score within their enabling environment section.[128]

The subcomponent categories that contribute to Nigeria's overall score of 53 are value realization, revenue management, and enabling environment.[129] The overall value realization score is 56, which is a combination of licensing (25), taxation (71), local impact (57), and state-owned enterprises (69) scores.[130] This value realization score of 56 is considered weak due to the lack of disclosure, and poor governance that hinders Nigeria's ability to realize the value that it has within the oil and gas sector.[131] Public officials and other politically exposed persons are supposed to report any assets that they own, especially assets within the oil and gas industry to ensure that there is proper public oversight over their dealings or holdings.[132] However, this information is not made public which, therefore, limits the public's ability to hold officials accountable for actions that could compromise Nigeria's best interest in the extraction industry.[133] Also under the Environmental Impact Assessment (EIA) Act of 1992, extraction companies are required to provide environmental impact assessments and environmental mitigation management plans for the government.[134] However, such assessments and management plans have not been routinely disclosed which is concerning considering the long history of oil spills, pollution and environmental degradation in the Nigeria Delta.[135] This lack of disclosure can be attributed to a weak governance, as there are no rules that govern these disclosure mandates.[136] This means that disclosures can stop at any time or in this case can happen whenever the individuals and entities feel like reporting.[137] Without improving this governance, Nigeria will continue to have difficulties in ensuring oversight and accountability within the industry, therefore, decreasing the value of the industry as a whole.[138]

The revenue management score is a 68 which is considered satisfactory.[139]

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[128] *Id.*

[129] Ayomide, *supra* note 125.

[130] *Id.*; *see* GlobalData Energy*., supra* note 124.

[131] GlobalData Energy*, supra* note 124.

[132] *Id.*

[133] *Id.*; Philip Agbonifo, *Institutional and Regulatory Compliance Gaps in Natural Resource Governance: Empirical Evidence and Lessons from the Nigeria Oil and Gas Industry*, 5 INT'L J. RELIGION 1006, 1007 (2024).

[134] GlobalData Energy, *supra* note 124.

[135] *See generally* Obioma Helen Onyi-Ogelle, Environmental Protection from Oil Spillage in the Niger-Delta Region of Nigeria: Ogiland Perspective, 7 INT'L J. HUMANITIES & SOC. STUD. 293, 293 (2019).

[136] *See* GlobalData Energy, *supra* note 124.

[137] *Id.*

[138] *Id.*

[139] Ayomide, *supra* note 125.

This is a score composed of the subcategories of national budgeting (70), subnational resources revenue sharing (57), and sovereign wealth funds (78).[140] The main issue presented within revenue management is the lack of governance specifically over domestic investments.[141] When domestic investments are not carefully approved and regulated by governing bodies it often leads to politically motivated investments that increase corruption.[142] Although the Nigerian Sovereign Investment Authority has rules that govern annual funds and reporting, it does not have investment rules, which allow for a gap in governance that, if not fixed, could greatly hurt the industry.[143]

The enabling environment subcomponent uses data from external public sources such as the Worldwide Governance Indicators and Open Data Inventory.[144] The enabling environment score is 34, which is considered to be "poor" or "failing."[145] This score is composed of voice and accountability (58), government effectiveness (24), regulatory quality (31), rule of law (31), control of corruption (23), political stability and absence of violence (8), and lastly open data (64).[146] Here, the issues stem from decades of corruptive practices due to lack of transparency and ongoing instability within governance that has allowed for environmental and societal damage.[147]

Although Nigeria has a comparatively higher score than the DRC, there are specific components that contribute to the overall weakness of the RGI score. For instance, within the value realization component, the licensing subcomponent scores a "failing" 25 as there is a general lack of transparency in this part of the sector.[148] This is because there is no publicly accessible registry of licenses, and because of the licensing process itself.[149] The 1969 Petroleum Act does not require the minister, or any other authority, to establish criteria for participatory company qualifications in regards to licensing, or any requirements for the disclosure of biddable terms or rules governing the licensing process.[150] The law also does not require that bids made by companies be disclosed by the licensing authority.[151] There are also no rules that require the government to disclose contracts assigned with extractive companies, and the Nigerian

[140] *See* GlobalData Energy, *supra* note 124.

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] Ayomide, *supra* note 125.

[146] GlobalData Energy, *supra* note 124.

