PhD THESIS IN HUMAN RIGHTS: EVOLUTION, PROTECTION AND LIMITS

FACULTY OF LAW, UNIVERSITY OF PALERMO

A THESIS SUBMITTED TO THE UNIVERSITY OF PALERMO, FACULTY OF LAW IN FULFILMENT FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY (Ph.D.) IN LAW

TOPIC: THE OBLIGATIONS OF STATES AND NON-STATE ACTORS IN RELATION TO MULTINATIONAL CORPORATIONS UNDER DOMESTIC AND INTERNATIONAL LAW: *A CASE STUDY ON THE LEGAL REGIMES COVERING CORPORATIONS IN THE EXTRACTIVE INDUSTRIES IN SIERRA LEONE AND ITALY.*

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Declaration

This is to certify that this thesis entitled: ‘’The Obligations Of States And Non-State Actors In Relation To Multinational Corporations Under Domestic And International Law: *A Case Study On The Legal Regimes Covering Corporations In The Extractive Industries In Sierra Leone And Italy.*” has been prepared by Abubakar Koroma under my guidance and supervision of

Professor Nicola Gullo: …….

and

Professor Curtis. F.J. Doebbler……

I recommend, therefore, that the above dissertation, which Abubakar Koroma has submitted, be accepted in partial fulfilment for the conferment of a Ph.D. in Law.

Dedication

To my Children, Marcello A. Koroma and Martino B. Koroma.

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Abstract

This thesis examines the obligations of states and non-state actors regarding multinational corporations in the extractive industry, under both domestic and international law, with respect to environmental protection and human rights in Italy and Sierra Leone. The study examines the obligations of states and multinational corporations in the extractive industry under domestic and international law, with respect to human rights and environmental protection. This includes the obligation to protect and ensure the fulfilment of human rights, the obligation to prevent violations of human rights, and the obligation to prevent non-discrimination, which were analysed. This is because the activities of corporations in the extractive industry can impact human rights.[1] Thus, the policies and actions of states and corporations were examined in comparison to their obligations under domestic and international law. This comparison allows us to assess the obligations of states and corporations in the extractive industry regarding environmental protection and human rights. The study employs both normative (doctrinal) and socio-legal (non-doctrinal) legal research approaches. Therefore, primary and secondary sources were examined. Primary sources include environmental and human rights treaties under international law. Domestic laws governing the extractive industry were also reviewed. Secondary sources reviewed include judicial decisions (case law), relevant literature (textbooks), academic journal articles on human rights and environmental protection, and commentaries, policy documents, reports on corporations in the extractive industry, soft law instruments relating to human rights and environmental protection, legal periodicals, and internet sources were examined for interpreting and understanding the law. Interpreting and understanding the law using search engines such as Google Scholar, EUR-Lex, and HeinOnline. The translation tool, 'DeepL Translator', was used. On referencing style, the Oxford Standard of Citation of Legal Authorities (OSCOLA) was used. The study concluded that both state and non-state actors, particularly multinational corporations, have obligations to protect, respect and fulfil human rights through environmental protection. Therefore, specific obligations examined include the *obligation to protect and ensure the fulfilment of human rights, the obligation to prevent human rights violations, and the obligation to observe non-discrimination* under international human rights law, taking into account the environmental impact assessment. These obligations have emerged from domestic and international law, particularly treaties, as well as from general principles and declarations. The specific obligations were analysed in light of the *rights to life* and *to health*, with a focus on environmental impact assessment. Thus, one could argue that states typically enact laws on environmental management and protection to fulfil human rights, which multinational corporations in the extractive industry mainly adhere to. However, there is no internationally legally binding instrument to hold multinational corporations in the extractive industry directly accountable for their actions, even though they comply with treaty obligations that host countries have signed and ratified.

[1] Rebeca Wallace, Fraser Janeczko and Karen Wylie, *Nutshells International Law*, Sweet and Maxwell, 2013.

CHAPTER ONE

1.1 General Introduction

Generally, there are actors in the international arena that are not subjects of international law, yet they enjoy some degree of international legal personality, mainly because states allow them to do so.[2] For instance, some have argued that many multinational corporations have extensive power on the international plane, sometimes even more than some states.[3] Given such power, there have been calls to hold multinational corporations accountable for their actions within the international legal system.[4] This is despite the fact that many multinational corporations have established some corporate codes of conduct.[5] Nevertheless, such codes of conduct are not only non-binding, but also questionable given the fact that the authors are simultaneously the addressees.[6] In particular, there is growing concern about human rights violations due to adverse corporate activities.[7] It is not surprising that, in 2010, the Special Representative of the UN Secretary-General on Human Rights and Transitional Corporations and other Businesses issued a framework that established the foundations for better managing business and human rights on the one hand and the obligations incumbent on states and corporations, on the other.[8]

This study focuses on states and non-state actors. It examines the rules governing the obligations of states and non-state actors in relation to multinational corporations (MNCs) under domestic and international law, particularly in the context of business entities in the extractive industry, regarding human rights. In this study, multinational corporations (MNCs), which are interchangeable with transnational companies (TNCs) and corporations, are the focus of this research analysis.

1.2 Background of The Study

As Ruggie has pointed out, '*the responsibility of governance over transnational corporate behaviour should lie with states, and that any global strategy for regulating such entities should focus first on*

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[2] Karsten Nowrot, *'Reconceptualising International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities'* in John Fleurs (ed*), International Legal Personality* (Ashgate 2010) 369, 372; Rebeca Wallace, Fraser Janeczko and Karen Wylie, *Nutshells International Law*, Sweet and Maxwell, 2013.

[3]Rebeca Wallace, Fraser Janeczko and Karen Wylie, *Nutshells International Law*, Sweet and Maxwell, 2013.

[4] Ibid

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations, 2011 "Protect, Respect and Remedy" Framework', Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises UN Doc. A/HRC/17/31 (21 March 2011). ['GPs']

reinforcing and building on state capacity to regulate the activities of business actors within their territories.'[9]This aligns with the idea that states' laws play a crucial role in regulating enterprises, a concept advanced by many scholars.[10] Nevertheless, Simons and Macklin have noted that the question of how best to regulate corporate activities to prevent human rights violations has long been debated and remains unsettled.[11]Therefore, there is a need for state-made norms as part of a broader governance legal framework that are enforceable and that regulate the conduct of corporations[12] regarding the environment and the protection of human rights. Thus, states can play a vital role in regulating the activities of corporations in the extractive industry.

1.3 Framing the Issue

In recent years, corporate crimes have become more numerous.[13]These crimes do not occur in a vacuum. Their transnational character is not only difficult to trace, but also exhibits difficulty in holding those responsible to account for violations of human rights, nor would one be able to quantify the economic loss in revenues.[14]Corporate crimes are believed to be very complex. For instance, Sutherland has stated that studies on crimes orchestrated by the powerful are difficult to pinpoint without expanding the legal definition of a crime.[15]More so, multinational enterprises are geographically located in numerous countries.[16]

Accordingly, the blurring boundaries between national identities and economies make it possible for the emergence of a transnational capitalist system.[17]This, however, raises the question of the consequences that multinational corporations' activities have on local communities as a result of the states' complicity in the mining industry against their people, and the inaction of the corporations.[18]

[9] John G. Ruggie, 'Business and Human Rights' (n 11) 838–39.
[10] Howlett et al, (n 73). See also Karkkainen (n 57) 476–77; and Crawford (n 70) 471.
[11] Penelope Simons and Audrey Macklin*, The Governance Gap Extractive industries, human rights, and the home state advantage,* Routledge 2014.
[12] Penelope Simons and Audrey Macklin*, The Governance Gap Extractive industries, human rights, and the home state advantage,* Routledge 2014.
[13]Garuba, D. S.,Trans-Border Economic Crimes, Illegal Oil Bunkering and Economic Reforms in Nigeria, Policy Brief Series, no. 15, October (2010), Global Consortium on Security Transformation.
[14] Garuba, D. S.,Trans-Border Economic Crimes, Illegal Oil Bunkering and Economic Reforms in Nigeria, Policy Brief Series, no. 15, October (2010), Global Consortium on Security Transformation
[15] Sutherland E, *White-Collar Crime.* New York: Holt, Reinhart and Winston (1949).
[16]Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.* Available at: https://doi.org/10.1093/hrlr/ngac003*. Accessed 21/08/24*
[17] Garuba, D. S.,Trans-Border Economic Crimes, Illegal Oil Bunkering and Economic Reforms in Nigeria, Policy Brief Series, no. 15, October (2010), Global Consortium on Security Transformation.
[18]Uwafiokun Idemudia, Francis Xavier D. Tuokuu, Marcellinus Essah, *The extractive industry and human rights in Africa: Lessons from the past and future directions*. Elsevier Limited, Resources Policy 78 (2022) 102838

The international law on responsibility and attribution of international wrongful conduct to States has been limited to conduct of organs of state, persons or entities exercising elements of government authority, organs placed at the disposal of a state, conduct directed or controlled by the state, and conduct of an insurrectional movement.[19]Also, the grounds for the attribution of internationally wrongful acts failed to capture non-state actors.[20]Moreover, the law on responsibility is limited to acts of state 'organs and agents exercising public authority.'[21]In particular, private conduct may be attributed to a state *if a private actor has acted under the state's instructions, direction or control.*[22]Such instructions and directions are mostly associated with actors such as security companies involved in law enforcement and private military companies.[23]Other forms of attribution of non-state actors' conduct include the exercising elements of governmental authority by non-state actors, the acknowledgement and the adoption of their conduct by the state,[24] non-state actors acted under state direction or control,[25]in the absence or default of government,[26] and the state's for failure to prevent or prosecute certain conduct by private individuals.[27]

However, the actions of multinational corporations (MNCs) in the extractive industry in the territorial state (area of operation) and the attribution of responsibility for wrongfulness, especially for violations of human rights, is a grey area. It has been acknowledged that no law defines a multinational enterprise as a legal entity under international law; therefore responsibility gap exists, and certain state actions that contribute to non-state actors' behaviour 'fall' through this gap and do not engage the responsibility of the state in question.[28]This is because of the effective control test, which has a high threshold for capturing certain types of state conduct relating to non-state actors.[29]

[19] ILC, ILC, Articles on Responsibility of States for Internationally Wrongful Acts, UN Doc A/56/83, 3 August 2001 (ARSIWA), arts. 4 – 11. (hereafter: ILC Articles 2001)
[20] Vladyslav Lanovoym, *The Use of Force by Non-State Actors and the Limits of Attribution of Conduct*, EJIL (2017) Vol.28 no.2, 563-585.
[21] James Crawford, State Responsibility: The General Part (2013), at 141. See *Certain Questions Relating to the Settlers of German Origin in the Territory Ceded by Germany to Poland.* Advisory Opinion. 1923 PCIJ Series B. No. 6, at 22: States can act only by and through their agents and representatives.'
[22] See Diplomatic and Consular Staff in Tehran (US v Iran), Judgment, 24 May 1980, ICJ Reports (1980) 29, at 31-34.
[23] Vladyslav Lanovoy, *The Use of Force by Non-State Actors and the Limits of Attribution of Conduct*, EJIL (2017) Vol.28 no.2, 563-585; See also Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.*
[24] ILC Articles on Responsibility of States for Internationally Wrongful Acts, 2001, arts., 5 & 11
[25] Ibid art. 8
[26] Ibid. art.9
[27] Ibid.
[28] Ibid.
[29] Ibid.

An attempt to establish international norms binding on corporations was promoted in 2003 at the UN but failed because it needed more consensus from many states.[30]As a result, the international community's focus has shifted to creating soft laws rather than hard rules.[31]In this regard, the Human Rights Council adopted the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011.[32] In addition, the preexisting soft law frameworks, such as the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises and the International Labour Organisation Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, have also been updated in line with the UNGPs.[33]These frameworks, although not binding, aim to promote corporate responsibility to respect human rights and provide remedies for abuses.[34]

Accordingly, a multinational corporation is defined as 'an entity operating in more than one country or a cluster of economic entities operating in two or more countries, whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.'[35]Multinational corporations have the power to flexibly move production and assets across countries, operating with independent management structures that are separate from national systems, except for formal incorporation.[36] Under international law, states could recognise non-state

[30] UN Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights 2003 [E/CN.4/Sub.2/2003/12/Rev.2]; Rosemann, 'Business Human Rights Obligations—The Norms of the Responsibility of Transnational Corporations and Other Business Enterprises' (2005) 23 Nordic Journal of Human Rights at 47

[31]Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.*

[32] Ruggie, 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (2011) 29 Netherlands Quarterly of Human Rights, at 224

[33] Ruggie, 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (2011) 29 Netherlands Quarterly of Human Rights, at 224; Ruggie, 'The Construction of the UN "Protect, Respect and Remedy" Framework for Business and Human Rights: The True Confessions of a Principled Pragmatist' (2011) 2 European Human Rights Law Review at 127; Organisation for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises, (2011), available at https://www.oecd.org/corporate/ mne/48004323.pdf; International Labour Office, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (5.ed, 2017), available at: file:///C:/Users/koroma/Downloads/wcms_094386.pdf; Ruggie and Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges' (2015) 66 Corporate Social Responsibility Initiative Working Paper 1.

[34] Katayoon Beshkardana and Faraz Shahlaei, *Non-State Actors for Profit: Revising Transnational Corporations' Personhood and Responsibility under International Law*. Northwestern Journal of International Law & Business. (2024), Vol.. 44, No.2

[35] UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises *with Regard to Human Rights,* 26 August 2003, para.20

[36] Jan Wouters and Anna-Luise Chane, Multinational Corporations in International Law. Working Paper No. 129, December, 2013.

actors as subjects by giving them certain rights and obligations.[37]Despite recognising them, a number of studies on non-state actors have been focused on the areas of armed conflicts concerning the use of force by informal groups,[38]and others areas.[39]However, holding non-state actors accountable for their actions, especially multinational corporations in the territorial state, remains a challenge due to the difficulty of attribution.[40]Also, this area remains a grey area in terms of legal research. For instance, the Special Representative of the Secretary-General has noted that while states have enacted domestic legislations to regulate the conduct of companies operating in their territories, they have not yet imposed directly binding human rights obligations on them under international law.[41] Supporting this view, Pabomlo has noted that no law defines a multinational enterprise as a legal entity and national laws of countries where they operate regulate only the entities incorporated in their territory.[42]Thus, different rules apply to various multinational companies.[43] This means that when a multinational enterprise abuses human rights, the only remedy available to the victims is to sue each entity belonging to the group for liability.[44]

In particular, the literature on human rights within the extractive industry in Africa tends to focus on documenting incidences of human rights abuses.[45]Therefore, examining the legal regimes governing the extractive industry remains vital. There is a need to examine the effectiveness of the different processes and practices that MNCs are putting in place to address their human rights obligations in relation to their environmental activities on the one hand and for direct accountability of corporations on the other. This is vital given that MNCs are signing up for global initiatives such as the UN Global Compact and the Voluntary Principles of Security and Human Rights to demonstrate their

[37]Karsten Nowrot, *'Reconceptualising International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities*' in John Fleurs (ed*), International Legal Personality* (Ashgate 2010) 369, 372; See also, Antonio Cassese*, International Law in a Divided World* (Clarendon 1986) 103; Karsten Nowrot, 'Reconceptualising International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities' in John Fleurs (ed*), International Legal Personality* (Ashgate 2010) 369, 372.

[38]Ibid.

[39]For instance, International Criminal Law and Commercial Arbitrations, which focus on non-state actors.

[40]ILC Articles 2001

[41] UNHR, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and their business enterprises, 'John Ruggie'(2010), UN Doc A/HRC/14/27 para 55; UNHRC, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie' (n 83) para 84; Eric De Brabandere, (n 25) 67

[42] Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.*

[43]Ibid.

[44] Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.* Available at: https://doi.org/10.1093/hrlr/ngac003*. Accessed 21/08/24*

[45] Uwafiokun Idemudia, Francis Xavier D. Tuokuu, Marcellinus Essah, *The extractive industry and human rights in Africa: Lessons from the past and future directions.* Resources Policy 78 (September 2022) 102838.

commitments to uphold human rights.[46] In addition, it has been argued that multinational corporations benefit from a globalized market but are still regulated by national laws on companies' liability.[47]Consequently, there exists an accountability gap, which has resulted in a call for changes in the laws regulating the activities of multinational enterprises.[48]

1.4 The Research Aim and Objectives

This study aims to examine the obligations of states and multinational corporations in the extractive industry under both domestic and international law in relation to human rights and environmental protection. This is because the activities of multinational corporations in the extractive industry can have effects on human rights and fundamental freedoms.[49] Thus, the main objectives of the study are as follows:

- To examine the legal frameworks governing the extractive industry under domestic and international law.
- To examine the policies and actions of corporations and assess their compliance with domestic and international obligations.
- To identify obligations for accountability of states and corporations in the extractive industry.
- To establish gaps in the legal frameworks governing corporations in the extractive industry.
- To examine the processes and practices of corporations in the extractive industry with respect to the environment and human rights.
- To examine the treatment of workers by multinational corporations in the extractive industry.

1.5 The Research Questions

As Evans and his colleagues stated**:**

> *It is certainly true that research questions can only be generated after an area is reviewed and gaps are identified. Accordingly, the right place for a precise statement of the research questions*

[46]Ibid.

[47] Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25*

[48]See Bilchitz, 'The Necessity for a Business and Human Rights Treaty' (2016) 1 Business and Human Rights Journal at 203; De Schutter, 'The Accountability of Multinationals for Human Rights Violations in European Law' in Alston (ed), Nonstate actors and human rights (2005) at 227; Jägers, Corporate Human Rights Obligations: In (2020); Augenstein, Study on the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union (University of Edinburgh, 2010), available at: http://ec.europa.eu/DocsRoom/documents/11865/attachments/1/translations/en/renditions/nativeSearch of Accountability (2002); Deva, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here' (2003) 19 Connecticut Journal of International Law 1; Palombo, Business and Human Rights The Obligations of the European Home States

[49] Rebeca Wallace, Fraser Janeczko and Karen Wylie, *Nutshells International Law*, Sweet and Maxwell, 2013.

may indeed be at the point where the background chapters finish, and just before the start of the core of your own work, but the questions need to be stated in broad terms in your first chapter.[50]

This is equally true in this study. The research questions are drawn based on the relevant literature reviewed on the subject matter. Moreover, including the research question in this first chapter is appropriate, as it guides the study's direction. Therefore, the key question is:

What are the specific obligations of states and non-state actors with respect to multinational corporations in the extractive industry for upholding human rights and environmental protection under domestic and international law, and how have they respected these obligations?

To answer the above main question, the following sub-questions will be examined:

a. How do we understand the obligations of states and non-state actors for human rights under domestic and international law?
b. What are the laws governing corporations in the extractive industry in Sierra Leone and Italy?
c. Under which circumstances can corporations be held directly accountable for violations of human rights?
d. How do corporations in the extractive industry set out their commitment to respect human rights?
e. How do corporations in the extractive industry identify actual and potential human rights impacts in their business activities and relationships*?*
f. What is the relationship between states and multinational corporations regarding attribution of responsibility for wrongful acts?
g. Should states enhance their regulation over non-state actors in order to hold corporations responsible for environmental and human rights violations?
h. What responsibilities does a state have for regulating the activities of multinational corporations concerning human rights and environmental law?

1.6 Methodology of the Study

Methodology explains and justifies the methods used in research.[51]It provides the conceptual justification for the choice of methods for understanding and analysing theories in specific

[50]David Evans, Paul Gruba, and Justine Zobel, *How to Write a Better Thesis* (3rdEdition, Springer International Publishing, Switzerland, 2014), *p.*68

[51] Rossana Deplano and Nicholas Tsagourias, *Research Methods in International Law. A Handbook*. (Edward Elgar, 2021), p.1 (hereafter: Deplano and Tsagourias, Research Methods 2021)

research.[52]It is the identification and description of specific argumentation techniques and theoretical approaches under international law.[53]On the other hand, methods under international law describe the techniques of acquiring knowledge about international norms.[54]Thus, methodology and methods provide how issues can be researched and solutions proffered.[55]

This study employs a 'mixed or hybrid methodology.' It employs both normative (doctrinal) legal research and socio-legal (non-doctrinal) legal research methodologies.[56]The reasons for this are threefold: **firstly**, the subject matter of this study requires identifying the law to ascertain the obligations of states and corporations in the extractive industry in relation to environmental protection and upholding human rights. **Secondly,** it allows the researcher to undertake a comparative study with a broader abstraction of the issue under investigation.[57] This includes evaluating the consistency of states' policies and actions with international law. This rests on the premise that academic legal research should focus on finding answers to the intention for which laws are enacted, rather than seeking alternatives to solve the problem within the legal system.[58] **Thirdly,** adopting non-doctrinal methods enables the researcher to make first-hand observations of the subject matter of this research: the obligations of states and corporations in the extractive industry. Thus, the following methodology was adopted:

A). Data was collected through the following techniques and methods. A desk review was carried out, in which both the relevant *Primary* and *Subsidiary* sources were reviewed:

i). The ***primary*** data sources reviewed include global and regional human rights treaties and environmental protection laws. In addition, customary international law was considered. This is in accordance with Article 38 of the Statute of the International Court of Justice,[59]which serves as a legal basis for the identification of primary sources under international law. In addition, domestic laws governing the extractive industry were also reviewed.

[52] Ibid.
[53] Ibid.
[54] Deplano and Nicholas Tsagourias, *Research Methods* 2021, p.1
[55] Ibid.
[56] Urmi Roy defines doctrinal legal research methodology analyses principles, rules, and doctrines in the legal system, whilst non-doctrinal legal research focuses on establishing the relationship between law and its impact on society. It focuses on what the law is and analysing the law. Whilst non-doctrinal research is the collection of first-hand information on the subject matter of the research by interpreting and analysing it.
[57] John C. Reitz, *How to Do Comparative Law? The American Journal of Comparative Law*, Autumn, 1998, Vol. 46, No. 4 (Autumn, 1998), pp. 617-636
[58] Mc Conville M. and Hong Chui W., *Research Methods for Law* (Edinburg University Press, Edinburg, 2, 2007)
[59] Statute of the International Court of Justice, 1945, art. 38(1)(a)(b)(c)

ii). The **subsidiary sources** reviewed include judicial decisions (case law) and teachings of highly qualified publicists,[60] as a means of ascertaining the law when primary sources of law are not clear. Other relevant sources examined in this study include textbooks, academic journal articles on human rights and environmental protection, and commentaries. In addition, relevant policy documents, reports on corporations in the extractive industry, soft law instruments relating to human rights and environmental protection, legal periodicals, and internet sources were examined to interpret and understand the law.

B). The study also employs socio-legal research methodology through the following data collection techniques or methods which include **interviews, questionnaires**, and **field trips:**

Field Trips, Interviews and Questionnaire: Field trips were undertaken, and interviews were conducted.[61]Visits were made to interview individuals in key positions at the Marampa Mines Limited (MML), an Iron Ore mining corporation in Sierra Leone. In Italy, a six-month internship at Cava Consona, a Sicilian mining company located in Bagheria, Italy. These visits and the internship aim to examine respect for human rights and environmental protection issues, then compare that with the extractive industries in Sierra Leone and Italy. Thus, the various visits to these corporations serve as a personal appraisal of the 'processes and practices' of these corporations in the extractive industry in relation to their specific obligations regarding human rights and environmental protection. The information obtained from these exercises enables the researcher to ascertain the extent of implementation of relevant domestic laws, treaties and other laws and principles within the policies and legal mandates analysed in this study.[62]

A structured interview technique was adopted. A set of *questions* was formulated beforehand and emailed to or placed in front of the participants in the selected corporations, who answered them. The researcher recorded responses in a standardised way.[63]The questionnaires do not identify legal obligations, rather, they provide information about how these obligations are implemented in practice. In other words, it is essential to note that the questionnaire was not intended to identify obligations, but rather to gather information about how states and corporations in the extractive industry implement those obligations in practice.

[60] Ibid, art. 38 (1)(d)

[61] Pricilla Schwarts, Sustainable development and mining in Sierra Leone. PhD Thesis, Queens Mary University of London, 2005 (hereafter Priscilla Schwartz, Sustainable Development and Mining in Sierra Leone, 2005)

[62] Priscilla Schwartz, *Sustainable Development And Mining In Sierra Leone,* 2005.

[63] Note that respondents or interviewees wished to remain anonymous. However, personal information such as names, etc., are available upon request.

The interviews serve as an appraisal to ascertain the obligations in the extractive industry and how they are complied with. In this regard, interviews were conducted at the Marampa Mines, in Lunsar, Port Loko District, Northern Province, Sierra Leone, and at the *Cavas Consona*, in Bagheria, Southern Italy. The interviews focused on administrative managers and Health and Safety Environment Officers (in short, Compliance Officers) respectively.

C). **Obligations**

The key obligations the researcher focused on in this study include:

(i) ***Obligation to protect and to ensure the fulfilment of human rights,***

(ii) ***The obligation to prevent violations of human rights.***

(iii) ***The principle of non-discrimination***.

In addition, the study focuses on the specific human rights associated with the above obligations. These include (i) **the right to life and (ii) the right to health.**

The above-identified obligations are analysed considering the principle of **good faith** in upholding human rights under international law.[64] Under international human rights law, states must protect and ensure the fulfilment of human rights. This means not only recognising human rights for all but also the obligation of states to ensure, secure, or guarantee the effective enjoyment of human rights to all within their jurisdiction.[65]This obligation is enshrined in many international and regional human rights instruments.[66]In addition, key environmental principles, especially the **precautionary** and **preventive** principles recognized under environmental law, were analysed.

The study focuses on comparing two (Italy and Sierra Leone) distinct systems. Italy is in the Global North, with developed economy),whereas Sierra Leone, is in the Global South with a developing economy. Comparing these two distinctive legal frameworks allows us to explore how different legal systems handle obligations under domestic and international law with respect to multinational corporations in the extractive industries for environmental protection and human rights. In particular, the comparison allows us to advance environmental justice, identify responsibilities, interconnectedness, identify the effectiveness of environmental laws in the selected countries.

[64] Vienna Convention on the Law of Treaties 1969, art. 26.

[65] States obligations not only for conduct within their territories but also extraterritorially, and where they exercise authority or effective control.

[66]See Article 2 of the International Covenant on Civil and Political Rights 1966; Article 2 of the International Covenant on Economic, Social and Cultural Rights 1966; Article 2 of the Convention on the Elimination of Forms of Discrimination against Women 1979; Article 2 of the Convention on the Rights of the Child 1989, Article 1 of the African Charter on Human and People's Rights, 19081; and Article 1 of the European Convention on Human Rights and Fundamental Freedoms 1950,

Additionally, comparing these two distinctive systems, this study will explore best practices, legal gaps and pathways for embedding environmental and human rights protection. Thus, the comparative approach enables the researcher to identify commonalities and differences between the laws and practices in the extractives industry regarding environmental protection and human rights in Italy and Sierra Leone, as well as divergent (methods of) interpretation. Therefore, the comparison is undertaken from two angles:

i. **Thematic issues**: Environmental protection and adherence to international human rights law.
ii. **Doctrinal issues**: interpretation methods, domestic legislations, treaties, case law, guiding principles, and declarations.

