A Political Ecology of Injustice when Extracting Rights-holders from Nature:

Analysis of the communications mechanism of the UN Working Group on Business and Human Rights

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Submitted in partial fulfillment of the requirements for the degree of MA
Erasmus Mundus Human Rights Practice and Policy Masters Programme

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22 May 2023

Dissertation Module (30 ECT)

Supervisor: PhD, Sofie Hellberg
Spring semester 2023

Abstract:

In a world of interconnected global value chains, regulating the conduct of transnational corporations is challenging. In international human rights law, only voluntary mechanisms regulate the responsibility of businesses to respect. In the United Nations, the Guiding Principles of Business and Human Rights determine the international standards applicable: the duty of the State to protect, the corporate responsibility to respect, and the right of victims to remedy. The UN Human Rights Council established the Working Group on Business and Human Rights to guarantee the implementation of the Guiding Principles. This special procedure, composed of five independent experts, pushes forward the business and human rights agenda in the UN system. The Working Group receives information on abuses from civil society and sends letters to the States and companies involved to draw attention to the issue, ask for information, and remedy. This dissertation seeks to identify in those complaints patterns of conduct of the extractive industry that can reproduce environmental injustice and environmental human rights abuses. The extractive industry is the most frequently addressed sector in public allegations of abuses due to its impacts on local communities and the environment. As a nature-intensive sector, it offers an entry point to re-think environmental human rights from a political ecology perspective. The methodology includes a qualitative content analysis of 57 cases of alleged abuses of extractive companies from 2012-January 2023 in the complaint mechanism of the UN Working Group. Based on the Third World Approaches to International Law movement, this research questions whether human rights can challenge extractive neocolonial corporate practices. In the findings, the company´s notion of reputation and home States´ mere expectations are on the spot. At the same time, the claims of indigenous peoples and defenders are central to re-imagining environmental human rights in and from the sites of extraction.

Keywords: business and human rights; extractive industry; political ecology, Third World Approaches to International Law

Word count: 17.924

Acknowledgments

Grateful to all who kindly shared their thoughts and experiences with me, invited me to reflect and re-think, and supported me in this process. Special thanks to my supervisor for her guidance.

I write this dissertation with profound respect and consideration for the community leaders who have lost their lives defending their territories.

Luis Martínez, Mexico
César García, Colombia
Nacilio Macario, Nicaragua
Pitan Thongpanang, Thailand
Marcelo Monterona, Philippines
Sikhosiphi Rhadebe, South Africa
Adelinda Gómez Gaviria, Colombia
Alejandro Antonio Díaz Cruz, Mexico
Abraham Hernández González, Mexico
Ignacio Basilio Ventura Martínez, Mexico

Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
Aarhus Convention	Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters
C	Company
CSR	Corporate social responsibility
EHRs	Environmental human rights
Escazú Agreement	Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean
FPIC	Free, prior, and informed consent
GP	Guiding Principle
HRC	Human Rights Council
HS	Home State where the parent company is domiciled
IACHR	Inter-American Commission on Human Rights
IEL	International Environmental Law
ISHR	International Service for Human Rights
NAPs	National Action Plans on Business and Human Rights
NGOs	Non-governmental organizations
NIEO	New International Economic Order
OHCHR	Office of the High Commissioner for Human Rights
S	State where alleged abuses occurred
TWAIL	Third World Approaches to International Law
UN	United Nations

UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
UN Working Group **UNWGBHR** **WG**	UN Working Group on Business and Human Rights

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Introduction

Are corporations subject to international law and human rights obligations? This is a "deeply contested" debate since, so far, only "soft" law instruments have offered a normative response (Baxi, 2016a). On the one hand, there is a divergence between the "(deterritorialized) free trade regime" and the international human rights framework based on sovereign states (Segerlund, 2010, pp. 31–32). On the other hand, the proliferation of non-binding and voluntary initiatives reaffirms the widespread expectation that companies perform according to international standards. The problem is that in a world of interconnected global value chains, the aspiration of the universal application of human rights is limited by national jurisdictions and the lack of international binding mechanisms to target transnational corporations accountable (Bright *et al.*, 2020).

From voluntary initiatives to the latest ongoing drafting process of a binding treaty in Geneva, the UN system has been, for more than five decades, the scenario of several attempts to regulate the conduct of transnational corporations (Rodríguez-Garavito, 2017b, pp. 188–190). In 2011 the unanimous endorsement by the Human Rights Council of the UN Guiding Principles on Business and Human Rights (UNGPs) marked the “end of the beginning” by reaffirming: State's duty to protect, companies' responsibility to respect and victims' rights to access to an effective remedy (Ruggie, 2013, pp. xx–xxi). Besides, to pursue the implementation of the UNGPs, the Human Rights Council created the UN Working Group on Business and Human Rights. This group of five UN independent experts actively advocates forwarding the business and human rights agenda in the UN system. Despite being a voluntary set of principles, the UNGPs make explicit the expectation that companies operate according to international human rights standards. In the emerging business and human rights field, the UNGPs constitute a landmark and stepstone to civil society´s quest for corporate accountability and effective remedy.

In search of profit maximization, transnational corporations outsource their supply chains to geographies of low-cost production, frequently countries with weak governance structures but rich in natural resources (MacKinnon and Cumbers, 2019). Several studies of public allegations against companies worldwide show that the most frequently addressed sector, around one-third of the cases, corresponds to extractives: mining, oil, and gas extraction (Ruggie, 2013, pp. 19–26; UNWGBHR, 2021b). The extractive mode of accumulation is reproduced by corporate neocolonial exploitation (Harris, 2021). Civil society´s claim for

accountability and environmental justice in cases of transnational extractive corporations is an urgent matter and a “central aspect of the relationship between the environment and human rights” (Simons, 2015, pp. 506–507).

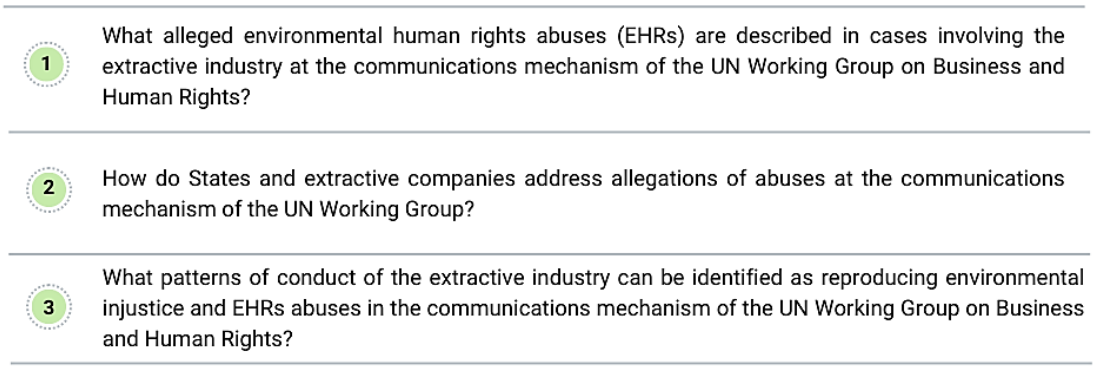
Critically addressing the causes of corporate impunity and its impacts on communities and the environment is the opportunity to reimagine human rights. This research is situated as part of the movement of the Third World Approaches to International Law (TWAIL). From an interdisciplinary approach, TWAIL scholars reflect on the role of international law in protecting foreign investment and trade in complex neocolonial landscapes (Simons, 2012, p. 35). Lawmaking acts that deny access to an effective remedy to victims shape geographies of impunity (Baxi, 2016b). This dissertation focuses on two limitations of international human rights law: the failure to hold northern states and transnational corporations accountable for human rights abuses and the anthropocentrism underlying the construction of the legal subject and rights-holder (Gonzalez, 2015a, pp. 177, 185). By focusing on a political ecology of injustice, structural power relations are unveiled as grounded in extractive neocolonial practices (Acosta, 2011).

The fragmented legal personalities of corporations across jurisdictions limit the ability of States to regulate multinational enterprises through global value chains that reproduce uneven development. The environment and human rights have developed in separate fields in international law, following an anthropocentric approach that splits humans (subjects of rights) from nature (resources) (Natarajan, 2022). The current socio-ecological crisis is a reminder of the vulnerability of the earth's system, making it urgent to weave loose ends in an effort to resist (Bosselmann, 2015; Gonzalez, 2015b). The emerging environmental human rights and the quest for accountability of transnational extractive corporations represent an opportunity to reinvent human rights.

This dissertation focuses on alleged environmental human rights abuses in the communications mechanism of the UN Working Group on Business and Human Rights in cases involving the extractive industry: mining, oil, and gas extraction. The research includes a qualitative content analysis of the UN Working Group on Business and Human Rights communications mechanism regarding the extractive industry. This group of five independent experts can receive information on alleged human rights abuses and, if deemed necessary, send letters to States and companies involved to draw attention to the facts and the international human rights standards applicable, particularly the UNGPs (OHCHR, 2023a). This complaint procedure does not have the authority to enforce "views or recommendations" (OHCHR, 2023a). However, since international human rights law is "state-centric," the letters sent by the

UN Working Group directly addressing corporations and their home and host countries can illustrate "patterns of business-related abuses and how States and businesses respond to such allegations" (UNWGBHR, 2021b, p. 2). Figure N. 1 shows the research questions guiding the dissertation.

Figure N. 1. Research questions guiding the dissertation.



Source: self-elaboration

The first chapter of this dissertation includes an introduction to the field of business and human rights in the UN system. From a historical approach, it describes the path for regulating the conduct of transnational corporations from its first attempts in the 1970s to the endorsement of the UN Guiding Principles on Business and Human Rights by the Human Rights Council and the current efforts in Geneva to draft a binding treaty. A section is dedicated to the UN Working Group on Business and Human Rights and the role of the independent experts advocating to push forward the business and human rights agenda. This first chapter closes by making explicit the link between business and environmental human rights in the field of the extractive industry.

The second chapter elaborates on the theoretical lenses that are the backbone of the analysis. By adhering to the TWAIL movement, a critical and eclectic theoretical approach is introduced. The chapter responds to how international law has been produced and applied to address environmental human rights abuses of extractive transnational corporations and whose embodied experiences have been taken into account in the language of rights. The author elaborates on the uneven geographical development fueled by neo-colonial corporate practices of the extractive industry. Those are also geographies of impunity and injustice reproduced by extractive modes of accumulation. From the structural problems, the research lands on environmental human rights as an opportunity to reinvent the legal subject and rights-holder: "A Political Ecology of Injustice when Extracting Rights-holders from Nature."

The third chapter focuses on the methodology applied for the qualitative content analysis of the 57 cases involving the extractive industry, mining, and oil and gas extraction in the UN Working Group on Business and Human Rights communications mechanism. Through a thematic analysis, 149 documents from States, companies, and the UN Working Group were coded. Besides describing the research design, the author engages in a reflexive process about positionality from the perspective of feminist political ecology to uncover the complexity of doing research with a purpose and the personal experience of "uneasiness" when navigating divergent knowledge systems and normative statements of how the world should be.

The fourth chapter introduces the findings from this research. First, a descriptive overview (4.1) of the cases analyzed highlights the geographical distribution of the alleged abuses. The following section (4.2) introduces the alleged negative environmental human rights impacts of the extractive projects in the communications mechanism of the UN Working Group, with particular emphasis on indigenous peoples´ collective rights (4.2.1) and land defenders on the frontline (4.2.2). After that, the focus is on home States and the companies addressed in the communications procedure (4.3). First, businesses' "reputation" (4.3.1) is analyzed as an entry point to claim corporate accountability and as a strategy to criminalize defenders through companies´ defamation lawsuits. Then the attention turns to the role of home States (4.3.2) when regulating the conduct of companies abroad. The findings chapter closes by putting neocolonial corporative practices on the spot, considering the risk of a wave of "green colonialism" behind the low-carbon energy transition highly dependent on mining. The dissertation concludes with policy recommendations to improve the UN Working Group on Business and Human Rights communications mechanism, joining the urgent call for protecting defenders and pushing forward an integral approach to the environment, business, and human rights agenda.

1. Business, human rights, and the environment in the UN system

In the last five decades, the UN system has been the scenario of multiple attempts to regulate the conduct of transnational corporations. From the early debates in the 1970s led by developing countries to the current drafting process of a binding treaty, the emerging discourse of business and human rights has focused on corporate accountability and the state's role as a regulator and enforcer of law (Ramasastry, 2015, pp. 249–252; Deva, 2020, pp. 3–5). While the state´s duty to protect, respect, and fulfill human rights has been extensively recognized in international law, the corporate responsibility to respect human rights is based on an international "social norm": a social expectation (Deva, 2021, p. 338; Cantú Rivera, 2022, p. 14).

In a world of shareholder primacy and profit maximization, global value chains and multinational corporations are "difficult regulatory targets" (Wettstein, 2020, pp. 35–40). Separate legal personalities (between the parent and subsidiary company) and limited corporate liability allow businesses to outsource their risks overseas (Deva, 2017, pp. 65–68). In many developing countries, corporations escape accountability due to, among others, weak regulation and enforcement of the law, ineffective judicial systems, and corruption (Boyle and Redgwell, 2021, p. 345).

Despite being a voluntary instrument, the 2011 UNGPs endorsed by the UN Human Rights Council represented an opportunity to build consensus on this emerging field. The UNGPs emphasize the legal obligations of States under international human rights law, insist on companies' due diligence responsibility, and foresee empowering affected individuals and communities through their right to remedy (Ruggie, 2017). The communications procedure, in particular, allows the UN Working Group to address actual cases of alleged human rights abuses, including business-related human rights impacts from climate change and environmental degradation (Knox, 2018, para. 35; OHCHR, 2021).

To frame the discussion, this chapter elaborates on the historical quest for accountability of transnational corporations in the UN system. After that, it focuses on the UNGPs and the UN Working Group on Business and Human Rights to introduce the communications procedure. Eventually, it offers an overview of business and environmental human rights to set the ground for the analysis of the extractive industry while responding to the call for "greater corporate accountability" to reduce and redress ecological harm (Olawuyi, 2021, pp. 234–237).

1.1. No more business as usual:

A quest for accountability of transnational corporations in the UN system

In the 1970s, a group of developing countries known as the Group of 77, mainly from Latin America, unsuccessfully tried to introduce in the United Nations the quest for a legally binding Code of Conduct on Transnational Corporations (Lim, 2021, p. 1065). The coalition argued that such regulation was crucial to Third World countries' development in the context of the New International Economic Order (NIEO) (UN General Assembly, 1974, art. 4. g). The NIEO aimed to overcome the "geopolitical process of decolonization," redirecting the benefits of the global economy to new democratic and sovereign states: ''the developing nations'' (Gilman, 2015, p. 1). For those advocating in favor, foreign direct investment represented a problem for newly independent countries, the sovereignty, and control over natural resources (Lim, 2021, p. 1070). Countries from the Global North, led by the United States, pushed back on this proposal by the argument that it threatens free international capital flows (Lim, 2021, p. 1065). In the end, the proposal of the Group of 77 was rejected in 1992, and in practice, many developing countries adopted global trade and foreign investment policies instead (Lim, 2021, p. 1065).

During the 1990s, the increasing "liberalization of trade, domestic deregulation, and privatization" worldwide deepened the impact of global markets (Ruggie, 2013, p. xxv). Transnational corporations operate globally, but each subsidiary has its own separate legal personality under the jurisdiction of the host country. This makes it harder to regulate the activities of multinationals and can become an obstacle when seeking remedy from the parent company. During the 1990s, some emblematic cases shed light on the responsibility of companies regarding their supply chain, as well as the complicity of some of them with gross human rights violations (Ruggie, 2013, pp. 2–3). That was the case of Shell in Nigeria, which operated in the country from the 1950s until 1993. During this period, environmental degradation caused the impoverishment of local communities, who were deprived of their sources of income, farming, and fishing. After the company left, social unrest was violently repressed by the State (around 2000 people were killed) (Ruggie, 2013, pp. 9–14); this led to a lengthy legal process in the US that ended up in 2009 when Shell agreed to pay $15.5m in settlement to the victims (Pilkington, 2009). The case of Shell was not an isolated one, but part of the 1990s period of "mushrooming" of corporate social responsibility initiatives, from civil society (including big NGOs such as Amnesty International and Human Rights Watch) to business and multi-stakeholder organizations (Segerlund, 2010, pp. 67–68).