[147] Ayomide, *supra* note 125.; *see generally* Onyi-Ogelle, *supra* note 135, at 296.

[148] Ayomide, *supra* note 125.

[149] *See* GlobalData Energy, *supra* note 124.

[150] *Id.*; *see generally*, PETROLEUM ACT, 1969, Cap. P10, L.F.N. 2004 (Nigeria), https://fao-lex.fao.org/docs/pdf/nig92407.pdf (last visited May 11, 2025).

[151] *See generally*, PETROLEUM ACT, *supra* note 150.

government has not made these contracts public.[152] Therefore, contract transparency within the extraction industry will be crucial to enable greater oversight in determining whether a country – such as Nigeria - is getting the best deal for their resources, thereby returning power to citizens, parliamentarians, and others not affiliated with extraction companies.[153]

Lack of financial interest disclosures also present a problem.[154] Public officials and politically exposed persons are required to declare their assets, including within oil and gas companies regularly.[155] However, this information is not made public, limiting possible oversight of improper dealings, holdings, or conflicts of interest in the licensing or negotiation processes.[156] Information has yet to be published in regards to public officials' holdings in extractive companies even though there is evidence that a former president of the senate has falsely declared their assets and commercial interests.[157] Nevertheless, state-owned enterprises increased by 25 points since 2017, which was an improvement made by the disclosure of annual reports and financial statements by Nigeria National Petroleum Corporation's ("NNPC").[158] In addition the NNPC commissioned and published an audit of its subsidiary financial statements, and now regularly publishes data in regards to the sale of its oil and gas production.[159] This information also includes the volume, value, dates, and names of buyers, additional details, and procedures helping to close the gap within issue disclosure.[160] Although there are a dearth of rules and laws mandating regular publication of the NNPC annual report and legislative review of published documents, there are no rules mandating the disclosure of oil and gas production and sales.[161] As a result, these disclosures could stop at any time,

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[152] *See* GlobalData Energy, *supra* note 124.

[153] *Id.*

[154] *Id.*

[155] CODE OF CONDUCT BUREAU AND TRIBUNAL ACT, 1991 Cap. C15, L.F.N. 2004 (Nigeria), Declaration of Assets

(1) Every public officer shall, within 16 months after the coming into force of this act or immediately after taking office and thereafter

(c.) …specify, of all his properties, assets, and liabilities

(2) Any statement in any declaration that is found to be false by any authority or person authorized in that behalf to verify it, shall be deemed to be a breach of this Act.

[156] *See* GlobalData Energy*, supra* note 124.

[157] *Id.*

[158] *Id.*; *see also generally* Murjanatu Ibrahim Gamawa, *What NNPC's Financial Statement Shows Us – And Why It Matters*, EITI (Nov. 5, 2020) https://eiti.org/blog-post/what-nnpcs-financial-statement-shows-us-and-why-it-matters.

[159] GlobalData Energy*, supra* note 124; Murjanatu Ibrahim Gamawa, *supra* note 158.

[160] GlobalData Energy, *supra* note 124; *see generally Nigerian National Petroleum Company Limited*, NNPC (Dec. 31, 2022) https://cms1977.nnpcgroup.com/uploads/NNPC_CONSOLIDATED_AND_SEPARATE_FINANCIAL_STATEMENTS_AS_AT_31_ST_DECEMBER_2022_0de3c4c7e0.pdf (last visited May 12, 2025).

[161] GlobalData Energy*, supra* note 124.

with no deterrence for inaccurate or absent reporting.[162] Once more, this exhibits the gap that exists between Nigeria's legal frameworks and their actual enforcement, which continues to inhibit accountability in the extraction industry.

XII. HUMAN RIGHTS VIOLATIONS

Human rights have always been intertwined with the intersectionality of labor and industry. Whether international, supranational, or domestic, they affect all aspects of societal life.[163] Human rights are linked with the idea of sustainability and development as is the case for natural resource development.[164] This connection underscores how exploitation of natural resources comes at the price of fundamental rights violations as the exploitation destroys the balance between economic growth, environmental preservation, and the protection of human liberty.[165] Therefore, it is unsurprising that integrating human rights discourse has become essential in discussions surrounding the extraction of natural resources as they are imperative both politically and economically.[166] Not only are natural resources indispensable to countries that import them but also for those that depend on the industry for the export revenue.[167]