1.7 The Scope of the Study

This study is within the scope of human rights evolution, protection and limits. Therefore, it focuses on examining the obligations of states and non-state actors under domestic and international law concerning corporations in the extractive industry in Italy and Sierra Leone. In particular, the study examines the legal regimes governing corporations in the extractive industries in these states. Thus, the focus is on the obligations of states and corporations in the extractive industry to protect the environment and human rights. However, where necessary, obligations under general international law would be examined. In that regard, the areas of law covered in this study are domestic laws on human rights and the environment on the one hand, and an examination of general international law, international human rights law, and international environmental law on the other. The obligations are related to specific rights, such as the right to life and the right to health. Thus, the study is both descriptive and analytical.

1.8 Significance of the Study

This study examines the laws and actions of multinational corporations (MNCs) in the extractive industry, with a focus on environmental law and human rights obligations. Therefore, the study will contribute to the debate on holding corporations in the extractive industry directly accountable for human rights violations. In that regard, the study highlights the specific obligations of states and corporations in the extractive industry under various human rights laws and environmental laws. Specifically, the study focuses on the obligations of non-state actors, particularly multinational corporations in the extractive industry, to uphold human rights as well as the obligations of states in

holding non-state actors to account and ensuring that they respect human rights in carrying out their extractive activities. Having stated that, the key significance of the study is to:

(1). It highlights and clarifies the specific obligations that will provide both states and corporations with the relevant legal guidance on how to interpret and discharge their obligations under domestic and international law.

(2). Clarify and give a guide on how to hold states directly responsible for human rights violations by corporations in their territories, on the one hand, and how to hold corporations in the extractive industry directly accountable for violations of human rights in carrying out their activities.

(3). Advance the knowledge and contribute to the literature on the legal and policy debates about states' obligations in upholding human rights and responsibility for human rights violations by multinational corporations in the extractive industry in relation to existing relevant laws.

1.9. Development of Earlier Research

1.9.1 Italy

Several studies on the extractive industry and environmental protection have been conducted in Italy.[67] For instance, the European Commission has studied the legal framework for mineral extraction and permitting procedures for exploration and the exploitation in the EU. [68]This study provides insight into the European Union's permitting procedures for the exploration and exploitation of non-energy natural mineral resources. Another study on the law and practice focuses on the regulatory framework, highlighting key environmental policies, principles, and laws.[69] Other studies have been conducted on Italy's general environmental laws.[70] In the extractive industry, Mauro Lucarini *et al.* have highlighted, in their study, the importance of the production and supply of mineral raw materials from mines and quarries in the economy, both for the European Union and on a national scale, with better management.[71] Additionally, Nicole Gullo has also examined the relationship

[67]See *Salvatore Patti*, *Environmental Protection in Italy: The Emerging Concept of a Right to a Healthful Environment.* Natural Resource Journal, Volume 24 Issue 3 Summer 1984*;* Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy.* 10 January 2024*;* Stefano Grassi, Marcello Cecchetti, Alessandro Andronio, Antonio Borzì, Gianni Taddei and Andrea L. Davis, *Environmental Law in Italy* (Second Edition, Wolters Kluwer, 2019); Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*

[68] European Commission, Study – Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU, MINLEX-Final Report, May 2017

[69] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023*

[70] Stefano Grassi, Marcello Cecchetti, Alessandro Andronio, Antonio Borzì, Gianni Taddei and Andrea L. Davis, *Environmental Law in Italy* (Second Edition, Wolters Kluwer, 2019); Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy.* Institute for Environmental Protection and Research*, 10 January 2024.*

[71] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*

between the environment and human rights.[72] He highlighted how the Italian legal system has gradually achieved an advanced model of locus standi for environmental NGOs, which is due more to the domestic evolution of caselaw than to international or EU law.[73]

1.9.2 Sierra Leone

Earlier studies have examined the extractive industry in Sierra Leone; for instance, Priscilla Schwartz examined sustainable development and mining in Sierra Leone, focusing on conflicts between pursuing mining activities to foster economic development and protecting the environment.[74] She concluded that sustainable development is directly relevant to environmental protection in the economic exploitation of natural resources.[75]Barrie's article also examines natural resources, including oil and gas in Myanmar and diamonds in Sierra Leone. It focuses on the irresponsible exploration and extraction of these resources, which have led to continued human rights abuses and environmental degradation.[76] Other studies related to the extractive include those of Moses Fayiah's[77]respectively.

From the above, it is apparent that studies have been conducted on the extractive industries in Italy and Sierra Leone, but none of the studies highlighted above compare the extractive industries in Italy and Sierra Leone or the obligations of non-state actors concerning multinational companies in the extractive industry in these two countries.

1.9.3. The Value of the Study to Sierra Leone and Italy

This study examines the obligations of states and corporations in the extractive industry under domestic and international law, with a focus on human rights and environmental protection in Italy and Sierra Leone. Therefore, the added value to Sierra Leone and Italy is threefold:

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[72] Nicole Gullo (editor), *Human Rights and Environment: Legal*: *Economic and Ethical Perspectives*, Editoriale Scientifica, 2021.
[73] Ibid.
[74] Priscilla Schwartz, *Sustainable Development and Mining in Sierra Leone,* PhD Thesis, Queen Mary University of London, 2005.
[75]Ibid
[76]Jeneba H. Barrie, 'Certifying the Safety, Humanitarian & Environmental Needs in Natural Resources Exploration and Extractions: A Myanmar & Sierra Leone Case Study' (2014) 11 Manchester J Int'l Econ L 96
[77] Moses Fayiah, *Mining and Environmental Degradation: a Gift Brings Grief Scenario for Mining Communities in Sierra Leone, 27 February 2020, Journal of Mining & Environment, Vol. 11, No. 2, 2020; Fayiah M, Fayiah MS. Long and short term implications of mineral mining operations in Sierra Leone: A review.* Natural Resources Conservation and Research. 2024; 7(1): 4452*; M. Fayiah, The Untold Benefits of Mineral Mining in Developing Countries: A Case Study of Sierra Leone, December 2020, 6(2):41-51;*

Firstly, this study is the first to compare the extractive industry between Sierra Leone and Italy. Although there are earlier studies[78] on the extractive and related industries in Italy and Sierra Leone, none have focused on comparing the obligations of states and non-state actors, under domestic and international law, particularly corporations in the extractive industry in these countries.

Secondly, this study also compares activities and practices in the extractive industry and human rights. In other words, it highlights the activities of corporations in the extractive industry in Sierra Leone and Italy, as well as their impact on human rights. This is particularly crucial, considering the differences in economic development and governance systems between the two countries. Comparing the two countries allows us to explore how different governance systems handle long-term obligations and identify scalable models for the protection of the environment and human rights.

Thirdly, the study pinpoints the laws governing the extractive industry in Sierra Leone and Italy. Therefore, this will enhance awareness of legal practitioners and policymakers regarding the nexus between environmental and human rights protection. Thus, it is worth noting that the study contributes to our broader understanding of the legal regimes in the extractive industry, on the one hand, and the environment and human rights in Sierra Leone and Italy, on the other.
The following section outlines the motivation for the extractive industry in this study.

1.9.4. Why the Extractive Industry?

The section presents the researcher's motivation for examining the laws governing the extractive industry. The rationale for focusing on the extractive industry cannot be overemphasised. However, the following motivation points are worth considering:

Firstly, in as much as corporations in the extractive industry can provide livelihoods in communities where they operate, by contributing to the creation of employment opportunities and through private investment in development,[79] their activities are not without consequences on human rights. For instance, Howard Mann has reported that corporate investors can have negative consequences for individuals' enjoyment of human rights, including adverse effects on human rights, preservation of

[78] Priscilla Schwartz, *Sustainable Development and Mining in Sierra Leone,* PhD Thesis Queen Mary University of London 2005; Moses Fayiah, *Mining and Environmental Degradation: a Gift Brings Grief Scenario for Mining Communities in Sierra Leone, 27 February 2020, Journal of Mining & Environment, Vol. 11, No. 2, 2020; Fayiah M, Fayiah MS. Long and short term implications of mineral mining operations in Sierra Leone: A review.* Natural Resources Conservation and Research. 2024; 7(1): 4452*; M. Fayiah, The Untold Benefits of Mineral Mining in Developing Countries: A Case Study of Sierra Leone, December 2020, 6(2):41-51;* Jeneba H. Barrie, 'Certifying the Safety, Humanitarian & Environmental Needs in Natural Resources Exploration and Extractions: A Myanmar & Sierra Leone Case Study' (2014) 11 Manchester J Int'l Econ L 96

[79] Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

fundamental labour rights, the security of persons, and the prevention of non-discrimination.[80] In addition, studies have shown that the extractive industry is one of the sectors where corporations violate human rights.[81] For instance, a study conducted by the International Council on Mining and Metals examined 38 allegations against mining companies in 25 countries,[82] and found that most alleged human rights violations have occurred in the extractive industry.[83] This suggests that the extractive industry is among the sectors with the most significant human rights abuses. As Cecily *et al*. have stated, multinational corporations are capable of abusing human rights, for instance, by employing children or by using materials made by forced labour.[84] In particular, their activities may damage the environment, which could affect human health and individuals' means of subsistence.[85]

Also, a 2006 report by the UN Special Representative of the Secretary-General on Business and Human Rights (SRSG) revealed that the "extractive sector oil, which includes gas and mining, utterly dominates this sample.''[86] The report suggests that approximately 60 percent of reported cases involve direct forms of company involvement in the alleged violations, through its acts or omissions[87]and 40 percent involved indirect forms of corporate violations.[88] The Human Rights Council has also reiterated, with growing evidence, that the impact of corporate activities on impoverished communities in developing countries can result in human rights violations.[89]

Secondly, the traditional view that human rights law applies only to states is increasingly challenged, as non-state actors with rights are also seen as bearing corresponding obligations.[90] There is a

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[80] Howard Mann, *International Investment Agreements, Business and Human Right*: *Key Issues and Opportunities,* International Institute for Sustainable Development (February 2008)

[81] Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities,

[82] Ibid., at para. 108

[83] Jernej Letnar Černič, *Corporate Human Rights Obligations At The International Leve*l. Willamette Journal of International Law and Dispute Resolution, 2008, Vol. 16, No. 1 (2008), pp. 130-205.

[84] Cecily Rose, Niels Blokker, Daniella Dam-de Jong, Simone van den Driest, Robert Heinsch, Erik Koppe, and Nico Schrijver, An Introduction to Public International Law, Cambridge University Press, 2022, p.41

[85] Ibid.

[86] SRSG on Business and Human Rights employed the sample of 65 surveyed instances in 27 countries recently reported by NGO

[87] See Corporations and Human Rights, supra note 14.

[88] Pradeep Mullekyal Devadasan, "Legal Research- Descriptive Analysis on Doctrinal Methodology" 4, International Journal of Management, Technology, and Social Sciences (IJMTS) 4(2), 95-103. (December 2019), p.99

[89] See Human Rights Watch, On the Margins of Profit, Human RIGHTS WATCH, February 2008, available at http://hrw.org/reports/2008/bhr0208/; John Ruggie, Corporations and Human Rights: A Survey of the Scope and Patterns of Alleged Corporate-related Human Rights Abuse, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, U.N. Doc. A/HRC/8/5/Add.2 (23 May 2008) [hereinafter Corporations and Human Rights] (summarizing the scope and patterns of alleged corporate-related human rights abuse found in a sample of 320 cases posted on the Business and Human Rights Resource Centre webpage from February 2005 to December 2007).

[90] Shruti Bedi, International Human Rights Law: Responsibility of Non-State Actors For Acts of Terrorism. Journal of the Indian Law Institute, JULY-SEPTEMBER 2014, Vol. 56, No. 3 (JULY-SEPTEMBER 2014), pp. 386-397

consensus among practitioners and academic commentators alike that business activities, including those of corporations in the extractive industry, have the potential to act as a catalyst for the violation of fundamental human rights of individuals, particularly when corporations invest in countries with weak governance.[91] Sierra Leone falls within this description, yet the extraction of natural resources has also had a positive impact on society.[92]

Furthermore, it is essential to acknowledge that holding states directly responsible for human rights violations committed by corporations in the extractive industry can be problematic and, at times, impossible.[93]This is because the current legal regime on states' responsibility is restricted to the responsibility of state organs and those entities entrusted with public functions or acting on behalf of the state. [94]This makes it difficult for states to be held accountable for the actions of corporations in the extractive industry. Therefore, examining the specific legal regimes covering corporations in the extractive industry is vital. It helps reveal the specific human rights obligations of states to corporations and corporations themselves.

Lastly, the activities of corporations in the extractive industry primarily focus on environmental issues, which could have negative consequences for local communities where extractions take place. For instance, in many African countries, the extractive industry has contributed to the socio-economic development.[95]However, there are also incidences of human rights violations in many rural communities.[96] Therefore, examining the legal regimes governing the obligations of states and multinational corporations in the extractive industry to protect the environment is not an isolated endeavour. Also, it is now widely accepted at both regional and international levels that environmental activities are closely linked to human rights.[97] Also, the connection between

[91] See Business & Human Rights Resource Centre, http://www.business humanrights.org/Legal Portal/Home https://www.business-humanrights.org/en/latest-news/liptons-response-to-alleged-human-rights-abuses-in-the-tea-supply-chain-september-2023/

[92] Moses Fayiah, ShiKui Dong, Sanjay Singh, Muloma Seibatu Fayiah, *The Untold Benefits of Mineral Mining in Developing Countries: A Case Study of Sierra Leone. International Journal of Mining Science (IJMS) Volume 6, Issue 2, 2020, PP 41-51*

[93] See Uwafiokun Idemudia, Francis Xavier D. Tuokuu and Marcellinus Essah, *The extractive industry and human rights in Africa: Lessons from the past and future directions.* Resource Policy, vol. 78, (September 2022), 102838*;* Steven R. Ratner, Corporations and Human Rights: A Theory of Legal Responsibility. The Yale Law Journal, Vol. 111. No.3 (December 2001), pp. 443-545

[94] See ILC Articles 2001

[95] Uwafiokun Idemudia *, The extractive industry and human rights in Africa: Lessons from the past and future directions.* Resources Policy 78 (2022) 102838.

[96]Ibid.

[97] Council of Europe, *Manual on Human Rights and the Environment* (3rd Edition, February 2022); *UN General Assembly*, '*Right to a healthy environment: good practices. Report of the Special Rapporteur on* the issue of *human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment'* (30 December 2019), UN Doc. A/HRC/43/53, p. 4, paras. 11-13; UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (24

environmental protection and human rights has been acknowledged in the case law of human rights courts.[98] Hence, adherence to environmental protection rules remains a priority for safeguarding human rights and fundamental freedoms.

1.10 Literature Review

This section presents the relevant literature reviewed. A key component of this study is the review of the relevant literature.[99] As Devadasan stated:

> *…' extensive literature review highly depends on the research problem identified for the scientific enquiry whereas formulating such research problem highly depends on the extensive quality literature. '*[100]

In this study, the formulation of the research problem was informed by an extensive review of the literature on the subject matter, specifically multinational corporations in the extractive industry, regarding human rights and environmental protection under both domestic and international law. This is achieved by first identifying the broad area of the study (obligations of states and non-state actors under national and international law), followed by dissecting the broad area into subareas (such as in the case of multinational corporations in the extractive industry), and finally, formulating the research question of the study.[101]Thus, below are some of the relevant literature reviewed in this study.

1.10.1 On Non-State Actors /Multinational Corporations

Lilienthal defined multinational corporations (MNCs) as entities that "have their home in one country but which operate and live under the laws of other countries as well...."[102]Vernon has described MNCs

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January 2018) UN Doc. A/HRC/37/59, § 16; See also UN Economic and Social Council, 'Human Rights and the Environment' Final report prepared by Fatma Zohra Ksentini, Special Rapporteur' (6 July 1994), UN Doc. E/CN.4/Sub.2/1994/9, §§ 31, 54, 124, 178.; Daly E. and May J. R. (2019), "*Exploring environmental justice through the lens of human dignity*", Widener Law Review Vol. 25, p. 177; Introductory Report to the High-Level Conference "*Environmental Protection and Human Rights*" (Strasbourg, 27 February 2020), prepared at the request of the Steering Committee for Human Rights (CDDH) by Elisabeth LAMBERT, CNRS Research Director, SAGE Research Unit, University of Strasbourg; Knox J. H. and Pajan R. (2018), *Introduction, The Human Right to a Healthy Environment, Cambridge University Press, Cambridge, p. 1. ;* Karel Vasak, "*Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of Law to the Universal Declaration of Human Rights*", UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.

[98] See Inter-American Court of Human Rights, *Advisory Opinion* OC-23/17 (15 November 2017), Requested by the Republic of Colombia, Environment and Human Rights (State Obligations in Relation to the Environment in the Framework of the Protection and Guarantee of the Rights to Life and Personal Integrity – Interpretation and Scope of Articles 4.1 and 5.1, in Relation to Articles 1.1 and 2 of the American Convention on Human Rights), para. 47.

[99] David Evans, Paul Gruba and Justin Zobel, *How to Write a Better Thesis (3rdThird, Springer 2014)*

[100] Pradeep Mullekyal Devadasan, "Legal Research- Descriptive Analysis on Doctrinal Methodology" 4, International Journal of Management, Technology, and Social Sciences (IJMTS) 4(2), 95-103. (December 2019), p.99.

[101] Ibid.

[102]Lilienthal, D. (1960). *The Multinational Corporation*. In M.H. Anshen & G.L. Bach (Eds.). Management and Corporations (P. 119). New York: McGraw-Hill, p. 119.

as a cluster of affiliated firms located in different countries that are linked through common ownership, share a common pool of resources, and respond to a common strategy.[103] Also, multinational enterprises are often described as geographically located in multiple countries.[104] Multinational corporations in Sierra Leone's extractive industry have their headquarters in other countries but operate in Sierra Leone. For instance, Marampa Mines Limited at Lunsar, Port Loko District, Sierra Leone, is a subsidiary of the Gerald Group, headquartered in London, United Kingdom.[105]

Likewise, Brabandere has stated that since the beginning of the 21st century, numerous avenues for increasing the accountability of multinational corporations have been explored in the legal literature and several international instruments have been adopted to regulate the conduct of non-state actors, in particular the conduct of transnational corporations in the sphere of human rights.[106] However, international corporations lack International Legal Personality, which impedes their direct accountability for violations of international law.[107] Expanding on the legal status of non-state actors, Peter Malanczuk has also reiterated that they have rights and duties at the national level granted by a state. [108]However, a link between non-state actors and international law remains. For instance, Rinwigati has argued that most of the Bilateral Investment Trade Agreements between host countries and transnational corporations refer to International Arbitration for the Settlement of Disputes on the one hand, and refer to General Principles of international law when there is a gap in the law,[109] on the other. In addition, James Crawford has pointed out that although the International Law Commission Articles (ILC) concerned the breaches of international law by states and not non-state actors, [110]however, in terms of investment treaty arbitration, Part One of the ILC Articles applies to the general questions surrounding breach of an international obligations contained in an investment treaty.[111] This means non state actors rely on international law.

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[103] Vernon, R. (1971). *Sovereignty at Bay*. New York: Basic Books.

[104] Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.*

[105] Marampa Mines Limited, incorporated in 2021 in Sierra Leone, is a subsidiary of Gerald Group. Available at:www.marampamines.com

[106] Eric De Brabandere, Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility. *Human Rights and International Legal Discourse, Vol. 4, No. 1, pp. 66-88, 2010, p.16 (hereafter:* De Brabandere, Human Rights and Transnational Corporations, 2010)

[107] Ibid. See also the Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (9 February 2007), see above note 2, at 20.

[108] Peter Malanczuk, Akehurst's Modern Introduction to International Law (London: Routledge, 1997), 91.

[109] Patricia Rinwigati, p.389.

[110] James Crawford, Investment Arbitration and the ILC Articles on State Responsibility, p.129

[111] Ibid.

Ferdausy and Rahman have argued that multinational corporations have both positive and negative impacts on developing countries.[112]They argued that multinational corporations (MNCs) in the "*mining operations have generated severe environmental degradation and pollution, including the discharge of toxic substances into river systems, large volume waste disposal, the inadequate disposal of hazardous wastes, and the long run impacts of poorly planned mine closure."*[113]Thus, MNCs have been targeted for human rights violations in developing countries.[114]

Jernej Letnar Černič, in his article, '*Corporate Human Rights Obligations At The International Level,'* with a focus on corporations' obligations for human rights at the international level, has described not only how the last decades have witnessed fundamental changes in domestic and international environments, due to globalization, but also how corporations are at the forefront of these changes.[115]Therefore, examining the obligations of States and non-state actors in this study, with a specific focus on corporations in the extractive industry, is not isolated.

Considering the subject matter in this study (on obligations of states and non-state actors, with a focus on the corporations in the extractive industry), analysing the theoretical perspective of 'state-corporate crime'[116] should not be neglected. Expanding on this theory, Katz has indicated that state-corporate crime concerns instances that involve corporate power and environmental crime at local and global levels.[117] This theory takes into account crimes of political, social and economic elites in the form of government and institutional frameworks.[118]Corporate crime theory focuses on the interests of public and private sector elites, analysing activities of politicians and corporations, and examining the *acts or inactions of elites that have led to human rights abuses and environmental harm*.[119]

According to Clapham in his book: 'Human Rights Obligations of Non-state Actors**,'** in which he examined 'the legal protection of human rights in situations where the threats to the enjoyment of

[112] Shameema Ferdausy and Md. Sahidur Rahman**,** *Impact of Multinational Corporations on Developing Countries*. The Chittagong University Journal of Business Administration, Vol. 24, 2009, pp. 111-137
[113] Shameema Ferdausy and Md. Sahidur Rahman, p. 120
[114] Ibid.
[115]Jernej Letnar Černič, *Corporate Human Rights Obligations At The International Level***.** Williamette Journal of International Law and Dispute Resolution, 2008, Vol. 16, No. 1 (2008), pp. 130-205
[116] Kramer R. & Michalowski, "State Corporate Crime." Paper presented at the Annual Meeting of the American Society of Criminology. November 7-12, 1990.
[117] Katz, R., The corporate crimes of Dow Chemical and the failure to regulate environmental pollution. *Critical Criminology* (2010) 18 (4): 295-306.
[118] Kramer R. & Michalowski, "State Corporate Crime." Paper presented at the Annual Meeting of the American Society of Criminology. November 7-12, 1990.
[119] Ibid.

human rights come from non-state actors rather than directly from state agents,'[120]by analysing recent human rights cases to develop an understanding of the importance of human rights accountability for corporations.[121]He maintains that if corporations can enjoy rights under the European Convention on Human Rights (ECHR), they should also be subjected to duties under human rights law.[122]However, imposing duties to uphold human rights could only be feasible when we pinpoint the obligations of corporations in the extractive industry by examining the legal frameworks, which is the focus of this study.

The paradox provides corporations with human rights protection, but it does not adequately address corporate accountability. In other words, human rights law is used to protect corporations as persons, and at the same time, human rights law fails to protect individuals from corporate human rights violations.[123] This assertion is evident in the context of ECtHR, which has not only recognised corporations as legal persons and as objects of rights, but also granted them the protections of the ECHR. This means the ECtHR considers corporations as victims of state-authored human rights violations, but it does not consider the responsibility of corporations for their human rights violations.[124] The ECtHR has increased the scope of corporate human rights through its case law. Which include: *Societe Colas Est v France* (2002), it applied Article 8 to the Company; and in *Comingersoll S.A v Portugal* (2000), the corporation was described as 'an 'independent living organism.'[125] In other words, corporations can invoke human rights to protect themselves, but it is challenging to use the same law to protect individuals from corporations.[126]

1.10.2 Responsibility and Attribution

Crawford has pointed out that, under international law, the attribution of conduct or omission to states occurs in instances of a breach of duty by the state through its act or omission by one or more organs or its agents, and there should be a causal connection between the corporate entity of the state and the harm done.[127] In other words, conduct attributable to a state may consist of both actions or omissions

[120] Andrew Clapham, Human Rights Obligations of Non-state Actors. Oxford, New York: Oxford University Press, 2006, p. 1 (hereafter Adrew Clapman, 2006)
[121] Ibid.
[122] Andrew Clapham, 2006,
[123] Stefanie Khoury, *Corporate Non-Accountability and Human Rights*. Asian Journal of Social Science, 2018, Vol.46. No. 4/5, Special Issue: Continuities and Ruptures in Global North Legal Pressures on Global South Societies 2018, pp.503-523.(hereafter: Stafanie, corporate Non-Accountability 2018)
[124] The ECtHR has justified its consideration of corporations as rights holders through Article 1, Protocol 1 of the European Convention on Human Rights: Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
[125] Stafanie, corporate Non-Accountability 2018
[126]Stafanie Khoury, Corporate Non-Accountability 2018
[127] James Crawford, Brownie's Principles of International Law (8th Edition, OUP, Oxford 2012), p. 542-543

and breaches of international obligations by omission are relatively common.[128]Supporting this view, Shaw has pointed out that attribution depends on the link that exists between the state and the person or persons who committed the wrongful act or omission.[129]Shaw went further a state's 'failure to ensure compliance may be attributed to the state even when the conduct was that of private entities.'[130]This line of reasoning resonates from the principle that states must ensure that their international obligations are respected on their territory, as many treaties require them to do so, especially in the area of environmental protection[131]and human rights.

Certainly, Shaw noted that customary international law imposes obligations upon states in the area of environmental protection.[132] Failing to do so will engage the state's responsibility. International responsibility for wrongful acts is attributable to states as subjects of international law.[133] Such responsibility arises from the nature of the international legal system and the doctrines of state sovereignty and equality of states.[134] However, the characterization of responsibility hinges on the following factors: there must be an international legal obligation; there must to be an act or omission that violates that obligation, which is attributable to the state; and the damage or loss occurred as a result of the act or omission.[135]International wrongs occur when there is a breach of a treaty or of obligations under customary international law.[136]Therefore, the law of responsibility focuses on the incidence and consequences of unlawful conduct as well as the forms of reparation for any loss suffered.[137] For attribution to take place, "it is irrelevant whether the constitutional structure of the State gives the … government power to compel the component unit to abide by the State's international legal obligations."[138]Attribution is an international doctrine, and its rules have nothing to do with the contractual responsibility of states.[139]

State Obligations

In terms of states' obligations to uphold human rights, it has been established that states not only bear a duty to respect the human rights of individuals on their territory but also must ensure that private

[128] James Crawford and Simon Olleson*, The Nature and Forms of International Responsibility* (OUP 2010), p. 459
[129] Malcolm N. Shaw, International Law (8th Edition, CUP, Cambridge, 2017), p. 595
[130] James Crawford, Brownie's Principles of International Law (8th Edition, OUP, Oxford 2012), p. 543
[131] Malcolm N. Shaw, International Law (8th Edition, CUP, Cambridge, 2017),p.595
[132] Ibid
[133] James Crawford, Brownie's Principles of International Law (8th Edition, OUP, Oxford 2012), p.543
[134] Malcolm N. Shaw, International Law (8th Edition, CUP, Cambridge, 2017).
[135] Ibid.
[136] Ibid.
[137] James Crawford.
[138] James Crawford, Investment Arbitration and the ILC Articles on State Responsibility, p.133
[139] Ibid. p.134

actors do not violate those rights.[140] The underlying view is that human rights are addressed to states and are intended principally to regulate the relations between individuals and the state.[141]

In the context of states and multinational corporations, it is noted that the host state has both an obligation to respect the human rights of individuals residing within its territory and a duty to ensure that human rights are respected there.[142] On the other hand, there is a home state responsibility for corporations' actions when a corporation is directed or controlled by the state in carrying out its conduct,[143] the corporation is viewed as a de facto organ of the state, rather than as a purely private entity.[144] Otherwise, no such responsibility exists.[145] Basically, under international law, states are not under any obligation to regulate the extraterritorial activities of Transnational Corporations that have their 'nationality.'[146]But the same could not hold within states' territories.