In the 1990s, two initiatives emerged in the UN system to respond to economic globalization. On the one hand, the UN Secretary-General Kofi Annan supported the creation of the Global Compact (UNGC), launched in 2000, representing an UN-sponsored corporate responsibility framework aiming to connect corporations, UN agencies, and NGOs (Lim, 2021, p. 1073). Corporate social responsibility refers to voluntary and aspirational goals regarding companies' decision-making processes (Ramasastry, 2015, pp. 249–252). This platform advocates for the voluntary endorsement of companies of principles based on human rights, labor, environment, and anti-corruption (UNGC, 2023). According to its 2021-2023 policy strategy, the UN Global Compact has grown from 44 companies to more than "12.000 businesses and 3.000 non-business stakeholders across 160 countries" (UNGC, 2021, p. 4). The UNGC promotes reporting on activities relevant to the UNGC without monitoring or enforcement mechanisms (Segerlund, 2010, pp. 146–147).

In 1998, an expert subsidiary body of the UN Commission on Human Rights [nowadays the Human Rights Council] started drafting and released in 2003 a treaty-like document called "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" (Ruggie, 2013, p. xvii). Those Norms intended to impose on companies within their "sphere of influence" the same human rights obligations as States have. Therefore, they were dismissed in 2004 by the intergovernmental parent body, the Commission, as having "no legal standing" (Ruggie, 2017, p. 46). That situation increased the "highly polarized" division between human rights advocacy organizations, who supported companies being directly accountable under international law, and the business community that rejected transferring States' obligation by the argument of the privatization of human rights (Ruggie, 2013, pp. xvii–xxvi).

Later, John Ruggie was appointed as Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises from 2005-2011 (OHCHR, 2023g). In 2011, Ruggie submitted the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council[1] (OHCHR, 2011b). Ruggie (2013, pp. xlii–xliii) followed a "principled pragmatism" approach by opting for a politically authoritative but not legally binding formula. The UNGPs (2011b) suggest a "smart mix" between a) the obligation of the State to *protect* against human rights abuses by third parties within their jurisdiction, b) requiring that companies, beyond legal obligations,

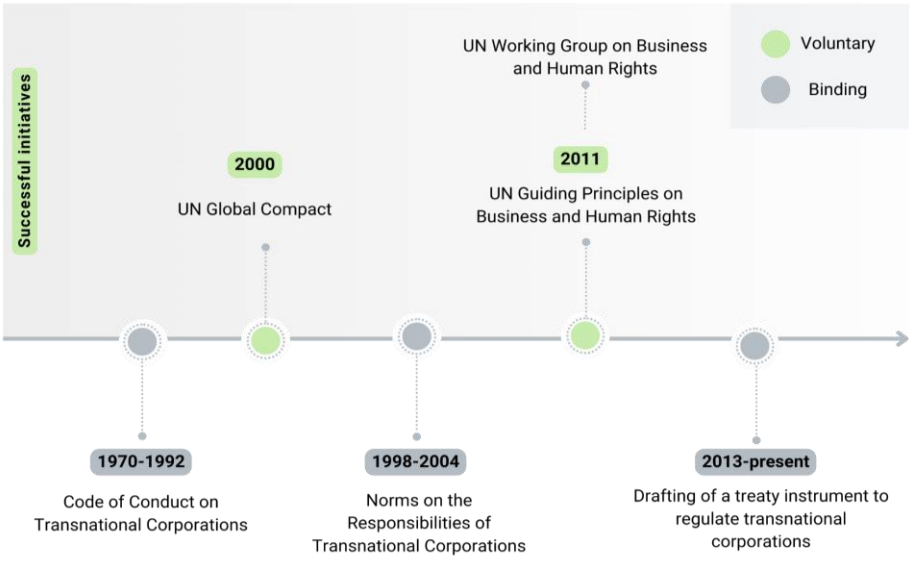
[1] Inter-governmental body within the United Nations system made up of 47 States.

carry out *due diligence* to avoid wrongdoings and c) *remedy* through judicial and non-judicial mechanisms.

In 2013, Ecuador proposed to the UN Human Rights Council to establish an open-ended intergovernmental working group to negotiate a treaty instrument to regulate transnational corporations (Ruggie, 2017, pp. 56–60). The proposal was cosponsored by Bolivia, Cuba, South Africa, and Venezuela; while the European Union and the US voted against it (Ruggie, 2017, p. 56). Despite the opposing views, in 2014, the UN Human Rights Council adopted resolution 26/9 that established the creation of this intergovernmental mechanism, which has held so far eight sessions in Geneva (OHCHR, 2023e).

In this "deeply contested" field, opinions on the binding treaty are divided. There is the risk that the negotiations extend for more than a decade and get eventually dismissed, or if enough developing countries adopt the treaty, the home countries where TNC are domiciled will not ratify it: becoming "a dead end" (Ruggie, 2017, p. 60). For Deva (2021, pp. 347–350), the treaty-making process is an opportunity for "building on a regulatory architecture" complementary to the UNGPs. For Vargas (2017, pp. 125–126), adopting and ratifying a treaty could bring legitimacy and empower civil society to close the implementation gap only if the voices of victims are at the center of the negotiation process. Despite the different points of view, drafting the treaty is an opportunity for questioning and imagining alternatives in this contested field. After concluding with the historical approach (see Fig. N. 2 for a summary), the following sections focus extensively on the UN Guiding Principles on Business and Human Rights (UNGPs).

Figure N. 2. Timeline of corporate accountability mechanisms proposed in the UN.



Source: self-elaboration from the literature

1.2. The United Nations Guiding Principles on Business and Human Rights:

"The end of the beginning"

In 2011, the UN Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights. The UNGPs include the duty of the State to protect, the corporate responsibility to respect, and the right of victims to remedy (OHCHR, 2011b). The Protect, Respect, and Remedy Framework constitutes a basis for cumulative progress (Ruggie, 2013, p. 81): that is what Ruggie referred to as the "end of the beginning" when he introduced the UNGPs to the Human Rights Council (HRC, 2011, para. 13). As a political statement adopted by an intergovernmental body, the UNGPs give "corporate responsibility to respect enhanced legitimacy beyond a social expectation" (Ruggie and School, 2017, p. 193). This subsection focuses on the three pillars of the UNGPs while highlighting challenges and opportunities.

The UNGPs reaffirm the existing obligation of States under international human rights law to protect people against human rights abuses by third parties: private actors, including corporations. For that purpose, States must prevent, investigate, punish, and redress human rights abuses in domestic business operations (OHCHR, 2011, GP1; UNWGBHR, 2014, p. 3). Additionally, the UNGPs recommend States set "clear expectations" that the companies domiciled in their territory respect human rights throughout their operations, even abroad (OHCHR, 2011, GP2; UNWGBHR, 2014, p. 3). Transnational corporations invest offshore to take advantage, among others, of low wages, new markets, tax breaks, lax pollution control, and cheap land and resources (Wright, 2002, p. 75). Besides, global corporations can influence countries by threatening to relocate their operations to other countries or by suing the host government under binding international arbitration (Ruggie, 2013, pp. xxviii–xviv). In that scenario, it is crucial to reaffirm the State's duty to protect, including a "smart mix" of measures: incentives, sanctions, guidance, and capacity-building (UNWGBHR, 2014, p. 21).

The UN Working Group on Business and Human Rights has actively promoted the adoption of National Action Plans on Business and Human Rights (NAPs) as a means for implementing the UNGPs (UNWGBHR, 2016). Currently, 30 countries have developed NAPs, the majority (17) located in Europe (DIHR, 2023). National Action Plans are effective in awareness-raising (dissemination and capacity-building), leading to improved implementation measures by public officials in regulatory bodies, including state-based non-judicial or administrative remedies for victims (Cantú Rivera, 2019, pp. 223–224). Nevertheless, critical

voices remind us that NAPs, as public policy documents, cannot bring legislative changes, their effectiveness is not usually measured, and they are linked to political cycles and changing agendas (Cantú Rivera, 2019, pp. 226–227).

The second pillar of the UNGPs refers to the responsibility of companies to respect human rights throughout their own operations and from business relationships with third parties (OHCHR, 2011, GP 11-13; Ruggie, 2013, p. 100). Beyond a "state-centric" approach, the UNGPs imply companies "irrespective of a state's willingness or ability to enforce the law" have the responsibility to respect human rights (Ruggie and School, 2017, p. 13). For the second pillar, the UNGPs (2011, GP 11) limit the "minimum" internationally recognized human rights to those in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

Surya Deva (2021) points out that the UNGPs are a "starting point" in a polycentric governance system where soft and hard norms should loosely align. As a social norm, companies' responsibility to respect human rights differs from legal duties; they exist beyond law enforcement mechanisms by the States and can directly influence the company´s social license to operate (Ruggie, 2013, p. 91). Despite its innovative character, the use of "social expectations" as the ground of this second pillar is the weak point of the UNGPs since it means giving greater emphasis to the "ethical and moral character" of human rights norms than their legal implications (Methven O'Brien and Dhanarajan, 2016; Macchi, 2022, pp. 50–51).

According to the UNGPs (2011, GP 15), companies address their responsibility to respect human rights through a policy commitment, carrying out human rights due diligence, and enabling remediation of adverse human rights impacts. Human rights due diligence refers to a "continuous process of identifying and addressing" impacts across the company's own operations, supply chains, and business relationships (OHCHR, 2011, GP 17; UNWGBHR, 2014, p. 27). The search for justice in the home country of corporations has raised innovations such as the judicialization of the corporate responsibility to respect human rights and various mandatory due diligence regulations adopted in Western countries (mainly in the EU), including the current proposal of an EU Corporate Sustainability Due Diligence Directive (Bright *et al.*, 2020).

Access to remedy is the third pillar of the UNGPs. It includes the State´s duty to guarantee access to domestic judicial and non-judicial grievance mechanisms and encourage the establishment of non-state grievance mechanisms (administered by companies or multi-stakeholders initiatives) (OHCHR, 2011, GP 25-31). Access to an effective remedy is a human right, which includes access to appropriate remedial mechanisms and the outcome of an

effective remedy "which should result in some form of corporate accountability" (UNWGBHR, 2017, para. 17). Nevertheless, much is left to do when it comes to remedy since there is an asymmetry of power between victims and corporations, reflected in the burden of proof, access to legal aid, and in general, limited financial resources to bear the costs of the litigation process (UN Working Group expert interview, 2023).

Particular attention deserves corruption in judicial systems and the practice of "corporate capture" when companies influence legislative and regulatory processes to undermine human rights respect (UNWGBHR, 2022, paras 6–10). Even after winning legal cases, victims struggle to enforce judicial rulings (UN Working Group expert interview, 2023). On the other hand, state non-judicial mechanisms vary in each jurisdiction. When they do have the competence to act in cases of abuses committed by private companies, these institutions (for instance, National Human Rights Institutions) face a lack of resources, including personnel to give an appropriate response, being able to intervene only when the violations have already occurred (UN Working Group expert interview, 2023; OHCHR, 2018). Eventually, when it comes to grievance mechanisms developed by companies and multistakeholder initiatives, emphasis must be placed on effective remedies rather than the mere existence of those formal mechanisms (UN Working Group expert interview, 2023; OHCHR, 2020). After reviewing the three pillars of the UNGPs, the following section dives deeply into their implementation through the communications procedure of the UN Working Group on Business and Human Rights.

1.3. The UN Working Group on Business and Human Rights:

Starting a targeted and victim-centered dialogue

The Working Group on the issue of human rights and transnational corporations and other business enterprises was established by the Human Rights Council in 2011. Its mandate is to "promote the effective and comprehensive dissemination and implementation" of the UN Guiding Principles on Business and Human Rights (UN Human Rights Council, 2011, art. 6). The Working Group is composed of 5 independent experts coming from different regions of the world: Africa, Asia, Latin America and the Caribbean, Eastern Europe, and the Western group (OHCHR, 2023d). The HRC appoints the experts, but they are not staff members nor receive remuneration from the UN (UN Human Rights Council, 2007; OHCHR, 2023f). The

Working Group is part of a broader set of Special Procedures[2] (independent experts, special rapporteurs, and working groups) of the UN Human Rights Council, which work on implementing well-established human rights in a contemporary context and explore the status and viability of emerging ones (Bantekas and Oette, 2013, paras 174–175). The majority of them (56%) come from an "academic/research" background, followed by 23% from civil society (Piccone and Limon, 2014, p. 14). In particular, the UN Working Group on Business and Human Rights can undertake country visits, conduct thematic studies, engage in advocacy, and act on individual cases of alleged human rights abuses by sending communications (UN Human Rights Council, 2011, art. 6).

The Working Group receives information on alleged human rights abuses by civil society (groups or individuals) and national human rights bodies (UN Human Rights Council, 2007, art. 9.d). Then, letters are sent by the experts to the States and businesses involved to "draw attention" to the facts of the alleged human rights abuses and the international human rights standards, particularly regarding the UNGPs (ISHR, 2017; OHCHR, 2023a). Depending on the case, those letters can be sent jointly with other special procedures of the Human Rights Council. The communications and replies remain confidential until they are published in joint communications reports submitted to the regular sessions of the Human Rights Council (March, June, and September) (OHCHR, 2023c). This is part of a "name and shame" strategy to increase the response rate from the actors involved, mainly aiming for State compliance (Naples-Mitchell, 2011, p. 237).

As described above, the communications mechanism of the UN Special Procedures includes sending urgent appeals and allegation letters to States and companies involved. The UN Special Procedures do not have a formal treaty basis nor exercise judicial or quasi-judicial functions. Therefore, they do not have the authority to demand that States or private companies undertake any particular action. The UN Working Group on Business and Human Rights has started receiving individual communications since 2012 (OHCHR, 2023c). By resolution 26/22, the HRC (2014, art. 11) encourages "States, United Nations agencies, funds and programs, treaty bodies and civil society actors, including non-governmental organizations, as well as public and private businesses to cooperate fully with the Working Group in the fulfillment of its mandate by, inter alia, responding to communications transmitted." The Working Group seeks "clarification" from the stakeholders involved on the actions undertaken

[2] There are 45 thematic special procedures (e.g., Working Group of Experts on People of African Descent) and 14 country-specific mandates (e.g., Special Rapporteur on the situation of human rights in Myanmar) (OHCHR, 2023f).

and remediation mechanisms for victims (OHCHR, 2023h). It does not require victims to exhaust domestic remedies, and it is done irrespective of the State's ratifying status of international and regional human rights instruments (Nolan, 2019; OHCHR, 2023h).

The flexible position of the UN Special Procedures, in between "UN affiliation and independence," gives space for the experts to be innovative and promote human rights despite institutional inertia (Naples-Mitchell, 2011, p. 234). However, there are problems in this particular communication mechanism: 1. there is no record of the petitions that are not taken into account by the special procedures (some NGOs estimate it can correspond to 80%), 2. the low response rate by States, for instance, between 2008-2013 it was around 50% (Piccone and Limon, 2014, pp. 29–31), and 3. the quest on the effectiveness of the mechanism itself since a response does not imply a positive action benefitting the victims (Spannagel, 2019, p. 9). Unfortunately, the capacity to respond and follow up on the cases is limited by the reduced number of personnel and resources, including the fact that the experts have additional jobs to attend to since they do not receive a salary from the United Nations (UN Working Group expert interview, 2023). Still, the UN Working Group uses the communication procedure as a valuable tool to start a dialogue between the voices involved and to support local efforts to access effective remedy (UN Working Group expert interview, 2023).