The initial human rights consideration in connection to natural resources mining is to address who is entitled to ownership, exploitation, extraction, and the use of natural resources – in other words, who holds permanent sovereignty over these resources.[168] This concept stems from past colonial practices in which colonizer nations deemed themselves the permanent sovereign over any natural resources they came to find, regardless of the land they were on or the people to whom it technically belonged.[169] This was the beginning of exploitative practices such as disrespecting historic titles to land resources, and the needs of local communities.[170] The African Charter Right to Economic Development serves as an instrument to ensure "that the material wealth of the countries is not exploited by aliens to no or little benefit to the African countries."[171] Similarly, albeit in less detail, many other countries recognized by the European Court of Justice have expressed that people have the right to develop and determine their

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[162] *Id.*

[163] Michael-Lysander Fremuth, *Resource Mining and Human Rights*, *in* NATURAL RESOURCES AND INTERNATIONAL LAW - DEVELOPMENTS AND CHALLENGES: A LIBER AMICORUM IN HONOUR OF STEPHAN HOBE 145, 147 (1st ed. 2021) http://dx.doi.org/10.5040/9781509952847 (last visited Mar. 16, 2025).

[164] *Id.*

[165] *Id.*

[166] *Id.*

[167] *Id.* at 148.

[168] *Id.* at 149.

[169] *Id.*

[170] *Id.*

[171] *Id.* at 150.

own future, and to freely dispose of their wealth and natural resources.[172]

Existing frameworks of human rights, therefore, can be used as safeguards for nations against the exploitation and extraction of their natural resources, and to ensure that local communities are able to benefit from such practices.[173] It is within a state's rights and obligations to guard and enforce their permanent sovereignty over national natural resources and protect their populace from harmful exploitation.[174] Furthermore, they are entitled to establish their own legal regimes that may grant property or licensing rights in regards to natural resources.[175] However, although the concept of property – such as natural resources – being considered a human right is less clear, it has been acknowledged by Article 17 of the Universal Declaration of Human Rights.[176]

Another human rights concern regarding resource mining is that extractive industries pose specific threats to human rights, and generally impair them.[177] For example, in the extractive industry, oil, gas, and mining companies are held to be responsible for the most and gravest business-related human rights violations, accounting for up to 30%.[178] This is due to several characteristics of the industry, the first being that by its very nature the practice of resource extraction is hazardous work as it is often underground, in dark conditions, sometimes even underwater, and often with tools that are very dangerous to human health and safety.[179] Second, many of the world's resources are located in low- and middle-income countries, where governments and institutions lack strong democratic legitimacy as they may suffer from corruption, lack of legislation, and inconsistent enforcement powers.[180] Such weak foundations make it difficult for these nations to then be agents and defenders of human rights.[181] Instead they are responsible for, ignorant towards, or complicit in the violations against their land and people.[182] Third, the increasing global competition for natural resources makes it difficult for nations with natural resources to compel transnational corporations and trading partners – whose only bottom line is resource extraction—to protect human rights and the environment abroad, or fight corruption.[183] This creates a race-to-the-bottom, in

[172] *Id.*

[173] *Id.* at 152.

[174] *Id.*

[175] *Id.*

[176] *Id.* at 153; *see* G.A. Res. 217A (III), U.N. Doc. A/810 at art.17 (Dec. 10, 1948). 1) Everyone has the right to own property alone as well as in association with others, and 2) No one shall be arbitrarily deprived of his property).

[177] Fremuth, *supra* note 163, at 157.

[178] *Id.*

[179] *Id.*

[180] *Id.*

[181] *Id.* at 158.

[182] *Id.*

[183] *Id.*

regards to human rights standards with the increased demand for natural resources.

Therefore, there remains a question of who is responsible for protecting these people. While private business are not bound by international human rights law, 'soft' steering instruments have recently been created to force businesses to respect human rights.[184] Examples of these types of instruments have been: 1) reporting obligations by companies about their human rights compliance so that NGO's, shareholders, or consumers can exert pressure to ensure that they remain compliant: 2) due diligence legislation to ensure that human rights are protected specifically in supply chains: and 3) domestic tort law, which offers remedies and compensation even for human rights violations abroad.[185] However, ultimately states are primarily responsible for respecting, protecting, and fulfilling human rights.[186]