To sum up, the literature reviewed shows that, under international human rights law, there is a consensus on the responsibility of states to uphold human rights. However, the same cannot be said of non-state actors, who have rights under international law, but whose accountability for human rights violations remains a grey area. In addition, there is a recognition and reliance on international law by non-state actors. However, non-state actors do not have International Legal Personality under international law. Nevertheless, corporations enjoy rights and should be subjected to duties under human rights law. Furthermore, it is also clear that the state not only bears a duty to respect the human rights of individuals on its territory but also must ensure that private actors do not violate those rights.

1.10.3 Environmental Protection and Human Rights

This section discusses the nexus between environmental protection and human rights. In other words, it highlights the link between environmental protection and human rights. The reason for this is that environmental protection has become a global concern.[147]

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[140]*C. Tomuschat, Human Rights: Between Idealism and Realism 309 (2003). For an extensive analysis of the horizontal application of human rights, see J. H. Knox, Horizontal Human Rights Law, 102 American Journal of International Law 1-47 (2008).*

[141] Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/11/13 (22 April 2009), para. 57.

[142] De Brabandere, *Human Rights and Transnational Corporations*, 2005

[143] See DARSIWA 2001, Art. 8

[144] De Brabandere, Human Rights and Transnational Corporations, 2010*, p. 20*

[145] See O. De Schutter, Extraterritorial Jurisdiction as a Tool for Improving the Human Rights Accountability of Transnational Corporations, (November 2006), at http://www.reports-and-materials.org/Olivier-de-Schutterreport-for-SRSG-re-extraterritorial-jurisdiction-Dec-2006.p

[146]De Brabandere, Human Rights and Transnational Corporations, 2010

[147] Council of Europe, Manual on Human Rights and the Environment (3rd Edition, February 2022)

Before proceeding with the relationship between environmental protection and human rights, an explanation of what constitutes environmental protection and human rights is vital. Accordingly, it is pertinent to note that there is a lack of consensus in the literature on the meaning of environment. This is perhaps due to the absence of a universal framework convention; no generally accepted legal definition exists at present.[148] Nevertheless, the ICJ, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons,* held that: "*the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn*".[149]The ICJ further confirmed the existence of the:

> "general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.''[150]

In addition, the environment is also defined in Article 10 of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment as including:

> "*natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of the landscape*.''[151]

On the other hand, **human rights** are concerned with fundamental and inalienable rights essential to human beings,[152] those rights that are necessary to live a human(e) life. This stems from the notion that every individual has certain inalienable and legally enforceable rights protecting him or her against state interference and government abuse of power.[153]

The literature acknowledges the link between environmental protection and human rights. For instance, Knox and Pajan have noted that it is now commonly accepted that human rights and the environment are interdependent.[154]Building on this line of reasoning, Vasak has indicated that the

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[148] Council of Europe, Manual on Human Rights and the Environment (3rd Edition 2022)

[149]*Legality of the Threat or Use of Nuclear Weapons, Advisory opinion of 8 July 1996, ICJ. Reports (1996) 226, para. 29; See also* ICJ, *Gabčíkovo-Nagymaris Project, judgment* of 25 September 1997, Reports 1997, para. 53.

[150] Ibid., para. 29

[151] Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No 150); Convention on the Protection of Environment through Criminal Law (ETS No. 172); European Landscape Convention (ETS No. 176).

[152]Jan Klabbers, *International Law* (Third Edition, Cambridge University Press, 2021); Malcolm N. Shaw, International Law (Ninth Edition, CUP 2021)

[153] Rhona K. M. Smith, Sangeeta Shah, *et al., International Human Rights Law* (3rd Edition, OUP 2017)

[154] Knox J. H. and Pajan R. (2018), Introduction, The Human Right to a Healthy Environment, Cambridge University Press, Cambridge, p. 1. See also UN General Assembly, 'Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (30 December 2019), UN Doc. A/HRC/43/53, p. 4, paras. 11-13

link between human rights and the environment has reached the point that environmental rights belong to a "third generation of human rights."[155]

In terms of policy, it has also been acknowledged that "the protection of the environment and the protection of human rights are interconnected: one cannot be achieved without the other, nor at the expense of the other."[156]Also, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights.[157]In particular, the UN Guiding Principles provide not only an obligation for states to protect individuals against human rights abuses by third parties,[158]but also corporate responsibility to respect human rights,[159]and access to remedies by victims to both judicial and non-judicial.[160]

The extraction of natural resources, whether in Africa, Europe or elsewhere, has undoubtedly resulted in environmental degradation and various human rights abuses.[161]For example, gas flaring, oil pollution, and pipeline leakages have led to acid rain and destroyed the resources that once sustained millions of people in Nigeria's Niger Delta region.[162]This section highlights the discourse on the relationship between environmental protection and human rights. The following section provides an overview of the study's chapters.

1.11 An Overview of the Study

Generally, this study comprises seven chapters summarised as follows: Chapters One to Three set up the theoretical framework; Chapters Four and Five provide case studies; Chapter Six provides a

[155] Karel Vasak, "*Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of Law to the Universal Declaration of Human Rights*", UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977. Jacobs, White & Ovey (2014), The European Convention on Human Rights, Oxford University Press, Oxford, Sixth Edition, p. 7: "The third generation of human rights consists of those rights that concern people collectively and include the right to development, to peace, and to a clean environment".

[156] Final Declaration by the Georgian Presidency of the Committee of Ministers, *Environmental Protection and Human Rights,* High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020),

[157] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/17/31 (21 March 2011). ['GPs']

[158] Ibid

[159] ibid

[160] Ibid

[161] Oyeniyi Abe & Ada Ordor, 'Addressing Human Rights Concerns in the Extractive Resource Industry in Sub-Saharan Africa Using the Lens of Article 46 C of the Malabo Protocol' (2018) 11 Law & Dev Rev 843.

[162] See Friends of the Earth: Gas Flaring in Nigeria: An Environmental Health Nightmare. See further, Jonah Gbemre v SPDC and Ors, FHC/B/CS/53/05 (2005) [court ordered an immediate stop to gas flaring].

comparative analysis; and Chapter Seven provides legal analysis, conclusions and recommendations. Below is an overview of each chapter of the study:

Chapter One provides a general introduction of the study. A detailed analysis of the legal framework, methodology, and other preliminary matters follow this.

Chapter Two: Chapter Two provides an overview of the extractive industry. It explains its structure, types, processes and activities, and its social, economic and environmental impacts.

Chapter Three: This chapter examines international law and the roles of states and corporations in the mining industry. It highlights the obligations of states and non-state actors in upholding human rights. It further highlights the obligations under European Union law, the African Union, and the Economic Community of West African States (ECOWAS) law.

Chapter Four: This chapter presents an overview of environmental laws in Italy and Sierra Leone. The aim is to assess these laws and compare them between the two countries. Therefore, the various domestic laws applicable in the two countries were examined.

Chapter Five presents the extractive industries in Italy and Sierra Leone and the various laws applicable to these industries in each country. In this regard, the study presented two case studies. Case I is on Quarry Consona, in Italy, while Case 2 is on Marampa Mines Limited in Sierra Leone. The goal is to examine how the practices and actions of these corporations align with their obligations under domestic and international law.

Chapter Six provides a comparative analysis of Italy's and Sierra Leone's environmental laws. Thus, commonalities and differences between the Italian rules covering the extractive industry and those of Sierra Leone are presented.

Chapter Seven provides a legal analysis of the study, particularly regarding the obligation to conduct an environmental impact assessment, and concludes with lessons learned and recommendations.

CHAPTER TWO: THE EXTRACTIVE INDUSTRY

2.1 Introduction

This chapter focuses on the extractive industry, providing a general overview to gain insight into this area of study. Accordingly, corporations are responsible for ensuring that where their activities have negatively impacted their host communities, they must take immediate steps to remedy any adverse impact on the community.[163] In this regard, it has been argued that companies must have human rights policy statements,[164]describing corporate responsibility to respect human rights and ensure human rights compliance in the corporate sector.[165] This chapter discusses the developmental background of the extractive industry, its definition, the various types of extractive industries, and the associated processes. However, it is not exhaustive. It gives an overview of the extractive industry.

2.2. Development of the Extractive Industry

The origin and development of the extractive industry cannot be generalised or described as having the same history and development. The reasons for this vary. For instance, Olade has pointed out that in many resource-rich countries, the extractive industry has passed through legal and technological development stages.[166]But despite the development stages, there are also commonalities in the extractive industry. For example, there is a consensus in the literature that the extractive industry, especially in resource-rich countries, has been associated with economic development since this sector contributes significantly to the gross domestic product (GDP).[167]This is because the large-scale extraction of minerals and other natural resources is central to national and global economies.[168] Nevertheless, it is impossible to generalize the historical development of the extractive industry; instead, it is more feasible to attempt to explain its meaning, which brings us to the next section on the definition of the extractive industry.

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[163]Oyeniyi Abe & Ada Ordor, 'Addressing Human Rights Concerns in the Extractive Resource Industry in Sub-Saharan Africa Using the Lens of Article 46 C of the Malabo Protocol' (2018) 11 Law & Dev Rev 843.

[164] GP 19

[165] J. Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, Report of the SSRG on the issue of human rights and transnational corporations and other business enterprises (7 April 2008).

[166] M.A. Olade, Solid mineral deposits and mining in Nigeria: A sector in transitional change. Achievers Journal of Scientific Research (2019), 2(1), 1-16.

[167] See Vitoria R Nalule, *Land Law And The Extractive Industries: Challenges and Opportunities in Africa. Global Energy Law and Policy: Volume 7;* Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn, *Governing Extractive Industries: Politics, Histories, Ideas.* Oxford University Press 2018, p.1; Alie Kamara, *The extractive industry and human rights in Africa: Lessons from the past and future directions.2007;*

[168] Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn, *Governing Extractive Industries: Politics, Histories, Ideas.* OUP 2018.

2.2.1 Definition of the Extractive Industry

The literature on the extractive industry is diverse in its scope and meaning. This could be a result of the industry's differences in natural resources. Therefore, a general definition of the extractive industry is good for our general understanding of the subject matter in this study.

Accordingly, the United Nations defines the extractive industry as processes that involve various activities leading to the extraction of raw materials from the earth (such as oil, metals, minerals, and aggregates), their processing, and utilisation by consumers.[169]Such processes are carried out in countries where the extraction operations take place (host countries), in countries where these companies are incorporated and registered (home countries), and in consuming markets.[170] Additionally, various local policies and regulations streamline the processes, particularly in host countries, which have become integral to investment and sustainable development strategies. [171]

In addition, Sigam and Garcia have noted that extractive activities can also be defined as "*process that involves different activities that lead to the extraction of raw materials from the earth (such as oil, metals, mineral and aggregates), and their processing and utilization by consumers*."[172]Similarly, Awhefeada and Mrabure noted that the "extractive industry refers to activities of industries geared towards the removal of raw materials from the earth for use by consumers.''[173]This includes all operations that remove minerals, metals and aggregates from the earth, including oil and gas exploration, quarrying, mining, and dredging of solid minerals, especially gold, diamonds, sand, laterite, and so on.[174]

The above definitions of the extractive industry make clear that processes involve different activities depending on the mineral being extracted from the earth in resource-rich countries. In other words, the above descriptions highlight that the extractive industry comprises 'processes' that involve diverse activities that lead to extracting raw materials from the earth's soil, in which local policies and regulations play a critical role. Nevertheless, the definitions do not distinguish between small and large-scale extracting activities.

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[169]Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries,* UN0CTAD/SUC/2012/1

[170] Ibid.

[171] Ibid.

[172]Claudine Sigam & Leonardo Garcia, *Extractive industries: Optimizing value retention in host countries*. Geneva, Switzerland: UNCTAD, 2012.

[173]Ufuoma Veronica Awhefeada & Kingsley Omote Mrabure, 'Prevailing Human Rights Issues in the Nigerian Extractive Industry: A Critical and Comparative Discourse' (2023) 26 J Legal Ethical & Regulatory Issues 1, p.1

[174]Ibid.

This study focuses on the extractive industries in Sierra Leone and Italy. Therefore, the above descriptions of the extractive industry are considered in the cases of these two countries. The reason is that different raw materials are extracted in both countries, and processes are carried out. The following section identifies the stakeholders involved in the extractive industry.

2.2.2 Who is Who in the Extractive Industry?- Actors

This section highlights the main actors in the extractive industry. It is not intended to be exhaustive but rather illustrative by giving a synopsis of the actors. This is reason for this stems from the premise that the extractive industry is not only about the extraction of natural mineral resources from the earth's surface, rather behind the extraction activities, there are people, corporations governments and financial institutions that support the extraction of these resources.[175]Hence, those who are involved in the extractive industry can be broadly categorised into three categories, which include: the host countries, rights-holding companies and other stakeholders.

2.2.2.1 Host Countries

To begin with, the host countries, insofar as they have sovereignty over natural resources, set the guidelines under which businesses and corporations in the extractive industry operate.[176]In other words, the host countries set rules that corporations in the extractive industry should adhere in their extractive activities. In short, the host countries set the general parameters for the extraction business.[177]These parameters include not only the issuing of mining licenses and permits to companies and corporations to extract natural resources, but also the setting of rules on taxation, corporate governance, environmental protection, health, and safety.[178] However, the extent to which host countries exercise oversight functions on businesses and corporations in the extractive industry varies from one country to another.[179]

The literature on the extractive industry shows that most resource-rich countries have governance systems that are less stringent in exercising oversight functions on multinational corporations in this industry. In the case of Sierra Leone, for instance, Sowman and Wynberg have noted that laws are

[175] Victoria R. Nalule (ed): *Minin Law and Governance in Africa: Transformation and Innovation for a Sustainable Mining Sector* (Routledge 2023).
[176]Ibid.
[177]Robert Pitman and Kaisa Toroskainen, *Beneath the Surface: The Case for Oversight of Extractive Industry Suppliers.* Natural Resource Governance Institute (2020)
[178] Ufuoma Veronica Awhefeada and Kingsley Omote Mrabure, 'Prevailing Human Rights Issues in the Nigerian Extractive Industry: A Critical and Comparative Discourse' (2023) 26 J Legal Ethical & Regulatory Issues 1.
[179] Ibid.

manipulated by the powerful who control access to mineral resources.[180]The control on access to mineral resources also centres around the imposition of different legal frameworks, such as residual colonial laws, postcolonial laws, and customary systems that operate simultaneously.[181]This makes it difficult, if not impossible, for some people to exercise their rights, while making it easier for others to abuse such rights.[182]

2.2.2.1.1 Host Countries (Italy and Sierra Leone)

(i) Italy

Generally, the governance of the mining sector in Italy is decentralised.[183] It is divided between the central authority or national State government and the various regions. This is in accordance with the Royal Decree No. 1443 of 1927, which serves as the legal basis for mining activities in the country and categorises minerals into two distinct categories: mines and quarrying.[184]These are being classified into the first and second categories.[185]The first category falls under the administrative leadership of the national State government, whereas the second category is under the administrative leadership of the Regions.[186]This also means that environmental regulators, at national and local levels, have a wide range of powers to prevent and sanction individuals or entities involved in mining activities that affect or degrade the environment.[187]

a. Institutional Framework at the National Level in the Mining in Italy

The central authority that has the primary role in protecting the environment is the Ministry for Environment and Energy Safety (*Ministero dell'Ambiente e della Sicurezza Energetica 'MASE')*.[188]The MASE also delegates some functions to other ministries, such as the Ministry of Health, the Ministry of Agriculture and the Ministry of Culture.[189] The MASE is also assisted by the Institute for Environmental Research and Protection (ISPRA) or *Istituto superiore per la ricerca e la protezione dell'ambiente (ISPRA)*, which provides technical assistance on relevant

[180] Merle Sowman and Rachel Wynberg, *Governance for Justice and Environmental Sustainability: Lessons across natural resource sectors in sub-Saharan Africa* (Routledge, 2014).
[181] Ibid.
[182] Ibid.
[183] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*
[184] Royal Decree No. 1443 of 29 July 1927, art. 2.
[185] Ibid. art. 2
[186] Ibid
[187] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023* Available at: https://practiceguides.chambers.com/practice-guides/comparison/746/12348/19399-19401-19402-19403-19404-19405-19406-19407-19408-19409-19410-19411-19412-19413-19414-19415-19416-19417-19418-19419-19420
[188] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023*
[189] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023.*

administrative procedures, monitoring and reports on environmental matters and the coordination of the Regional Environmental Agencies (*Agenzie Regionali di Protezione Ambientale*).[190]

The Ministry of the Environment and Energy Safety issues offshore exploration or extraction permits.[191] This includes:

minerals that may be utilised for the extraction of metals, metalloids and their compounds, even if these minerals are used directly;[192]*graphite, solid, liquid and gaseous fuels, asphaltic and bituminous rocks; phosphates, alkaline and magnesia salts, alunite, mica, feldspars, kaolin and bentonite, bleaching earth, clay for porcelain and strong earthenware, earth with a degree of refractoriness higher than 1630 degrees Celsius; precious stones, garnets, corundum, bauxite, leucite, magnesite, fluorine, barium and strontium minerals, talc, asbestos, cement marl, lithographic stones; radioactive substances, mineral and thermal waters, vapours and gases*.[193]

Regarding the exploration of the first category of minerals, the application process commences with the completion of an application form to be submitted together with an operation plan to the Administration, and upon approval, a permit will be granted.[194]

b. Institutional Framework at the Regional Level in Mining in Italy

Generally, laws relating to the regulation of the mining or extraction of minerals and environmental permit procedures are decentralised, as each region has its own Regional Law. [195]Therefore, it is unsurprising that administrative functions related to environmental protection are entrusted to regional and local municipalities.[196]These include planning, setting standards, environmental authorisations, sanctions, and control, among other things.[197]

Regional authorities also administer the exploration and exploitation of minerals.[198]Therefore, the category of minerals extracted in quarries includes: ‘’a) *peat bogs; b) building, road and hydraulic construction materials; c) earth dyes, diatomaceous earth, quartz and silica sand, millstone, whetstone; d) other industrially utilisable materials not included in the first category.’’*[199]These minerals are regarded as the property of the landowners, as recognised under Article 45 of the Royal Decree 1443 for 1927, which states: ‘‘The right of use of quarries and peat bogs shall fall to

[190] Ibid.
[191] Royal Decree 1443, of 1927,
[192] Royal Decree 1443 1927, art. 2 (a -e)
[193] Royal Decree 1443, of 1927, art. (2)(a-e)
[194] Ibid.
[195] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016. Available at: https://data.europa.eu/doi/10.2873/920344
[196]David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023.*
[197] Ibid.
[198] Ibid
[199] Royal Decree 1443 of 1927, art. (2)(a-d)

the owner of the land.''[200]In addition, the regions are responsible for issuing environmental impact assessment permits, including permits for onshore mineral extraction plans prepared under the relevant municipality's mining plan.[201]

In summary, both national and regional authorities perform key functions not only in the general administrative governance of the environment and related issues, but also in the exploration and extraction of mineral resources assigned to their respective bodies. The mineral resources administered by each body depend on the category of such mineral under the relevant law. The section below presents an overview of the Italian extractive industry.

c. Institutions in the Extractive Industry in Italy

This section provides an overview of the key institutions that govern the extractive industry in Italy. This is to get an appraisal of the institutional buildup governing the extractive industry. However, this study does not encompass the various regional agencies that oversee the extractive industry in Italy. Therefore, an overview of the national state institutions is given below. See Table 1:

AGENCY	RESPONSIBILITIES
Ministry of Environment and Energy Security (*Ministero dell'Ambiente e della Sicurezza Energetica* 'MASE*')*[202]	Primarily Responsible for the protection of the environment, together with other ministries.
Institute for Environmental Research and Protection (ISPRA) or *Istituto superiore per la ricerca e la protezione dell'ambiente (ISPRA)*.[203]	It provides technical assistance on relevant administrative procedures, monitors and reports on environmental and related matters, and coordinates with Regional Environmental Agencies. It also offers environmental training.
Ministry of Health	Assist the Ministry of Environment, Energy, and Safety on environmental issues related to health.

[200] European Commission, Study Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU, May 2017.
[201] Ibid.
[202] Ministry of Environment Energy and Safety. Available at: https://www.mase.gov.it/
[203] See for further information: https://www.isprambiente.gov.it/it

Ministry of Agriculture and the Ministry of Culture	Assist the Ministry of Environment, Energy, and Safety on environmental and food-related issues.
Regional Environmental Agencies (*Agenzie Regionali di Protezione Ambientale*)[204]	The Regional Environmental Protection Agencies are responsible for protecting the environment at the regional level. They provide permits and licences for mining and extraction activities.

(ii). Sierra Leone

a. Institutional Framework in the Mining Sector

The institutional framework for the mining industry in Sierra Leone is intended to implement various laws relating to mining activities in Sierra Leone. The principal institutions responsible for mining activities are listed as follows: Ministry of Mines and Mineral Resources (MMMR), Ministry of Local Government and Community Affairs (MLGCA); National Mineral Agency (NMA); Environmental Protection Agency (EPA); National Revenue Agency ((NRA); Mining Cadastre Office (MCO); Chiefdoms and Districts Councils; Members of Parliament and Mineral Advisory Board.

b. Institutions in the Extractive Industry in Sierra Leone

Primarily, the governance of the extractive industry in Sierra Leone is spearheaded by the Ministry of Mines and Mineral Resources (MMMR) and the National Mineral Agency (NMA), responsible for promoting and regulating exploration and mining activities, in addition to implementing and monitoring of policies, developing legislation and regulatory frameworks in the mining industry.[205] Nevertheless, other agencies involved in the extractive industry are summarised below -See Table 2 below:

[204] Regional environmental protection agencies Available at : https://www.mase.gov.it/pagina/agenzie-regionali-protezioni-ambiente

[205] SLEITI, Report 2020-2021, 30 March 2023.

AGENCY	KEY RESPONSIBILITIES
Ministry of Mines and Mineral Resources (MMMR)	The Ministry is responsible for promoting and regulating exploration and mining activities, as well as implementing and monitoring policies, developments of legislation, and regulatory frameworks in the mining industry. It oversees the issuance of all mineral rights, administration and supervision of all activities under these rights, and administers regulations on mining and marketing minerals.[206]
National Mineral Agency (NMA),	NMA's mandate is to administer and regulate the minerals sector. It is responsible for the day-to-day implementation of the Mines and Minerals Act (2009), other mining acts. It is responsible for mineral rights management, collecting and disseminating geological information and regulating the trading of precious minerals.
Mining Cadastre Office (MCO):	MCO is responsible for managing Mining Cadastre Administration System (MCAS) in the country. These include: Processing of mineral rights applications, the issuance and administration of licenses and permits; Providing maintenance of cadastral records, registers, and maps; Receive mining reports.[207]
Environmental Protection Agency (EPA)	EPA is responsible for creating and enforcing a strict environmental regulation framework in Sierra Leone. Its mandate is to coordinate, monitor, and evaluate the implementation of national environmental policies, programs, and projects, including the issuance of Environmental Impact Assessment (EIA) licenses. It also monitors companies with EIA licenses and investigates illegal operations with environmental impacts. EPA also advises the Minister of Environment and Climate Change on environmental and related matters.

[206] See more: https://www.slminerals.org/

[207] See for further information: https://www.nma.gov.sl/mining-cadastre-office/

National Revenue Authority (NRA)	NRA is responsible for assessing and collecting domestic taxes, customs duties, and other revenues specified by law and for administering and enforcing laws related to these revenues.[208]
Ministry of Local Government and Community Affairs (MLGCA)	Local authorities and Chiefdom Councillors levy property taxes and license fees for mining activities in host communities to raise revenues. Under the Local Government Act 2004, the Ministry of Local Government and Community Affairs is responsible for local government, comprising six urban councils (Freetown, Bo, Kenema, Makeni, Koidu and Bonthe) and 16 district councils. In the third sphere of Government, there are chiefdom councils[209].
Chiefdoms and District Councils	The British long recognised Paramount Chiefs and members of the ruling families in all chiefdoms during the Colonial period. Thus, such individuals receive surface rents from mining companies.
Parliament (Members of Parliament	Oversees activities of the extractive Sector in Sierra Leone.
Minerals Advisory Board	The Minerals Advisory Board advises the Minister in the discharge of his statutory responsibilities under the Mines and Minerals Act. In fact, the act restricts the wide range of discretionary powers the minister had under the previous legislation which the average investor was hardly ever comfortable with. The Board is made up of fourteen (14) members including the Director of Mines as Secretary and the Director of Geological Survey as member. The local Chamber of Mines is well represented on the Board with others from the industry and together, presents an informed voice of the industry in its deliberation. The Secretary to the Board is a senior member of the Ministry

[208] See for further information: www.nra.gov.sl
[209] See

	of Mineral Resources. Composition of the Minerals Advisory Board: Chairman; Director of Mines (Secretary of the Minerals Advisory Board); Director of Geological Survey; Commissioner-General of National Revenue Authority; Representative of Attorney-General and Minister of Justice; Representative of the Ministry responsible for local government; Representatives of the Ministry of Environment and Climate Change; The Permanent Secretary of the Ministry of Mineral Resources; and Two persons with considerable qualifications and experience in the mining industry.[210]

Source: SLEITI, 2023

2.2.2.2 Right Holders

On the other hand, rights holders' companies are those issued licenses by the host country to extract natural resources. These companies hold the right to exploit natural resources and minerals from the earth.[211]As far as the rights holders are concerned, they decide what goods and services they want and are ultimately responsible for the outcomes of their extractive projects.[212]

These include multinational corporations and other right holders permitted by authorities in the host country to carry out extractive activities and engage in such processes through various activities. In particular, they include big multinational companies, State owned enterprises, and smaller independent and domestic producers.[213] Right holders could be single or joint ventures. In joint venture cases, where companies share exploitation rights, a single company will serve as the 'operator,' usually managing the day-to-day activities of the extraction project.[214]

[210] SLEITI 2023
[211] Robert Pitman and Kaisa Toroskainen, *Beneath the Surface: The Case for Oversight of Extractive Industry Suppliers.* Natural Resource Governance Institute (2020).
[212] Ibid.
[213] Ibid.
[214] Ibid.

2.2.2.3 Home Countries

In the extractive industry, the home countries are those where multinational corporations are incorporated and registered.[215]In other words, these are the countries of nationality for these corporations. This stems from the fact that corporate entities, including multinational corporations, are recognised as legal persons or persons with juridical status under corporate law.[216] Most often, multinational corporations in the extractive industry operating in resource-rich countries are incorporated and registered in their home countries. For instance, some corporations in Sierra Leone's extractive industry are incorporated and registered in the United Kingdom and other countries in Europe or elsewhere. A case in point is *Marampa Mines Limited*, a subsidiary of Gerald Group, headquartered in London, engaged in the exploration, development, and production of high-grade iron ore concentrate *Marampa* Blue at *Marampa,* in the Northern Province of Sierra Leone.[217]

Therefore, the home countries are actors in the extractive industry. However, there have been calls for home countries to be held accountable for the actions of corporations abroad which are incorporated in their territories. For instance, Dalia Palombo, in her book on business and human rights, focuses on the obligation of European home states share this view.[218]In particular, she proposes the filing of ''suits against the European home states of multinational enterprises for their failure to regulate corporate groups incorporated within their jurisdiction and that abuse human rights extraterritorially.''[219]This is given the fact that European States have positive obligations under the European Convention on Human Rights to ensure that private persons respect human rights, which include the duty to protect individuals against extraterritorial abuses committed by corporations.[220] Similarly, Seck has examined the issue of home country regulating multinational corporations by drawing upon insights from the Third World Approach to International Law (TWAIL).[221] The following section is on supply companies as actors.