Regarding the case of the UN Working Group on Business and Human Rights, a report done by the law firm DLA Piper analyzed 174 communications sent between 2011 and 2020, finding that 43% of companies replied while 63% of States did it (UNWGBHR, 2021b, pp. 2–3). Spannagel (2019, pp. 23–24) found that in communications involving human rights defenders, the involvement of businesses limits the substantial improvement of their conditions since "states are either unable or unwilling to provide meaningful remedy and protection in the aftermath." Observing those asymmetries between civil society, states, and companies, Rodríguez-Garavito (2017a, pp. 42–43) advocates for the UN Working Group to establish a "transparent and explicit" system for the communications procedure and inform on how those individual complaints have nurtured the agenda of the experts including the thematic choices. After explaining the mechanisms and functioning of the UN system, the following section elaborates on the substantial issue of business and environmental human rights to introduce the case of the extractive industry.

1.4. Business and environmental human rights in the extractive sector

The extractive industry can cause tensions over land ownership, the loss of traditional sources of livelihood, degradation of fragile ecosystems and people's health, and the marginalization of communities in the decision-making process (do Amaral and Palacio, 2018; Idemudia, Tuokuu and Essah, 2022). According to studies carried out by John Ruggie (2013, p. 19) and Kamminga (2015, p. 100), for the whole period of 2005 - 2014, the majority, around 29%, of the inquiries to reply to allegations of corporate misconduct raised by civil society in the database of the Business & Human Rights Resource Centre corresponds to the extractive industry. Extractive projects can have negative environmental human rights impacts, such as forced displacement, pollution, criminalization of human rights defenders and social leaders, community division, and the exclusion of local communities (Woods, Valencia and Cerqueira, 2017). Leaders who protect and promote human rights face criminalization and violence, primarily indigenous peoples and local communities (Forst, 2016). The adverse effects of extractive projects in the communities and their surrounding environment open the space to reflect on business and environmental human rights.

Corporations have the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, and if it is the case, address, prevent, and mitigate such impacts (Knox, 2018, para. 35). The first pillar of the UNGPs, the State's duty to protect, was developed in a "non-exhaustive manner in the specific BHR [business and human rights] context" (Deva, 2021, p. 341), which means that the integration of environmental and climate concerns does not necessarily opposes the UNGPs but rather represents an opportunity for filling a gap. In the literature, authors refer to it as a "holistic" interpretation of the companies´ responsibility to respect (Macchi, 2022) or a "comprehensive approach" (Krebs, 2022) in mandatory due diligence regulations. The wave of national laws, including compulsory environmental due diligence, can be a source for improving the conditions of business operations in transnational value chains (Krebs, 2022).

Human rights consist of entitlements recognized under international law based on inherent and equal human dignity. There is broad recognition of the right to a healthy, clean, and sustainable environment due to the detrimental effect of environmental degradation and pollution on human rights. For the UN system, environmental human rights include the adoption of an "explicit new right" (the right to a clean, healthy, and sustainable environment) and "greening" already well-established rights (Knox, 2012, para. 11). To this research, environmental human rights refer to the recently recognized right to a healthy, clean and

sustainable environment, as well as the procedural and substantive human rights "that may be violated by the failure to protect the environment" (Gonzalez, 2015a, p. 157).

By 2020, 156 States worldwide had recognized constitutional or legislative protection to the right to a healthy environment (Boyd, 2020, para. 10). However, it was not until July 2022 that the UN General Assembly adopted a resolution recognizing the human right to a clean, healthy, and sustainable environment (UN General Assembly, 2022). As argued by the UN Special Rapporteur David Boyd (2020, para. 114), the protection of the environment contributes to fulfilling human rights, and at the same time, human rights contribute to safeguarding the environment. This anthropocentric approach focuses on the environment based on its utility for the "preservation and flourishing of human life" (Theil, 2021, p. 35). The role of the UN in protecting the natural world through "greening" human rights can be strategic to catalyze change and ensure access to legal and enforcement mechanisms (Collins, 2015, p. 244). Ultimately, a human rights-based approach may protect the population, but "it will not protect the environment itself in a situation falling short of a human rights abuse" (Boyle and Redgwell, 2021, p. 346).

The recognition of the right to a clean, healthy, and sustainable environment in 2021 by the UN Human Rights Council and one year later, the similar resolution adopted by the UN General Assembly is a step forward in implementing a human rights-based approach to environmental protection (OHCHR, UNEP and UNDP, 2023, p. 12). The formal recognition of the right to a clean, healthy, and sustainable environment is the result of decades of advocacy and debate in the UN system on the interrelation of human rights and the environment, starting in 1972 through the United Nations Conference on the Environment in Stockholm (Knox, 2012, paras 7–11). Before those resolutions were adopted, the Office of the High Commissioner for Human Rights (2011a, paras 6–10) had already identified three approaches to the relationship between human rights and the environment: a. the environment as a precondition to the enjoyment of human rights; b. human rights as a tool to address environmental protection; and c. the integration of human rights and nature through the concept of sustainable development (Boyle and Redgwell, 2021, pp. 290–291). The 2022 resolution of the UN General Assembly adds a layer to the debate by making explicit the right to a clean, healthy, and sustainable environment.

Environmental human rights include procedural and substantive aspects. The procedural rights ensure access to information, public participation, and access to justice. In contrast, the substantive rights include clean air, a safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and a non-toxic

environment (OHCHR, UNEP and UNDP, 2023, p. 9). The Aarhus Convention (1998) in Europe and the Escazú Agreement (2018) in the Latin American and Caribbean context focus on those procedural aspects. Additionally, ILO Convention 169 (1989) recognizes indigenous peoples' right to free, prior, and informed consent in decisions regarding their traditional territories. To sum up, from a procedural point of view, human rights are principles to discuss the use and control of natural resources.

From a substantive point of view, the right to a healthy, clean, and sustainable environment implies an effort to reinterpret ("greening") some well-established rights. Food and water have had a long tradition of being recognized as self-standing rights in the UN system. The *right to food* is recognized in the Universal Declaration of Human Rights (1948, art. 25.1) and as part of the right to an adequate living standard in the International Covenant on Economic, Social, and Cultural Rights (1966, art. 11). Unsustainable food systems have negative impacts on human rights and the environment; for instance, industrial models favor large monocultures that are highly water-dependent, induce land use changes, and biodiversity loss (Boyd, 2020, 2021). The human right to *safe drinking water* was recognized by a resolution of the UN General Assembly in 2010. Mega-projects (for instance, infrastructure projects and extractive industries) can cause significant changes in water resources in the long term, including the "involvement of private actors or capital investors who often prioritize their economic interests" to the detriment of groups in vulnerable conditions "whose lifestyles are often centered around water," like indigenous peoples (Heller, 2019, pp. 2–6).

Environmental human rights also refer to a human rights-based approach to environmental degradation. International treaties in the field of environmental law focus on climate change, toxic substances, and biodiversity (e.g., the Paris Agreement, Basel, Rotterdam, and Stockholm Conventions, and the Convention on Biological Diversity). Human-induced climate change is negatively impacting hydrological systems around the world, which among others, causes disruption of agricultural and livestock production and increased conflicts between users (Arrojo, 2022). A safe climate is another substantive element of the right to a clean, healthy, and sustainable environment (Boyd, 2019). There has been increasing rights-based litigation on climate change, emphasizing its impact on people (Peel and Osofsky, 2018). Pollution and exposure to toxic substances can reproduce sacrifice zones and environmental injustice (Boyd, 2022). The interconnectedness of the different substantial elements of the right to a clean, healthy, and sustainable environment offers the framework to understand the potential impacts of the extractive industry while opening the space for navigating the different theoretical approaches that sustain the analysis in this dissertation.

Chapter 2 describes the theoretical approach to a political ecology of justice to re-imagine environmental human rights from the perspective of the Third World Approaches to International Law (TWAIL). For that purpose, the language of rights is problematized, both in the anthropocentrism underlying the human–nature separation and the universal human rights bearer set apart from the embodied suffering and its material existence in geographies of impunity. The Chapter closes with a reflection on uneven geographical development, extractivism, and neocolonial corporate practices.

2. Re-imagining environmental human rights from TWAIL

The Third World Approaches to International Law (TWAIL) is a movement of critical scholars from the Global South and their "allies oriented to the South" that question how "injustices are enabled and structured through law and its institutions" (Natarajan *et al.*, 2020, p. 7). The term TWAIL was coined in 1997 by a group of scholars of the New Approaches to International Law at Harvard Law School in the United States who were committed to addressing and prioritizing Third World interests (Mickelson, 2008, p. 356; Natarajan, 2017, pp. 208–209).

TWAIL scholars use the term "Third World" to refer to States and peoples marginalized from economic growth and political power in the international society (Mickelson, 1997, pp. 355–362; Natarajan, 2017, p. 209). By applying a postcolonial approach, for TWAIL scholars, the term "Third World" has "flexible and porous meanings" that contribute to a counter-hegemonic discourse beyond rigid separations of the Third and First World (Natarajan, 2017, p. 211). The "Third World" is not a geographical space historically fixed but an anti-subordinating term (Gathii, 2020, pp. 401–402). Mutua and Angie (2000, p. 36) highlight TWAIL is reactive to international law as an imperial project but also proactive in its search for transformation: an intellectual and political movement.

The origin of TWAIL can be traced to the '70s as a "response to decolonization and the end of direct European colonial rule over non-Europeans" (Mutua and Anghie, 2000, p. 35; Mickelson, 2008). That first wave of TWAIL scholars was state-centric and advocated for the potential of international human rights to improve the conditions of the Third World (Badaru, 2012, pp. 380–381). Later, since the 1990s, the second wave of TWAIL has criticized the universality of human rights, echoing the voices of those marginalized in the Third World and questioning the "viability of employing human rights to address human needs" (Badaru, 2012, pp. 380–381). Contemporary TWAIL analysis has focused on questioning why International Environmental Law (IEL) has failed to tackle ecological degradation by normalizing unsustainable assumptions about the natural world (Natarajan, 2017, p. 234; Natarajan and Dehm, 2022).

TWAIL, as an "analytical tool," encourages the interconnectedness of disciplines to study law in its historical context (Badaru, 2012, p. 382). TWAIL´s interdisciplinarity sustains the analysis in this dissertation through a political ecology of injustice lens. Political ecology

focuses on power relations underlying socio-environmental systems. According to Sundberg and Dempsey (2014, p. 177), political ecology is a "stance" of sharing concerns on "power, positionality, and intertwining of politics and ecologies." It requires applying a normative stance that "there are better ways of living together that are less coercive and less damaging" (Sundberg and Dempsey, 2014, p. 175). Considering that international law both "reflects and reproduces a worldview" of nature based on "its potential for appropriation and ownership" (Gilbert *et al.*, 2023, p. 54), TWAIL scholars question how the struggles of communities in resistance have challenged histories of marginalization in the past and the present and how that can "alter our conceptions" of environmental human rights (Parmar, 2008, p. 367).

In a search for transformation beyond "greening" human rights, the following section elaborates on the concept of environmental human rights, revealing the risks of the language of rights and the opportunities for reinventing the discourse. Such endeavor involves re-imagining the subject of human rights beyond universalizing approaches historically taken that could reinforce colonial and western worldviews. This section sets the grounds for a theoretical response on how environmental human rights can challenge environmental injustice and neocolonial corporative practices.

2.1. Beyond "greening" human rights

Environmental human rights have become a language to frame socio-ecological justice claims (Kotzé, 2021, p. 89). However, the language of rights is not neutral but founded on a Western historical and ideological basis (Parmar, 2008, p. 369; Ramina, 2018, p. 271). The gross human rights violations in the Second World War inspired the drafting of the Universal Declaration of Human Rights: "the embodied nature of the human suffering" (Grear, 2010, pp. 40–41). In that context, Natarajan (2022, pp. 203–209) invites us to question "who we think and where we are" to reveal the possible harmful assumptions underlying the human rights discourse. The author traces back the archetypal subject of human rights: "a propertied white man with his full range of privileges to consume and waste" (Natarajan, 2022, p. 202). Following Western philosophy and the liberal legal tradition, the subject of law reproduces "body-politics of privilege and marginalization" in which "a whole universe of lively 'others' are caught up in juridical processes of objectification" (Grear, 2020, p. 354).

Human rights enable the conceptual fragmentation of humans from non-humans (environment): those that are subjects and others who are objects of law. Environmental human rights risk enhancing the hierarchical dichotomy of humans and the environment, favoring people's welfare and environmental protection to satisfy human needs (Bosselmann, 2015, p. 531; Burdon, 2015). Nevertheless, progress and unlimited growth face ecosystem boundaries: human and environmental well-being are intertwined (Natarajan, 2022, p. 201). From a critical stance, legal institutions, including human rights and International Environmental Law (IEL), have been complicit in causing the Anthropocene´s socioecological crisis (Kotzé, 2021, p. 86).

The harmful effects of rapid industrialization in the 70s motivated the emergence of the environmentalist movement and IEL (Natarajan and Khoday, 2014, p. 582). For the latter discipline, the environment is an object of protection, which differs from the notion of "natural resources," which are governed by public and private economic law to further development (Natarajan and Dehm, 2022, p. 9). The problem is that historically the colonization and decolonization processes have involved the transformation of territories (land and oceans) into the sovereign control of the nowadays modern states (Natarajan and Khoday, 2014, pp. 586–588). Nature is pictured in international law as an object of protection and a commodity to guarantee development. A development agenda that is profoundly unequal in its economic and ecological impacts and rooted in European colonialism (Natarajan, 2021, p. 45).

TWAIL scholars ask, "[h]ow does this process continue to facilitate the marginalization of the suffering of some humans? How might the 'exhumation of subjugated knowledges' in all their complexity lead to alternative theories of human rights?" (Parmar, 2008, p. 366). The emergence of subaltern non-Western understandings of nature and recognized nature's legal rights in several national jurisdictions (e.g., Colombia, New Zealand, Ecuador, Bolivia, Mexican, and US local governments) reminds us of existing divergent knowledge systems (Boyd, 2018). Those are possibilities of "situated and embedded" human-nature relationships that cannot be reduced to "granting rights" and for which international law can play a crucial role "in enabling or constraining" their implementation on-the-ground (Gilbert *et al.*, 2023, p. 66).

The following section elaborates on the construction of the legal subject as an abstract entity beyond its material experience and the subsequent risks involved in this artificial separation of humans from nature. As an exacerbation of that Western rationalism, corporations (non-human entities) benefit from legal subjectivity, which is fragmented across jurisdictions in parent, subsidiaries, and suppliers across the value chain. The section closes with a glimpse of systems thinking in international law, arguing for Earth system law in the Anthropocene.

2.2. “Paradoxes of dis/embodiment”: Whose human rights?

Grear (2010, pp. 81–95) uses the term “paradoxes of dis/embodiment” to critique the Western rationalism underlying the liberal law tradition (including human rights). Although based on a notion of human materiality, the liberal form of legal rights constructs an abstraction of its subject: a “possessive hyper-rational individual” with specific male morphology and the socio-political status of a property owner (Grear, 2010, pp. 95–99). That modern notion of rights and its rational neutrality has historically ignored the suffering of “female bodies, black bodies, the bodies of workers and the bodies of indigenous peoples” (Baxi, 2008, p. 44; Grear, 2010, pp. 111–112). In response to that universal abstract human rights bearer, contemporary critics (from the Second World War and the creation of the UN system) focus on the “embodied difference to the imposition of suffering” that causes the marginalization of certain human groups (Baxi, 2008, pp. 33–58; Grear, 2010, p. 112).