XIII. ENVIRONMENTAL VIOLATIONS

Another critical dimension intertwined with labor and the extraction industry is the environment. Environmental problems stemming from extraction activities include resource depletion and habitat destruction.[187] Resource depletion involves the loss of fossil fuels such as oil, coal, and natural gas due to extensive extraction for energy production and industrial use.[188] Additionally, it includes the depletion of groundwater through over-extraction for irrigation and domestic consumption, leading to aquifer depletion and land subsidence.[189] Habitat destruction - including deforestation, soil erosion, air and water pollution, and oil spills - all contribute to the depletion of biodiversity.[190] The loss of forests has far-reaching consequences for local communities, depriving them of a vital natural defense against floods.[191] Forests serve as sponges, absorbing rainfall, stabilizing soils, and regulating water flow.[192] Deforestation disrupts this delicate balance, resulting in flash floods and droughts. Soil erosion and degradation further exacerbate these issues, as forests play a crucial role in

[184] *Id.* at 159.

[185] *Id.*

[186] *Id.*

[187] ELISA MORGERA & KATI KULOVESI, RESEARCH HANDBOOK ON INTERNATIONAL LAW AND NATURAL RESOURCES 3–4 (2016).

[188] Jiannan Wang & Waseem Azam, *Natural Resource Scarcity, Fossil Fuel Energy Consumption, and Total Greenhouse Gas Emissions in Top Emitting Countries*, 15 GEOSCIENCE FRONTIERS 1, 5 (2024).

[189] *Id.*

[190] Lei Nguyen, *5 Biggest Environmental Issues In Africa In 2024*, EARTH.ORG (Feb. 25, 2024), https://earth.org/environmental-issues-in-africa/.

[191] *Id.*

[192] *Id.*

maintaining soil structure.[193]

In addition, Africa faces pressing environmental challenges in air and water pollution. Emissions from industries and cities contribute to air pollution, leading to approximately 780,000 premature deaths annually, according to a 2019 NASA study.[194] Water pollution, stemming from inadequate sanitation and contaminated water sources, claims an estimated 115 lives per hour, according to the United Nations Department of Economic and Social Affairs.[195]

Nigeria, Africa's top oil producer, grapples with additional environmental challenges related to the oil extractive industry. While oil production fuels the economy, uncontrolled spills, particularly in the Niger Delta, have devastating consequences for agriculture, waterways, and biodiversity.[196] These spills contribute to a decline in biodiversity, which is not only critical for Africa but also for the world. Despite the continent's significance in biodiversity conservation, approximately one million species are endangered with extinction, as noted by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.[197]

The tension arises from the principle of permanent sovereignty over natural resources, which allows states the freedom to exploit resources as they see fit, often conflicting with the duty of nature preservation.[198] However, at the turn of the 21st century, evolution in environmental law and development law ushered in a renewed relationship between national sovereignty and resource protection, proving that sovereignty not only gives rights over resources but also the responsibility to manage them in sustainable way.[199] Nonetheless, the question remains whether these legal evolutions are being effectively implemented on the African continent or are primarily benefiting colonizing extracting countries. If that is the case, the benefits of such legal evolutions disproportionally favor extraction companies rather than local populations and ecosystems by allowing them to operate with minimal accountability.

XIV. ECONOMIC VIOLATIONS

> Powerful States and their transnational corporations, [. . .] that are territories of extraction, emerge as the clear winners… the scale of corporate benefit from the extractivism economy is staggering. At the same time, those peoples who in the past were colonized on the grounds of false claims of

[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] *Id.*

[198] MORGERA & KULOVESI, *supra* note 187, at 4.

[199] *Id.* at 5.

> their racial inferiority, today continue to bear the greatest cost of the extractivism economy. [200]

For years, Africa has been simultaneously coined as the richest and poorest continent—rich in resources, land, and beauty, and yet poor in governance, infrastructure, and finances due to colonial remnants of the extraction industry.[201] Even though 161 billion dollars come into the continent through loans, remittances, and aid, 203 billion dollars leave the continent.[202] This is in part due to the corners that are cut by extraction industries, specifically in taxes whereby they essentially "steal" money "legally" by pretending to generate wealth in tax havens outside of Africa.[203] Such "illicit financial flows" surmount to around 6.1 percent of Africa's total gross domestic product (GDP) – which is three times what Africa receives in aid.[204] 30 billion dollars made in profit by these corporations are sent back to the home country to enjoy surplus wealth instead of being used to adequately pay their laborers, or invest in the facilities of production.[205] Another 29 billion dollars are stolen through illegal logging, fishing, and trade in wildlife—all industries that are interconnected with extraction industries through several channels.[206] Meanwhile, Africa is owed 36 billion dollars due to the damage climate change will have and has already begun to have on its societies and economies, especially since Africa cannot rely on the use of fossil fuels like Europe did to develop.[207] The climate crisis was not caused by Africa and yet Africans bear the costs and effects the most. This highlights how African countries are disadvantaged by both the climate crisis and actors within global systems. For African countries to fight against this disadvantage, they must be able to benefit from foreign investment and be allowed to, and aided in, legally regulating investments and investing corporations.[208] They must have the power to protect themselves and put themselves first.

