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A RIGHTS-BASED APPROACH TO RESOURCE EXTRACTION IN THE PURSUIT OF SUSTAINABLE DEVELOPMENT

ADVOCACY BRIEF

in this brief

1. Proposal for a rights-based sustainable development agenda
2. Transformation of the current model of extractive development
3. The Rights-based Litmus Test
4. Post-extractivism: a vision for a rights-based and sustainable model of development

The UN Conference on Sustainable Development (“Rio+20”)

called for a **people-centered sustainable development**, towards a world that is just, equitable, and inclusive. As the UN aims to operationalize the outcomes of Rio+20 through the post-2015 sustainable development agenda, the international human rights framework must guide its parameters, including objectives related to natural resource management and extractive activity.¹

It is an indispensable requirement of sustainable development to guarantee the necessary resources, capabilities, choices, security, and power for individuals and groups to exercise their human rights.

PROPOSAL

Rights-based Sustainable Development refers to the diverse range of all social, political, and economic processes that effectively serve to preserve, restore, or create the environmental, social, and economic conditions necessary for all persons, including future generations, to fully enjoy their civil, political, economic, social, and cultural rights.



Photo by Vivian Stockman, www.ohvec.org²

1. WHAT IS A RIGHTS-BASED APPROACH TO SUSTAINABLE DEVELOPMENT?

Civil society advocacy has emphasized **human rights as a non-negotiable normative base** for the sustainable development agenda.³ **A post-2015 agenda anchored in human rights** “moves from a model of charity to one of justice,” with people as rights-holders; States as primary duty-bearers to respect, protect, and fulfill human rights; and all development actors with varying degrees of responsibility for guaranteeing human rights.

A rights-based approach to sustainable development guarantees the achievement of the interlinked objectives of Rio+20: poverty eradication; transforming unsustainable consumption and production; and protecting natural resources, by ensuring rights to local autonomy and rights to participation in natural resource management. To achieve this, it is necessary to **transform systemic and structural imbalances in power** to eradicate poverty and create a just, equitable, and inclusive world, through redistribution of wealth and resources and a foundation of equality and non-discrimination, particularly regarding the rights of women and the collective rights of indigenous peoples and peasants over natural resources including land.

This rights-based approach also emphasizes the role of States as guarantors and sovereigns of the public interest, the rights of individuals and communities, and environmental sanctity. It utilizes established international human rights law as a clear and common set of standards for monitoring and accountability. This ensures policy coherence for sustainable development, by orienting the sustainable development agenda according to related existing obligations.

Particularly important for environmental sustainability, a rights-based approach recognizes the **interdependence between human rights and the integrity of the natural environment**. Effective environmental protection both promotes and depends on the exercise of human rights.

spotlight

INDIGENOUS PEOPLES' RIGHTS

Indigenous peoples' rights are guaranteed under the international human rights framework – including specifically *ILO Convention 169 on Indigenous and Tribal Peoples* (1989) and the *UN Declaration on the Rights of Indigenous Peoples* (2007). For the post-2015 sustainable development agenda to be truly rights-based, therefore:

- The post-2015 agenda should promote the legal obligations of States to guarantee the **rights of indigenous peoples to freely determine their political status and pursue their economic, social, spiritual, and cultural development**.
- The post-2015 agenda must take into consideration the aspirations of indigenous peoples, in accordance with **the right of indigenous peoples to participate in the elaboration, application, and evaluation of policies that affect them**.
- Indigenous peoples' **right to prior consultation** obliges States to consult indigenous peoples before adopting policies that may concern them, including those related to the post-2015 agenda.
- Post-2015 policies must be realized according to indigenous peoples' right to **free, prior and informed consent**, which authorizes indigenous peoples to impede the realization of policies when such measures affect the integrity of the group, e.g., displacement, military activities, or storage or disposal of hazardous materials in their lands or territories.

2. TOWARDS A RIGHTS-BASED MODEL OF DEVELOPMENT

For the sustainable development agenda to achieve its objectives, the dominant model of extractive industries must be re-examined and transformed. This model currently stands as an **obstacle to development** as understood in the *Declaration on the Right to Development*, which outlines States' responsibilities to eliminate obstacles to development resulting from the failure to observe human rights – civil and political as well as economic, social, and cultural rights.