On the other hand, as an exacerbation of that model, corporations, nonhuman entities, benefit from legal subjectivity (Kotzé, 2021, p. 92), which is fragmented across the supply chain in parent companies, subsidiaries, and business partners. For Baxi (2008, p. 234, 2016a, pp. 23–25), the dominant neoliberal ideology is behind the trade-related and market-friendly human rights paradigm that allows the configuration of geographies of impunity. Developing countries want to be competitive to attract foreign investment, and the home country is unwilling to hold companies accountable for their operations overseas to avoid competitive disadvantages (Deva, 2013, p. 1080). Meanwhile, weak judicial systems in the host country, underfunded or defunct local subsidiaries, and lower labor and environmental standards limit victims' access to effective remedies (Deva, 2013, p. 1080). In response, Seck (2019, p. 176) argues in favor of reimagining corporations as “embodied and responsible enterprises” carrying out due diligence, preventing and remedying harm while drawing attention to those who hold power behind the corporate veil.

The human rights law and discourse could be a tool to challenge environmental injustice rather than “an ossified and unchanging body of law" (Gonzalez, 2015b, p. 173). For Baxi (2008, p. 46), the rights language has to transcend its hegemonic governance function at home (class and patriarchal domination) and abroad (colonial and neocolonial practices) to “open up sites of resistance and struggle.” Re-imagining human rights implies recognizing the “rich complexity of the human personality”: its material existence and physical situatedness (Grear, 2010, p. 97).

Humans are interdependent between each other as well as part of trans-human systems: "the earth system" (Kotzé, 2019, 2021). That interdependency is reflected in the fact that how we treat each other is intertwined with how we treat nature (Natarajan and Dehm, 2022). Kotzé (2020, p. 87) highlights humans are not separated from nature; instead, we are "… a central part of an interlinked Earth system that we also influence through our primal urges, cultures and beliefs, our efforts to survive and to dominate, and our intrinsic desire to master other vulnerable humans and non-humans." Based on Fineman´s (2008) concept of vulnerability, Harris (2014) and Kotzé (2019) propose replacing the current liberal human rights bearer with a vulnerable complex human/non-human subject. Harris (2014) suggests an "ecological vulnerability frame" to emphasize human bodies' fragile materiality and power relations as part of a complex web of human and trans-human relationships. Interdependency and vulnerability are essential to re-thinking environmental human rights and their subjects as part of the earth system.

Moving to the structural problems, the last section of this chapter critically analyzes the implications of post-colonial trade and neocolonial corporate practices in reproducing geographies of injustice. The focus is on uneven geographical development through the extraction/commodification of nature and companies' outsourcing practices. The section closes by referring to the emergence of voluntary sustainability standards and the green energy transition, both issues at the forefront in the field of business and human rights.

2.3. "A political ecology of injustice"

Based on the 1984 Bhopal chemical disaster, Baxi (2016a) elaborates on a political ecology of injustice to analyze the reproduction of geographies of human rightlessness in cases of abuses involving multinational corporations. Gonzalez (2015a, p. 166) unveils the colonial roots of international law, including human rights, in justifying "European domination of nature and of non-European territories and peoples." The market-friendly globalized legal system shields the economic interests of developed states and their transnational corporations while undermining the ability of developing states to regulate and control business conduct (Simons, 2015, pp. 481–482). Persistent North-South political and economic disparities overshadow the efforts to achieve environmental justice through international law. For Baxi (2016b), those lawmaking acts shape geographies of injustice:

> The "real" space of mass disasters, the constitutive geographies of injustice, is at once local and global. It is local in terms of the violation of actually existing human beings, and in terms of the events and environments that shape their suffering; it is global in its production of spaces and structures of suffering of global scope (Baxi, 2016b, p. 26).

Those contributing the least to environmental harm are at the frontline of the negative impacts: environmental injustice (Gonzalez, 2015b). It is caused by factors such as vulnerable geographic locations and weak law enforcement mechanisms in developing countries, the unsustainable extraction of natural resources to satisfy the demand of consumers in the wealthiest geographies, and the transboundary movement of waste to the Global South (Gonzalez, 2015a, pp. 157–158). In the post-colonial era, industrial development in the Global North requires access to cheap labor and natural resources (Natarajan, 2021, p. 46). Even though formerly colonized and developing countries (India, China, Brazil, and South Africa) have achieved explosive economic growth and political importance, corporate neocolonial exploitation is reproduced in a complex web beyond the strict north-south divide (Kotzé, 2021, p. 91). To Harris (2021, pp. 460–461), despite the transformation of the world economy, traces of the "colonial empire" are still present in international political and economic institutions which favor the interests of the "richest nation-states," prioritizing economic outcomes and supporting extractive modes of production over the people affected and environmental degradation.

Uneven geographical development is part of the capitalist system in which profit maximization includes relocating companies to seek new markets and cheaper production sites (MacKinnon and Cumbers, 2019). Capital accumulation is "materially grounded in the web of socio-ecological life" and is maintained through accumulation by dispossession (Harvey, 2019, p. 58). In particular, extractivism[3] refers to "socio-ecologically destructive modes of organizing life," which can cause land grabbing, labor exploitation, and environmental degradation (Chagnon *et al.*, 2022, p. 763). From a political ecology perspective, extraction involves not only physical but "social processes that facilitate the removal of more-than human nature, transforming it into marketable resources that produce nature as commodity" (Johnson and Zalik, 2020, p. 386).

[3] Extractivism as a concept was introduced by Gudynas (2018, pp. 61–64) to refer to removing and exporting significant and not processed (or only to a limited degree) quantities of natural resources. For Acosta (2011, p. 62), extractivism includes oil, minerals, and global agribusiness. In this dissertation, the extractive industry refers only to mining, oil, and gas exploitation.

Extractivism as a mode of accumulation began on a massive scale 500 years ago with the conquest and colonization of the Americas, Africa, and Asia (Acosta, 2011). Alimonda (2015, p. 159) argues mining is crucial to the constitution of Latin American coloniality as a form of "exploitation and degradation of both nature and people." The author traces the historical political ecology of mining as a driving force of the Spanish and Portuguese conquest, which allowed economic accumulation in Western Europe (Alimonda, 2015). Later in the nineteenth century, neocolonial relations persisted since the newly independent Latin American countries (mainly agricultural and mining economies) were the source of the minerals required for industrializing Europe and the USA (Alimonda, 2015).

The old division of labor from the nineteenth century was based on a regional specialization of Europe and North America producing manufactured goods, while the underdeveloped world focused on providing raw materials and foodstuffs (MacKinnon and Cumbers, 2019, pp. 66–69). Later, in a landscape of post-colonial trade, the political independence achieved by Latin American (19th century), as well as African and Asian colonies (middle of the 20th century), did not "significantly alter" the economic landscape dominated by Europe and the United States where manufactured goods prevail over commodities (Gonzalez, 2015a, pp. 160–161). As part of the "new international division of labor" that emerged in the 1970s and 1980s, transnational corporations in search of cheaper labor costs started changing the location of the most basic production functions to the Global South, while the high value-added activities remained in developed countries (MacKinnon and Cumbers, 2019, pp. 86–89). In the 1980s, transnational corporations began subcontracting local firms, increasing the flexibility of switching suppliers (MacKinnon and Cumbers, 2019, p. 89). This coincided with the 1980s debt crises that facilitated the implementation of a free market export-driven economic model supported by the IMF and the World Bank (Gonzalez, 2015a, p. 162).

In response to the last wave of globalization (1994–2018), in the 1990s, voluntary sustainability standards (VSS) emerged as private-driven solutions to ensure social and environmental standards in global supply chains (Bennett, 2022, pp. 178–182). These standards are not legally enforceable but have been adopted widely by companies due to the pressure of investors, larger buyer firms, peers, and consumer demand (Rasche, 2022, p. 163). By the 2000s, certifications based on the compliance of VSS had become widespread (Bennett, 2022, pp. 180–181). From the political ecology perspective, the global certification wave is problematic since it does not question the systemic problem of unsustainable consumption patterns hidden in the notion of a "green consumer" (Robbins, 2012, p. 226). Besides, concerns

about justice have named the process as “ecological neocolonialism” since the “financial and environmental risk is transferred from Global Northern consumers (who, needless to say, bear responsibility for the bulk of global environmental degradation) to peoples of the Global South” (Otto and Mutersbaugh, 2015, p. 426). Still the effectiveness of such VSS is “highly context-specific” and insufficient per se to improve living conditions and overcome human rights abuses in the context of business operations (Bennett, 2022, p. 204).

Nowadays, the race to achieve a clean energy transition risks repeating the story in a new form of “green colonialism” searching for those critical minerals in various regions of the world, from mining projects in the South American Andes (Romero, 2023) to cobalt extraction in the Democratic Republic of the Congo (Baumann-Pauly, 2023). Alternative energy sources, such as wind, solar, and hydrogen, are material-intensive, increasing the demand for minerals (e.g., cobalt and lithium) extracted in contexts of human rights abuses, particularly children's and indigenous peoples' rights (Ward, 2020, pp. 22–23). A 2021 global analysis by the transition minerals tracker initiative of the Business & Human Rights Resources Centre showed that 495 human rights cases of abuses occurred between 2010-2021 involving attacks against human rights defenders and negative impacts on the water, livelihoods, and consultation rights of local communities, particularly indigenous peoples’ rights (Cato, Tochukwu and Zbona, 2022). It remains to ask just transitions for whom and whose embodied experiences are considered.

After introducing the theoretical approach, Chapter 3 describes the methodology applied to analyze the UN Working Group on Business and Human Rights communications mechanism. The research design includes the qualitative content analysis of 57 cases of alleged environmental human rights abuses concerning the extractive industry in the complaint mechanism of the UN Working Group. Besides describing the challenges of doing research with documents, the author reflects on the issue of “positionality” from the perspective of feminist political ecology.

3. Methodology

The methodology applied in this dissertation consists of a qualitative content analysis of the communications mechanism of the UN Working Group on Business and Human Rights (UNWGBHR) regarding the extractive industry. The UNWGBHR sends letters to the States where the alleged abuses occurred, the companies involved (parent and subsidiaries), and the States where the companies' headquarters are located. The sample comprises 57 cases (see Annex 1) concerning the extractive sector, oil and gas exploitation, and mining, covering the whole period of existence of the UN Working Group on Business and Human Rights from 2012 to January 2023. The focus is on large-scale extractive projects in their external relations with communities.

The high frequency of communications referring to the extractive industry and its widespread impacts on communities and the environment motivate the choice of the sector. A research report from the law firm DLA Piper concluded that the "most frequently" addressed sector at the UN Working Group communication mechanism is the extractive industry, with 38 out of 174 communications between 2011 and 2020 (UNWGBHR, 2021b, p. 3). In other international databases, such as the Business & Human Rights Resource Centre, around 29% of inquiries of alleged corporate misconduct refer to this sector (Ruggie, 2013, p. 19; Kamminga, 2015, p. 100).

The extractive industry can heavily impact the land and the livelihoods of communities where the projects are located. In an exclusive report in 2015, the Inter-American Commission of Human Rights (IACHR, 2015, paras 17–20) highlighted the negative environmental and socio-cultural impacts of the extractive sector in the territories of indigenous peoples and Afro-descendant communities, as well as the lack of accountability measures to prevent and remedy victims of abuses. The African Commission on Human and Peoples' Rights conducted a study on extractive industries finding that there is a "protection vacuum" causing the "plundering of the resources of the continent" (ACHPR, 2022). According to a report by Global Witness (2021, pp. 10–11), from the 227 murdered land and environmental defenders in 2020, 17 cases involved mining and extractive projects, only after logging (23) and water & dams (20). The choice of the sample seeks to deepen the knowledge of environmental human rights abuses in an industry where conflicts over land and natural resources significantly impact local communities.

This dissertation conducts a qualitative analysis of the documents exchanged as part of the communication mechanism of the UN Working Group. A qualitative content analysis is an "inductive approach to analysis that focuses on how meaning is produced and communicated in texts by allowing categories of interest to emerge from data during the course of study" (Bryman *et al.*, 2022, p. 254). It includes the systematic review of the letters the UN Working Group sent to the States where the alleged abuses occurred and the replies received from companies and States from 2012 to January 2023 (see Table N. 1 for further details). A total of 149 documents were considered from the official website of the UN Office of the High Commissioner for Human Rights (OHCHR, 2023c)[4].

Table N. 1. Documents coded.

Type of document	(f)
Communications sent to the State(s) where violations occurred	59
Response from States where violations occurred	39
Response from other States	21
Response from companies	29
Response from other international organizations (UNDP)	1
Total	149

Source: self-elaboration from the official search website of the UN OHCHR (2023c).

A thematic analysis was applied to identify, analyze and report patterns in the communications. Those patterns refer to the themes within the data, which were obtained through a systematic coding process (Grant, 2019, pp. 48–49). This research focuses on the meanings produced in the documents (letters and responses) and the frequency of themes coded (Bryman *et al.*, 2022, p. 280). In total, 149 documents were coded using the software Atlas.ti. As part of the qualitative analysis, an inductive and deductive category formation approach was applied (Mayring, 2004, pp. 370–372). Table N. 2 shows the relationship between the research questions, the qualitative content analysis, and the findings section.

[4] The documents were in English, Spanish, and French. Two (2) documents were in French. Google Translate to English was used before coding.

Table N. 2. Research questions and qualitative content analysis.

Research questions	Questions for the content analysis	Findings
What alleged environmental human rights abuses (EHRs) are described in cases involving the extractive industry at the communications mechanism of the UN Working Group on Business and Human Rights?	● What human rights abuses did civil society allege? ● Who are the rights-holders in the communications? ● What are the claims of civil society?	● Alleged environmental human rights abuses and rights-holders in cases involving the extractive industry at the UN Working Group. - Impacts on environmental human rights - Indigenous peoples' rights: consultations and agreements - Environmental human rights defenders who are opposing extractive projects.
How do States and extractive companies address allegations of abuses at the communications mechanism of the UN Working Group?	● How do States (host and home countries) respond to the letters from the UN independent experts? ● How do extractive companies (including parent enterprises) answer the letters from the UN independent experts?	● States and extractive companies addressed in the communications procedure of the UN Working Group - The role of home States (where parent companies are domiciled) - Companies' reputation as a weapon against defenders as well as an entry point to claim corporate accountability
What patterns of conduct of the extractive industry can be identified as reproducing environmental injustice and EHRs abuses in the communications mechanism of the UN Working Group on Business and Human Rights?	● What corporate behavior and States' practices perpetuate environmental injustice and EHRs abuses?	● Environmental human rights abuses and neocolonial corporate conduct in the extractive sector - Extractives in geographies of environmental injustice - Re-imagining environmental human rights for just transitions

Source: self-elaboration.

A semi-structured interview was carried out with one of the five experts of the UN Working Group on Business and Human Rights through the digital platform Zoom focused on the challenges and opportunities of the communications mechanism. The independent expert gave express consent to use the interview for this analysis. That interview was recorded and then transcribed for further coding and thematic analysis. Besides, during the internship at the Business and Human Rights Unit of the UN High Commissioner for Human Rights in Geneva,

the researcher had informal conversations with three staff members about the communications mechanism and, in general, business, human rights, and the environment. The information obtained from the interviews enriched the context and the choice of topics introduced in the first part of this dissertation, particularly Chapter 1 on business, human rights, and the environment.

One of the limitations of this study is the application of an unobtrusive research method, content analysis, which means the researcher did not directly engage with the different voices involved in the conflict: civil society, States, or companies. The responses from States and companies reflect "the official stories and the ways institutions frame them through official documents" (Bryman *et al.*, 2022, p. 248). On the other hand, the allegations of human rights abuses part of the communications mechanism are limited to the cases in which the presumed victims reached the UN Working Group on Business and Human Rights. From those communications sent by civil society, the UN Working Group on Business and Human Rights experts select the most urgent cases according to their institutional capacity. Therefore, the communications mechanism does not reflect the universe of cases of corporate abuses worldwide. Still, they show patterns of corporate abuses through the official bridge of the UN independent experts.