[215] Vitoria R Nalule, *Land Law And The Extractive Industries: Challenges and Opportunities in Africa. Global Energy Law and Policy: Volume 7,*
[216] Margaret M. Blair, *Corporate Personhood and The Corporate Persona*, 2013 U.Ill.L.Rev.785 (2013)
[217] Marampa Mines Limited, Available: https://marampamines.com/ ; Geral Group. Available at: https://www.gerald.com/
[218]Dalia Palombo, *Business and Human Rights: The Obligation of the European Home States*, Hart Publishing 2019.
[219] Ibid, p.2
[220] Ibid.
[221] Sara L. Seck, Transnational Business and Environmental Harm: A TWAIL Analysis of Home State Obligations, 3(1) Trade, Law and Development, 164 (2011).

2.2.2.4 Supply Companies

Supply companies are also other actors in the extractive industry. As *Pitman* and *Toroskainen* put it, most extractive industry activities today would not be possible without a range of supplier companies that provide the many goods and services needed to take natural resources out of the ground.[222]These companies provide the equipment and machinery needed to extract natural resources from the earth. A corporation's decision to involve a company depends on the type of mineral extracted and the equipment and machinery it can offer. A study on Local Content Policies in the Oil and Gas Sector shows that supply companies vary in the sense that they can either be multinationals or local companies, large or small and may participate in all phases of the extraction cycle or only part of it.[223]This means supplier companies in the extractive industry are not homogeneous. Nevertheless, it has been reported that suppliers receive a significant share of the gross revenues generated by extractive industry projects worldwide.[224]For instance, in the upstream extractive industries, rights holders' spending on suppliers averaged USD 960 billion a year between 2008 and 2017, with suppliers in the mining sector receiving USD 160 billion annually.[225]This suggests that supplier companies are key players in the extractive industry.

Personal observations made at *Cava Consona*, an extractive company in Bagheria, Italy, revealed that the company has dealt with and is dealing with many Supply Companies, such as *CAT, Kobelco Construction Machinery Europe, Perlini Dumpers, Atlas,* and *Montalbert*, among others, for the procurement of machinery and other equipment for extraction activities.

2.2.2.5 Local Communities and Indigenous Peoples

The extraction of natural resources mostly occurs in areas of the host communities. These communities live around mining areas either before the discovery and exploration of the natural

[222]Robert Pitman and Kaisa Toroskainen, *Beneath the Surface: The Case for Oversight of Extractive Industry Suppliers.* Natural Resource Governance Institute (2020), p. 4. Available at: : https://www.jstor.org/stable/resrep42271.4

[223] Silvana Tordo, Michael Warner, Osmel E. Manzano and Yahya Anouti. Local Content Policies in the Oil and Gas Sector (World Bank, 2013), 161-163; Columbia Center on Sustainable Investment (CCSI), Linkages to the Resource Sector: The Role of Companies, Government and International Development Cooperation (2016), ccsi.columbia.edu/files/2016/07/Linkages-to-the-resource-sector-GIZCCSI-2016.pdf.pdf; J. Korinek. The mining global value chain, (OECD Trade Policy Papers, No. 235, 2020),

[224] Robert Pitman and Kaisa Toroskainen, *Beneath the Surface: The Case for Oversight of Extractive Industry Suppliers.* Natural Resource Governance Institute (2020).

[225] Rystad Energy: EP expenditure by service segment and S&P Global: Mine Economics. We note that these findings complement other estimates published by Olle Östensson. Local content, supply chains, and shared infrastructure (UN-WIDER, 2017). Available at: https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2017-148.pdf ; https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2017-148.pdf; International Council of Mining and Minerals, Taxation and other economic benefits, www.icmm.com/en-gb/society-and-the-economy/economic-development/taxation; and World Gold Council, Socio-Economic Impact of Mining Gold (2015),www.gold.org/goldhub/research/socioeconomic-impact-mining-gold

resource takes place or continue to live there during the extraction processes. These communities are mostly Indigenous Peoples. The United Nations defined Indigenous Peoples as:

> *those peoples having a historical continuity with preinvasion and pre-colonial societies, consider themselves distinct from other sectors of societies now prevailing in those territories or parts of them. They form, at present, non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity as the basis of their continued existence as peoples in accordance with their own cultural patterns, social Institutions, and legal systems*.[226]

In particular, Indigenous Peoples are stakeholders in issues of land ownership, consultations and decision-making powers, entitlements and benefits from extracted minerals, community development, the relationships to government, and with non-indigenous small-scale and artisanal miners.[227]In this study, local communities are those directly impacted by activities of corporations the extractive industry in area where extractions take place.

2.2.2.6 International Community

The international community's role in the extractive industry cannot be overemphasized. However, it suffices to state that the international community has some influence in the industry. In recent decades, the international community has debated the need for global regulation and oversight of multinational companies.[228]These discussions have focused on international environmental law and the responsibility of companies towards the environment.[229]In particular, the international community set up standards and initiatives on the extractive industry for states to follow. These include, for instance, the United Nations Guiding Principles on Business and Human Rights, the Organization for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises, and the Financial Action Task Force on Money Laundering Recommendations, which have established basic expectations for supply chain due diligence on human rights and the environment.[230] These

[226] *UN, Workshop on Data Collection and Disaggregation For Indigenous Peoples (New York, 19-21 January 2004*
[227] Mining and Indigenous Peoples: *Case Studies, International Council and Metals and the Environment*, 1999
[228] Early attempts were undertaken in the context of the UN Economic and Social Council (ECOSOC), which adopted a resolution in 1972 acknowledging the lack of an international regulatory framework for multinational corporations and the need to institutionalize international debate on that issue. See ECOSOC Res. 1721 (LIII) (28 July 1972).
[229] Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972), (1972) 11 ILM 4116, para. 7 (hereinafter 'Stockholm Declaration').
[230] Robert Pitman and Kaisa Toroskainen, *Beneath the Surface: The Case for Oversight of Extractive Industry Suppliers.* Natural Resource Governance Institute (2020).

guidelines have become norms for companies to be embedded in their Corporate Social Responsibility frameworks.[231]

Also, regarding international environmental law, the international community has progressed beyond denying that companies have international legal obligations under international human rights law.[232] Instead, it has recognized the 'global standard of expected conduct for all business enterprises wherever they operate' independently of states' abilities and willingness to fulfil their international obligations.[233]It is no surprise that the 2002 World Summit on Sustainable Development coined two concepts of corporate responsibility and corporate accountability. [234]From the above, it is clear that the international community has set standards that corporations have adopted as norms. Hence, the international community's role remains crucial in protecting the environment and safeguarding human rights in the extractive industry.

2.3 Structure of the Extractive Industry

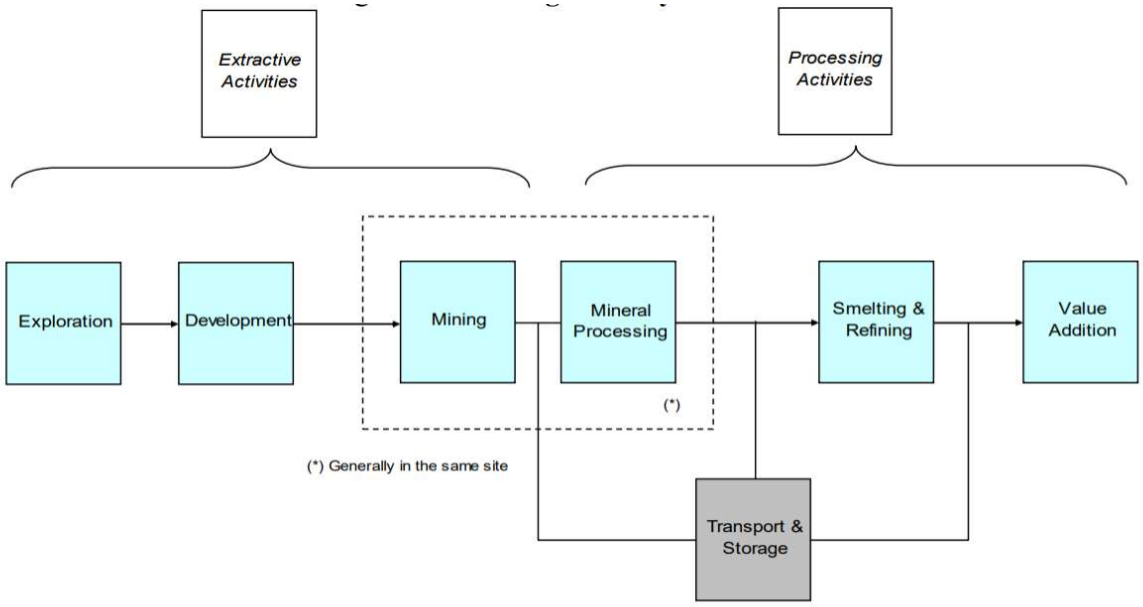
The types or structures of the extractive industry in a particular state depend on what is available in the host country. Generally, the extractive industry is divided into three categories, which include: oil, gas, and mining. These industries comprise activities ranging from exploration to selling to end consumers.[235]This study focuses on the mining category, which is the next section. As a result, the mining industry is structured into three main components, which include: *extractive activities, processing activities, transportation and storage.*[236]

- (i). **The extractive activities**. Extractive activities involve the minerals' exploration, development, and mining (surface mining such as open pit, open cast, and underground mining). The choice of extraction method depends on the ore size, body, shape and depth.

[231] Ibid
[232] Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights to Implement the United Nations 'Protect, Respect and Remedy' Framework, UN Doc. A/HRC/17/31 (21 March 2011).
[233] Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights to Implement the United Nations 'Protect, Respect and Remedy' Framework, UN Doc. A/HRC/17/31 (21 March 2011), para. 11. (The Guiding Principles were endorsed by the Human Rights Council Res. 17/4 (6 July 2011), para. 1).
[234] World Summit on Sustainable Development (WSSD), 'Resolution 1: Political Declaration', in Report of the World Summit on Sustainable Development, UN Doc. A/CONF.199/20 (26 August– 4 September 2002), paras 27 and 29 (hereinafter 'WSSD Declaration'); and WSSD, 'Resolution 2: Plan of Implementation of the World Summit on Sustainable Development', in Report of the WSSD, paras 49 and 140(f). The most recent UN environmental summit and policy (the UN Conference on Sustainable Development or Rio+20, held in Rio de Janeiro on June 2012), did not shed any new light on these questions: see discussion in E. Morgera and A. Savaresi, 'A Conceptual and Legal Perspective on the Green Economy', 22 RECIEL (2013) 14, at 26–27.
[235] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries*, UNCTAD 2012
[236] Ibid

- (ii). **Processing Activities**. The processing activities involve mineral processing, *smelting* and *refining,* and *value addition*. Processing or beneficiation involves separating the mineral from waste material, removing impurities, or preparing the ore for further refinement. This is done in the mine to obtain products with a high content of value material (concentrates), which are shipped to the smelters or refiners for further extraction or refinement of metal for final use or chemical manufacturing. Lastly, the value addition activities include the metalworking industries that process metals and convert them into commercially traded shapes such as nuggets or cathodes.
- (iii). **Transportation and Storage.** This involves the transportation and storage of minerals. Transportation and storage involve carrying the minerals from one stage of the value chain to another, which is done by road, rail and sea. Transportation decisions depend on the mineral characteristics and minerals are transported in batches, such as a unit train or vessel, whose supply chain depends on the demand, origin, receipt port, and end users.[237]

However, the above information on the **mining industry structure** is illustrated by the United Nations Trade and Development (UNCTAD) as follows in **FIGURE 1:**



Source: UNCTAD.

The following section focuses on a detailed explanation of the processes and practices of corporations in the extractive industry, as highlighted below.

[237]Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries*, UNCTAD 2012

2.4 Processes and Practices of Multinational Corporations in the Extractive Industry

Accordingly, the processes and practices corporations employ in the extractive industry depend on the type of extraction. This study focuses on the category of mining. Therefore, the activities in mining are structured into three categories, which include extractive activities, processing activities and transport and storage, as discussed below:

2.4.1 Extractive Activities

This involves exploration, development, and mining. Exploration is the first stage, which involves discovering resources within a specified time frame. On the other hand, development includes the building of the mine, the processing plant, roads, and rail lines, sewer and water lines, and housing to support the mining operation. Finally, the mining stage starts with the actual exploitation of the mine and consists of removing the mineral value in ore from the host rock or matrix. However, mining consists of two types of extraction methods: surface mining and underground mining. Nevertheless, the choice of method depends on the size, shape and depth of the ore body, as all operations involve the basic steps of ore breaking, loading and hauling to a mill for treatment.[238] Finally, after the mining ends or the mineral is exhausted, *decommissioning* and *mine closure* activities must be carried out. The time required to complete such an exercise depends on the size of the mine. The bigger the size, the more complex the operation will be, and the longer it will take to close.

2.4.2 Processing Activities

This encompasses processing, beneficiation, smelting, refining, and other added-value activities. The Processing activities involve mineral processing or the beneficiation stage, which consists of the separation of minerals from waste material, removing impurities, or preparing the ores for refinement, which is usually completed at the mine to determine a product with a much higher content of valued material before the concentrates are shipped to smelters or refineries to further extract or refine the metal for its final use or incorporation into physical or chemical manufacturing. Finally, the value-added activities include forming it into commercially traded shapes such as ingots or cathodes.[239]

2.4.3 Transport and Storage

Transport and storage activities play a significant role in carrying minerals from one value chain stage to another. The transportation of ore and concentrates is done by sea, rail, and road, but it is also dependent on the mineral characteristics within the mining supply chain. However, because minerals

[238] Ibid.
[239] Ibid.

are transported mainly in batches (for example, a unit train or a vessel), the supply chain must accommodate surges and lulls in demand at the mine, at the origin and receipt dock or port for water shipment, and the end user.[240]

2.5 The Impacts of the Extractive Industry

The extractive industry has impacts on host countries. However, quantifying the full range of benefits from resources in the extractive industry has been a challenge for many factors, such as the enclave nature of the industry and the capital required for the industry's development.[241] Also, pinpointing the positive and negative impacts of the extractive industry depends on the country where the resource is found, the type of extractive industry, the economic situation, the governance system and the existing laws. For instance, ‘’the impacts on the labour force are not limited to direct operations, but also extend to business partners such as suppliers or joint venture partners.’’[242]As a result, even companies with good human rights records may be complicit in human rights abuses.[243] As a result, the extractive industry's main impacts revolve around economic, environmental and social impacts,[244] which are explained below.

2.5.1 Economic Impacts

The economic impacts of extractive industries are focused on *macroeconomic performance, government revenues, direct employment, economic externalities, and spillover effects on other sectors of the economy.*[245]

In the case of ***macroeconomic performance***, it is concerned with the export of extractive industry resources for foreign exchange in host countries, which is, in turn, needed for industrialisation, diversification, growth, and a positive impact on the country’s balance of payments.[246] The ***government revenues*** concerned with the raising of revenues through the following ways: direct ownership, direct ownership with state-owned companies or joint ventures, taxation including corporate income, value added, and other specific taxes, and royalties, and payments under

[240] Ibid
[241] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*
[242] Felicitas Weber and Olivia Watson, *Human Rights And The Extractive Industry, Why Engage, Who to Engage, How to Engage,* Principles for Responsible Investment 2015, p.5
[243] Ibid
[244] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*
[245] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*
[246] Ibid

contractual arrangements such as concessions or production share agreements (in the oil industry).[247] On the other hand, in terms of ***employment as a*** component of economic impacts**,** the following is worth noting**:** In the mining industry, artisanal and small-scale mining has a vital role in local employment, especially in poor countries, although their contribution is difficult to estimate because of the informal nature of the activity, which is performed in remote locations and employees may be paused during periods of seasonal agricultural inactivity or underemployment.[248] However, although the extractive industry creates employment, it is generally limited due to its capital-intensive nature. For instance, according to the OECD, the mining sector employs 22 to 25 million people worldwide, approximately 1% of the total global workforce.[249] This is because, in some low-income countries, there are limited professionals to meet the capacity of the industry, especially in the early stages of the development of an extractive industry, due to the lack of the required educational level and skilled workers, which are usually replaced with expatriates, whose proportion in the total could be very high.[250] Finally, the other economic impacts are *externalities and the development of other sectors of the economy.*[251] This means if the extractive industry is managed well, it can contribute to establishing new industries, new employment and related activities that might not otherwise be developed in the country.[252]

2.5.2 Environmental Impact

The activities of the extractive industry are largely carried out in the environment and have various environmental impacts that need to be addressed. Such environmental impacts occur in the entire value chain with potential adverse effects depending on the type and scale of the extractive activity, the location and surrounding areas, and the technology used.[253] Specifically, in the mining industry, the most common negative environmental impacts include *landscape alteration, such as erosion and the formation of sinkholes, and air and water pollution; decommissioning and closure of mines* are all negative environmental impacts if not properly managed.[254]These negative environmental impacts

[247] Ibid.
[248] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*
[249] OECD 2008. DAC Guidelines and Reference Series Natural Resources and Pro-Poor Growth. The economics and politics.
[250]A good example is the CEIM in Chile created by Minera Escondida
[251] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*
[252] Ibid.
[253] The larger the oil field or mine, the greater the impacts, and these are more complex when the extractive activity occurs near ecologically or socially sensible areas.
[254] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*

could adversely affect individuals' rights to life and to health, as guaranteed in international human rights law, especially communities living in mining areas.

However, apart from the negative environmental impact of the extractive industry, there are also positive environmental impacts. This includes, for instance, activities taken to mitigate the negative environmental impacts, which can provide opportunities to develop local skills and reduce the carbon footprint of the extractive industry, such as the development of renewable sources like biofuels and local energy production. Another positive environmental impact is the expansion of the recycling market. For instance, it has been observed that iron and steel are the world's most recycled materials and among the easiest materials to reprocess.[255]Ultimately, mitigating adverse environmental impacts necessitates the formulation of effective policies and environmental regulations in resource-rich countries. However, effective enforcement could lead to companies adopting high environmental protection standards, creating opportunities for the local participation of professionals and experts from key institutions such as universities and other professional bodies, including companies and organizations.[256]

2.5.4 Social Impact

The social impacts of the extractive industry on local communities are twofold: on the one hand, it creates new opportunities, such as jobs, new businesses, higher salaries, and improved health and education.[257] On the other hand, the industry could also be a source of tension during the exploration and development stages due to the influx of people and the utilisation of available local resources, including land and housing.[258] Specifically, Sigam and Garciathe have identified the negative impacts of the extractive industry on local communities as follows:

- *'**Displacement of population and disruption of their life.** The sudden arrival of expatriate workers can be socially challenging for local communities, perceived as competitors for local resources utilisation, creating crowding-out effects in services (housing, infrastructure, etc), leading to a reconfiguration of local social structures.*
- ***Management of land (including its utilisation for waste disposal**). This issue is particularly sensitive when extractive activities compete with other uses of land, such as farming, artisanal mining, or tourism activities and also when it is inhabited by indigenous people for whom*

[255]Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*

[256] Ibid.

[257] Ibid

[258] Ibid.

land usually represents their source of living and the core of their collective identity and spirituality.

- ***Economic dependency and inequalities****. Local economy can highly rely on meeting mine (or oil and gas exploitation) needs, being vulnerable to booms and busts in commodity prices or changes in levels of activity. Regarding economic inequalities, they can be internal, between incomes and living conditions of members of a community that work in the mine and the rest, and also external, between regions receiving resource rents or royalties and those who do not.'*[259]

In sum, as highlighted above, the impacts of the extractive industry revolve around three categories: economic, environmental, and social. However, regardless of the category, the extractive industry has positive and negative impacts. The following section highlights human rights abuses and environmental laws in the extractive industry.

2.6 Allegations of Abuses of Human Rights and Environmental Law in the Extractive Industry

This section outlines human rights and environmental protection violations in the extractive industry, highlighting notable cases of these violations. As the literature on the extractive industry shows, there is a link between the environment and human rights. Such a link is not without problems, such as abuses or violations of environmental laws that could directly affect human rights.

It has been noted that the incidence of human rights violations in the extractive industry is often linked to economic, social, and cultural rights.[260] However, breaches of civil and political rights are vital and usually related to this issue of land ownership.[261] In this regard, the pattern of abuse is often in terms of the violation of economic, social, and cultural rights, and the core drivers of human rights abuses are contestations over land ownership, the associated loss of livelihood, and the marginalization of communities in decision-making.**'** [262]

[259] Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention In Host Countries, UNCTAD/SUC/2012/1*

[260] Ibid.

[261] Uwafiokun Idemudia, Francis Xavier D. Tuokuu, Marcellinus Essah, *The extractive industry and human rights in Africa: Lessons from the past and future directions*. Elsevier Limited, Resources Policy 78 (2022) 102838

[262] Uwafiokun Idemudia, Francis Xavier D. Tuokuu, Marcellinus Essah, *The extractive industry and human rights in Africa: Lessons from the past and future directions*. Elsevier Ldt, Resources Policy 78 (2022) 102838

2.6.1 Criticisms of the extractive industry

Accordingly, studies have indicated that, in some resource-rich countries, a significant portion of this revenue has not been reflected in infrastructure development.[263]In other words, despite their contribution to development, it does not reflect the reality in some resource-rich countries. For instance, in the case of Africa, Nalule has noted that although the African continent is home to massive mining resources, it is also home to some of the poorest countries, as resources been exploited have not fully benefited most local communities.[264]One of the reasons for this is that, African countries are still prone to unfavourable extractive contracts negotiations.[265]Also, such disparity arises because the definitions of these terms differ based on the degree to which goals of poverty and income inequality, environmental justice, gender equity, and human and citizenship rights are addressed.[266]

Additionally, the disparity in resource-rich countries could also result from the balance of political power and institutional build-up for the governance of the mining industry in general and the extractive industry in particular.[267]Studies have shown that disappointing development outcomes in economies with high extractive activities have been associated with 'poor quality' or 'weakness' of institutions that existed before and during the growth of investment in mining, as well as the adverse impacts of a growing extractive economy on institutional quality.[268]Consequently, many proposals for change have emphasised the need for new, improved, and strengthened institutions. But the proposed institutions are diverse, often depending on the most pressing concerns of the commentator.[269]These can include: institutions and processes for free, prior and informed consent (FPIC), sovereign wealth funds to manage resource rents without distorting incentives; transparency institutions ranging from subnational government oversight to the global Extractive Industries

[263]Vitoria R Nalule, *Land Law And The Extractive Industries: Challenges and Opportunities in Africa. Global Energy Law and Policy: Volume 7;* Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn, *Governing Extractive Industries: Politics, Histories, Ideas.* OUP 2018.
[264]Victoria R. Nalule (ed), Minin Law and Governance in Africa: Transformation and Innovation for a Sustainable Mining Sector (Routledge, 2023), p.3
[265] Victoria R. Nalule (ed), Minin Law and Governance in Africa: Transformation and Innovation for a Sustainable Mining Sector (Routledge, 2023), p.3
[266] Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn, *Governing Extractive Industries: Politics, Histories, Ideas.* OUP 2018, p.1
[267] Ibid.
[268]Michael L. Ross, 2015. 'What have we learned about the Resource Curse?'. Annual Review of Political Science 18: 239–59, at 240; Macantan Humphreys, Jeffrey D. Sachs, and Joseph E. Stiglitz, *Escaping The Resource Curse*, Columbia University Press, 2007
[269] Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn, *Governing Extractive Industries: Politics, Histories, Ideas.* OUP 2018

Transparency Initiative (EITI) and tax codes to reallocate benefits along the value chain and among stakeholders.[270]

On the other hand, the balance of political power and mineral resources is economically strategic for most post-colonial masters in post-independence resource countries, which have had a significant impact on political elites' strategies to perpetuate themselves but relatively little on the economy at large.[271] In the case of the mining industry in Sierra Leone, the state plays a crucial role in protecting and facilitating access to natural resources and capital access.[272]For instance, in rural areas, local chiefs and tribal leaders grant communal rights to land to the sons or daughters of the soil, but the state retains ownership of the land's contents.[273]This means that corporations in the extractive industry must negotiate with the state to gain access to subsoil mineral resources.[274]Only the state can allocate mineral resources for mining activities or mining licenses for the extraction of mineral resources, in which local chiefs are also involved.[275]It is worth noting that diamonds have shaped and influenced national politics through patronage politics at the local level, where local elites expect rewards for their party loyalty in exchange for delivering development resources to their local communities.[276]
The imbalance between economic development and gains from the extractive industry has been referred to as a 'resource curse.'[277]In particular, Ross has defined the resource curse as 'the adverse effects of a country's natural resource wealth on its economic, social, or political well-being.'[278]This indicates a mismatch between natural resources and economic growth. The negative correlation between economic growth and natural resources is puzzling, as countries with limited natural wealth

[270]Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn, *Governing Extractive Industries: Politics, Histories, Ideas.* OUP 2018
[271]Rosemary Thorp, Stafania Battistelli, Yvan Guichaoua, Jose' Carlos Orihuela and Maritza Paredes, *The Development Challenges of Mining and Oil: Lessons from Africa and Latin America*. Palgrave Macmillan, 2012, 188
[272]Merle Sowman and Rachel Wynberg, *Governance for Justice and Environmental Sustainability: Lessons across natural resource sectors in sub-Saharan Africa* (Routledge 2014).
[273] Ibid
[274] Ibid
[275] Ibid
[276]Merle Sowman and Rachel Wynberg, *Governance for Justice and Environmental Sustainability: Lessons across natural resource sectors in sub-Saharan Africa* (Routledge 2014).
[277]See Richard Auty, *Sustaining Development in the Mineral Economies: The Resource Curse Thesis*. London: Routledge 1993
[278] Michael L. Ross, 2015. 'What have we learned about the Resource Curse?'. Annual Review of Political Science 18: 239–59, at 240

have been among the fastest-growing economies over the last few decades,[279] whereas countries endowed with abundant natural resources, such as Sierra Leone, have been among the poorest. [280]

Contrarily, developed countries are heavily industrialised and depend mostly on minerals as raw materials, which are essential primary input for industries, and the mining sector has become key in tackling the development of the other sectors of these economies.[281]Hence, it is not surprising incidents of environmental abuses in the mining industries are not uncommon, which brings us to the next section below.

2.6.2 Environmental Abuses and Cases

Documenting human rights abuses by corporations in the extractive industry cannot be exaggerated. However, it is a fact that mining companies have been criticised for their complicity in the human rights abuses of people and indigenous populations.[282]Some issues of human rights abuse by multinational corporations in the extractive industry revolve around the **use of security companies to protect operations**, **the rights of Indigenous Peoples in mining operations, and labour rights**.[283]In other words, human rights abuses in the extractive industries are prevalent in these three categories.