The extractive development model contributes to poverty, inequality, ecological destruction, and human rights violations. It is by definition unsustainable and non-renewable.

Part of a historical trajectory that includes colonization, the extractive development model is characterized by wealthier, less resource-rich countries extracting from “developing” ones. Because natural resources are typically removed for export, rather than processed or consumed where they are extracted, the industry benefits the extractor while functioning as an “enclave economy” within its host country. This model entrenches and reinforces power imbalances between nations, and contributes to poverty and violence in its host countries – in addition to causing significant environmental damage, pollution, and destruction.

Therefore, the post-2015 sustainable development agenda must **critically assess, re-examine, and transform the extractive development model** – including the violence it causes – based on the international human rights framework. The role of the extractive activity within this agenda must depend on a critical assessment of its contributions to poverty eradication and to the creation of a just, equitable, and inclusive world – the objectives of sustainable development.

DEFINITION:

Extractive Industries: those activities that “remove a natural resource from its natural surroundings for industrial purposes without provision for their renewal in a social, economically, or environmentally viable timeframe.” [A/HRC/21/48 (2012)]

AGREED LANGUAGE:

According to the **Declaration on the Right to Development** (A/RES/41/128), 1986: *States have the duty to co-operate with each other in ensuring development and **eliminating obstacles to development.** States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.*

spotlight

HUMAN RIGHTS VIOLATIONS CAUSED BY THE EXTRACTIVE MODEL OF DEVELOPMENT

In the name of development, this model inflicts violence and environmental harm with impunity.

Systemic human rights violations include:

- negative health impacts
- contamination and appropriation of fresh water; contamination of food sources
- loss of livelihood, especially for small-scale farmers
- displacement; forced labor
- prevention of people's ability to exercise their rights to safely and effectively participate in natural resource management decisions
- armed conflict and violence; militarization of lives and territories
- criminalization and persecution of opposition movements
- discrimination of women, indigenous peoples, and peasants
- disruption of the social fabric and cultural life of affected communities.

3. MAKING RIGHTS OPERATIONAL: THE LITMUS TEST

To assess the complex impacts and define the potential role of resource extraction within sustainable development, the Mining Working Group at the UN has developed a **rights-based litmus test**. The parameters for this four-step assessment are set in accordance with States' obligations under core international human rights treaties, which set clear standards for State responsibility vis-à-vis extractive activity.⁴

The application of the litmus test operationalizes the rights-based approach to sustainable development in assessing the proper role of natural resource extraction. As a **tool for policy-makers and commentators**, this test identifies policies that: are people-centered (with people as rights-holders); contribute to the eradication of poverty; and promote a world that is just, equitable, and inclusive as well as sustainable for nature and for human beings, including future generations.

THE RIGHTS-BASED LITMUS TEST

STEP	PRINCIPLES	ASSESSMENTS
1	Do no harm	<ul style="list-style-type: none"> • To what extent can extractive activities be carried out without violating human rights, including the rights to life, health, water, food, right to land and control over productive resources, right to work, right to self-determination (including FPIC), or cultural life? • To what extent can extractive activities be carried out without damaging vital ecosystems or threatening Earth's capacity? • Are disadvantaged or marginalized groups particularly vulnerable to these impacts in a way that violates their right to non-discrimination? • Can measures be taken to protect the population from situations that violate human rights and which tend to accompany extractive activities, including human trafficking, land grabbing, insecurity, and armed conflict?
2	Eradicate root causes of poverty	<ul style="list-style-type: none"> • Does the local community enjoy a greater enjoyment of their human rights as a result of the development? • Do the positive contributions of extractive activity prioritize the promotion of human rights among the most disadvantaged or marginalized groups, with a particular attention to possible gender or racial/ethnic biases? • Does this extractive activity effectively contribute to eradicating poverty?
3	People as rights-holders	<ul style="list-style-type: none"> • Do potentially affected people and communities have sufficient access to information and policy-making spaces, to effectively participate in the process of assessing the extractive activity? • Are there conditions that allow affected communities and human rights defenders to fully exercise their rights? • Is effective remedy guaranteed if harm does occur?
4	Sustainability	<ul style="list-style-type: none"> • What are the effects of potential mining activity in the immediate and/or short term? • Based on all available evidence and indication, how will this extractive activity affect the rights of future generations mid- and long-term? • Can uncertainty be overcome in strict adherence to the precautionary principle?