Despite not conducting fieldwork, the question about positionality and reflexivity has been a latent concern for the researcher. To navigate that "uneasiness," I would like to clarify the theoretical approach guiding this reflexive process (Johnson and Zalik, 2020). Following a feminist political ecology approach, "the personal is always political, where a normative separation of some mythical "pure academic research" divorced from material politics does not exist" (Sultana, 2023, p. 5). As Haraway (1988, p. 583) describes, "[f]eminist objectivity is about limited location and situated knowledge, not about transcendence and splitting of subject and object." It also implies acknowledging the risk of "romanticizing and/or appropriating the vision of the less powerful while claiming to see from their positions" (Haraway, 1988, p. 584). To write about the political ecology of injustice required questioning the notion of human rights as normative stances of how the world should be like to contribute to identifying in the claims of civil society what is happening and what is needed.

I understand research as a political practice and "an active component in shaping different realities" (Bacchi, 2012, p. 142). One of the cases analyzed referred to a mining project close to my hometown. I was born and raised in a city located in the Ecuadorian highlands. As an urban woman, I was part of a rural-urban women-led social collective resisting a large-scale mining project close to a national park where rural communities live and from

where the four rivers that cross my hometown flow. I did not know beforehand that this case was part of the sample studied. However, from that experience, I found inspiration to choose the topic for my dissertation.

4. Findings

This chapter introduces the findings from the qualitative content analysis of 57 cases of alleged human rights abuses involving the extractive industry in the communications mechanism of the UN Working Group on Business and Human Rights. The chapter starts with a descriptive overview (4.1.) of the cases highlighting the most recurrent themes in the analysis. Then section 4.2 focuses on the alleged environmental human rights abuses and the claims of the most frequent rights-holders in the communications procedure: indigenous peoples and land defenders. After that, 4.3 introduces States and extractive companies' responses to the communications procedure of the UN Working Group. The last section (4.4) elaborates on environmental human rights and extractive neocolonial corporative practices on the path to just transitions.

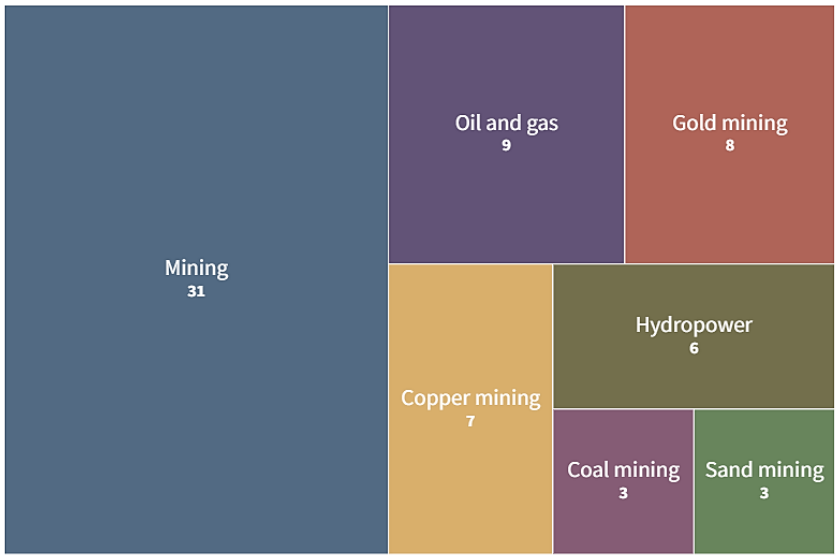
4.1. An overview of the extractive industry in the communication procedure of the UN Working Group

This section offers a descriptive overview of the 57 cases analyzed regarding the extractive industry from 2012 to January 2023. The UN independent experts addressed 57 States where alleged abuses occurred, 61 companies, 11 other countries where parent enterprises are domiciled, and one international organization (UNDP). States replied in 65% of the cases, companies in 47%, and other countries in 82%. The replies received from States and companies do not imply a recognition of responsibility but rather the willingness to collaborate with the UN independent experts by sharing new facts or policies implemented. As mentioned before, the pressure to reply to the communications sent by the UN Working Group is part of a "name and shame" strategy behind the publicity of the cases, which are sent periodically to the UN Human Rights Council and made available online through the UN Office of the High Commission for Human Rights website. The communications procedure is a bridge of dialogue between civil society claims, States, and companies. It is also a valuable tool for the UN independent experts to raise awareness and push the business and human rights agenda forward.

The communications analyzed refer to the traditional classification of extractives: oil and gas extraction, as well as mining. Of the 57 cases studied, 49 refer to mining activities,

including disasters such as spills from tailing dams; the remaining 8 involve oil and gas extraction, pipeline construction, and spills (see Fig. N. 3 for disaggregated information). In nine (9) cases, besides extractives, the UN independent experts referred in the same communication to other projects, including hydropower, timber extraction, tourism infrastructure, and palm oil plantations. Those joint cases refer to attacks against environmental human rights defenders. The following sections discuss the structural context of violence against land and environmental human rights defenders.

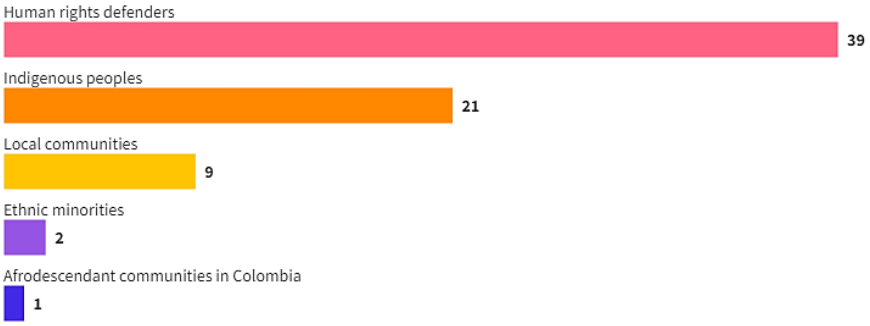
Figure N. 3. Industry sectors involved in cases of extractive projects.



*****Only the minerals with more than one case are shown separately from the "mining" category. In three (3) cases, the projects included gold and copper mining together.
Source: self-elaboration

The UN Working Group has considered at least five (5) cases annually involving the extractive sector for the last five years. The affected rights-holders are environmental human rights defenders, indigenous peoples, local communities, ethnic minorities, and Afro-descendant communities in Colombia (see Fig. N. 4 for detailed information). Rights-holders belong to groups marginalized within nations whose livelihoods strongly depend on the access and control of the land. In the few cases occurring in the Global North (Canada, Denmark, the US, and Australia), the conflict focuses on the traditional territories and the right to free, prior, and informed consent of indigenous peoples.

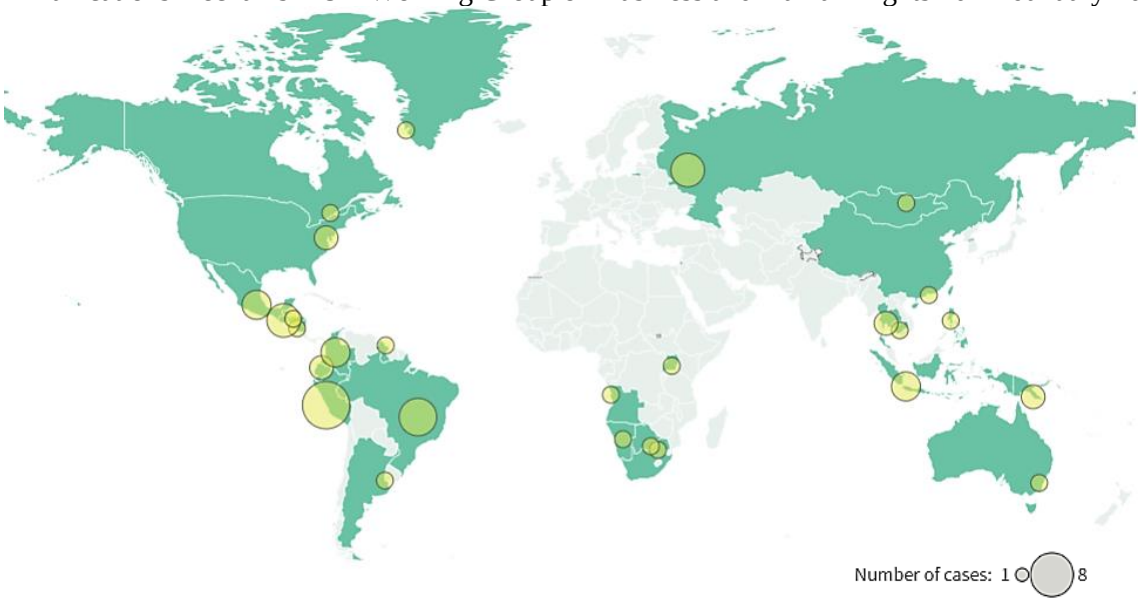
Figure N. 4. Rights-holders involved in the 57 cases of extractive projects analyzed.



Source: self-elaboration

Around half of the communications analyzed refer to the Latin American region (53%), followed by Asia-Pacific States (19%), Western Europe and other States (12%), Africa (9%), and Eastern Europe (7%). The higher number of cases in certain regions does not necessarily represent the universe of abuses occurring worldwide. Rather it indicates civil society's reliance on the UN independent experts to spread their voice. In 17 cases, the UN Working Group addressed other States where parent companies are located. In 13 of them, Canadian, Australian, and/or Chinese companies were involved. More than half of the total 11 countries where parent companies were addressed are part of the group of Western Europe and other States (6), followed by Asia-Pacific (4) and one Latin American country (Chile). The claims from civil society unveil geographies of injustice which will be further recalled in this chapter. Figure N. 5 maps the countries where the alleged abuses occurred and the frequency of cases.

Figure N. 5. Number of cases of human rights abuses in the extractive sector. Communications mechanism UN Working Group on Business and Human Rights 2012- January 2023



Source: self-elaboration using a projection map by the Flourish website

4.2. Alleged environmental human rights abuses and rights-holders in cases involving the extractive industry at the UN Working Group

This section focuses on the negative impacts of extractive projects on environmental human rights from the claims of civil society, particularly indigenous peoples and land defenders. First, the impacts (4.2.1) are described and systematized into the categories: land, water, air, and "body-territory." After that, the emphasis is on indigenous peoples' collective rights (4.2.2) to their ancestral territories and traditional livelihoods. Eventually, the attention turns to the systematic criminalization of environmental human rights defenders (4.2.3) on the frontline.

4.2.1. Impacts on environmental human rights in the extractive industry

Human rights are normative statements that envision a solution to injustice and suffering. Re-imagining environmental human rights requires identifying them from the claims made by civil society. It matters then whose embodied experiences are considered when formulating human rights. In the case of the extractive industry, bodies and nature are at the center of the discussion furthering the TWAIL quest on the artificial separation between humans and the environment posed in the second Chapter of this dissertation. In a "nature-intensive industry" such as the extractive sector, the focus is on environmental human rights.

This section of the findings focuses on the environmental human rights affected by the extractive industry in the 57 cases analyzed. The impacts of the extractive industry are classified into the following elements: land, water, air, and "body-territory." The land is the entry point where conflicts occur, including dispossession, resettlement, pollution, and degradation of ecosystems. Water enables livelihoods to flourish; pollution and water depletion deeply affect local communities. The extractive industry is water-intensive, and the appropriate management of toxic waste represents a challenge to avoid the contamination of rivers and water sources. Air pollution affects people's and ecosystems' health, even globally, regarding human-induced climate change. This reflects the complex, situated, and embedded human-nature relationships emerging in the operations of a nature-intensive industry (Gilbert *et al.*, 2023).

In the communication mechanism, the UN independent experts highlight the traditional ecological knowledge of indigenous peoples. For instance, elements such as water, mountains,

and silence at night are crucial for indigenous peoples´ physical and cultural survival. Compensation and remedy in resettlement cases can, for instance, leave out "intangible losses" because of the complexity of measuring them (WG24, Brazil, 2018). The examples below from the letters the UN Working Group sent illustrate the impacts of extractive projects on indigenous peoples' traditional livelihoods.

> "The affected indigenous peoples have expressed their fears over environmental harms caused by the expansion of mining activities, as the Marudi Mountain is not only culturally sacred to them but is the source of four major river systems on which they and the surrounding ecosystem depend on as a natural water source." (WG4, Guyana, 2022)

> "...the permanent noise from the machinery impedes sleeping and dreaming peacefully. The dreams are key for the Wayuu in their ancestral tradition concerning birth, pain, and death" (WG13, Colombia, 2020: translation from the author).

> "The San, who were previously evicted from their traditional territory within the Central Kalahari Game Reserve, have strongly objected to petroleum exploration and any future extraction that may cause irrevocable damage to the fragile ecosystem and protected areas on which they depend for their physical and cultural survival" (WG7, Namibia and Botswana 2021).

From a political ecology perspective, the extractive industry does not involve only physical but also social processes that leave traces "…on bodies, landscapes and soils" (Sundberg and Dempsey, 2014, p.178; Johnson and Zalik, 2020). The body is the entry point to analyze extractivism and the other (gender-based) violent dynamics that manifest through the material embodied experiences of resisting communities (Zaragocin and Caretta, 2020). The notion of "body-territory" introduced by Latin American feminist theory is critical to explain how through the experience of resisting, bodies become the first territories (Caretta et al., 2020). Lorena Cabnal, a Maya-xinka indigenous feminist, highlights the political background of the notion of "body-territory" as a collective claim in a historical context of dispossession of land and nature of indigenous communities (Cabnal, 2010, pp. 11–25. From that theoretical and political approach, the last category of impacts is "body-territory," which includes the violent conflicts and systematic criminalization faced by local communities, indigenous peoples, and land defenders on the frontline. To conclude, Table N. 3 shows a non-exhaustive list of the different impacts of the extractive industry as they emerged from the

content analysis of the communications and the rights negatively affected. The following sections, 4.3 and 4.4, focus on indigenous peoples' rights and environmental human rights defenders, central to the UN Working on Business and Human Rights communications mechanism.

Table N. 3. Negative impacts of the extractive industry.

Element	Environmental human rights risks	Rights negatively impact
Land	- Land dispossession and lack of adequate compensation - Resettlement of local communities - Forced evictions and destruction of housing - Criminalization of human rights defenders - Destruction of cultural heritage sites of indigenous peoples - Soil pollution, affecting agriculture and food security - Seismic activity negatively impacts the infrastructure around, including local communities' housing - Deforestation - Community division and violent conflict - Negative impacts on the flora and fauna - Extractive projects located close to protected areas and sensitive ecosystems - Cumulative impacts from various large-scale projects (e.g., hydropower and mining) - The land where medicinal and culinary herbs are cultivated is not available	- Right to food - Right to development - Right to housing - Cultural rights - Right to health - Right to a clean, healthy, and sustainable environment
Water	- Water pollution for human consumption and irrigation - Non-affordable drinking water - Damage to coastal marine ecosystems in cases of oil spills and tailing dams - Adverse impacts on traditional livelihoods: agriculture, fishing, hunting - Adverse effects on the livelihoods of artisanal fishermen - Negative health impacts in local communities as a result of biomagnification - Intense water consumption of the mine - Tailing dams and toxic waste disposal - Hydropower projects developed to fuel mining - Pollution of groundwater - Acid rain	- Right to water - Right to health - Right to food - Right to a clean, healthy, and sustainable environment

Air	- Air pollution - Negative impact on the health of local communities (respiratory diseases) - Noise pollution - Pollution from increased road traffic - Contribution to human-induced climate change	- Right to a clean, healthy, and sustainable environment - Right to health
Body-territory	- Companies' private security involvement in harassment and violence against communities - Sexual violence against indigenous women - Death threats, harassment, and intimidation against defenders - Relocation of defenders for security reasons - Collusion between companies, police, and the military - Lack of trust in the State: no "good faith consultation" - Weak governance of environmental authorities - Excessive use of force during peaceful protests - Arbitrary detention of defenders - Defenders facing prosecution based on criminal charges - Defenders sentenced to years in prison - Defenders facing abusive defamation lawsuits from companies - The killing of environmental human rights defenders - Loss of traditional livelihoods of indigenous peoples - Exclusion of local communities in the decision-making process - Censorship in media about the negative impacts of the project - Collective and immaterial damage to indigenous peoples - Structural context of impunity and violence against defenders - Increased police and military presence in the communities - Community division - Limited access to information regarding the impacts of the projects on communities - Negative impacts on the health of local communities from pollution	- Right to peaceful assembly, freedom of expression, and association - Right to defend rights - Right to free, prior, and informed consent - Right to development - Right to life - Right to safe working conditions - Right to access information - Right to bodily integrity - Right to liberty and security (to not be subject to arbitrary detention)

Source: self-elaboration from the UN Working Group on Business and Human Rights communications mechanism.