Regarding the use of security companies to protect operations**,** corporations whose security forces commit human rights abuses in host countries are expected to be criticised for failing to prevent such abuses.[284] In **Nigeria**'s oil region, for instance, it has been reported that multinational corporations do influence and manipulate the government into excessive use of coercive powers by using the Nigerian military and police to torture, dehumanise and assault protesters under the pretext of attempting to disperse the civil action. [285]Their mandate is to protect the extractive industry facilities at all costs, so during such duties, they fire live ammunition, resulting in the murder of protesters at the behest of the multinational corporations.[286] Another instance of a similar case occurred on 30 July 2013, when a group of 12 Tanzanians sued Acacia Mining (formerly Barrick Gold Mine) and its subsidiary,

[279] Boschini, AD, Pettersson, J and Roine, J, 'Resource curse or not: A question of appropriability' (2007) 109(3) Scandinavian Journal of Economics 593–617.
[280] Vitoria R Nalule, *Land Law And The Extractive Industries: Challenges and Opportunities in Africa. Global Energy Law and Policy: Volume 7,p.21*
[281] Victoria R. Nalule (ed), Minin Law and Governance in Africa: Transformation and Innovation for a Sustainable Mining Sector (Routledge, 2023), p.5
[282] Simon D. Handelsman, 'Human Rights in the Minerals Industry' (2002) 2002 Glob Envtl L Ann 106
[283] Ibid
[284] Simon D. Handelsman, 'Human Rights in the Minerals Industry' (2002) 2002 Glob Envtl L Ann 106
[285] Cayford, S. (1996). The ogoni uprising: Oil, human rights, and a democratic alternative in Nigeria. Africa Today.
[286] Ufuoma Veronica Awhefeada & Kingsley Omote Mrabure, 'Prevailing Human Rights Issues in the Nigerian Extractive Industry: A Critical and Comparative Discourse' (2023) 26 J Legal Ethical & Rights Issues 1

North Mara Gold Mine Limited, in the High Court of England and Wales, London.[287] The applicants alleged the company's subsidiary, North Mara Gold Mine Limited, failed in 2008 to prevent the use of excessive force by police and security personnel, which led to six deaths and other injuries.[288] The police, who were part of the companies' security, had fired live ammunition at villagers who were protesting the companies' high-handedness. The company denied any wrongdoing, but litigation and claims were settled out of court.[289]

Also, in February 2020, 7 Tanzanians filed a new lawsuit at the UK High Court against *Barrick Tz Limite*d (formerly Acacia Mining), alleging abuses by security forces, including local police, employed at Barrick's North Mara gold mine.[290] On August 14, 2020, 3 more Tanzanian victims joined the legal suit against security forces' abuses. However, the High Court ordered the company to disclose documents about police actions of abuse at its North Mara mine in Tanzania.**[291]**

Similar facts of police and security forces' abuses also occurred in the cases *Kadie Kalma & others v African Minerals Limited.*[292] African Minerals Limited operated a mine in Tonkolili, Sierra Leone's Northern Province, one of the country's largest iron ore mines. On two occasions in November 2010 and Apr 2012, unrest among local communities erupted in connection with the operations of African Minerals Limited in the area.[293] The incidents involved beatings, shootings, robbery, sexual assault and one death.[294] During these incidents, African Minerals Limited employed the service of the Sierra Leone Police (SLP), made payments and provided them with logistical assistance, including the use of African Minerals Limited's vehicles and premises. The Claimants (142 individuals) alleged that they suffered injuries at the hands of the SLP. African Minerals Limited had engaged the SLP to deal with the protests and supplied them with payments, accommodations and vehicles. The claimants contended that African Minerals Limited (AML) was directly involved in the violence and should be held liable for the acts of the Sierra Leone Police.[295] Victims of the attacks brought claims against AML in the English courts for alleged abuses of human rights by the Sierra Leone police.[296] However,

[287] The Guardian, Available: https://www.theguardian.com/environment/2015/feb/10/british-gold-mining-settlement-deaths-tanzanian-villagers Accessed on 07/09/24
[288] Ibid
[289]Business and Human Rights Resource Centre. Africa Barrick Gold Lawsuit (re Tanzania) 30 July 2013. Available at : https://www.business-humanrights.org/en/latest-news/african-barrick-gold-lawsuit-re-tanzania/
[290] Ibid
[291] Ibid,
[292] Kadie Kalma & Others. v. African Minerals Ltd And Ors [2020] EWCA Civ 144.
[293]*Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) Limited and Tonkolili Iron Ore (SL) Limited* [2020] EWCA Civ 144.
[294]*Ibid*
[295]*Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) Limited and Tonkolili Iron Ore (SL) Limited* [2020] EWCA Civ 144.
[296] Ibid

the Court of Appeal of England and Wales dismissed the claims, holding that African Minerals Limited could not be held responsible for the actions of the Sierra Leone police.[297]

In *Kiobel v. Royal Dutch Petroleum Co*. is a lawsuit brought against Royal Dutch Petroleum Company, the Shell Transport & Trading Company, and their joint subsidiary Shell Petroleum Development Company of Nigeria Ltd (SPDC), on behalf of the late Dr. Barinem Kiobel and eleven other Nigerian activists from the Ogoni area of the Niger Delta who were tortured and executed by the military in Nigeria in 1995.[298]The case involved Esther Kiobel and other Nigerian nationals who instituted claims and alleged that they or their relatives were tortured, killed, unlawfully detained, deprived of their property and forced into exile by the Nigerian government. In particular, the applicant maintained that the Shell Petroleum Development Company were complicit in the Nigerian government's human rights abuses.[299]

The applicants brought a class action against the respondents under the Alien Tort Statute in the United States District Court for the Southern District of New York, which was partly dismissed in favour of Shell and certified its order for interlocutory appeal. All the parties appealed.[300] The Court held that nothing in the Alien Tort statute was intended to apply extraterritorially.[301] Specifically, on 17 April 2013, the Supreme Court ruled that the Alien Torture Statute does not provide for justice to benefit the applicants or their relatives who were tortured and executed in Nigeria by the Nigerian government and in collaboration with Royal Dutch Petroleum Shell.[302]

2.6.3 Other Environmental Cases

In *Kotov and others v Russia,*[303] a case which concerned a challenge by 14 residents of the town of Klin against the failure of the Russian authorities to effectively regulate a waste management facility at Aleksinskiy quarry, run by a private company under a lease agreement with the Klin municipal

[297] *Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) Limited and Tonkolili Iron Ore (SL) Limited* [2020] EWCA Civ 144.
[298] See Center for Constitutional Rights, *Kiobel v. Royal Dutch Petroleum Co. (Amicus)*
[299]The activists were part of the Movement for the Survival of the Ogoni People (MOSOP) and had campaigned against the environmental damage caused by Shell's extractive activities in the Niger Delta. Relatives of the victims alleged Shell was complicit in the torture and killing of the activists.
[300]The legal questions in the case were: (1) Under the Alien Tort Statute, are corporations immune from tort liability for violations of the law of nations, such as torture, extrajudicial executions, or genocide? (2). Upon reargument, does the Alien Tort Statute allow courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States?
[301] *Kiobel v. Royal Dutch Petroleum Co*
[302] Center for Constitutional Rights, *Kiobel v. Royal Dutch Petroleum Co. (Amicus)*
https://ccrjustice.org/home/what-we-do/our-cases/kiobel-v-royal-dutch-petroleum-co-amicus
[303] Case of Kotov and others v Russia (Kotov), Applications nos 6142/18 and 13 others, Judgment, European Court of Human Rights, Third Section, 11 January 2023

administration. In particular, residents complained of foul odour emanating from the quarry, and alleged that the waste management facility was being operated in violation of applicable environmental regulations.[304] The Court held that it is not necessary to demonstrate impacts on physical health to succeed in a claim under Article 8 of the European Convention on Human Rights as '*severe environmental pollution may affect individuals' well-being in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.'*[305] Similarly, in *Pavlov and others v Russia,* [306]a case concerned a claim by residents of Lipetsk against the state for failing to regulate several industrial undertakings in the city, including steelworks, a cement plant and a tractor factory. The applicants also claimed that the operations had been carried out in violation of domestic environmental standards, raising several issues regarding the precise scope of protection afforded by the European Convention on Human Rights (ECHR) on matters of environmental pollution.[307] Two of the issues raised in this case concerned the fact that the pollution did not occur in a single facility, but rather a range of polluting activities, and not all of the applicants lived within the immediate vicinity of the pollution, with several of them living up to 15 km from the site of the operation. However, the Court held that proximity to pollution is only one of the factors to be considered in determining whether the threshold of seriousness has been crossed to trigger Article 8 of the Convention.[308]

In both *Kotov* and *Pavlov* cases, a concurring opinion emphasized the importance of the evolution of the human rights case law to address environmental challenges and suggested the emergence of a new 'sub-right to a healthy environment' which should be interpreted broadly, with strict control over any interference with the right[309] In this regard, Judge Krenc explicitly mentioned one such development: the adoption by the UN General Assembly in July 2022 of a resolution 'recognizing the right to a clean, healthy and sustainable environment as a human right'.[310]

So far, the avenues available to reconfigure the relationship between individuals and businesses to reduce the accountability gap are to argue for the extraterritorial application of the domestic laws of Western states, where the holding companies of multinationals are typically incorporated, to their

[304] Case of Kotov and others v Russia (Kotov), Applications nos 6142/18 and 13 others, Judgment, European Court of Human Rights, Third Section, 11 January 2023
[305] Ibid 108
[306] Case of Pavlov and other v Russia (Pavlov), Application no 31612/09, Judgment, European Court of Human Rights, Third Section, 11 January 2023.
[307] European Convention on Human Rights(1953) 213 UNTS 221
[308] Pavlov (n 81) [63]
[309] James Harrison, Significant International Environmental Law Developments: 2022–2023. Journal of Environmental Law, 2023, 35, 467–479
[310] Right to a Clean, Healthy and Sustainable Environment, UNGA Resolution 76/300, 28 July 2022, para. 1

subsidiaries or supply chains in developing countries.[311] These efforts are pursued both in courts by litigating cases filed against parent companies for the abuses committed by their offshore subsidiaries,[312]and in Parliaments, advocating for the adoption of mandatory due diligence laws requiring companies to oversee the activities of their supply chains.[313]

2.7 Chapter Summary and Conclusion

This chapter presents a general overview of the extractive industry. It, therefore, attempts to explain the development of the extractive industry, but one which cannot be described as having the same historical development for various reasons, including legal and technological development stages, commonalities such as extractive industries' contribution to economic development on the one hand, and the non-reflection of extractive industries' contribution to economic growth or the resource course, among other. The chapter further defines the extractive industry, and identifies its main actors, including host states, rights holders, home states, supply companies, local communities, indigenous people and the international community. In particular, rights holderscould be single or joint ventures. In joint venture cases, companies share exploitation rights and a single company will serve as the operator, and managing the day-to-day activities of the extraction project.

In addition, the chapter also highlights the structure of the extractive industry with a focus on the mining industry, and describes its three key activities: extraction, processing, transportation and storage. It further highlights the impacts of the extractive industry, focusing on economic, environmental and social effects. Lastly, to show how environmental activities in the extractive

[311] Enneking, Foreign Direct Liability and Beyond: Exploring the Role of Tort Law in Promoting International Corporate Social Responsibility and Accountability (2012); Meeran, 'Tort Litigation against Multinational Corporations for Violation of Human Rights: An Overview of the Position Outside the United States' (2011) 3 City University of Hong Kong Law Review at 1; Jägers and van der Heijden, 'Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands' (2008) 33 Brooklyn Journal of International Law at 833; Philip Wesche and Saage-Maaß, 'Holding Companies Liable for Human Rights Abuses Related to Foreign Subsidiaries and Suppliers before German Civil Courts: Lessons from Jabir and Others v KiK' (2016) 16 Human Rights Law Review at 370

[312] Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents) [2019] UKSC 20; Nevsun Resources Ltd v Araya [2020] Supreme Court of Canada 37, 919; Kiobel v Royal Dutch Petroleum Co [2013] US Supreme Court 133 S. Ct. 1659; Jesner v Arab Bank, PLC [2018] US Supreme Court 584;Okpabi & Ors v Royal Dutch Shell Plc & Anor [2021] UKSC 3.

[313] See e.g. the French mandatory due diligence law Loi 2017–399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2017 (JORF); the Dutch Child Labour Due Diligence Law Wet van 24 Oktober 2019 houdende de invoering van een zorgplichtter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen (Wet zorgplicht kinderarbeid) 2019; the German Due Diligence Law Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten 2021 2959; the Swiss proposal for a due diligence law Swiss Coalition for Corporate Justice 'About the Initiative', available at https://corporatejustice.ch/about-the-initiative/; Joint Committee on Human Rights UK Parliament, '6th Report—Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability' (2017) HL Paper 153, HC 443, available at https://publications.parliament.uk/pa/jt201617/jtselect/jtri ghts/443/44302.htm

industry directly contribute to human rights violations, incidents of abuse are also highlighted. This is to justify the link between environmental activities that could affect individuals' rights.

The next chapter presents obligations of states and corporations in the extractive industry under international law.

CHAPTER THREE: INTERNATIONAL LAW, STATES AND CORPORATIONS IN THE EXTRACTIVE INDUSTRY

3.1 Introduction

This chapter highlights the legal regimes covering States and non-state actors in upholding human rights under international law. It outlines the various laws that exist, pinpointing the obligations of states to uphold human rights in general and, concerning multinational corporations operating in their territories, with a specific focus on corporations in the extractive industry under international law. On the other hand, the chapter also highlights the human rights obligations of non-state actors, focusing on multinational corporations in the extractive industry under international law. In addition, domestic law was considered to determine whether it is consistent with international law.

3.2 The Application of International Law

Generally, international law applies to the relations between states or is predominantly made by states[314]but it also affects the actions of States and others in the international community.[315]International law lacks a consistent centralised system of enforcement apart from the UN and the International Court of Justice, whose powers are limited and cannot be considered an effective equivalent to national institutions.[316]As Klabbers puts it, 'The absence of a single overarching authority is perhaps the most noteworthy characteristic of international law.'[317]
In practice, mainstream international law's views and assumptions have been shaped by a nexus of typical challenges: the right of sovereignty and the interests of a global community, international security and cosmopolitan justice, self-determination and national autonomy, and international rules on human rights, development, and the environment.[318]

These challenges suggest not only relationships but also tensions.[319] Despite such challenges, domestic and international law regulate environmental issues, international investment, and human rights.[320] Shaw, pointing out this premise, has stated that the assumption of an analogy between the

[314]Jan Klabbers, International Law (3rd Edition, CUP 2021)
[315]Ibid
[316] Martin Dixon, Robert McCorquodale and Sarah Williams, Cases and Material on International Law (Sixth Edition, OUP 2015), p.5
[317] Jan Kalbbers, International Law (3rd Edition, CUP 2021), p.82
[318] M. Koskenniemi, 'International Lawyers', Erik Castrén Institute of International Law and Human Rights, University of Helsinki (2007).
[319] Ibid.
[320] Jan Klabbers, International Law (3rd Edition, CUP 2021),

national system and the international order ‘’is at the heart of all discussions about the nature of international law.’’[321]

Notably, both domestic and international law regulate these fields concurrently. As Klabbers puts it, international law encompasses not only the law governing war and peace, genocide and human rights, but also rules on trade and environmental protection.[322] In any case, developments within the international community could be significant and have a lasting impact on international law.[323]In other words, new developments could influence the application of international law in the contemporary world. Nevertheless, states remain the main actors of international law, which is the next point of discussion.

3.3. States under International Law

Under international law, states are the primary legal subjects[324]with full international legal personality. This means they can bring claims at the international level, and at the same time, bear responsibility for wrongful acts or omissions.[325] In other words, the doctrine of international legal personality holds that certain entities possess rights and duties that are enforceable[326] simply because the law recognises them as legal persons possessing the capacity to have and maintain certain rights and duties. [327]Thus, international legal personality revolves around the interrelationship between rights and duties under the international legal system and the capacity to enforce claims.[328]For instance, in as much as states enjoy the right to sovereignty,[329] they equally have the obligation not to ‘torture’ anyone under the Convention against Torture, [330]an obligation which is also reflected in Article 3 of ECHR,[331]and Article 5 of the ACHPR,[332] respectively.

[321] Malcolm N. Shaw, International Law (Ninth Edition, Cambridge University Press 2021), p. 390
[322] Jan Klabbers, International Law (3rd Edition, Cambridge University Press, 2021), p.3
[323] M N. Shaw, International Law (Ninth Edition, CUP 2021)
[324] Malcolm N. Shaw, *International Law* (Ninth Edition, Cambridge University Press, 2021)
[325]Ibid.
[326] Roland Portmann, Legal Personality in International Law, Cambridge, 2010; J. E. Nijman, The Concept of International Legal Personality, The Hague, 2004; Brownlie’s Principles of Public International Law (ed. J. Crawford), 9th ed., Oxford, 2019, part II.
[327] Malcolm N. Shaw, *International Law* (Ninth Edition, Cambridge University Press, 2021)
[328] Jan Klabbers, *International Law* **(**Third Edition, Cambridge University Press, 2021).
[329]See United Nations Charter 1945, art. 2(1)
[330] See UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS, vol. 1465
[331]Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 3
[332]*African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Entry into force: 21 October 1986.(hereafter: ACHPR 1981)

Having highlighted the legal status of states under international law, the next section presents the legal regimes on the obligations of states in upholding human rights under international law. The reason for this is to establish the specific obligations of states in upholding human rights in general and concerning corporations in the extractive industry in particular, for accountability.

3.3.1 States' Obligations under International Human Rights Law

Accordingly, the Human Rights Council[333]has noted that human rights are addressed to states, with the principal aim of regulating the relations between individuals and the State.[334] Therefore, the state not only bears a duty to respect the human rights of individuals on its territory but must also ensure that private actors adhere to those rights.[335]Human rights obligations are enshrined in various treaties and recognised under customary international law and other relevant global and regional instruments relevant to this study.

In the researcher's view, the questions presented in this study require identifying and considering the relevant rules of international law, including those in the fields of human rights and the environment, for interpreting obligations under human rights treaties. This requires interpretation of the various relevant treaties in accordance with the Vienna Convention on the Law of Treaties, [336]which reflects customary international law.[337]

3.3.1.1 Treaty Obligations

Article 2, paragraph 1, of the Vienna Convention on the Law of Treaties 1969 states that a 'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.[338]This means a treaty is an agreement concluded between States,

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[333]Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/11/13 (22 April 2009), para. 57.

[334]Article 1 of the Montevideo Convention on the Duties and Responsibility of States defines a state as: '*The state as a person of international law should possess the following qualifications: a. permanent population; b. a defined territory; government; and capacity to enter into relations with the other states.*

[335]*See C. Tomuschat, Human Rights: Between Idealism and Realism 309 (2003). For an extensive analysis of the horizontal application of human rights, see J. H. Knox, Horizontal Human Rights Law, 102 American Journal of International Law 1-47 (2008).*

[336] Vienna Convention on the Law of Treaties (Signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art.31.

[337]As confirmed by the ICJ in Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Judgment) [2010] ICJ Rep. 14, para. 65 ("Pulp Mills Judgment"); Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) (Judgment) [2009] ICJ Rep. 213. Para.47; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep. 136, para. 94;

[338] *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331(hereafter: The VCLT 1969)

must be in writing and must be governed by international law (not national law), and may be in a single, two, or more documents, regardless of how it is designed or drafted.

Under international law, treaties are based on free consent and guided by the fundamental principle of good faith or ***Pacta Sunt Servanda*** *as provided under* **Article 26 of the VCLT***: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*[339]It is this principle that states' obligations to uphold human rights on which the analysis in this study is anchored, whereby parties to relevant treaties are bound by the obligations in those treaties. In addition, Article 27 of the VCLT states that a party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'[340]This is relevant considering the nature of the study, which examines domestic and international law.

Also, human rights law set out universal principle on individuals' rights which states are bound to respect, such as the prohibition of torture, inhumane and degrading treatment and slavery for instance.[341] In this regard, a specific focus will be laid on human rights and environmental treaties. Thus, the following is worth considering.

(i) The United Nations Charter, 1945

The UN Charter recognizes the obligations of all states to uphold human rights. In particular, Article 1, paragraph 3, of the UN Charter states that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for *all* without distinction.[342]This means Member States of the organisation are encouraged not only to promote, but also 'to respect' human rights and fundamental freedoms at all times, without any form of discrimination based on prohibited grounds such as race, religion, sex, or language.

Article 13 (1) United Nations Charter 1945, states that the General Assembly shall initiate studies and make recommendations regarding the realisation of human rights for all.[343] Furthermore, Article 55 (c) recognizes that the UN shall promote 'universal respect for, and observance of, *human rights and fundamental freedoms for all* without distinction as to race, sex, language, or religion.' [344]This provision is binding on all Member States as it requires each Member State to take measures, by the

[339] *The* VCLT, 1969
[340] The VCLT, 1969, art. 27
[341] Shruti Bedi, *International Human Rights Law: Responsibility Of Non-State Actors For Acts Of Terrorism*. *Journal of the Indian Law Institute*, JULY-SEPTEMBER 2014, Vol. 56, No. 3 (JULY-SEPTEMBER 2014), pp. 386-397
[342] UN Charter 1945, art. 1(3).
[343] UN Charter 1945, art. 13(1)
[344] UN Charter 1945, art. 55 (c)

use of the word 'shall', to ensure the universal respect for human rights and fundamental freedoms for all. This obligation is *erga omnes,* which is binding to all Member States. It calls for universal respect for human rights and fundamental freedoms, which means ensuring uniform applications of minimum standards of rights. In addition, under Article 56 of the UN Charter, members of the organisations pledge themselves to take 'joint' and 'separate' action in cooperation with the Organization for the achievement of the purposes outlined in Article 55.[345]

Furthermore, it was also noted at the World Conference on Human Rights of 1993 on the adoption of the Vienna Declaration and Programme of Action that:

> The promotion and protection of human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of International Cooperation. In the framework of these purposes and principles, the promotion of all human rights is a legitimate concern of the International Community.[346]

To sum up, it is clear from the above provisions that the United Nations can adopt all measures in accordance with the UN Charter to deal with issues of violations of human rights and fundamental freedoms.

(ii). States' Obligations under the 'Universal Declaration of Human Rights 1948'

It is important to note that the UDHR 1948[347](hereafter UDHR) is a non-binding instrument. Although UDHR is not binding, it is 'widely accepted as the consensus of global opinion on fundamental rights.'[348]The UDHR sets forth general principles or standards of human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination. [349]This is because the rights set out in this instrument have been incorporated into many national constitutions and legal frameworks.[350] It is therefore safe to state that the UDHR has 'provided the foundation from which a wealth of other legally binding human rights treaties have been developed, and has become a clear benchmark for the universal human rights standards that

[345]UN Charter 1945, art. 56.
[346] The World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Vienna, 25 June 1993, para.4
[347]Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)
[348] Rhona K.M. Smith, *Texts on International Human Rights* (4thEdition, Oxford University Press, 2010), p.36
[349] Rhona K.M Smith, *Texts on International Human Rights* (4thEdition, Oxford University Press, 2010)
[350] See Amnesty International, Universal Declaration of Human Rights. Available at: https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/ Accessed 23/09/2023.

must be promoted and protected in all countries.'[351]Having said that, it is therefore worth noting that the UDHR is the leading instrument of the International Bill of Rights, [352]alongside the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both adopted in 1966 respectively.

In addition, universal standards of human rights have been accepted at the international level, which make up human rights law.[353]However, establishing such universality comes in different declarations, especially UN Declarations, and key principles, and minimum standards are relevant to human rights law and therefore provide the detailed meaning to binding obligations of fundamental rights such as the right to life.[354]

(iii). State Obligations Under The International Covenant on Political and Civil Rights 1966

Unlike the UDHR, the ICCPR is a binding instrument that comprises a set of first-generation rights. Its binding nature is reflected, in particular under Article 2, which requires:

> *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.[355]

This means Article 2 (1) ICCPR obliges State Parties to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognised in the Covenant, [356]which is a general obligation in upholding human rights. There is a general obligation imposed on the Parties to respect the rights therein and to ensure these rights to all in the territory and subject to their jurisdiction.[357] This is because '*the rules concerning the basic rights of the human person are 'erga omnes' obligations.'*[358]This means, the general obligations of the Covenant, and those of Article 2, in particular, are binding on every State Party.[359]In addition, it is important to note that a State Party

[351]Ibid.
[352] Peter Malanczuk, Akehurst's Modern Introduction to International Law (London: Routledge, 1997).
[353] Adrew Clapman 2006.
[354] Ibid.
[355] *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations Treaty Series, vol 999, p.171, art. 2(1).
[356] Ibid
[357] See, Human Rights Committee*, General Comment N0. 31 (80), The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.* Adopted on 29 March 2004 (2187th meeting),(hereafter: General Comment 31)
[358]Human Rights Committee*, General Comment N0. 31 (80), The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.* Adopted on 29 March 2004 (2187th meeting), para. 1
[359] Ibid., para. 4

may not rely on its domestic law as an excuse for failing to fulfil the obligations under the Covenant. [360]This is in accordance with Article 27 of the VCLT, which states that: '*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*. [361]Similarly, Article 103 of the UN Charter also obliges to prioritise their obligations under the Charter, against any other agreement in the event of conflict between the two. [362]This also requires the State Parties to refrain from enacting local laws that could be contrary to the provisions of a treaty, in respect of human rights.

Furthermore, it has been confirmed by the Human Rights Committee that the obligation to respect and ensure the rights under Article 2(1) of the Covenant is with immediate effect for all Parties.[363]Thus, the obligations under Article 2 of ICCPR require Parties to adopt legislative, judicial, administrative, and other appropriate measures to fulfil the obligations under the Covenant.[364]

Accordingly, Article 2 (1) of the Covenant compels State Parties to take positive measures to prevent acts committed by private persons or entities that would affect the enjoyment of the Covenant rights as required. [365] Therefore, the host state has both an obligation itself to respect the human rights of the individuals residing within its territory and a duty to ensure that human rights are respected within its territory.[366]These dual obligations have been confirmed in ***Velasquez Rodriquez v. Honduras*** case:

> in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to the international responsibility of the State, not because of the act itself, but because of the

[360] Ibid.
[361]The VCLT 1969, art. 27.
[362] UN Charter 1945, art. 103
[363]General Comment 31
[364] General Comment 31, para. 7
[365]General Comment 31, para. 8
[366] Eric De Brabandere, Human Rights and Transnational Corporations The Limits of Direct Corporate Responsibility. *Human Rights and International Legal Discourse, Vol. 4, No. 1, pp. 66-88, 2010, pp.17-18*

lack of due diligence to prevent the violation or to respond to it as required by the Convention'.[367]

(iv). States Obligations Under The International Covenant on Economic, Social and Cultural Rights, 1966

The ICESC entails the so-called Social and Economic Rights, also referred to as second-generation rights. This is based on the fact that the realisation of these rights is done progressively. Article 2 of the ICESCR partially reflects this as follows:

> *Each State Party to the present Covenant undertakes **to take steps**, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving **progressively the full realization** of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*[368]

It has been noted that states have an obligation to protect women from discrimination by non-state actors. These obligations include the adoption of legislation to eliminate discrimination and to prevent third parties from interfering directly or indirectly with the enjoyment of this right.[369]In particular, states are obliged to monitor non-state actors' behaviour and regulate their conduct to ensure they do not violate the equal right to the enjoyment of economic, social and cultural rights.[370]

3.3.1.2 States' Obligations Under Customary International Law

The human rights obligations of states under customary international law are anchored on the premise that some human rights treaties provide specific provisions that require the monitoring body to take customary international law into account in its activities. This is clear, for example, in the African Convention on Human and Peoples Rights, which, under Article 61 stipulates that:

> *The Commission shall also take into consideration as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization …, African practices consistent with international norms on human and people's rights, customs generally accepted as law,*

[367]Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of 29 July 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para. 172.
[368] ICESCR, 1966, art. 2(1).
[369] General Comment 16, Article 3: 'the equal right of men and women to the enjoyment of all economic, social and cultural rights,' Doc. E/C.12/2005/3, 13 May 2005 |(unedited text) at para. 19
[370]Andrew Clapham, Human Rights Obligations of Non-state Actors (Oxford, New York: Oxford University Press, 2006), p. 324

general principles of law recognized by African states as well as legal precedents and doctrines.[371]

Another school of thought on the obligations of human rights under customary international law is that customary international law may take the level of domestic law, in which case no specific implementing legislation is required, but the rights and obligations therein are enforceable in domestic courts. Having said that, applying customary international law could be more effective in terms of holding non-state actors directly accountable for human rights violations at the state level.[372]In addition, many of the principles in the Universal Declaration of Human Rights have acquired the status of customary international law, which is legally binding.[373]These include, for instance, the prohibition of torture, arbitrary killing, slavery, and discrimination.[374]Hence, states' obligations for upholding human rights under customary international law are binding.