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[200] U.N.C.H.R., Resources extraction fuels rights violations and racial subordination - UN expert (July 08, 2019), https://www.ohchr.org/en/press-releases/2019/07/resources-extraction-fuels-rights-violations-and-racial-subordination-un (last visited Mar. 16, 2025).

[201] *See generally* Cristina Duarte, *Beyond Compensation: Reparatory Justice as a Structural Economic Imperative for Africa,* AFR. RENEWAL (May 2, 2025) https://africarenewal.un.org/en/magazine/beyond-compensation-reparatory-justice-structural-economic-imperative-africa; Nick Dearden, *Africa Is Not Poor, We Are Stealing Its Wealth,* ALJAZEERA (May 24, 2017),
https://www.aljazeera.com/opinions/2017/5/24/africa-is-not-poor-we-are-stealing-its-wealth.

[202] Dearden, *supra* note 201.

[203] *Id.*

[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] *Id.*

[208] *Id.*

XX. POSSIBLE SOLUTIONS AND COMPARISON

Central to the governing of investments within the extractive sector is international investment law.[209] This is one of the fastest developing areas of public international law, as it is composed of over 3000 complexly put together investment treaties.[210] Investment treaties are international agreements between states that impose obligations and restrictions on countries regarding the treatment of foreign investors.[211] However, many of these treaties instead of allowing "host states" certain liberties are limiting the direction a "host state'' may act or not act in regards to the rights or interests of foreign investors.[212] The impact of investment treaties is especially evident in the domestic governance of extractive industries.[213] Good governance of this sector requires substantial state involvement to maximize benefits and minimize the environmental and social harms that can happen from the exploitation of natural resources.[214] Embedded within these treaties are investor-state dispute settlements ("ISDS") which are mechanism that extractive industry investors use to challenge states action or inactions that have allegedly negatively affected their investments.[215] When such mechanisms are used or threatened to be used it restricts a state's ability to maximize the benefits and minimize harms as mentioned before.[216] This allows host countries to be taken advantage of because when a state signs an investment treaty, its ability to adopt, revise, repeal, and enforce laws, regulations, and policies that affect foreign investors or investments is subject to the state's obligations under the treaty, which, contains no obligations for investors.[217]

Investors can enforce the obligations established by ISDS provisions. ISDS allows for investors to bring claims against host states and seek damages for the alleged impacts of state's action or inaction, usually without the involvement of the investor's home state.[218] This is unlike other areas of international economic law, whereby under the World Trade Organization's agreement, states are given the ability to challenge other states for violating their treaty commitments.[219] There has been significant reliance by foreign investors on investment treaties to challenge a wide array of government conduct connected to the approval,

[209] Lise Johnson & Jesse Coleman, *International Investment Law and the Extractive Industries Sector*, COLUM. CTR. ON SUSTAINABLE INV. STAFF PUBL'NS 1 (2016).

[210] *Id.*

[211] *Id.* at 2.

[212] *Id.*

[213] *Id.*

[214] *Id*.

[215] *Id.*

[216] *Id.* at 3.

[217] *Id.* at 4.