4.2.2. Indigenous Peoples' Rights: consultations and agreements

Emerging European international law was instrumental in the colonization and land dispossession of indigenous peoples in the Americas (Gómez, 2017a, pp. 169–173). Later on, in contemporary international law, indigenous peoples were first treated as objects of protection: "…the marginalized situation of indigenous peoples was permeated by a paternalistic approach, since international law and international institutions had the 'civilizing mission' of caring and protecting them" (Gómez, 2017a, p. 176). Later in the 70s and 80s, indigenous peoples organized around the principle of self-determination and claimed their full recognition as subjects of collective rights, including the ownership of their ancestral territories and the right to be consulted in case of projects that could affect their land and resources[5] (Gómez, 2017b, pp. 187–189).

At the communications mechanism of the UN Working Group on Business and Human Rights, 21 of the 57 cases analyzed referred to extractive projects located in the ancestral territories of indigenous peoples. The main concern is the right to free, prior, and informed consent (FPIC), considering the impact of extractive projects on indigenous peoples' traditional lands and livelihoods. The right to free, prior, and informed consent (FPIC) is part of the 2007 UN Declaration on the Rights of Indigenous Peoples: "…a hybrid document, given that incorporates both universal human rights and indigenous views on dignity and human rights" (Gómez, 2017a, p. 187). According to Anaya and Puig (2017), FPIC has been used by some States, from an instrumentalist approach, as another formal participation mechanism and by companies and States as a "check the box" strategy and a bureaucratic obstacle to productive activities. Under those circumstances, the good faith of the consultation is in question, particularly when the economies depend on the extraction of natural resources and investments agreements had been signed with companies.

In the cases analyzed, conflicts around the participation of indigenous peoples include the lack of consultation and not fulfillment of human rights standards during the consultation process. In practice, FPIC does not mean a right to veto, and according to national laws, the consultation process could be in the hands of companies. The right to free, prior, and informed consent (FPIC) is a duty of the State, part of international instruments such as the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169. The UNGPs (GP18)

[5] UNDRIP, art. 10, 26, 32.2; ILO Convention No. 169, art. 6, 14-16.

contemplate, as part of the due diligence responsibility of companies, to carry out human rights risk assessments in consultation with affected groups. Another point of conflict is when to conduct the consultation process (at which stage of the extractive project) and about what type of impacts. For that purpose, communities claim access to information on the environmental and social impacts. However, States can be reluctant to ratify international instruments, such as the Aarhus Convention and Escazú Agreement. The following quotes exemplify companies' and States' positions on consultation.

> "In this process, Amerisur sought, in good faith, the Reservation's free, prior, and informed consent, but at the end of the procedure, no agreement was reached. Under international law, consent is the purpose of consultation, but according to the standards cited by the Special Rapporteurs [on indigenous peoples, James Anaya], it is not an "absolute requirement" (C9, Colombia, 2021).
>
> "It should be noted that the activity approvals and related stakeholder engagement occur separately at exploration and production stages, and only in respect of the activities anticipated at each stage" (C7, 2021, Namibia and Botswana).

> "[A] full and formal implementation of the Aarhus Convention would result in a significant and undue administrative burden for the relatively small Greenlandic administration" (S11, Denmark, 2021).

In the cases where indigenous communities consented to extractive projects, the validity of agreements[6] is under dispute. Agreements can change, and their validity can be questioned. The division of communities shows the difficulty of achieving agreements. Those instruments have been framed as corporate social responsibility measures, but a human rights perspective is still missing. Anaya and Puig (2017, pp. 27–29) suggest a human rights pluralist approach to the duty to consult with indigenous peoples by considering the role and interests of the State, companies, and indigenous peoples. From that pluralist approach, agreements must be periodically revised to ensure indigenous peoples´ rights are respected. The excerpt below illustrates conflicts emerging around agreements.

[6] For instance, "Indigenous land agreements and Conservation Agreement" in the context of Canada (C1, Canada, 2023), "Act of Agreements" in Colombia (C13, Colombia, 2020), and "Deep Gorge Joint Statement (2017) (later renamed Ngajarli Joint Statement)" in Australia (C2, Australia, 2022).

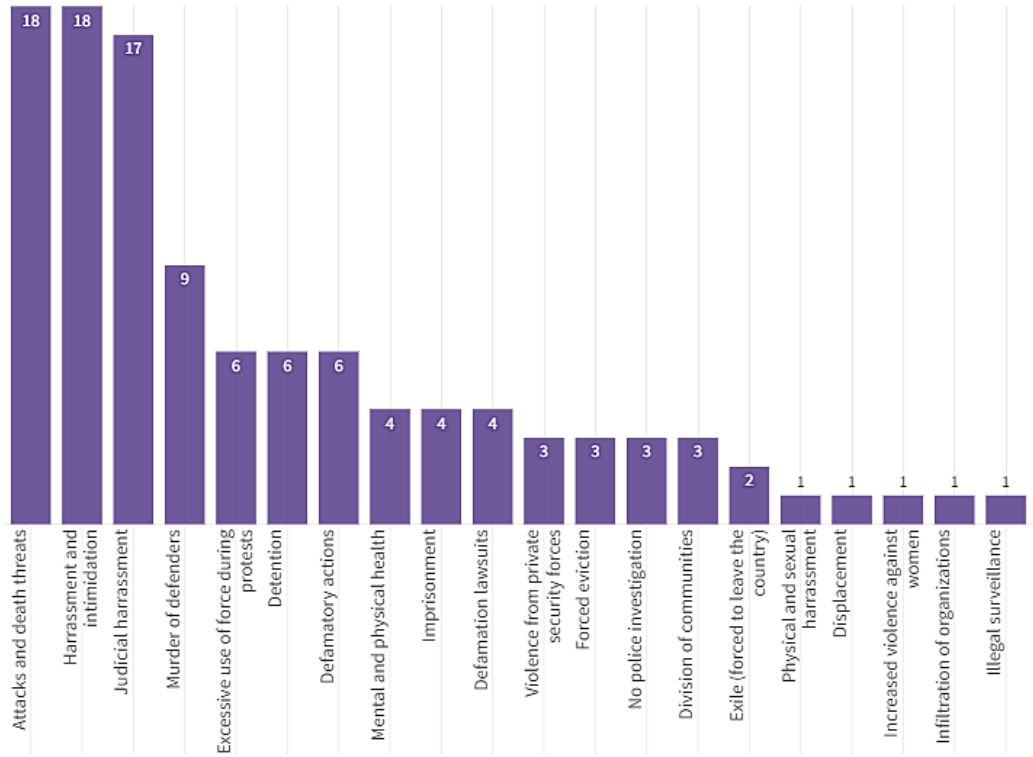
> "[i]n 2016, the Buenavista Reservation modified its position and rejected oil exploration activities in its territory through Resolution 002, in which it stated that Amerisur "pressured the community" to sign the Act of Agreements, which is not true" (C13, Colombia, 2020).

4.2.3. Environmental human rights defenders: "If you don´t stop opposing development…"

Quelvin Otoniel Jiménez Villalta is an indigenous leader opposing a silver mining project in Guatemala who received a death threat if he did not stop "opposing development" (WG18, 2019, Guatemala). This case is not isolated but rather part of a systematic criminalization of defenders in contexts of nature-intensive industries. John Knox (2017, p. 10), Special Rapporteur on the human rights and the environment, after consultation with civil society organizations, identified key drivers of this issue: the increasing demand for natural resources, the marginalization of certain groups of defenders, as well as weak governance structures allowing impunity. This section focuses on the complex interaction of the bodies of defenders and territories in dispute.

In the communications mechanism of the UN Working Group on Business and Human Rights, 39 out of 57 cases analyzed involved allegations of abuses against environmental human rights defenders. The criminalization of defenders ranges from the deterioration of community relations in the sites of extraction to the forced displacement and murder of leaders. Fig. N. 6 shows an overview of the different criminalization strategies and their frequency in the 39 cases analyzed, which referred to environmental human rights defenders in the extractive sector.

Figure N. 6. Attacks and harassment against defenders in the 57 cases of the communications procedure of the UN Working Group concerning extractives (2012 - January 2023)



Source: self-elaboration

As shown before, the criminalization of defenders includes judicial harassment, excessive use of force during protests, and in general, the lack of guarantees to exercise the right to defend rights[7]. States use the judicial system to criminalize defenders by discrediting their advocacy work and spreading a chilling effect in communities, also known as strategic lawsuits against public participation. Criminal charges against defenders, such as terrorism, extortion, mutiny, unlawful association, and obstruction of public services, are sanctioned with imprisonment and monetary fines. Additionally, companies pursue civil and criminal defamation lawsuits against defenders. During protests opposing extractive projects, allegations of excessive use of force from the police and military, illegal detentions, and criminal prosecution of defenders are reported. From the perspective of companies, protests have negative economic impacts, and when they include violent events, they put at risk the security of their employees. The following quotes show the perception of home States and companies on the so-called "unlawful," "anarchist," and "violent attacks" on the infrastructure of projects.

[7] See the UN Declaration on Human Rights Defenders (1998) by General Assembly resolution 53/144.

> "The mine worksite was violently attacked on 9 May 2018; about 10 Chinese managers on site were forced to evacuate to a safe area under the protection of local police and security forces. However, buildings and mining equipment on the project site were destroyed, resulting in direct economic losses of about US$500,000. Since then, according to Ecuadorian reports, local police have arrested four persons suspected of involvement in the violent attack" (HS26, 2018, Ecuador, response from China).

> "TC Energy and Coastal GasLink respect the right to peaceful and lawful protest, however, the activities of opponents of the project have, at times, exceeded the legal limits of protest, endangering people and the environment. It is regrettable that the RCMP [Royal Canadian Mounted Police] are required to enforce the court ordered injunction, however we understand that RCMP enforcement has been necessary to protect workers and public safety due to unlawful and anarchistic activities in the area" (C1, 2023, Canada).

There is a lack of adequate protection programs and thorough investigation processes to identify and prosecute attackers against defenders. Countries such as Brazil count on National Programmes to Protect Human Rights Defenders, which in most cases, according to the State, involves "indigenous peoples, the right to land, traditional afrodescendent communities ("quilombolas") and environmental protection" (S40, Brazil, 2017). Protection plans should consider the diversity of defenders, their identities, and the power relations underlying the extraction site, which can result in greater exposure to violence, vulnerability, and marginalization (Protection International, 2021).

That structural violence is reflected in the increasing numbers of defenders murdered on the frontline. Only in 2020, 227 land and environmental defenders were killed, with 17 cases connected to mining and extractive projects (Global Witness, 2021, pp. 10–11). As highlighted in the 2021 report of the UN Working Group on Business and Human Rights on defenders: "[t]he matters at stake are often a question of life or death, and/or ecological destruction" (UNWGBHR, 2021a, para. 22). In the cases of Colombia (WG56, 2013) and Guatemala (WG32, 2017), the UN independent experts warned authorities about the structural and systematic violence against defenders. The 2020 report of Global Witness on environmental and land defenders shows that Colombia and Guatemala are part of the five countries with higher documented killings of defenders per capita (2021, pp. 10–11). Table N. 4 describes the cases involving 15 environmental human rights defenders murdered in the context of their advocacy work in the 57 cases analyzed.

Table N. 4. Environmental human rights defenders murdered in the context of their advocacy work.

Names	Country	Year	Description
Nacilio Macario	Nicaragua	2021	Mayangna indigenous environmental defender who opposed mining projects and illegal logging (WG12, 2021, Nicaragua)
Alejandro Antonio Díaz Cruz, Ignacio Basilio Ventura Martínez, Luis Martínez, and Abraham Hernández González	Mexico	2018	Zapotec indigenous defenders who opposed mining and hydroelectric projects (WG23, 2018, Mexico)
Shuar indigenous leader	Ecuador	2009	The leader was killed during protests in the Ecuadorian Amazon in 2009 (WG30, 2018, Ecuador)
Sikhosiphi Rhadebe	South Africa	2016	Environmental defender who was resisting open-cast mining of titanium in South Africa (WG44, 2016, South Africa)
Four indigenous defenders	Peru	2015-2016	Defenders killed in protests against the mining project "Las Bambas" in Peru (WG19, Peru, 2019)
Pitan Thongpanang	Thailand	2015	Defender who had been opposing a Barite mine in Thailand since 2009 (WG48, Thailand, 2015)
Marcelo Monterona	Philippines	2014	Defender who was resisting a large-scale, open-pit mining operation in the Philippines (WG52, 2014, Philippines)
Adelinda Gómez Gaviria and César García	Colombia	2013	Rural leaders of local communities in Colombia resisting mining projects (WG56, Colombia, 2013)

Source: self-elaboration from the communications mechanism of the UNWGBHR.

Eventually, the private security of extractive companies has been involved in cases of sexual violence against women and excessive use of force during protests, including the illegal detention of defenders. See, for instance, the 119 indigenous women victims of sexual violence from mine security and the police guarding an extractive project from 2006-2015 in Papua Nueva Guinea (WG38, 2017). Besides, there are cases reported of agreements between the companies and the security forces of the State to protect the area of extractive projects: in Papua Nueva Guinea, "Frieda River Limited [gold and copper mine company] has a Memorandum of Understanding" with the Police, while in Colombia the Ministry of Defense informed about the existence of agreements with the oil company Geopark to guarantee the "exercise of economic activities of companies legally constituted in the country… which are of public

interest" (C15, Papua Nueva Guinea, 2020; S9, Colombia, 2021). Communities worry about the militarization of their territories and the increased presence of police forces, originating from previous agreements between companies and the States. From a defender-centric approach, civil society concerns are central when assessing the risk of defenders and ensuring their participation and agency in the construction of protection plans (Protection International, 2021).

4.3. States and extractive companies addressed in the communications procedure of the UN Working Group

The following two sections elaborate on the role of companies and home States where parent enterprises are domiciled. First, it introduces companies' notion of reputation (4.3.1), both used by civil society to claim corporate accountability and employed by certain businesses as part of strategic lawsuits against public participation. Second, it describes home States' expectations (4.3.2) on the behavior of companies operating abroad. While "expectations" are a barrier for victims to access effective remedy, international global affairs policies indirectly support and shape the sites of extraction.

4.3.1. Companies: the reputation of a "good corporate citizen"

Companies´ reputation is in the spotlight when allegations of human rights abuses are made public. As described in Chapter 1, the "name and shame" strategy pressures companies to reply to the UN independent experts. In the cases analyzed involving the extractive industry, the response rate of companies is high, around 85%, compared to the usual 30% (UNWGBHR, 2021b). This section elaborates on companies' "reputation" as a point of entry to push forward the business and human rights agenda and the risk when assimilating enterprises to "corporate citizens" bearing the right to dignity. The following quote shows the willingness of companies to cooperate as "good corporate citizens" with the UN Working Group on Business and Human Rights.