3.3.1.3 *Jus Cogens* Norms of Human Rights

Under international law, jus cogens norms are rules from which no derogation is permitted. Therefore, the jus cogens rules on human rights and fundamental freedoms are norms that are accepted by the international community as a whole.[375] Under Article 40, paragraph 2, of the ILC Articles, the violations of jus cogens norms have to involve 'a gross or systematic failure by the responsible States to fulfil the obligations.[376] In addition, the ILC has noted that countermeasures shall not affect the obligation to respect human rights, which is a jus cogens norm.[377]This means that states' obligations to uphold human rights cannot be compromised even in the event of countermeasures. It is therefore clearly stated as: '*Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law*.'[378]

[371] ACHPR 1981, art. 61
[372] Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law,* 25 Georgia Journal of International and Comparative Law (1995/6) 287-397.
[373] Andrew Clapham, Human Rights Obligations of Non-state Actors. Oxford, New York: Oxford University Press, 2006.
[374] Ibid.
[375] Ibid.
[376] See ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, art. 40(2). (hereafter: ILC Articles 2001).
[377] ILC Articles 2001, art 50 (1)(d)
[378] Commentary to Art. 26, at para 4. Report of the ILC, GAOR, Supp.No 10(A/56/10) at p,208.

Also, under Article 53 VCLT 1969, it is clear that a treaty which conflicts with a peremptory norm of general international law is considered void,[379]whereas an earlier treaty, which conflicts with a new peremptory norm, becomes void and is therefore terminated.[380]

3.3.1.4 Erga Omnes Obligations

Erga omnes means towards everyone.[381]In *Barcelona Traction*,[382] the ICJ characterised *erga omnes* obligations as those that give rise to international obligations owed by states to all other states or the international community as a whole. The case concerned whether one state had the right to complain about breaches of international law by another state. The ILC has also confirmed that every state may complain of a violation of international law when another state has breached an obligation owed to the international community as a whole.[383] In particular, James Crawford has noted that human rights obligations are either obligations *erga omnes* (first category) or *erga omnes partes* (second category), and 'depending on their universality and significance, and that human rights treaties are designed to protect the general common interest.'[384]

However, the characterisation of these obligations has been a subject to diverging views.[385]Nevertheless, obligations *erga omnes* are obligations owed to the international community as a whole,[386] whereas obligations *erga omnes* partes are obligations under multilateral treaties owed by any State party to all the other State parties.[387]The ICJ has consistently reasoned on the characterisation these obligations in relation to protecting common interest. In *Belgium v Senegal* judgment, the Court has confirmed that the common interest of States in compliance with certain obligations supports their characterisation as obligations *erga omnes* or *erga omnes partes*.[388]Additionally, the ICJ has opined 'that common interest implies that the obligations in question are owed by any State party to all the other State parties' and 'each State party has an interest in compliance with them in any given case.'[389]Thus, it is the common interest in compliance with

[379] VCLT 1969, art. 53
[380] VCLT 1969, art. 64
[381] ICJ Reports 4 (1970), para. 33
[382] ICJ Reports 4 (1970), para. 33
[383] ILC Articles 2001, art 48
[384] Third Report, UN Doc. A/CN 4/507, at para.92
[385] Christian J. Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP 2005) 119.
[386] Belgium v Senegal (n 6) 449. See also The Gambia v Myanmar (n 9) 515–16; ARSIWA (n 3) art 48(1)(a). There is no reason to exclude the possibility that obligations erga omnes partes may also arise under customary international law.
[387]Barcelona Traction (n 2) 32.
[388]Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Merits) [2012] ICJ Rep 422 (Belgium v Senegal).
[389]*Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Marit) 2012, ICJ Rep 422 (Belgium v Senegal).*

obligations *erga omnes* and *erga omnes partes* that entitles States other than the injured State to institute claims alleging violations of such obligations.[390]

Although the Court's reasoning does not only focuses on the existence of a common interest in compliance with relevant obligations to justify charaterisation as *erga omnes* or *erga omnes partes* obligations.[391]but also 'the importance of the rights involved' aligns with the conclusion that 'all States can be held to have a legal interest in the protection of obligations *erga omnes*.'[392]This suggests that although there are multilateral obligations,[393] that reflect States' common interests, but only those that protect fundamental rights qualify as obligations *erga omnes* or obligations *erga omnes partes,*[394] respectively. However, where the enforcement of these obligations to require a special interest over and above common interest no State would be in position to make such claim.[395]Nevertheless, it could be argued that human rights obligations could impose both *erga omnes* and *erga omnes partes* obligations on states.

3.4 States' Obligations to Incorporate International Human Rights Law into Domestic Law

The general position on the observance of treaties by states is that a state cannot invoke its domestic law to justify failing to comply with a treaty obligation. This position is recognized in both customary international law and treaty law. Under treaty law, Article 27 of the Vienna Convention on the Law of Treaties states: '*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*.'[396]This means that international law takes precedence over domestic law on treaty-related matters.

However, the incorporation of treaties could be explained by examining the two theories of *dualism* and *monism.* According to the dualist theory, as expounded by Triepel, international law and domestic law are separate legal systems, and the rules of international law are applicable only after they are

[390] Ibid.

[391]Priyas Urs, *The Articulation of Obligations Erga Omnes and Erga Omnes Partes by the International Court of Justice: Coherence or Confusion?* International and Comparative Law Quarterly (2025), 74, 257–286.

[392]Barcelona Traction (n 2) 32; See also Tams (n 5) 136; Besson S, 'Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them? 'in Benvenisti E and G Nolte G(eds), Community Interests Across International Law (OUP 2018) 36, 38–39

[393]The term 'multilateral obligations' refers to 'obligations owed not individually to a particular State but to a collective, a group of States, or even to the international community as a whole': ILC, 'Third Report on State Responsibility, by Mr. James Crawford, Special Rapporteur' (2000) UN Doc A/CN.4/507, 34 (Crawford's Third Report). See also J Crawford, 'Multilateral Rights and Obligations in International Law' (2006) 319 RdC331, 344, 346.

[394]Priyas Urs, *The Articulation of Obligations Erga Omnes and Erga Omnes Partes by the International Court of Justice: Coherence or Confusion?* International and Comparative Law Quarterly (2025), 74, 257–286.

[395] Belgium v Senegal (n 6) 450. See also The Gambia v Myanmar (n 9) 516.

[396] Vienna Convention on the Law of Treaties, 1969, art. 27

adopted into domestic law and applied as such, not as international law.[397]In other words, the applicability of international law under this theory could be achieved after it has been incorporated into domestic law. In *Exchange of Greek and Turkish Populations*, Advisory Opinion of 21 February 1925, the PCIJ has confirmed there is: "a principle which is self-evident, according to which a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken**.**''**[398]**On the other hand, monists such as Kelsen maintained that international law and domestic law are one and that international law is superior.[399]It is the unitary view of law as a whole as opposed to the strict division applied by the positivists.[400]

In addition, it is pertinent to note that most states' incorporation of international law is determined by their domestic constitutions within their domestic legal order, except for states in the European Union.[401] This exception emanates from the fact that under EU law, 'the European Union's legal instruments are directly applicable and directly effective in the EU's member states, and are so regardless of what the domestic constitution stipulates.''[402]The direct applicability of EU law stems from EU law itself, which has developed from a set of decisions of the Court of Justice of the European Union (CJEU).[403]In *Van Gend & Loos,* the Court of Justice of the European Union established the direct effect of a treaty provision that allows an individual to invoke a treaty provision, usually a right, directly before a domestic court and enables the individual to rely on international law in his or h*er defence*. [404]Thus, the CJEU states that:

> *The European Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independent of the legislation of member states, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty but also*

[397] Heinrich Triepel, *Les rapports entre le droit interne et le droit international*, R.C.A.D.I., 1923, p. 106 ;
[398] PCIJ, in *Exchange of Greek and Turkish Populations*, Advisory Opinion of 21 February 1925
[399] Hans Kelsen, *Principles of International Law* (New York: Rinehart & Co., 1952), at 403.
[400] Jan Klabbers, International Law, (3rd Edition, Cambridge University Press 2021), p. 748
[401] Jan Klabbers, International Law (3rd Edition, CUP 2021)
[402] Jan Klabber, International Law (3rd Edition, CUP 2021), pp. 749-50
[403] Case 26/62, Van Gend & Loos v. Netherlands Internal Revenue Administration, [1963] ECR
[404] Case 26/62, Van Gend & Loos v. Netherlands Internal Revenue Administration, [1963] ECR

by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community.[405]

The Court stated that EU law not only imposes obligations on Member States but also confers rights to individuals who can directly invoke EU law before national and European courts, independently of the national law test or where there is no judicial remedy under national law**.**[406]

The incorporation of international human rights law stems from the fact that it imposes obligations on states, which require them to take specific actions at the domestic level.[407] This is because human rights obligations have a special status as they are fundamentally different from other international law obligations.[408] In other words, this means obligations under International Human Rights Law are distinct from normal international law obligations in that they concern obligations of states towards individuals rather than between states.[409]Considering this, it is pertinent to highlight states' obligations to incorporate international human rights law into domestic law. Thus, the following is worth considering:

Firstly, states' obligation to incorporate international human rights law into domestic law could be highlighted under the UN Charter. In particular, Article 1, paragraph 3 requires member states of the UN to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.[410] Equally, Article 56 of the UN Charter imposes an obligation on Members who have pledged themselves *'*to take joint and separate action in cooperation with the Organization for the achievement of the purposes outlined in Article 55,' [411]including human rights.

Secondly, Article 2, paragraph 1 of the International Covenant on Civil and Political Rights imposes an obligation on States Parties to incorporate the human rights in the covenant into their domestic laws by ensuring that:

> *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language,*

[405] Van Gend & Loos, para. 8
[406] See Van Gend en Loos v Netherlands Inland Revenue Administration – the fundamental principle of direct effect
[407]John K. Knox, *Horizontal Human Rights Law*, *102 American Journal of International Law 1- 47 (2008).*
[408]Mégret, Frédéric, "The Nature of International Human Rights Obligations." *International human rights law* (2010).
[409] Ibid.
[410] UNC 1945, art.1(3)
[411] UNC 1945, art. 56

religion, political or other opinion, national or social origin, property, birth or other status.[412]

However, it is vital to note that states' actions to incorporate international human rights law depend on the legal system in a particular jurisdiction.[413] For instance, in the cases of Sierra Leone and Italy, the following is worthwhile. Under **Sierra Leone law**, Section 40, paragraph 4 of the 1991 Constitution gives the president the power to sign treaties, but a treaty signed by the president requires parliamentary ratification before it becomes binding in Sierra Leone. [414]In the case of **Italy**, Article 10 of the Constitution of the Italian Republic stipulates how its legal system conforms to the generally recognised rules of international law. [415]Also, Article 117 of the Constitution gives legislative power to the State in compliance with obligations deriving from EU legislation and international law as follows: 'Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.'[416]Nevertheless, the European Union's legal instruments are directly applicable and practical in Italy because Italy is a member of the European Union, regardless of what its constitution stipulates. This includes the European Convention on Human Rights and Fundamental Freedoms.
The above clearly shows that States must incorporate international human rights law into domestic law. However, the incorporation depends on the legal system and the practices of the state concerned.

3.5 Non-State Actors under International Law

The current status of non-state actors in international law is that they are not subjects of international law. This is mainly because non-state actors lack International Legal Personality.[417] Nevertheless, they operate at the global level and enjoy some degree of international legal personality because states allow them to do so.[418]Taking this into account, Bas Arts defines non-state actors as all actors that are not states, but operate on an international level and are potentially relevant to international relations.[419]

In 1949, the ICJ noted that: 'the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community'.

[412] ICCPR, 1966, Art.2 (1)
[413] Cecily Rose, et al., An Introduction to Public International Law, Cambridge University Press 2022.
[414]The Constitution of Sierra Leone, 1991, Act No.6 of 1991, sect. 4
[415] Constitution of the Italian Republic, 1947, art. 10
[416] Constitution of the Italian Republic, 22 December, 1947, art, 117
[417] Eric De Brabandere, 'Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility' (2010) 4 Human Rights and International Legal Discourse 66, 80; James Crawford, Brownlie's Principles of Public International Law (8th edn, OUP 2012) 122.
[418] Rebeca Wallace, Fraser Janeczko and Karen Wylie, *Nutshells International Law*, Sweet and Maxwell, 2013
[419]Bas Arts, Non-State Actors in Global Governance Three Faces of Power (Max-Planck-Gesellschaft 2003), 5

[420]The European Commission has stated that non-state actors are created voluntarily by citizens and are therefore independent from states.[421]These descriptions also include[422] multinational corporations. The term multinational corporations was used in the UN framework to mean enterprises that own or control production or service facilities outside the country in which they are based.[423] In addition, the UN Draft Norms on the Responsibility of Transnational Corporations and Other Business Enterprises about Human Rights define Transnational Corporations as economic entities operating in two or more countries, whatever their legal form, whether their home country or country of activity, and whether taken individually or collectively.[424] On the other hand, the OECD and ILO instruments describe multinational enterprises as:

> These enterprises operate in all sectors of the country. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed.[425]

From the above, it is clear that there are variations in the meaning of non-state actors and the terminology of multinational corporations. However, what is certain is that non-state actors are not states under international law, are not subjects of international law, are not identical in nature and activities, and operate across different countries.

3.5.1 Obligations of Multinational Corporations to Respect International Human Rights Law

This issue of holding non-state actors, particularly multinational corporations, directly accountable for upholding human rights has not gone unnoticed. For instance, Andrew Clapham has pleaded for extending human rights obligations to non-state actors, including transnational corporations and local

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[420] International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion (11 April 1949), 178.

[421] Commission of the European Union, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee of 7 of November 2002, Participation of Non-State Actors in EC Development Policy (2002) 5

[422] Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations (1974) UN Doc E/5500/Rev.1, ST/ESA/6,25

[423]Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12(2003)

[424] Draft Norms, para 20.

[425] See OECD, Guidelines for Multinational Enterprises (2011). Available www.oecd.org/daf/inv/mne/48004323.pdf Accessed 10 October 2023; ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (4th edn, 2006) accessed 5 December 2013.

corporations.[426] He argued that: 'customary international law, international treaties, and certain non-binding instruments already create human rights responsibilities for non-state actors'[427] His argument was based on the premise that, if corporations can enjoy rights, for instance, under ECHR, there is no logical reason why they should not be subjected to duties of international human rights Law.[428]Also, Stefanie Khoury has noted that the paradox provides human rights protections for corporations, but does not adequately address corporate accountability.[429] In other words, human rights law is used to protect corporations as persons, yet fails to protect individuals from corporate human rights violations.[430] This assertion is evident in the context of ECtHR, which has not only recognised corporations as legal persons and as objects of rights, but also granted them the protections of ECHR. This means the ECtHR considers corporations as victims of state-authored human rights violations, but it does not consider the responsibility of corporations for their human rights violations.[431] The ECtHR has increased the scope of corporate human rights through its case law. These include, for instance in *Societe Colas Est v France* (2002), in which it applied Article 8 to the Company,[432] and in *Comingersoll S.A v Portugal* (2000),[433] the corporation was described as 'an 'independent living organism.'[434]In other words, corporations can invoke human rights for their protection, but it is difficult to use the same law to protect individuals from corporations.[435] Given this, this section highlights the legal obligations of non-state actors in upholding human rights, particularly multinational corporations in the extractive industry. Thus, obligations under treaties, customary Law and non-binding or 'soft law' will be examined.

(i) Non-State Actors Obligations Under OECD Guidelines

Under the OECD Guidelines for Multinational Enterprises, non-binding recommendations constitute a potentially helpful framework for holding corporations accountable for failing to respect the

[426] Andrew Clapham 2006.
[427] Andrew Clapham 2006, p.21
[428] Ibid
[429] Stefanie Khoury, *Corporate Non-Accountability and Human Rights*. Asian Journal of Social Science, 2018, Vol.46. No. 4/5, Special Issue: Continuities and Ruptures in Global North Legal Pressures on Global South Societies 2018, pp.503-523.(hereafter: Stafanie Khoury, corporate Non-Accountability 2018)
[430] Stefanie Khoury, corporate Non-Accountability 2018)
[431] The ECtHR has justified its consideration of corporations as rights holders through Article 1, Protocol 1 of the European Convention on Human Rights: Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
[432]Judgment of the European Court of Human Rights of 16 April 2002 (final on 16 July 2002) in the case of Société Colas Est and others against France.
[433] *Comingersoll S.A. v. Portugal [GC]*, 35382/97 Judgment 6.4.2000 [GC]
[434] Stafanie, corporate Non-Accountability 2018
[435]Stafenie Khoury, Corporate Non-Accountability 2018

UDHR's rights.[436] In other words, although these guiding principles are not mandatory, they clearly define corporate responsibility to respect human rights.[437]

In addition, domestic law also imposed human rights obligations on non-state actors such as the prohibition of discrimination on various grounds.[438]For instance, under the Sierra Leone Constitution of 1991, Section 27 provides for the protection from discrimination by stipulating that 'no law shall make provision which is discriminatory either of itself or in its effect.[439]and 'no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.'[440]It further defines "discriminatory" to mean:

> ''affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description."[441]

Although the above provisions on protection from discrimination do not expressly state that non-state actors, such as corporations, are protected, they also prohibit corporations operating in the country from enacting any law that is discriminatory in itself or in its effect on their operations. This is because corporations are directly subjected to the domestic laws of Sierra Leone.

(ii). UN Draft Norms on Transnational Corporations & Other Business Enterprises

Generally, corporations and other businesses should conduct their environmental activities in accordance with domestic laws and related policies in the host state, adhering to international treaties, principles, and standards regarding the environment and human rights, and exercising precaution.[442] This means corporations, including those in the extractive industry, should follow domestic laws, related policies and standardised international norms.

[436]Andrew Clapham 2006, p.211
[437] Felicitas Weber and Olivia Watson, *Human Rights and the Extractive Industry: why engage, who to engage, how to engage,* Principles for Responsible Investment, 2015
[438] Andrew Clapham 2006
[439] The Constitution of Sierra Leone, 1991, Act No. 6 of 1991, sec. 27 (1)..
[440] Ibid., sec. 27 (2)
[441] Constitution of Sierra Leone 1991, Act No 6, of 1991, sect. 27.
[442] Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12(2003)

At the time of writing, within the UN system, considerations for a binding convention on business and human rights are still being negotiated and amended to reach a compromise between states. [443]So far, an updated draft legally binding instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises[444]is being negotiated but is not yet in force. [445]Nevertheless, on environmental issues, the BBNJ Agreement covers four main substantive issues: Marine Genetic Resources (MGRs), area-based management tools, environmental impact assessment (EIA), and technology transfer and capacity building. [446] which is relevant in this regard.

3.5.2 Duties under the European Union Law and Policy Framework

The Council of Europe has identified protecting the environment and human rights as a top priority.[447] It has also acknowledged that human rights are universal, interdependent, and interrelated regardless of whether they are civil and political or economic, social, and cultural rights.[448] Also, under EU Law, Article 288 of the Treaty on European Union imposes a general application of EU Law, especially regulations which are binding and directly applicable to all Member States, whereas, 'directives' are binding on Member States to which they are addressed as to the result to be achieved, but which the choice of form and methods are left with the national authorities concerned, and 'decisions' are binding to those whom it is addressed.[449] Therefore, EU laws and policies impose duties on states for the protection of the environment and human rights, as highlighted below.

3.5.2.1 European Convention of Human Rights and European Social Charter

It is worth acknowledging that the Convention and Charter do not expressly guarantee the right to a safe, clean, healthy, and sustainable environment, but they both offer a certain degree of protection on matters of the environment, as developed by the case law of the European Court of Human Rights

[443]See *Overview of the Proposed Binding Treaty on Business and Human Rights.* Available at: https://www.law.georgetown.edu/transnational-business-center/blog/an-overview-of-the-proposed-legally-binding-instrument-to-regulate-in-international-human-rights-law-the-activities-of-transnational-corporations-and-other-business-enterprises/#_ftn41

[444] The text is submitted in accordance with paragraph 25 (g) of A/HRC/52/41, and in line with para paragraph 25 (i), will form the basis for State-led direct substantive intergovernmental negotiations during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

[445] See The ninth session of the open-ended Intergovernmental working group (OEIGWG) took place from 23 to 27 October 2023 . Available at: https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session9 Accessed 07/04/24

[446] Ibid

[447] Council of Europe, *Environment and Human Rights (CDDH-ENV). Available at:* https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/environment-and-human-rights *Accessed on 02/09/24*

[448] Ibid.

[449] The Treaty On The Functioning Of The European Union (2016/C 202/01), art.288

and the Committee of Social Rights, respectively. [450]For instance, the Court has examined complaints in which individuals have argued that activities with adverse environmental effects could violate their Convention rights.[451]

The European Convention on Human Rights and Fundamental Freedoms imposes an obligation to respect human rights, in which parties ''shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.''[452]Also, Article 2 on the rights to life of the ECHR imposes a duty on states as '*Everyone's right to life shall be protected by law.''*[453]In particular, there is a positive obligation on states to regulate activities of an industrial nature that could adversely affect the right to life that is protected under Article 2.[454] This duty requires States to protect human rights within their jurisdictions by adopting measures to address human rights violations by states, private individuals and entities, including multinationals.[455] This means the Convention has a horizontal effect extending the scope of human rights protection to include violations caused by private action as long as the private entities are within the State's jurisdiction.[456]In addition, states have a preventive obligation, which requires the States to enforce all the necessary measures to prevent the loss of human lives[457]and to investigate and prosecute violators of human rights.[458]

Under Article 3 of the European Social Charter, there is also a duty on the right to health, which imposes a duty on states to ensure the effective exercise of the right to safe and healthy working conditions by issuing safety and health regulations, enforcing such regulations, and consulting stakeholders on measures intended to improve industrial safety and health.[459]
In addition, under Article 3, paragraph 1 of the 1961 Charter and Article 3, paragraph 2 of the Revised Charter, States must pay attention to workers exposed to the dangers of asbestos and ionising radiation and produce evidence that workers at risk are protected to the equivalent of that set by international standards.[460]

[450] Council of Europe, *Environment and Human Rights (CDDH-ENV).*
[451] Ibid
[452] European Convention on Human Rights and Fundamental Freedoms, 1950, art.1
[453] Ibid, art. 2
[454] Scalia, V. (2015). The European Court of Human Rights and Environmental Crime. Study in the framework of the EFFACE research project, Catania: University of Catania
[455] Ibid
[456] European Convention on Human Rights and Fundamental Freedoms, 1950, art.1
[457] ECtHR, *Osman v. UK,* (28/10/1998), application n. 87/1997/871/1083, para. 115:
[458] Scalia, V. (2015). The European Court of Human Rights and Environmental Crime. Study in the framework of the EFFACE research project, Catania: University of Catania
[459] European Social Charter (ETS No. 35) (18 October 1961) and European Social Charter (Revised) (3 May 1996) ETS No. 163, art. 3
[460] Ibid., arts. 3 (1), 3(2)

Article 11, paragraph 3 of the Charter imposed a duty to reduce environmental risks to health.[461]Article 5, paragraph 1 (c) of the Aarhus Convention, which Italy has ratified, requires each Party to ensure that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected."[462]

3.5.2.2 Duties under African Union and ECOWAS Law and Policies

This section outlines the environmental protection duties under the laws and policies of the African Union and the Economic Community of West African States (ECOWAS). First, the responsibilities under the African Union are highlighted, followed by those of the ECOWAS.

(i) African Union

Article 1 of the African Charter on Human and Peoples' Rights obligates State Parties to recognise the rights, duties and freedoms enshrined in the Charter, and to adopt legislative or other measures to give effect to them.[463] This means States Parties have an obligation to incorporate domestic legislation to give effect to the human rights in the Charter. Furthermore, Article 25 of the ACHPR imposes a duty on State parties *'to promote and ensure* through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights, as well as corresponding obligations and duties are understood.'[464]This means that domestic legislation must be incorporated to give effect to the rights and freedoms under the Charter. Particularly, Article 24 of the African Charter guarantees the collective right of all peoples to a general satisfactory environment favourable to their development.[465]This provision places environmental protection at the core of African human rights law and reflects the Charter's recognition of collective and intergenerational interests. It is not surprising that the African Commission, in *SERAC*, has affirmed the justiciability of environmental rights and the obligations of States in that regard.[466]

[461] Ibid, art. 11(3)
[462] Aarchus Convention, art/5(1)(c)
[463] *African Charter on Human and People's Rights,* adopted June 27, 1981, entered into force 21 October 1986, art.1
[464] Ibid., art. 25
[465] Ibid., art.24
[466] *SERAC v Nigeria* (2001) AHRLR 60 (ACHPR).

Article 13 of the Constitutive Act of the African Union provides that the Executive Council coordinates and makes decisions on policies in areas of common interest to the member states, including, inter alia, the environment and its protection.[467]

Also, Art 51 of the Abuja Treaty Establishing the African Economic Community imposes an obligation on Member States to ensure the conservation of the environment.[468] In particular, Article 58 requires Member States of the African Union to promote a healthy environment, thereby adopting relevant policies at all levels and establishing appropriate institutions to protect and enhance the environment.[469]

(ii). Economic Community of West African States (ECOWAS)

On the duties under the Economic Community of West African States (ECOWAS) laws and policies, Article 29 of the Revised Treaty imposes the duty on States to protect, preserve and enhance the natural environment of the region as:

> *Member States undertake to protect, preserve and enhance the natural environment of the region and co-operate in the event of natural disasters*. [470]

In addition, to achieve this, the ECOWAS Members are required to adopt policies and programmes at national and regional levels and establish the appropriate institutions for the protection, preservation and enhancement of the environment.[471]In other words, states in the West Africa subregion are required to formulate policies and programmes and set up relevant institutions for the protection of the environment. From the above, it could be concluded that there are duties to protect and preserve the environment under the African Union and ECOWAS laws.