[218] *Id.*

[219] *Id.*

operation, and termination of investments in extractive industries.[220] As of January 2021, there have been 1,104 known treaty-based ISDS cases, with at least 16% of these cases involving extractive industries—making this sector the second most disputed in international investment arbitration.[221]

As mentioned throughout this Note, managing extractive industries involves a wide range of legal and policy frameworks, along with robust institutions and processes to govern interactions in-between.[222] So for host states and their nationals to have positive outcomes in this regard, it depends on several factors:

> 1) the strategic and coordinated planning across government agencies at both national and local levels: 2) rights-complaint engagement with project-affected communities and other stakeholders; mechanisms for ensuring integrity of public officials and safeguards against corruption and capture: 3) high-quality impact assessments able to identify potential harms and evaluate options for avoiding or mitigating those harms: 4) effective processes for granting and challenging licenses or permits according to the law: and 5) the government's ability to respond and act in the face of changed circumstances.[223]

Most extractive cases are filed against developing countries, leaving them to be more vulnerable than their developed counterparts because more extractive investments in these countries are protected under investment treaties.[224] Furthermore, these foreign investments within developing countries extractive industries often come before the establishment of effective foundations for governing the environmental, human rights, and economic sectors of those projects.[225]

Exhibited here is an imbalance of power and potential negative impacts resulting from the current framework of international investment law. Host states are often excluded from the decision-making process and subjected to accept terms and conditions they cannot afford to reject. The first possible solution requires the reform of investment treaties to address the imbalance of power between hosts states and foreign investors. Host states need to renegotiate or reform investment treaties to strike a better balance between protecting investor rights and safeguarding their sovereignty as host states. This would include revising provisions that severely restrict the regular autonomy of states or that enable investors to bypass domestic legal systems, therefore ensuring that local courts are allowed to play a central role in resolving disputes. It could also include provisions for when a foreign country is investing in a developing country with a non-robust legal structure to provide enforcing powers for the

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[220] *Id.*

[221] *Id.*

[222] *Id.* at 6.

[223] *Id.*

[224] *Id.*

[225] *Id.*

implementation of laws that hold both parties accountable. Such mechanisms should be overseen by impartial international bodies or, when able, regional cooperation initiatives, to create additional layers of accountability.

There must also be measures to strengthen regulatory oversight. This would include the building and implementation of institutions with the capacity to be able to effectively monitor foreign investments and ensure that they comply with environmental, social, and governance standards. There should be the creation of independent regulatory agencies composed of experts in the natural resources, its specific location, and the people who would be involved in its extraction, from miners all the way to investors. Under normal circumstance such agencies would be implemented by national governments where the natural resources are originally from. However, as mentioned within this Note some African countries, specifically Nigeria and the DRC, do not possess the complex infrastructure to implement such institutions because of the remnants of colonial abuse that have and continue to impede upon their advancements in governance. Therefore, such a responsibility should be split proportionally between the nation investing and the nation who possesses the natural resources. This would aid in establishing a balance that is fair and equal, and in part, a sort of reparation for harm caused.

These agencies should have oversight on investment activities and provide guidance and transparency in contracts and the allocation of resources. Host states should make public their own individual public reporting requirements and provide such information to the agency so that investors and government officials are all aware and aligned. This would help improve accountability and illuminate the traffic of financial flows and contracts. Also, each country should issue mandates for comprehensive environmental and social impact assessments within contracts before the approval of a foreign investment to mitigate and minimize any potential harm.

Other possible solutions include encouraging investors to adopt responsible investment practices, including but not limited to the adherence to international standards on human rights, labor rights, and environmental protections. Such adherence could help mitigate the negative impacts of extractive industry practices. This could be incentivized through provisions of preferential treatment, such as tax breaks, faster licensing procedures, or priority access to markets for investors who demonstrate a commitment to responsible and ethical practices. Another solution includes a certification program that recognizes "responsible investors" distinguishing them and enhancing their reputation, further making them attractive to host nations who seek foreign investment, and potentially other companies or partners who wish to consolidate resources for the purpose of investment.

In light of enduring colonial legacies, addressing exploitative extraction practices is imperative for fostering equitable development and sovereignty for the African continent. It requires policy and treaty change and reformation but also the change of global perspectives and practices. Africa must be viewed for the riches and resources it possesses, rather than being defined by the scars of

corruption and underdevelopment left behind by colonial exploitation. International investment law needs to become a more collaborative practice that emphasizes partnerships between host states and investor states, while ensuring equitable negotiation power between the two. Large corporations and developed nations should undertake a greater responsibility for enacting ethical practices and ensure that their actions do not further contribute to the harm of the African continent and its people – ending the perpetuating cycle of exploitation that has endured for centuries. By addressing these issues and implementing better safeguards and frameworks, Africa can better protect its sovereignty over its natural resources, its land and people, and bolster their economic development, positioning itself as a competitive contender in the global market.