> "OceanaGold takes the allegations described in the Joint Communication very seriously. As an organisation, we are committed to being a good corporate citizen. This commitment encompasses our respect for the environment and all internationally recognised human rights, including the rights of indigenous peoples" (C21, Philippines, 2019: response from the company).

As revised in the first chapter of this dissertation, the twist on the path from the 90s and on regarding business and human rights responds to the multiple public cases of abuses committed by corporations in developing countries. The pressure from civil society and developing countries pushed the agenda forward. Since the 2000s, several voluntary sustainability standards in the extractive sector have been established: Voluntary Principles on Security and Human Rights (launched in 2000 by the US and UK governments as a response to extractive companies operating in conflict zones), the Extractive Industries Transparency Initiative (established in 2003 and led by the UK focuses on natural resource-rich countries), and the Kimberley Process Certification Scheme on diamonds launched in 2003 (Jerbi, 2016, pp. 148–155). The reputation of companies has been the center of the strategy of human rights campaigns advocating for corporate accountability. Companies are then compelled to respond since the language of human rights abuses conveys a "gravity" that could risk their social license to operate:

> "We are deeply concerned in relation to the language used in the Communication, alleging that the activities of our Company constitute potential human rights "abuse". We acknowledge that not all stakeholders are supportive of the Kvanefjeld rare earths project (the Project), however the terminology of "human rights abuses" and "violations" conveys a gravity of impact which seems to be far beyond the nature of our activities and factual circumstances. We are dismayed that the OHCHR has chosen to use this powerful and important language in the Communication" (RC11, Denmark, 2021).

The juridical personality of companies represents the exacerbation of Western rationalism (Grear, 2010). In practice, the fragmented legal personalities of companies throughout the value chain and national jurisdictions allow parent enterprises to avoid responsibility (Kotzé, 2021). Besides, companies have employed their juridical personality to claim the right to dignity through civil and criminal lawsuits against defenders. Are corporations entitled to rights? What about the honor and good name of companies and representatives? The UN independent experts have identified this strategy as a retaliation measure orientated to stop the activities of the defenders violating the right to freedom of

speech and association: "… judicial harassment may have a chilling effect on public debate, human rights advocacy, access to information and awareness raising about environmental and human rights implications of business activities in Thailand" (WG33, Thailand, 2017). Defenders risk imprisonment and monetary fines if they cannot prove the truth of their allegations. The quote below shows the language employed by companies and States to justify the right to dignity of companies to the detriment of environmental human rights defenders:

> "The South African law of defamation is premised on the right to dignity. This is a right afforded to both natural and juristic persons under the South African Constitution" (C37, South Africa, 2017).

4.3.2. States where parent companies are domiciled: managing "expectations"

States expect their companies to perform according to international human rights standards even when they operate abroad. The second principle of the United Nations Guiding Principles on Business and Human Rights (2011, GP 2) highlights the importance of setting out clearly those expectations. Despite that, States are not required to regulate the extraterritorial activities of businesses domiciled in their jurisdiction. Neither are States forbidden from implementing mandatory legislation on due diligence. The use of the notion of "social expectations" has been criticized in the literature as a weakness of the UN Guiding Principles since it leaves out the discussion of the legal obligations of companies to respect human rights (Macchi 2022; Methven O´brien and Dhanarajan 2015). Those legal obligations are fundamental regarding accountability and access to remedy for victims. The excerpts below reflect some of the common responses in the 17 cases that the UN Working Group addressed home States where parent companies are domiciled.

> "The Government of Canada expects Canadian companies operating abroad to respect human rights, operate lawfully and conduct their activities in a socially and environmentally responsible manner..." (OS15, Papua Nueva Guinea, 2020; OS16, Mongolia, 2020).

> "Chinese enterprises are expected to carry out their overseas investment activities in accordance with such laws and regulations [domestic laws of the place where they operate], strengthen the

compliance management of their overseas business operations, and prevent and respond to overseas investment risks" (OS26, Ecuador, 2018).

"The Australian Government does not accept that it owes human rights obligations extraterritorially with regards to individuals outside of its effective control. With respect to Australian companies operating abroad, the Australian Government has little or no control over their actions, nor the law of the countries in which such actions may be occurring" (OS, Papua Nueva Guinea, 2020).

States (where the parent companies are domiciled) emphasize the notion of "expectations" to shield themselves from legal responsibility (see Fig. N. 8 for further information on the countries addressed in the communications procedure). Instead, States, where the extractive projects are located are in charge of enforcing human rights standards, despite recognizing that in some instances, "mining activities are carried out in remote areas, where the presence of state institutions is not optimal enough to allow adequate supervision" (OS29, Perú, 2018: response from Switzerland). Besides the strictly legal reading of "expectations," home States elaborate further on their role through international development cooperation and global affairs policies. On the one hand, "expectations" supersede its legal meaning. On the other hand, they fall short when preventing violations and providing remedies to victims.

"Expectations" are met through international development cooperation and foreign policies. Home States do (indirectly) intervene in other jurisdictions when their companies are involved in projects abroad. Besides implementing National Action Plans, foreign policies are relevant in this field. For instance, the Global Affairs policy of Canada stands out. It includes programmatic instruments in responsible business conduct abroad (2022-2027) and a feminist approach to natural resource management (launched in 2021). Canada aims to provide support and capacity building to "resource-rich countries" to "manage natural resources in a sustainable, inclusive and responsible way" (HS3, Argentina, 2022: Canadian government response). Funds for development cooperation flow from home States through multilateral institutions, such as the Inter-American Development Bank, and directly through embassies. Australia also refers to training women in Papua Nueva Guinea on leadership and financial literacy. Embassies are essential when implementing such policies and interacting with companies operating abroad. In a case of an oil spill in Peru, Spain ensured the presence of its "State Secretary for Ibero-America, the Caribbean, and Spain in the world," as well as technical

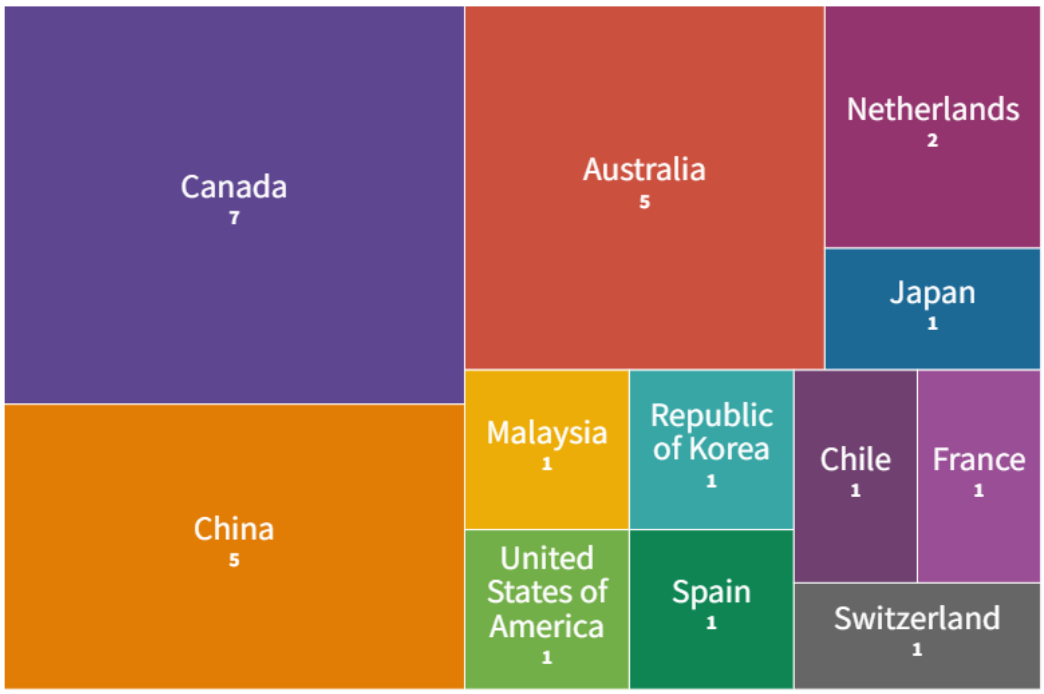
cooperation through the EU and the UN to produce a report on the disaster (OS6, Peru, 2022). These other subtle ways to intervene are part of the "expectations." The examples below illustrate such policies adopted by Canada and Australia:

> "... Global Affairs Canada has funded the InterAmerican Development Bank's Fund for the Extractive Sector in Latin America and the Caribbean. This resulted in projects that:
>
> • completed the first Emerging Women Leaders Program for the extractive sector in Peru, graduating 29 women from the private and public sectors;
>
> • supported the Mining and Energy Ministry of Colombia to adopt the "Gender Equity in Mining and Energy 10 Guidelines" and published the action plan to further gender equity in the sector;
>
> • assisted in integrating the Human Rights Policy for Mining and Energy in Colombia;
>
> • published a study on stakeholder engagement best practices in extractives for five Latin America and the Caribbean countries with over 40 case studies" (HS4, Guyana, 2022).

> "The Australian Ambassador to the Philippines and embassy officials have been briefed by OceanaGold on several occasions. Officials from the embassy visited the mine site in October 2017, at the invitation of OceanaGold" (HS21, Philippines, 2019).

Regarding access to remedy, States are reluctant to offer judicial mechanisms for victims: "Australian companies operating outside of Australia are subject to the law of the countries in which they are operating…" (HS11, Denmark, 2021: response from Australia). However, other non-judicial and non-state grievance mechanisms are highlighted; for instance, the Canadian Ombudsperson for Responsible Enterprise and National Contact Points in the OECD Guidelines for Multinational Enterprises context (HS4, Guyana, 2022: response from Canada). States also refer to mandatory due diligence legislation such as France's Duty of Vigilance Law and Australia´s Modern Slavery Act. The question remains: Who sets the bar for those "expectations"? They are still low to meet civil society's claims regarding access to effective remedy. The role of home States is crucial, and their power to influence cannot be hidden in the notion of "expectations."

Figure N. 7. Home countries where parent companies are domiciled.



Source: self-elaboration from the cases analyzed in this dissertation.

4.4. Environmental human rights abuses and neocolonial corporate conduct in the extractive sector

The last section of findings focuses on patterns of neocolonial corporate conduct in the extractive sector. First, it focuses on the geographies of environmental injustice and impunity (4.4.1), opening the debate on the concern about the green energy transition and the extraction of critical raw materials. After that, following TWAIL´s invitation to re-think human-nature relationships and from a political ecology of (in)justice lens, the findings chapter closes with a proposal for re-imagining environmental human rights towards just transitions (4.4.2).

4.4.1. Extractives in geographies of environmental injustice: "We mine to deliver progress…"

"We mine to deliver progress through the development of our people…" (C19, Peru, 2019). That was the response of a copper mining company in Peru regarding allegations of

human rights abuses against indigenous land defenders. Nature is portrayed as a resource extracted and commodified to "deliver progress." From the perspective of States, modern technologies and environmental management ensure the prevalence of positive socio-economic impacts (S57, Armenia, 2013). Companies promise mitigation and compensation measures to address the impacts (CR2, Australia, 2022).

States and enterprises highlight the coexistence of the extractive industry, the conservation of the environment, and cultural heritage (S2, Australia, 2022; S27, Russia, 2018). The extractive activities promise jobs, income, and tax revenue (S5, Brazil, 2022). To guarantee their social license to operate, companies offer financial benefit agreements, employment, contracting opportunities for indigenous peoples, and "investment in conservation and wildlife protection" (C2, Australia, 2022; C7, Namibia and Botswana, 2021). While in cases of ongoing long-term extractive projects, companies emphasize the "devasting" impacts on the local economy that the suspension or closing of the operations would have (C13, Colombia, 2020).

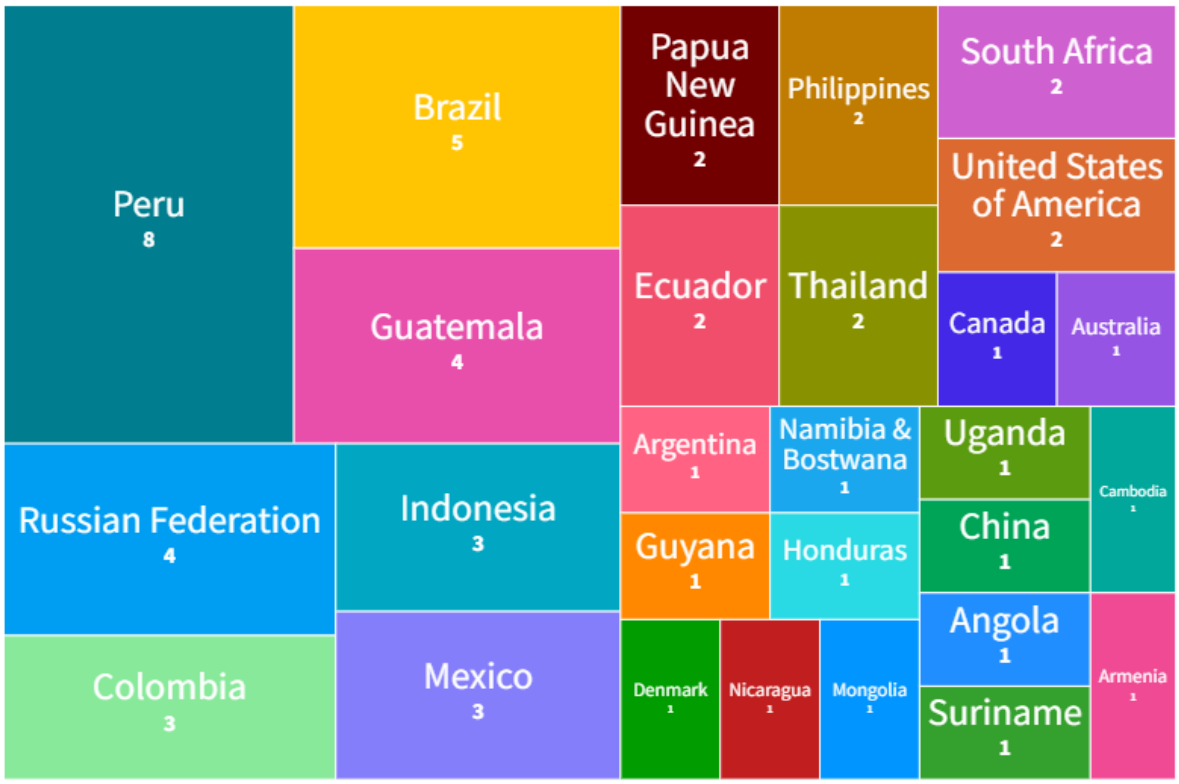
The energy transition is the new greener "progress": widely accepted to replace carbon-intensive energy forms. In the last communications (2022-2023) of the UN Working Group on Business and Human Rights, extractive companies and States highlight indigenous peoples' role in the energy transition and the importance of the projects to achieve a "lower carbon world" (C2, Australia, 2022; C2, Australia, 2022). For national governments, such as Canada, critical mineral value chains are an opportunity for indigenous peoples (First Nations, Inuit, and Métis peoples) to grow their economy "... through jobs, businesses, services, and ownership opportunities" (OS3, Argentina, 2022: response from Canada). Companies, on the other hand, in a case of an oil and gas pipeline that passes by Wet'suwet'en Indigenous Peoples and communities´ traditional territories in Canada, are "... proud to be playing a significant role in reducing global GHG [Green House Gases] emissions, while advancing Indigenous economic reconciliation in partnership with Indigenous communities" (C1, Canada, 2023). Greener economic progress prevails over other socio-environmental impacts on the traditional livelihoods of indigenous peoples. Nature as a resource and the body-territories of indigenous communities are required to achieve the "global clean energy transition" (C1, Canada, 2023).