3.6 Other AU Policies and Guidelines on environment and human rights

Policies and guidelines issued by the African Commission on Human and Peoples' Rights that worth mentioning:

Firstly, in its 2019 Guidelines on the Right to Water in Africa, the Commission on Human and Peoples' Rights calls on Member States of the African Charter to adopt all necessary measures to

[467] Constitute Act of the African Union, *Adopted By The Thirty-Sixth Ordinary Session Of The Assembly Of Heads Of State And Government* 11 July 2000, art.13 (1) (e)
[468]Organization of African Unity, *Abuja Treaty Establishing the African Economic Community* (3 June 1991), art. 51(b)
[469] Ibid, art. 58 (1)
[470] ECOWAS Revised Treaty 1993, Article 29 (1)
[471] Ibid. art. 29 (2)

implement the provisions of these Guidelines in their national legislation,[472]in particular, ‘*’States shall respect,* protect and fulfil *human rights in all matters of natural resources, exploration, extraction, toxic waste management, development, management and governance, in international cooperation, investment agreements and trade regulation.’’*[473]

In addition, the Commission also calls for adopting an integrated water strategy that links water with sanitation, health, a satisfactory environment and other cross-cutting rights.[474]

In its *Resolution 372, on the Protection of Sacred Natural Sites and Territories,* the African Human and Peoples' Rights Commission calls on AU Member States to recognise sacred and natural territories as contributing to the protection of human rights.[475] to uphold their obligations and commitments under regional and international law on sacred natural sites and the rights of custodian communities, [476]and urges State Parties, civil society groups, and other stakeholders, including businesses, to recognise and respect the intrinsic value of sacred natural sites and territories.[477] The above analysis outlines the laws and duties under the African Union (AU) and the Economic Community of West African States (ECOWAS) regarding environmental matters.

3.7 Legal Duties Under International Environmental Law

This section highlights duties under international environmental law. As identified above, states have general obligations to uphold human rights. This section highlights the legal duties under international environmental law, including treaties, guiding principles on environmental protection and human rights, declarations, and other relevant documents. Several declarations and treaties have emphasized the relationship between environmental protection and human rights, which include the following:

3.7.1 Stockholm Declaration 1972

In 1972, the United Nations held its first conference on environmental issues in Stockholm.[478] This declaration marked the beginning of a dialogue between industrialised and developing countries to

[472] *African Commission on Human and Peoples' Rights (2019). Guidelines on the Right to Water in Africa, adopted during the 26th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights. 16 - 30 July 2019.*
[473] Ibid, part 1, 1.2; See also ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance.'
[474] Ibid, part 7, para 34.2; See also Convention on the Law of the Non-navigational Uses of International Watercourses (1997), Art.10, para 2.
[475]*African Commission on Human and Peoples' Rights (2017). Resolution 372, on the Protection of Sacred Natural Sites and Territories. 22 May2017*. ACHPR/Res.372(LX)2017, para.1
[476] Ibid, para 2
[477] Ibid., para.3
[478] United Nations Conference on Human Environment, 5-16 June 1972, Stockholm (hereafter Stockholm Declaration 1972)

address environmental concerns and promote the well-being of all. [479]It placed environmental issues at the forefront of international concern and imposed duties on states.[480] For instance, the right to a healthy environment has evolved gradually since the 1972 Stockholm Declaration, in which its first Principle states: "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."[481]

The Declaration established an Action Plan comprising three distinct categories: a global environment assessment programme, environmental management activities, and measures to support assessment and management activities at the national and international levels, with key recommendations.[482] Accordingly, the declaration provided the first principles for future international cooperation on environmental issues. The first to note in this regard is Principle 7, which requires states to take all steps to prevent pollution and to protect human health as:

> *States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.*[483]

This means that Principle 7 imposes a duty on states to take all possible steps to prevent marine pollution that will affect *human health*.[484] In particular, the duty to enhance environmental policies by all states should not adversely affect the present or future development potential of developing countries, nor should it hinder the attainment of better living conditions for all.[485] They should therefore take appropriate steps.[486]

Principle 13 States should adopt an integrated approach to their development planning to ensure that development is compatible with the need to protect and improve the environment for the benefit of their population.[487]In addition, Principle 17 of the Stockholm Declaration calls on states to establish national institutions with the tasks of planning, managing and controlling natural resources for the enhancement of environmental quality:

[479] Ibid
[480] Ibid
[481] *Stockholm Declaration 1972, principle 1.*
[482] Ibid.
[483] Ibid., principle 7.
[484] Ibid, principle 7
[485] Ibid. Prin. 11
[486] Ibid, principle 11
[487] Ibid, principle 13

> *Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.*[488]

Thus, Principle 17 imposes a duty on the appropriate national institutions entrusted with the task of planning, managing, or controlling the environmental resources of States to enhance environmental quality.[489]Furthermore, Principle 21 recognises the sovereign right of states to exploit their natural resources in accordance with their environment, but also imposes a duty on states to ensure that environmental activities within their territories do not cause damage to others:[490]

> *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*[491]

On liability and compensation, Principle 22 of the Stockholm Declaration imposes a duty on States to cooperate in developing international law regarding liability and compensation for the victims of pollution and other environmental damages caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.[492]In other words, Principle 22 requires states to cooperate in developing the law on holding liable those whose activities cause environmental damage and of compensating its victims. Also, Principle 23 of the Stockholm Declaration requires each state to establish its standards based its values and laws concerning environmental issues.[493]

The above clarifies that the Stockholm Declaration is the first global instrument to establish principles for future international cooperation on environmental issues. Generally, the 26 principles established by this declaration are guidelines for states and individuals to protect the environment for present and future generations.[494] However, it is worth noting that as a diplomatic conference declaration, it is not formally binding, but it includes principles which, at the time of their adoption, were either already reflected in customary international law or expected to shape future normative standards, which have

[488] Ibid., principles 17.
[489] Ibid, principle 17
[490] Ibid., principle 21.
[491]Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF.48/14, at 2 and Corr.1 (1972), principle 21.
[492] Report of the United Nations on Human Environment, Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1, Stockholm Declaration, principles 22
[493] Ibid., principle 23
[494] Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF.48/14, at 2 and Corr.1 (1972), Principle 26

become part of general international law.[495]The International Court of Justice, in its Advisory Opinion on the *Legal of the Threat or Use of Nuclear Weapons,* endorsed the obligation as a rule of international customary law,[496] In its *Pulp Mills on the River Uruguay* decision, the Court confirmed that the state's obligation to prevent environmental issues is one of due diligence.[497]

3.7.2 United Nations Convention on the Law of the Sea (UNCLOS) 1982

Accordingly, Article 193 of the UNCLOS recognizes states' right to exploit their natural resources under each state's environmental policies, following its duty to protect and preserve the environment.[498]This means states have the right to exploit the natural resources in their territory in accordance with their established environmental policies. However, this right is not without obligations, which include the following:

Firstly, Article 192 of the UNCLOS obliges states to protect and preserve the marine environment.[499]Interpreting this provision, the International Tribunal on the Law of the Sea (ITLOS), in its May 2024 Advisory Opinion, concerning the specific obligations of the States to the UNCLOS in relation to preventing, reducing and controlling pollution of the marine environment, has reiterated that this provision imposes legal obligations on states which underpins the legal order for the protection and preservation of the environment under the convention.[500] Accordingly, the ITLOS sets the three main obligations of states under Article 194 of the UNCLOS as: first, the obligation under paragraph 1 to take necessary measures is to prevent, reduce and control marine pollution, second, the obligation under paragraph 2 is to take measures required to ensure that some situations relating to pollution do not occur, and third, the obligation under paragraph 5 to take necessary measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.[501]

In addition, the Tribunal further states that Article 194, paragraph 1 of the UNLCLOS, provides for an obligation of conduct requiring States to act with "due diligence" in taking necessary measures to

[495]Günther Handl, *Declaration of The United Nations Conference on The Human Environment (Stockholm Declaration), 1972 And The Rio Declaration on Environment And Development, 1992* , UN Audio Visual Library of International Law, 2012

[496]International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports* 1996, p. 226.

[497]International Court of Justice*, Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.*

[498] United Nations Convention on the Law of the Sea, art.193

[499] UNLCOS, art.192

[500]Request For An Advisory Opinion Submitted By The Commission of Small Island States On Climate Change And International Law Advisory Opinion*. International Tribunal For The Law of The Sea. No. 31,* 21 May 2024, para.184

[501] Ibid.para.195

prevent, reduce and control marine pollution. [502]In particular, the Tribunal reiterates that the obligation of due diligence requires states to enact the domestic legislation, administrative procedures, and enforcement mechanisms necessary to regulate environmental activities and to exercise adequate vigilance to ensure that such systems function efficiently to achieve the intended objective.[503] The Tribunal's view on this obligation is in line with the ICJ's *Pulp Mill* judgment, in which the Court reiterated that:

> It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators. [504]

Moreover, the ITLOS further states that the due diligence obligation is particularly relevant when environmental activities are carried out by 'private persons or entities.'[505]The tribunal also reaffirmed that the obligation of due diligence is closely linked to the precautionary principle,[506]which is in line with the reasoning of the Seabed Disputes Chamber's Advisory Opinion that the precautionary approach is 'an integral part of the general obligation of due diligence.''[507]It is also noted that the obligation to conduct an environmental impact assessment (EIA), as required under Article 206 of the UNCLOS, encompasses the duty of vigilance and prevention.[508]This obligation concerns planned activities, which should be assessed before implementing the environmental project.[509] In particular, the activities under assessment include those planned by private entities and states.[510]

In conclusion, from the above, it can be deduced that the due diligence obligation, linked to the precautionary approach that requires conducting an assessment before the commencement of the project, is incumbent upon private entities and states.

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[502] Ibid. para. 134
[503] Ibid.135
[504] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I), p. 14, at p. 79, para. 197.
[505] *Request For An Advisory Opinion Submitted By The Commission of Small Island States On Climate Change And International Law Advisory Opinion. International Tribunal For The Law of The Sea. No. 31,* 21 May 2024, para.236
[506] Ibid, para. 242
[507] See *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion*, 1 February 2011, ITLOS Reports 2011, p. 10, at p. 46, para. 131
[508] *Request For An Advisory Opinion Submitted By The Commission of Small Island States On Climate Change And International Law Advisory Opinion. International Tribunal For The Law of The Sea. No. 31,* 21 May 2024, para.236
[508] Ibid, para. 356
[509] Ibid, para. 358
[510] Ibid, para. 358

3.7.3 Rio Declaration on Environment and Development 1992

The Rio Declaration reaffirms and builds upon the Stockholm Declaration, which has proved to be a significant environmental legal instrument.[511] Principle 2 of the Rio Declaration on Environment and Development 1992, recognizes the sovereign right of states to exploit their natural resources in accordance with their environment and development, but also imposes a duty on them to ensure that environmental activities within their territories do not harm others.[512]

The Rio Declaration imposes duties on states to uphold human rights and protect the environment.[513] Principle 4 emphasises environmental protection as an integral part of the development process. [514]Principle 7 considers the various contributions to global environmental degradation, and the common but differentiated responsibilities of States.[515]However, Principle 11 imposes a duty on States to enact environmental legislation, standards, management, and priorities that are in line with the development context. [516]Additionally, Principle 13 imposes a duty on states to provide compensation for victims of environmental pollution and damages and urges states to develop further international law on the liability and compensation for adverse environmental damages caused by activities in their territories, as:

> *'States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.'*[517]

Furthermore, Principle 15 calls for the application of the precautionary approach to environmental protection,[518]whereas Principle 17 imposes the duty to undertake

[511] The Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, Annex I.
[512] Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, principle 2.
[513] Ibid
[514] Rio Declaration On Environment And Development (Rio de Janeiro, 3-14 June 1992), 4
[515] Ibid, principle 7
[516] Ibid, principle 11
[517] Rio Declaration 1992, Principle 13
[518] Ibid, 15

Environmental impact assessment for all activities that have an adverse effect on the environment.[519]And finally, Principle 27 recognizes that states and people cooperate in 'good faith' *for the fulfilment of the principles.*[520]

3.7.4 UN Guiding Principles on Business and Human Rights 2011

The UN Human Rights Council, on 16 June 2011, endorsed the United Nations Guiding Principles on Business and Human Rights, succinctly referred to as the Guiding Principles (GPs).[521] These Guiding Principles provide for the states' duty to protect against human rights abuses by third parties,[522] corporate responsibility to respect human rights[523] and greater access by victims to effective remedies, both judicial and non-judicial.[524]In this regard, Guiding Principle 19 requires companies to have a human rights policy statement. [525]Principle 4 stipulates that due diligence must be placed on the company.[526] Whereas Principle 23 requires that companies must obey all existing laws, "respect internationally recognised human rights and treat the possibility of directly violating human rights or being indirectly complicit in its abuse as a legal compliance issue where they operate.''[527]Guiding Principle 2 requires home states to be proactive in asserting control and monitoring their companies to ensure they respect human rights, mainly where those companies operate in developing countries.[528] Principle 7 stipulates that states must ensure heightened corporate respect for human rights in conflict zones.[529]

The Guiding Principles specifically direct states to review their laws and policies, identifying gaps in conformity with their duty to ensure that corporations demonstrate increased respect for human rights wherever they operate.[530] The review of laws includes articulating administrative, civil, or criminal liability and creating judicial remedies for corporations operating within the home jurisdictions that commit human rights violations abroad.[531] Consequently, the decision to establish an African court

[519] Ibid, 16
[520] Ibid, 27
[521] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises UN Doc. A/HRC/17/31 (21 March 2011). ['GPs'].
[522] UN Guiding Principles
[523] ibid
[524] Ibid
[525] GP 19
[526] GP 4
[527] UN Guiding Principles 23
[528] UN Guiding Principle 2
[529] Ibid 7
[530] UN Guiding Principles 7
[531] This duty aligns with states' commitment under international criminal law. See further commentaries to GPs 7, 17, 23 and 25 that states should prevent barriers to legitimate human rights cases from being brought before the courts.

with extended jurisdiction to address corporate criminal liability aligns with the business and human rights framework, which addresses the issue of companies' responsibility to respect human rights.[532] Weak extractive resource governance and the inability to transform resource projects into impactful development outcomes constitute sufficient reasons to establish a court with jurisdiction over the criminal excesses of MNCs.[533]

3. 8 Chapter Summary and Conclusion.

In summary, this chapter outlines the laws governing the obligations of states and non-state actors' to uphold human rights and the environment under international law. It also highlights the human rights obligations of non-state actors, focusing on multinational corporations in the extractive industry under international law and some elements of domestic law. Nevertheless, it suffices to state that whilst there are various legally binding provisions in different regional and international legal instruments imposing direct obligations on states to ensure human rights are upheld in their territories, which also includes making sure that human rights are not violated by third parties including corporations in their territories, the same cannot be said for multinational corporations who have gained a position at the international stage by possessing certain rights, especially under international economic law, in the form of foreign investment protection against illegal expropriation, discrimination and other actions that may affect their investments.[534] In addition, it is argued that multinational corporations have obligations under international law as well, particularly with respect to human rights and protection of the environment. [535]However, there are no legally binding instruments for multinational corporations under international law. There are guiding principles, declarations and other instruments that aim to address human rights abuses caused by multinational corporations and to establish responsibilities to respect human rights, but these are not legally binding. [536]Nevertheless, non-binding instruments can contribute to the development of binding norms.[537] For instance, non-binding rules are prevalent in environmental law, international financial law, and anti-money laundering law.[538]

[532] Ibid
[533] Ibid
[534]Cecily Rose, Niels Blokker, Daniella Dam-de Jong, Simone van den Driest, Robert Heinsch, Erik Koppe, and Nico Schrijver, An Introduction to Public International Law, Cambridge University Press, 2022
[535]Ibid.
[536]Cecily Rose, Niels Blokker, Daniella Dam-de Jong, Simone van den Driest, Robert Heinsch, Erik Koppe, and Nico Schrijver, An Introduction to Public International Law, Cambridge University Press, 2022
[537]Ibid.
[538]Ibid.

Finally, the case law also suggests that the obligation of due diligence is linked to the precautionary approach, which requires both private entities and states to conduct an environmental impact assessment before the commencement of environmental projects. The next chapter focuses on environmental laws in Italy and Sierra Leone. It will principally present the rules relevant to the extractive industries in the two countries.

CHAPTER FOUR: ENVIRONMENTAL LAWS IN ITALY AND SIERRA LEONE

4.1 Introduction

This chapter presents environmental laws of Italy and Sierra Leone. However, it is not exhaustive, as it places considerable emphasis on the rules covering the extractive industry. In other words, the focus is not on examining the general environmental laws but on those specific to the extractive industry. Nevertheless, a general overview of Italy's environmental laws is given. This will foster our understanding of the environmental legal framework in the selected countries. The first section (4.2) presents Italy's environmental laws. The second section (4.7) presents Sierra Leone's environmental laws as presented below:

4.2 Italy's Environmental Laws

This section presents background information on Italy followed by an environmental laws. It focuses on the environmental laws relating to the extractive industry in Italy. Thus, the following is worth noting:

4.2.1 Background Information on Italy

Italy transitioned to a Republic in 1946 after a referendum in which 54 percent of the electorate approved it, ending the Monarchy's rule.[539]It is a constitutional Republic with a multiparty political system.[540] The Prime Minister exercises executive powers and serves as the president of the Council of Ministers (in Italian: Presidente del Consiglio).[541]Despite being a unitary state, the Republic recognizes and promotes local autonomy and decentralization.[542] The country is divided into regions, which are the first-level administrative divisions. There are around 20 regions, and each region (except Aosta Valley), is divided into provinces (107) and municipalities (or Communes).[543]

Regarding mineral extraction activities, Italy remains the second-largest producer of steel in Europe, after Germany, and the world's largest producer of feldspar minerals.[544] It also has high export rates

[539] G. Conso, Dalla flessibilità dello Statuto albertino alla rigidità della Costituzione repubblicana, Giurisprudenza italiana 151, 1977 (1999).
[540]Ibid.
[541] Ibid.
[542] The Italian Constitution 1947, art.5
[543] MINLEX - Italy Country Report, 2017. Study on the Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU" (abbreviated as MINLEX), from December 2015 until May 2017. It was updated in 2019.
[544]European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016, available at: https://data.europa.eu/doi/10.2873/920344

of natural stones, especially marble.[545] For instance, studies have revealed that there are nearly 4900 active quarries, a quarter of which are in the Lombardy and Veneto regions. [546]Therefore, it is essential to acknowledge that the extraction of such natural resources is not without environmental consequences. As a result, public actions by various institutions for environmental governance remain crucial. Thus, the following section highlights the Italian environmental governance. The institutional framework of environmental governance focuses on implementing laws and regulations. The rationale for including governance is to show how the environmental laws make provision for the empowerment of institutions on environmental protection and human rights.

4.2.2 A Brief Overview of Environmental Governance in Italy

Accordingly, environmental governance ‘’refers to the set of regulatory processes, mechanisms and organizations’ through which political actors influence environmental actions and outcomes.’’[547]Under Italian law, the power to legislate on environmental matters in certain areas is entrusted to the exclusive competence of the national state government as provided under the Italian Constitution.[548]Nevertheless, there is decentralisation and shared competence between the central state government and the various regions.[549] However, owing to the scope of the study, it is not intended to examine all environmental laws in Italy. Instead, a general legal framework for environmental governance at national and regional levels, with a particular focus on regulations concerning the Italian extractive industry, is presented.

4.2.2.1 Ministry of Environment and Energy Security (Ministero dell’Ambiente e della Sicurezza Energetica or ‘MASE’*)*

At the national level, the Ministry of Environment and Energy Security (*Ministero dell’Ambiente e della Sicurezza Energetica* or ‘MASE’) is the primary institution responsible for environmental issues.[550] The MASE plays a key role in environmental protection by promoting good practices and environmental education.[551]For instance, the MASE can confer an Environmental Merit Award to

[545]Ibid.
[546]European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016.
[547] Maria Carmen Lemos and Arun Agrawal, *Environmental Governance,* Annu Rev. Environmental Resources 2006, 31.297—325, p. 298.
[548] The Italian Constitution 1948 (as amended in 2001), art. 117 (2).
[549]European E-Justice Portal, *Access to Justice in Environmental Matters: Access to Justice at Member State level*, 22/05/2025.
[550] Ministry of Environment and Energy Security. Available at: https://www.mase.gov.it
[551]Ibid.

individuals, corporate bodies and organizations whose work has 'acquired a particular merit in the field of environmental protection and conservation.'[552]

The MASE also guides and supervises the various bodies that carry out environmental management tasks, including protecting the environment.[553]These bodies include the Higher Institute for Environmental Protection and Research (ISPRA), the National Agency for New Technologies, Energy and Sustainable Economic Development (ENEA), the Energy Services Manager (GSE), the Nuclear Plant Management Company, and National Natural Heritage, among others.[554] In addition, MASE also confers some environmental-related functions to other authorities, such as the Ministry of Health, the Ministry of Agriculture and the Ministry of Culture, which could cause some organisational challenges, [555]especially in terms of coordination, for instance.

The MASE assigns critical administrative tasks to regional and local authorities, such as planning procedures, environmental authorisations, standards setting, sanctions, and control. For instance, the regional authorities have planning powers, whereas the municipalities are entrusted with urban planning.[556]

There is also a steering committee between the state and the regions that can rule on specific environmental matters.[557]However, it is worth noting that both national and local environmental regulators have a wide range of powers to prevent and sanction violators of environmental rules, whether administrative or criminal offences affecting the environment.[558] For instance, the regional authorities are permitted to conduct environmental inspections to determine whether or not the requirements set in a particular environmental permit have been met.[559]

4.2.2.2 Regional Environmental Protection Agencies in Italy

Generally, the governance of environmental protection in Italy is decentralised between the national government and the various regions.[560]However, the Italian Constitution guarantees that the state has

[552] Presidential Decree 406/89
[553] Ministry of Environment Energy and Security.
[554] Ibid
[555] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023* Available at: https://practiceguides.chambers.com/practice-guides/comparison
[556] Ibid.
[557] Aristide Police, Q & A on Environmental law in Italy, Clifford Chance 2012
[558] Ibid
[559] Ibid.
[560] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016.

exclusive competence to legislate on environmental matters.[561] Evident to the State's exclusive competence is the power of the State to determine legal standing on environmental and related matters, in which national rules on legal standing are applicable in the whole country.[562]

There are regional environmental protection agencies across the country, whereby each region has its own laws. The regional agencies are responsible for developing environmental protection policies and legislation in compliance with national legislation.[563] In this regard, Article 117, paragraph 3 of the Italian Constitution empowers the Regions the concurrent legislative competence in the following environmental areas, such as urban planning, health, civil protection, production, transportation and energy distribution.[564] In addition, the regions also performed the following administrative functions:

(i) planning procedures, (ii) setting standards, (iii) authorising environmental activities, (iv) economic measures, (v) sanctions (criminal[565]and administrative offences[566] affecting the environment), (vii) controlling, and (viii) monitoring activities for compliance with environmental rules.[567]The regional authorities can also conduct inspections to verify that conditions on environmental permits are met, including the power to collect and analyse samples.[568]

The functions stated above confirmed the shared competence or decentralized nature of the governance of the extractive industry and environmental protection between the state government and the regions.[569]At the time of writing, there are around 21 regional environmental protection agencies in Italy, which are named after their regions, presented in Table 3 as follows:[570]

[561] The Italian Constitution, 1948, art. 117 (2).
[562] European E-Justice Portal, *Access to Justice in Environmental Matters: Access to Justice at Member State level*, 22/05/2025.
[563] Aristide Police, Q & A on Environment in Italy, Clifford Chance 2012
[564] The Italian Constitution 1948.
[565] Relevant provisions, dealing with inspections, searches, sequestrations and the like, are mainly found in the Code of Criminal Procedure, in the Administrative Sanctions Act (Law No 689/1981), in the Code, and in the respective environmental permits.
[566]Integrated into the Administrative Procedure Act (Law No. 241/1990) (APA)
[567] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023*
[568] Ibid
[569]Ibid.
[570] Ministry of Environment Energy and Security. Available at : https://www.mase.gov.it/pagina/agenzie-regionali-protezioni-ambiente

REGIONAL ENVIRONMENTAL AGENCIES	REGIONAL ENVIRONMENTAL AGENCIES
1. **Abruzzo**: Regional Agency for Environmental Protection 2. **Basilicata**: Regional Agency for Environmental Protection 3. **Calabria:** Regional Agency for Environmental Protection 4. **Campania**: Regional Agency for Environmental Protection 5. **Emilia Romagna**: Regional Agency for Environmental Protection 6. **Friuli Venezia Giulia:** Regional Agency for Environmental Protection 7. **Lazio**: Regional Agency for Environmental Protection 8. **Liguria:** Regional Agency for Environmental Protection 9. **Lombardy**: Regional Agency for Environmental Protection 10. **Marche**: Regional Agency for Environmental Protection	11. Molise: Regional Agency for Environmental Protection 12. Piedmont: Regional Agency for Environmental Protection 13. Puglia: Regional Agency for Environmental Protection 14. Sardinia: Regional Agency for Environmental Protection 15. Sicily: Regional Agency for Environmental Protection 16. Tuscany: Regional Agency for Environmental Protection 17. Umbria: Regional Agency for Environmental Protection 18. Veneto: Regional Agency for Environmental Protection 19. Valle D'Aosta: Regional Agency for Environmental Protection 20. Provincial Agency for Environmental Protection - Trento 21. Provincial Agency for Environmental Protection - Bolzano[571] Source: *Ministry of Environment Energy and Security*

[571] Ibid.

The regional agencies listed above are empowered to make decisions and authorise environmental activities concerning environmental protection and mineral extraction in their localities.[572] Also, the regions are empowered by the Environmental Code (EC) allows the Regions to introduce stringent rules regarding environmental protection.[573]Notably, private entities are also responsible for carrying out specialised tasks, such as consortia of certain products utilised by companies or providing particular expert services, like managing environmental waste.[574]

4.2.2.3 Environmental Protection Associations (Environmental NGOs)

Under Italian law, environmental protection associations carry out environmental protection and related functions.[575] They have existed for at least three years, they are present in at least five regions, and they can submit an application to the Ministry for approval to be identified as an environmental protection association.[576]Specifically, Article 13 of Law 349/1986 states that:

> " *National environmental protection associations and those present in at least five regions are identified by decree of the Minister of the Environment on the basis of the programmatic purposes and the internal democratic order provided for by the statute, as well as the continuity of the action and its external relevance ...* "[577]

This implies that such associations must have been established in the region with regional headquarters, focusing on environmental protection, in compliance with relevant laws and regulations and that their activities must have continued in the three years preceding the application.[578] In other words, to be recognised by the MASE and to have legal standing, associations must fulfil the following requirements: they must operate across the whole country or at least in five (5) regions, have and adhere to democratic internal rules, focus on environmental protection and continued action.[579]

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[572]European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016. Available at: https://data.europa.eu/doi/10.2873/920344

[573] See Environmental Code (Legislative Decree 152/2006).

[574] Ibid.