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4. A VISION OF EXTRACTIVE ACTIVITY WITHIN RIGHTS-BASED SUSTAINABLE DEVELOPMENT

Only extractive activity that “passes” the four steps of the litmus test above can be included in a rights-based sustainable development agenda. Natural resource management and extractive activities must be subject to a wider range of democratic controls and international oversight, preceded and accompanied by safe, public debate and special consideration guaranteed to the communities most affected by mining activities and most likely to absorb its costs and burdens. For extractive activity to effectively contribute to sustainable development, it must also include a strong legal framework for effective regulation and implementation.

The post-extractivist, or indispensable extractivism vision begins to address the mobilizations and demands of affected communities in the global South and increasingly also in the global North who have mobilized to defend their lands, forests, water, ways of living and often their very lives.

- WoMin

This alternative model of extractive development, sometimes termed **post-extractivism**, requires the reorientation of production to prioritize the ecosystem and the creation of regulations and public policies regarding land tenure, the disproportionate accumulation of wealth, and the use of the commons. WoMin⁵ illustrates this alternative vision in a recent **collection of papers**, as outlined below.

spotlight

POST-EXTRACTIVISM

Post-extractivism, or indispensable extractivism, signifies extraction on very different terms:

- small-scale extractive activities driven by local and regional interests and demands
- governed through a commitment to preserve ecosystems and reduce carbon emissions
- inclusive of community and women’s rights of participation, control, and ownership
- accompanied by a profound redistribution of revenues from extractive activities
- supportive, through special regulation, of decent work, health, and a transition to a low-carbon economy
- guided by strong fiscal and environmental legislation, diversification of the economy, and reinforcement of local and regional markets
- valuing the work of social reproduction and supporting societies to organize work on a collective, shared, and equitable basis, while ensuring the necessary resources and support by the State.

TEST SDG PROPOSALS HERE

STEP	PRINCIPLES	APPLY QUESTIONS FROM THE MWG RIGHTS-BASED LITMUS TEST
1	Do no harm	
2	Eradicate root causes of poverty	
3	People as rights-holders	
4	Sustainability	

¹ This position is grounded in the main principles of the international human rights framework and based on the Mining Working Group’s thorough review of relevant jurisprudence from the UN treaty bodies and thematic reports from the Special Procedures.

² Maria Gunnoe, pondering the horror that is mountaintop removal coal mining on Kayford Mountain, about one hour south of Charleston, WV.

³ For example, a recent “Joint Statement on Human Rights for All Post-2015” was signed by more than 300 human rights organizations. This statement includes the quotation cited above.

⁴ The steps are based on four aspects of States’ responsibilities under international human rights law: the obligation to respect and protect (from all UN treaties and the Guiding Principles on Business and Human Rights); the obligation to promote and fulfill (especially when related to

economic, social, and cultural rights, as outlined in the Guiding Principles on Extreme Poverty and Human Rights); rights to participation and accountability; environmental law; and the rights of present and future generations (e.g., Agenda 21).

⁵ WoMin is a regional project established in 2013 that focuses on issues related to women, gender and extractivism. It is located within the International Alliance on Natural Resources in Africa (IANRA) at <http://womin.org.za/>

Only through a rights-based model of sustainable development can extractive activities positively contribute to achieving the sustainable development objectives of poverty eradication and creation of a just, equitable, inclusive, and sustainable world.

The Mining Working Group at the UN is pleased to share this vision for the parameters and tools to achieve a rights-based sustainable development agenda.

THE MINING WORKING GROUP AT THE UN (MWG)

is a coalition of NGOs that, in partnership with our members and affected local communities, advocates at and through the United Nations for human and environmental rights as related to extractive industries. The MWG addresses unjust and unsustainable extractive practices and policies through the lens of the rights of local communities and indigenous peoples and Earth's carrying capacity. The MWG promotes a human and ecological rights framework as the foundation for sustainable and just natural-resource management, through: just and transparent international policies; national laws and practices that meet the highest international standards and obligations; and intervention to address violations. In this context the Group also advocates for the use of economic benefits of resource extraction for the holistic and long-term social, economic, and sustainable development needs of local communities.

NGO MEMBERS OF THE MINING WORKING GROUP

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