In the official discourse, the extractive industry coexists with the traditional livelihoods of communities through mitigation and compensation measures. In practice, as recalled from the communications of the UN Working Group, rights-holders belong to groups historically marginalized within nations, whose livelihoods depend on the access and control of the land under dispute (see Fig. N. 8 that shows the geographical distribution of the States were the

alleged human rights abuses occurred). Indigenous peoples and local communities bear the consequences of violent extractive modes of production: putting their bodies on the frontline.

TWAIL scholars invite us to rethink environmental human rights from the physical situatedness and embodied experiences of environmental injustice (Gonzalez, 2015b; Baxi, 2008). Environmental injustice is reproduced by weak governance structures and the unsustainable extraction of nature as a resource to "deliver progress" (Gonzalez, 2015a). Kotzé (2021, p. 91) refers to this as "corporate neocolonial exploitation and oppression" of nondominant humans and the nonhuman world. The last section briefly attempts to re-imagine environmental human rights towards just transitions to other ways of living, caring for, and embodying rights.

Figure N. 8. Countries where the alleged human rights abuses occurred.



Source: self-elaboration from the cases analyzed in this dissertation

4.4.2. Re-imagining environmental human rights towards just transitions

As seen in the previous section, companies and States introduce the energy transition to justify intensifying extractive projects in indigenous territories. Voices from the ground at

the 2023 UN Permanent Forum on Indigenous Issues warned about a new wave of "green colonialism" through fast-track permits[8] ignoring the right to free, prior, and informed consent of indigenous peoples in the name of the clean energy transition (Monet, 2023). The legacy of the colonial empire is visible in the fact that groups historically excluded disproportionately face the "burdens of environmental extraction" (Harris, 2021, p. 461). Considering the risk of unjust extraction of minerals from the Global South and indigenous peoples' territories, it is necessary to build "global solidarities" to support the ownership and control quest by local communities (Bell, Daggett and Labuski, 2020, pp. 7–8).

Critical raw materials are central to implementing net-zero programs and reaching the energy transition. The UN Working Group on Business and Human Rights joined the call for a "just transition and a sustainable future" through its 2021 Roadmap for the Next Decade (OHCHR, 2023b; UNWBHR, 2021c, p. 4)[9]. Later, in its call for inputs for the 2023 report to the UN General Assembly, the UN independent experts ask how we can achieve a "human rights-based and just transition," being the extractive sector central to implementing net-zero programs and reach the so-called green energy transition (OHCHR, 2023b). More than re-packaging a new "human rights-based and just transition" approach, following TWAIL scholars, it is time to re-imagine environmental human rights from the situatedness and material experience of those on the frontline: indigenous peoples, local communities, and defenders.

Environmental human rights risks in the extractive industry allow for exploring the construction of vulnerable complex human/non-human subjects (Kotzé, 2019). Beyond "greening" human rights, the spot turns to the relationships between humans and nature. This interdependency relation originates in the vulnerable material embodied experiences of injustice in the Earth system. Just transitions to low-carbon energy systems cannot be separated from the quest for corporate accountability and the collective rights of indigenous peoples. The body-territory notion of critical Latin American feminists illustrates the richness of approaches to construct a rights language to challenge neocolonial corporate practices and environmental injustice.

[8] See the 2023 Critical Raw Materials Act proposed by the European Commission.
[9] The UN Working Group on Business and Human Rights have opened a call for inputs to elaborate a 2023 report on the "Extractive sector, just transition and human rights" to be presented in September 2023 in the UN General Assembly.

5. Conclusions

The UN Guiding Principles on Business and Human Rights (UNGPs) constituted a landmark in the UN system. Despite being a voluntary instrument, it represents a step forward in recognizing the corporate´s responsibility to respect human rights standards beyond local or national enforcement mechanisms. In a state-centric and deeply contested field, the UNGPs offer a set of principles for dialogue between civil society, governments, and companies. One example of those bridges built is the communications mechanism in the hands of the UN Working Group on Business and Human Rights.

The UN independent experts receive allegations of abuses that are reframed from a human rights-based approach to address the other stakeholders involved: companies and States, including those where the headquarters of the enterprises are located. The direct interaction with voices from the ground enriches the advocacy work of the UN Working Group and represents a unique opportunity to involve companies in the UN system. Still, the mechanism's limited institutional capacity to respond and effectiveness is to be explored.

A critical stance on the human rights subject invites us to rethink the concept as a tool to achieve social and environmental justice. The TWAIL movement questions the colonial legacy of international law, particularly in the field of business and human rights, in which neocolonial corporate practices have reproduced geographies of impunity. To elaborate on environmental human rights from the perspective of a political ecology of injustice requires recognizing the limitations and re-imagining different ways to talk about rights beyond formally established international legal instruments and based on the claims of civil society.

Indigenous peoples´ collective rights to their traditional land and livelihoods are at risk when facing corporate neocolonial practices. Defenders at the frontline resisting extractive projects are criminalized, prosecuted, imprisoned, and murdered. The company´s reputation is used to silence and criminalize defenders through defamation lawsuits and other practices of "corporate capture." Meanwhile, home States continue hiding in the notion of "expectations" to avoid implementing mandatory due diligence legislation and ensuring access to effective remedy mechanisms for victims of abuses. Beyond "greening" human rights, businesses, or the energy transition, re-imagining environmental human rights requires putting the embodied experiences of communities at the center to build a sense of global solidarities across human and more than-human nature.

6. Suggestions for further research and recommendations

The suggestions for further research and policy recommendations focus on a) how to improve the communications mechanism of the UN Working Groups on Business and Human Rights, b) companies and States´ responsibility to prioritize the protection of environmental human rights defenders in contexts of nature-intensive industries, and c) advocating for more than "greening" the business and human rights agenda. The points below result from the qualitative content analysis of the communications mechanism in cases involving the extractive industry hand in hand with the literature review conducted for this dissertation.

There is a gap in research involving the voices of those submitting the complaints to the UN Working Group on Business and Human Rights communications mechanism. Joint studies involving the Special Rapporteur on human rights and the environment, the Special Rapporteur on the rights of Indigenous Peoples, and the Special Rapporteur on human rights defenders could be of particular interest considering the systematic criminalization of environmental human rights defenders worldwide. Reaching out to civil society would improve the communications mechanism by evaluating its effectiveness, following up on cases, and improving accessibility. In the particular case of nature-intensive industries, such research would require to "... rethink, and recalibrate how fieldwork is carried out in spaces impacted by large-scale resource extraction" (Johnson et al. 2021, p. 389). Research with the participation of civil society and joining efforts beyond the borders of thematic mandates is the opportunity to enrich and improve the mechanism.

The communications procedure is an opportunity to start a dialogue between States, enterprises, and home countries of parent companies. Civil society claims are "rewritten" and "reframed" by the UN Working Group from a human rights-based approach to address companies and States. Rodríguez-Garavito (2017) calls for transparency on how individual complaints inform the agenda of the UN Working Group. Following that position and understanding the power relations embedded in the field, clarity on how the allegations of abuses are articulated to the advocacy work of the UN independent experts would be a step further in terms of justice and remedy. Besides the "name and shame" strategy of reporting to the UN Human Rights Council, the communications mechanism can be a source to build the business and human rights agenda from the ground, those recognized as "justice enablers" in the 10+ Roadmap of the UN Working Group (UNWGBHR 2021, p. 46).

In nature-intensive companies, indigenous and land defenders should be on the frontline of the business and human rights agenda. The systematic criminalization and killing of environmental human rights defenders call for the attention of states and companies involved. Oxfam (2023) has released a report on "Threats to human rights defenders: Six ways companies should respond," inviting businesses to "take action to defend the defenders" (p. 3). The following recommendations are the results of reading the dissertation with the Oxfam report (Bogrand *et al.*, 2023) and the UNGPs 10+ "A roadmap for the next decade of business and human rights" of the UN Working Group (2021). Companies benefit from this approach by reducing the reputational and operational risks of losing the social license to operate and consumers' trust (Bogrand *et al.*, 2023, p. 5).

States and companies bear responsibilities for human rights defenders. On the one hand, States must guarantee the right to defend rights, freedom of expression, and association by preventing and prohibiting attacks against defenders and ensuring effective remedy and thorough investigation (Protection International, 2021). According to the United Nations Guiding Principles on Business and Human Rights, States must guarantee the "…legitimate and peaceful activities of human rights defenders are not obstructed." (UNGPs, 2011, commentary GP 26). On the other hand, companies are responsible for ensuring the participation of defenders in the human rights risk assessment to understand better communities' concerns (UNGPs, 2011, commentary GP 18).

First, extractive companies should carry out strict due diligence, ensuring the participation of defenders in the human rights risk assessment according to Principle 18 of the UN Guiding Principles and considering the UN Declaration on Human Rights Defenders (Oxfam 2023, p. 8). Second, as reviewed earlier, companies should avoid judicial harassment against defenders or other strategic lawsuits against public participation (UNWGBHR, 2021a; Bogrand *et al.*, 2023, pp. 11–12).

Along the same line, private security hired by companies should avoid getting involved in the violent repression of peaceful protests and, from a more comprehensive approach, act in consultation with civil society following the Voluntary Principles on Security and Human Rights (2000). Third, the participation of defenders during all stages of the extractive project is critical, applying the UN Declaration on the Rights of Indigenous Peoples and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (see article 5.2). Fourth, as highlighted by Oxfam (2023, pp. 8–9), companies should offer grievance mechanisms designed to prevent risks faced by defenders, such as retaliation and intimidation.

There is an effort to “greening” the business and human rights agenda. In the literature, authors advocate for a “holistic” or a “comprehensive approach” to companies´ responsibility to respect (Macchi 2022; Krebs 2022) to include the growing concern about corporate accountability regarding environmental harm (Olawuyi 2021, pp. 234-237). The 2022 recognition of the right to a clean, healthy, and sustainable environment by the UN General Assembly and the multiple mandatory due diligence regulations adopted in Western countries call for integrating environmental human rights impacts as part of the State´s duty to protect, corporate responsibility to respect, and access to an effective remedy.

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Annex List

Annex N. 1. List of cases analyzed.

#	Year	Country where the abuses occurred	Industry	Home country of the company	Companies	Rights-holders
1	2023	Canada	Oil and gas pipeline	China Japan Malaysia United States of America Netherlands Republic of Korea	TCenergy Surerus Murphy Joint Venture SA Energy Group Royal Dutch Shell Petronas Petrochina Pacific Atlantic Pipeline Construction Inc. O.J. Pipelines Canada Mitsubishi Corporation Macro Spiecapag Joint Venture LNG Canada Joint Venture Ledcor Group Korea Gas Corporation Kohlberg Kravis Roberts & Co. L.P. Alberta Investment Management Corporation AECON Group Inc.	Wet'suwet'en indigenous peoples and defenders
2	2022	Australia	Fossil fuel project		Woodside Energy Perdaman BHP	Indigenous peoples
3	2022	Argentina	Mining	China Canada	Shandong Gold Mining Co. Minera Argentina Gold SRL Barrick Gold Corporation	Local communities
4	2022	Guyana	Gold mine	Canada	Golden Shield Resources	Indigenous peoples
5	2022	Brazil	Mineral, hydrocarbon, and hydropower activities			Indigenous peoples
6	2022	Peru	Oil spill	Spain Netherlands	Repsol S.A. Repsol Peru BV Refineria La Pampilla SAA	Coastal local communities
7	2021	Namibia & Bostwana	Oil and gas exploration	Canada	ReconAfrica National Petroleum Corporation of Namibia	San indigenous peoples
8	2021	Honduras	Mining		Empresa Minera Inversiones Los Pinares EMCO	Human rights defenders

9	2021	Colombia	Partnership oil company - UNDP	Chile	United Nations Development Programme - HQ Programa de las Naciones Unidas para el Desarrollo - Colombia GeoPark	Siona indigenous peoples
10	2021	Peru	Gold and copper mining			Human rights defenders
11	2021	Denmark	Uranium mining	Australia	Greenland Minerals Ltd.	Inuit indigenous peoples
12	2021	Nicaragua	Timber and gold mining		EMSA S.A.	Mayangna indigenous peoples
13	2020	Colombia	Coal mine		Cerrejon	Indigenous peoples and afrodescendant
14	2020	Peru	Copper and gold mine			Human rights defenders
15	2020	Papua New Guinea	Gold and copper mine	China Canada Australia	Highlands Frieda Limited Frieda River Limited	Local communities
16	2020	Mongolia	Mining	Canada	Steppe Gold Limited	Human rights defenders
17	2020	Uganda	Oil project	France	Total Headquarters Total E&P Uganda	Nomadic herding communities & defenders
18	2019	Guatemala	Silver mine			Xinca indigenous peoples and defenders
19	2019	Peru	Copper mine	China Australia	MMG Limited MMG Las Bambas China Minmetals Corporation	Indigenous peoples
20	2019	Indonesia	Sand mining			Human rights defenders
21	2019	Philippines	Gold and copper mine	Australia	OceanaGold Corporation	Indigenous peoples
22	2019	Indonesia	Coal mining			Human rights defenders

23	2018	Mexico	Mining and hydropower			Indigenous peoples
24	2018	Brazil	Mining	Australia	Vale Samarco Renova Foundation NHP Billiton	Indigenous peoples and local communities
25	2018	China	Mining			Environmental human rights defenders and Tibetan minorities
26	2018	Ecuador	Gold mine		China	Indigenous peoples and defenders
27	2018	Russian Federation	Coal mining		Russian Copper Company (RMK)	Human rights defenders
28	2018	Indonesia	Oil spill		PT Petramina	Local communities
29	2018	Peru	Mining	Switzerland	Glencore Volcan Compania Minera SAA	Local communities
30	2018	Ecuador	Mining & oil exploitation			Indigenous peoples
31	2018	Russian Federation	Copper mining			Human rights defenders
32	2017	Guatemala	Hydroelectric project & mining			Human rights defenders
33	2017	Thailand	Mining			Human rights defenders
34	2017	Peru	Gold mine			Human rights defenders
35	2017	Guatemala	Mining			Human rights defenders
36	2017	Peru	Mining	Canada	Canadian Company Hudbay Minerals	Human rights defenders
37	2017	South Africa	Sand mining		Mineral Sands Resources Ltd.	Human rights defenders
38	2017	Papua New Guinea	Mining	Canada	Barrick Gold Corporation (Barrick)	Indigenous peoples

39	2017	Mexico	Mining & tourism		Human rights defenders
40	2017	Brazil	Mining		Human rights defenders
41	2016	Peru	Mining		Human rights defenders
42	2016	Cambodia	Hydro dam & sand mining		Human rights defenders
43	2016	Russian Federation	Mining		Human rights defenders
44	2016	South Africa	Titanium mine	Mineral Commodities Limited (MRC)	Human rights defenders
45	2016	Mexico	Copper mine	Grupo México	Local communities
46	2016	United States of America	Oil pipeline		Indigenous peoples & defenders
47	2016	United States of America	Oil pipeline		Indigenous peoples & defenders
48	2015	Thailand	Mining (Barite mine)		Human rights defenders
49	2015	Angola	Mining (diamonds)		Human rights defenders
50	2015	Brazil	Mining (Ore tailing waste dam)	Vale S.A BHP Billiton Ltd Samarco Mining S.A.	Local communities
51	2014	Russian Federation	Mining		Indigenous peoples - Evenki “Dylacha” community
52	2014	Philippines	Palm oil Mining		Human rights defenders
53	2013	Suriname	Mining Hydroelectric project		Indigenous peoples
54	2013	Brazil	Mining Hydroelectric project		Human rights defenders

55	2013	Guatemala	Mining	Human rights defenders
56	2013	Colombia	Mining	Human rights defenders
57	2012	Armenia	Mining	Local communities