[575] Ministry of Environment Energy and Security. Available at: https://www.mase.gov.it/pagina/associazioni-di-protezione-ambientale-art-13-legge-8-luglio-1986-n-349

[576] Ministry of Environment Energy and Security. Available at: https://www.mase.gov.it/pagina/associazioni-di-protezione-ambientale-art-13-legge-8-luglio-1986-n-349

[577] Law n. 349/86, of 8 July 1986, art.13

[578] Ministry of Environment Energy and Security

[579] European E-Justice Portal, *Access to Justice in Environmental Matters: Access to Justice at Member State level*, 22/05/2025

Associations must fulfil these criteria to be approved and recognised by the MASE as environmental protection associations.[580]

Additionally, Italian caselaw revealed that judges can also confer legal standing to organisations and ad hoc groups that represent the interests of those affected by environmental decisions upon establishing a concrete link to that effect, on a case-by-case basis, and provided that such groups or associations are involved in environmental protection and related matters and represent local affected communities.[581] The extension of such legal standing by judges is also conferred upon foreign NGOs representing communities affected by an environmental decision.[582] Examples of foreign NGOs active in Italy include: *Greenpeace Italia; WWF Italia*; *Earth Council Italia; Society for International Development Italy; World Farmers' Organization (WFO); Action Committee for the Three Global Conventions (CA3C); and Friends of the Earth Italy.*[583]

Finally, the **Italian national Police Force**, also have powers to ensure compliance with environmental laws. Worth noting in this regard are the Ecological Operational Unit of the *Armadei Carabiniri (or Nucleo Operativo Ecologico dei Carabinieri),* with the powers to levy administrative fines, suspension of permits or report to the Public Prosecutor.[584]The section below outlines the environmental laws and regulations applicable to the extractive industry in Italy.

4.3 Environmental Laws in Italy

It is pertinent to note that, as a member of the European Union, Italy has a significant portion of its environmental legislation based on EU Law.[585] This is also reflected in the Italian Constitution, which underpins the state's commitment to international involvement and the establishment of an international order for a peaceful world.[586] This commitment is enshrined under Article 11 of the constitution,[587] which includes the acceptance of the State's conditions of parity and the limitations of sovereignty necessary for the creation of a just and peaceful international system, which has formed the basis of Italy's participation in the European integration, starting with the establishment of the

[580] Ministry of Environment Energy and Security
[581] Cons. Stato, Sez. V, 22 Marzo 2012, no 1640; see also Caranta, R. (2013), 'Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy', 13; European Commission 2019, Report on European Union implementation of the Aarhus Convention in the area of access to justice in environmental matters, Brussels, 10.10.2019 SWD(2019) 378 final.
[582]European E-Justice Portal, *Access to Justice in Environmental Matters: Access to Justice at Member State level*, 22/05/2025
[583]Ibid.
[584] Ibid.
[585]Legislative Decree No/ 152 of 3 April 2006 (as amended) (Environmental Code)
[586] Rainer Grote, *Oxford Constitutional Law: The Italian Republic: Introductory Note,* Oxford Constitutions of the World, Oxford University Press, 2013.
[587] Constitution of the Italian Republic, 1948, art.11

European Coal and Steel Community in 1951, and later the founding of the European Communities in 1957, and with the treaties establishing the European Union in the 1990s.[588]Therefore, it is unsurprising that the Italian Constitutional Court has used Article 11 as the legal basis for implementing and distinguishing the primary and direct effects of Community law developed by the European Court of Justice.[589]For instance, the Italian Constitutional Court has recognised the primacy of EU law over conflicting national law and its direct effect in Italy, in which it held that the Italian sovereignty is limited by the treaties establishing the European Community and the EU, whose effect cannot be ignored or nullify as interpreted by the European Court of Justice, neither the legislature may take any action that contradicts Community law.[590]In this regard, the Italian Constitutional Court has also reiterated that national law which contradicts EU Law also violates Article 11 of the Constitution:

> since respect for the primacy and direct effect of Community law is one of the primary obligations resulting from Italian membership in the European Communities/the European Union, the failure to comply with these obligations is also inconsistent with Article 11 by which the Italian State has agreed to the limitations of its sovereignty which are the necessary consequence of its decision to become involved in the European integration process.[591]

Therefore, it is not surprising that the adopted environmental principles originated in the European legal system, particularly the case law of the Court of Justice of the EU, coupled with Italian legislation and the Constitutional Court case law. [592]Hence, the key Italian environmental policies and principles are those provided by European Union Law, which includes the **integration principle, the precautionary and preventive action principle, the principle of rectifying environmental damage at its source, the "polluter pays" principle, and high-level environmental protection**.[593] Nevertheless, at the domestic level, there is significant environmental protection legislation encompassing both constitutional provisions and legal frameworks.

4.3.1 Theoretical perspective of Environmental duty in Italy.

Environmental law could be defined as the set of legal rules that protect these full rights, and consequently, environmental protection outlines the competence of the public authorities or

[588] Rainer Grote, *Oxford Constitutional Law: The Italian Republic: Introductory Note,* Oxford Constitutions of the World, Oxford University Press, 2013.
[589]See Van Gend & Loos, Case 26/62, [1962] European Court Reports (=ECR) 1.
[590] Corte costituzionale, Decision No. 183/1973; Corte costituzionale, Decision No. 170/1984.
[591] Corte Costituzionale, Decision no. 115/1993.
[592]Legislative Decree No/ 152 of 3 April 2006 (as amended) (Environmental Code)
[593] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023.*

parliament.[594]It is therefore, worthy to note that such description chiefly related to those systems of law, such as the Italian, where the Constitution provides a clear legislative or public power with respect to the environment.[595]In particular, Giannini tried to based his idea on Constitutional provisions that were closely connected with the principles of planning, which was vested under the regional level competence; health, with respect to pollution which could affect people's health, who damaged the environment; and the preservation of natural beauty, which charged under the responsibility of the Republic.[596]

Under the Italian legal system, scholar have suggested, from a legal point of view, that a comprehensive idea of the environment does not exist. For instance, Massino Severo Gianniniar argued that environmental law comprises of three specific areas of law such as planning law, pollution law and natural beauty law.[597] However, it is pertinent to note that this notion was emphasised when environmental issues were not recognised in the Italian Constitution, as opposed to now, when environmental issues have been added to the State's legislative powers, as a result Constitutional amendments of 2001 and 2022.[598] Apparently. the full rights theory and the tripartition theory do not seem appropriate, in current Italian dispensation where the Constitution made provisions acknowledging the environment as an autonomous issue and stipulates specific competence vested in some authority.[599]Thus the three elements grouped in the idea of environment are now taken into account distinctively under Constitutional provisions and principles.[600]The next section presents the environmental legal frameworks of Italy.

[594] Fabrizio Fraccia, *The Legal Definition of Environment: From Rights to Duties Fabrizio Fraccia. Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.) Legal Studies Research Paper Series, Research Paper No. 06-09*

[595] Ibid.

[596] Ibid.

[597] Massimo Severo GIANNINI, "Ambiente": saggio sui suoi diversi aspetti giuridici, RIV. TRIM. DIR. PUBBL (R.T.D.P.), 23 (1973). For an overview of other theories (especially prof. Alberto PREDIERI idea of environment connected to natural beauties topic), See Fabrizio FRACCHIA, Sulla configurazione giuridica unitaria dell'ambiente: art. 2 cost. e doveri di solidarietà ambientale, DIRITTO DELL'ECONOMIA 215 (2002)

[598] Constitutional Law No. 3 of 10 October 2001, Gazz. Uff. 2001, October 24 No. 248 (It.); Constitutional Law No. 1 2022, (in Official Gazette No.44 of 22 February 2022).

[599]Fabrizio Fraccia, *The Legal Definition of Environment: From Rights to Duties Fabrizio Fraccia. Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.) Legal Studies Research Paper Series, Research Paper No. 06-09*

[600]Ibid.

4.3.2 Legal Frameworks on Environmental Protection in Italy

This section highlights the key legislation on environmental protection in Italy. However, it is not exhaustive, as numerous environmental protection laws have been enacted. Therefore, an overview of those related to the extractive industry is presented.

4.3.2.1. The Constitution of Italy

Although the Italian Constitution does not initially provide for environmental rights, they are addressed through legislative frameworks and the rulings of the Constitutional Court.[601] However, the Constitution affirms the principles and norms regarding the environment and its protection as one of the values entitled to be guaranteed.[602] In other words, the absence of explicit references in the Italian Constitution does not affect the affirmation of the existence of constitutional principles concerning environmental protection, which refers to the protection of property rights,[603] the right to health,[604] and the need to protect cultural and landscape heritage,[605] which the Constitutional Court has developed over time.[606] For instance, the Constitutional Court has ruled in favour of the Umbria region concerning the extension of a mining authorisation.[607]The legal question in this case was whether certain rules governing the extension of existing authorisations for quarry exploitation are in accordance with the Italian Constitution and European laws on environmental impact assessment.[608] This follows the extension of the exploitation permit due to the crisis in the Umbria region under Article 5 of its regional law 7/2012, which simplifies the extension of the exploitation permit, linking it to the economic crisis. [609]However, the Italian President of the Council of Ministers contested this law, arguing that it conflicts with the EU Directive on Environmental Impact Assessment and the national legislation 152/2006, including Articles 9 and 117 of the Italian Constitution.[610]The Constitutional Court concluded that the regional provision aligned with environmental protection

[601] Corte Costituzionale, Decision No. 183/1973; Corte Costituzionale, Decision No. 170/1984; Corte Costituzionale, Decision no. 115/1993.
[602] Stefano Grassi, Marcello Cecchetti, Alessandro Andronio, Antonio Borzì, Gianni Taddei and Andrea L. Davis, *Environmental Law in Italy* (Second Edition, Wolters Kluwer, 2019).
[603] Constitution of the Italian Republic 1948, art. 42
[604] Constitution of the Italian Republic
, 1948, art. 32
[605] Constitution of the Italian Republic, 1948, art. 9
[606] Stefano Grassi, Marcello Cecchetti, Alessandro Andronio, Antonio Borzì, Gianni Taddei and Andrea L. Davis, *Environmental Law in Italy* (Second Edition, Wolters Kluwer, 2019).
[607] Case No.: Constitutional appeal no. 88/2012, judgment No.: 246/2013
[608] Ibid.
[609] Ibid.
[610] Ibid.

standards set under the Legislative Decree No. 152 of 2006 and the EU Directive 85/337/EEC,[611] the region did not violate any Constitutional provision as asserted by the state government.[612] The Constitutional Court confirmed that the region of Umbria has the right to approve the regulation in question for the extension of mining authorisations that were subject to environmental impact assessment when granted.[613]

The Italian codification of environmental law is within the state's exclusive legislative competence.[614] In that regard, Article 117 of the Italian Constitution (as amended in 2001) declares that the State enjoys exclusive competence in the area of, *inter alia*, the "protection of the environment, the ecosystem and cultural heritage."[615]However, the Constitutional Court has confirmed in its judgment No.407/2002 that regional legislative power exists in environmental issues.[616] In particular, the Court has legitimised the regions' environmental law-making alongside the State's, particularly when regional law introduces stricter forms of protection.[617]This means the state government and the regions share competence on environmental matters. However, while the state has exclusive competence in environmental protection and related issues, the various regions also have the power to make environmental laws in their localities alongside the state. This is provided for in Article 117 of the Constitution, which states that legislative powers shall be vested in the State and the Regions, subject to constraints deriving from EU legislation and international obligations.[618]The concurring legislative power applies to enhancing cultural and environmental assets. [619]This means that the state and the regions have concurrent or shared legislative powers to address cultural, environmental and related issues.

Notably, although the Italian Constitution[620] does not explicitly provide for environmental protection; rather, environmental protection can be referred to from the following provisions:

- Article 9 deals with the protection of 'natural landscape and the historical and artistic heritage'

[611] Council Directives on the assessment of the effects of certain public and private projects on the environment (27 June 1985), (85/337/EEC)
[612] Case No.: Constitutional appeal no. 88/2012, judgment No.: 246/2013
[613] Ibid
[614] Fabrizio Fracchia, ''*Codification" and the Environment*. Italian Journal Of Public Law (2009) 1-22, vol 1.
[615] The Constitution of the Italian Republic 1947, art.117 (q)
[616] Judgment no. 407/2002 (ECLI:IT: COST:2002:407, 10 July 2002.
[617]Corte Costituzionale, Decision No. 303/2003; Fabrizio Fracchia, ''*Codification" and the Environment*. Italian Journal of Public Law (2009) 1-22, vol 1
[618] Ibid, art.117
[619] Ibid.art.117
[620] Constitution of the Italian Republic 1948.

- Article 32 on the protection of health as a fundamental right of the individual and as a collective interest.
- Article 41 deals with the prohibition of economic enterprise against the common good
- Article 44 on the rational use of land.
- Article 117(s), which provides for the exclusive competence of the state and not of the Regions in matters regarding the ‘’protection of the environment and the ecosystem.’’[621]

In the author's view, the above provisions could be considered to implicitly serve as the legal basis for environmental protection in the country.

4.3.2.2 Constitutional Law No.1 of 11 February 2022 (Amended Articles 9 and 41 of the Italian Constitution)

Constitutional Law No. 1 of 2022 amends Articles 9 and 41 of the Italian Constitution to incorporate environmental protection as a fundamental principle, with a focus on sustainable development.[622]In particular, Article 9 of the Constitutional Law states that:

> ‘The Republic shall promote the development of culture and of scientific and technical research.
>
> It shall safeguard the natural beauties and the historical and artistic heritage of the Nation.
>
> *It shall safeguard the environment, biodiversity and ecosystems, also in the interest of future generations. State law shall regulate the methods and means of safeguarding animals.*[623]

Form the above, it is clear that the original focus of Article 9, paragraph 1, focuses on the state's duty to promote the cultural and scientific research and safeguards the landscape, historical and artistic heritage. However, the 2022 amended Article 9, paragraph 3, explicitly imposed duties on the state to protect the environment, ecosystems and biodiversity, and introduced constitutional basis for sustainable development and as well as mandated state law for animal protection.[624]This means that, the state has a duty to protect the environment, culture, biodiversity and the ecosystem on the one hand, and the constitutional guarantee of the sustenance of future generations, on the other.

Furthermore, Article 41 of the Constitutional Law No.1 states that:

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[621] European E-Justice Portal, *Access to Justice in Environmental Matters: Access to Justice at Member State level*, 22/05/2025

[622] Constitutional Law No. 1 2022, (in Official Gazette No.44 of 22 February 2022)

[623] Constitutional Law of 11 February 2022, No.1, (in Official Gazette No.44 of 22 February 2022), provided, by Art. 1, para. 1 for the insertion of two new sentences at the end of the article.

[624]Constitutional Law of 11 February 2022, No. 1, in Official Gazette No. 44 of 22 February 2022, provided, by Art. 1, para 1, for the insertion of two new sentences at the end of the article.

Private economic enterprise shall have the right to operate freely. It cannot be carried out in conflict with social utility or in such a manner as may harm health, the environment, safety, liberty and human dignity.

The law shall determine appropriate programmes and checks to ensure that public and private economic enterprise activity be directed at and coordinated for social and environmental purpose.[625]

Also, from the above, it is clear that the original focus of Article 41, paragraph 1, of the Italian Constitution is the recognition of private economic activities, but in which such activities must not compromised human dignity, and the coordination of such activities not just for social, but also the environmental purposes. In other words, it creates legal framework for private economic activities that must adhere to environmental sustainability. Additionally, the 2022 amended Article 41, paragraph 3, has explicitly mandated that economic activities must not harm the environment and allows laws to direct and coordinate economic activities not just for social, but also for environmental purposes.[626]

In summary, Constitutional Law No. 1, Amendment of Articles 9 and 41 recognised the protection of the environment as a fundamental principle, but also imposed an obligation to protect biodiversity and ecosystems, and to restrict private economic activities that have an adverse effect on the environment in consideration of future generations.[627] This means there is a constitutional guarantee obliging the state to protect the environment for the present and future generations. Thus, it could be concluded that, the 2022 Constitutional amendment of Articles 9 and 41 of the Italian Constitution provides constitutional guarantee for sustainable development and intergenerational responsibility, by imposing duty on the state to protect nature, biodiversity, and ecosystems, including the reinforcement of the legal framework for private economic activities without compromising environmental sustainability. [628]

[625] Constitutional Law of 11 February 2022, No.1, (in Official Gazette No.44 of 22 February 2022), provided, by Article 2.para.1 letter a), for the amendment of Article 41, para.2; and, by Article 2, para. 1 letter b), for the amendment of Article 41, para. 3

[626] Ibid.

[627] Constitutional Law of 11 February 2022, No. 1, in Official Gazette No. 44, of 22 February 2022, provided, by Art. 2, para. 1, letter a), for the amendment of Art. 41, para. 2; and, by Art. 2, para. 1, letter b), for the amendment of Art. 41, para. 3.

[628] Ibid.

4.3.2.3. Legislative Decree No 152/2006 ‘’(the ‘Code’)’’

Legislative Decree No.152 aims to promote the quality of human life by protecting and improving environmental conditions and the prudent and rational use of natural resources.[629] It sets out the framework applicable to all matters concerning environmental protection, including the definition of procedures relating to Environmental Impact Assessments, Strategic Environmental Assessments, and Integrated Environmental Authorisation.[630] Specifically, the legislation applies to the following matters: ‘’*the procedures for strategic environmental assessment (SEA), environmental impact assessment (EIA) (Per La Valutazione Dell'impatto Ambientale (VIA)) and for integrated environmental authorization (IPPC) or (or (E Per L'autorizzazione Integrata Ambientale (IPPC): soil protection and combating desertification, water protection from pollution and the management of water resources; waste management and remediation of contaminated sites; air protection and reduction of emissions into the atmosphere; in part six, compensation protection against environmental damage*.’’[631]

The Code is composed of six Parts:[632]

- *’’Part I (articles 1-3) defines the application scope and outlines general provisions applicable to all areas covered by the Code.*
- *Part II (arts. 4-52) defines and regulates the procedures related to the Strategic Environmental Assessment (VAS), Environmental Impact Assessment (VIA) and Integrated Environmental Authorization (IPPC).*
- *Part III (arts. 53-176) is devoted to soil protection (particular regard is given to the need to combat desertification), protection of waters against pollution and management of water resources. Regarding water policy and management, the national territory is divided into hydrological districts, upon which basin plans will be implemented.*
- *Part IV (articles 177-266) addresses waste management and the rehabilitation of polluted sites. It provides for the arrangement of the Integrated Waste Management Service.*

[629] Legislative Decree No. 152 of 3 April 2006 (as amended) (Environmental Code), art.2
[630] Ibid.
[631] Legislative Decree No 152/2006, art. 1(a-e)
[632] Legislative Decree No. 152/2006 approving the Code on the Environment.

- *Part V (arts. 267-298) addresses air quality and aims to reduce emissions into the atmosphere. Part VI (arts. 299-318) implements the precautionary principle and lays down the liability regime.''*[633]

Additionally, it protects against water pollution.[634]It also provides for implementing the precautionary principle and establishing the liability regime.[635]Accordingly, this law defines Environmental Impact Assessment Procedure (EIA) as:

> ' *the preparation of a study concerning the impact on the environment that may result from the construction and operation of a work whose project is subject to approval or authorization, the holding of consultations, the evaluation of the environmental study and the results of consultations In the decision-making process of approval or authorization of the project of the work, and the provision of information about the decision is available.*'[636]

Therefore, the law also stipulates that a strategic environmental assessment must be conducted during the preparation of the plan or program and before its approval in the legislative or administrative process.[637]Thus, an environmental report must identify, describe and evaluate the significant effects that the implementation of the proposed plan or program could have on the environment and cultural heritage, as well as the reasonable alternatives that may be adopted in view of the objectives and spatial scope of the plan or programme itself.[638]Article 13 of the law provides for the publication of an EIA decision.[639]This law also recognises the competence of regions or local authorities in approving environmental assessments,[640]It stipulates that the regions and the autonomous provinces of Trento and Bolzano shall be regulated by their laws and regulations, the procedures for the strategic environmental assessment of plans and programs.[641]

It further established the Technical Advisory Commission for Environmental Assessments at the Ministry of the Environment and Protection of the Territory.[642] The Commission consists of seventy-eight members, in addition to the chairman and three vice-chairmen, chosen from university professors, professionals, and qualified experts in management systems, measurements, and design, as well as in geological, environmental, legal, economic, and social issues, and from among public

[633] Ibid.
[634] Ibid., arts. 53-176
[635] Ibid., arts. 299-318
[636] Ibid. art. 5 (b).
[637] Ibid, art. 8 (1)
[638] Ibid. art. 9
[639] Ibid. art. 13
[640] Ibid. art.21
[641] Ibid., art. 22
[642] Ibid. art. 6

administration executives.[643] This law also outlines the work of the Commission in three operational areas regarding procedures: (a) **strategic environmental assessment; (b) environmental impact assessment; (c) integrated pollution prevention and control**.[644]

In summary, the Legislative Decree no. 152 of 3 April 2006, doe not only harmonised and codified Italian environmental laws with the EU Directive, but it also sets out the legal framework on Environmental Impact Assessment (EIA); Strategic Environmental Assessment (SEA); Pollution Prevention and Control (IPPC); soil protection; water policy and management; waste and packaging management; contaminated land management; air quality; environmental damage and sanctions.[645]

4.3.2.4 Legislative Decree No. 231 of 8 June, 2001(as amended by Legislative Decree No.121 of 7 July, 2011)

This Legislative Decree imposes monetary sanctions on companies that have committed or are committing offences against the environment, either in the company's interest or to benefit an individual representative of the entity.[646]

4.3.2.5. Administrative Procedure Act (Law No 241/1990) (APA)

Accordingly, the Administrative Procedure Act establishes requirements for environmental permits, which are typically granted after compliance with specific administrative procedures as specified in the Act.[647] However, it is worth noting that some authorisations are of European origin, whereas others are of national origin. An example of the former includes the International Plant Protection Convention (IPPC) authorisation, whilst the latter consists of the Environmental Single (in Italian *Autorizzazione Unica Ambientale* (AUA)).[648]

In addition, environmental permits are required and granted only after extensive administrative procedures are carried out. Such licenses are issued under the relevant sectoral environmental legislative procedure, in which the authority concerned must submit a request for environmental permits at the national and local levels.[649]

[643] Ibid. art. 6 (3)
[644] Ibid. art. 6(4)
[645] Legislative Decree No. 152 of 3 April 2006 (as amended) (Environmental Code).
[646] Legislative Decree No.121 of 7 July 2011
[647] The Italian Administrative Procedure Act* Law N. 241, 7th August 1990
[647] Administrative Procedure Act (Law No 241/1990
[648] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023.*
[649] Ibid.

4.3.2.6. Administrative Sanctions Act (Law No 689/1981

This Act provided for inspections, searches, sanctions and environmental permits.[650]It allows the relevant authorities to monitor and verify whether environmental activities have met the conditions specified in the environmental permit.[651]

4.3.2.7. Legislative Decree No 195/2005

Accordingly, the Legislative Decree No. 195/2005 requires all stakeholders to make environmental information available to the public. [652]This ensures access to information and public participation in decision-making regarding environmental matters, as envisaged under the Aarhus Convention.[653] Italy is also a party to the Aarhus Convention, as the MASE acknowledges: *"The best way to deal with environmental issues is to ensure the participation of all interested citizens at different levels."*[654]This Convention reinforces the principles of access to information, public participation in decision-making and access to justice in environmental matters.[655]

4.4. Other Legislation

In addition to the above laws, other laws include: the Law of 23 December 2000, no. 388, which provides for the remediation and environmental recovery of mines.[656]Legislative Decree No. 624/1996 focuses on the health and safety of workers.[657]Legislative Decree no. 117/08, which transposes Directive 2006/21/EC, is an essential instrument for managing extractive waste.[658]Additionally, as stated above, as a member of the European Union, it is worth noting that a significant portion of Italian environmental legislation is based on EU law.[659]

Accordingly, as highlighted above, the regional agencies are empowered to make decisions concerning environmental authorisation and protection. The above legal framework shows Italy's decentralised regime between the central administration and the regions, with each region having its

[650] Administrative Sanctions Act (Law No 689/1981
[651] Ibid.
[652] Legislative Decree No 195/2005
[653] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice to Environmental Matters, Aarhus 25 June, 1998, United Nations Treaty Series, vol. 2161,p.447, entered into force 30 October 2001.
[654] Ministry of Environment and Energy Security. Available at: https://www.mase.gov.it/pagina/convenzione-di-aarhus-informazione-e-partecipazione.
[655] Convention On Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters, 25 June 1998
[656] Law No. 388 of 23 December 2000
[657] Legislative Decree No. 624/1996
[658] Legislative Decree no. 117/08
[659]Legislative Decree No/ 152 of 3 April 2006 (as amended) (Environmental Code)

laws (RL) regulating environmental permitting procedures and the extraction of mineral activities.[660] Therefore, the regions are empowered to conduct the following: (i) planning procedures, (ii) setting standards, (iii) authorising environmental activities, (iv) economic measures, (v) sanctions (criminal[661]and administrative offences[662]affecting the environment), (vii) controlling, and (viii) monitoring activities for compliance with environmental rules.[663] Authorities can also conduct inspections to verify that conditions on environmental permits are met, including the power to collect and analyse samples.[664]

4.5 Summary

This section presents Italy's environmental governance and laws. Environmental governance demonstrates the shared competence between the state and regions on environmental issues, meaning the state government recognises the regions' autonomy. Environmental laws are also made at the state and regional levels. In particular, the regions have autonomy within their localities on specific environmental issues. These include planning, setting standards, authorising environmental activities, and monitoring for compliance, among others. Nevertheless, the case law indicates that under Italian law, the state has exclusive power to implement regulations on environmental protection, but the regions can authorise complementary rules on environmental protection.[665] which develops both domestic and European laws.[666]Additionally, the 2022 Constitutional amendment of Articles 9 and 41 of the Italian Constitution does not only provides guarantee for sustainable development and intergenerational responsibility, by imposes duty on the state to protect nature, biodiversity, and ecosystems, including the guarantee for to carry out private economic activities without compromising environmental sustainability.[667]

The next section in this chapter is on Sierra Leone. It presents the background information of Sierra Leone, which is followed by Sierra Leone's environmental governance, key environmental laws in Sierra Leone and the legal framework on Mining in Sierra Leone.

[660]European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016, available at: https://data.europa.eu/doi/10.2873/920344

[661] Relevant provisions, dealing with inspections, searches, sequestrations and the like, are mainly found in the Code of Criminal Procedure, in the Administrative Sanctions Act (Law No 689/1981), in the Code, and in the respective environmental permits.

[662]Integrated into the Administrative Procedure Act (Law No 241/1990) (APA)

[663] David A. Röttgen, Andrea Farì, Francesco Fonderico, *Law and Practice in Italy: Environmental Law 2023*

[664] Ibid

[665] Case No.: Constitutional appeal no. 88/2012, judgment No.: 246/2013

[666] MINLEX - Italy Country Report, 2017 (Updated 2019)

[667] Constitutional Law of 11 February 2022, No. 1, in Official Gazette No. 44 of 22 February 2022.

4. 6 Sierra Leone's Environmental Laws

This section presents background information of Sierra Leone and its environmental laws. It focuses on the environmental laws relating to the extractive industry in Sierra Leone. Thus, the following is worth noting:

4.6.1 Background Information of Sierra Leone

Sierra Leone is a small and low-income country with a population of around 8.6 million,[668] and 45.8 percent of the population is under the age of fifteen and 53 percent live below the poverty line. [669]The country suffered eleven years (1991-2002) of civil war in which mass violations of human rights were inflicted. The civil war deepened poverty and eroded a myriad of social amenities.[670] Sierra Leone is endowed with abundant natural resources, including iron ore, diamonds, rutile, bauxite, and gold, which multinational corporations extract in large quantities. More recently, oil and gas have been discovered during the exploration stage.[671]

The mining industry has contributed significantly to Sierra Leone's economy since the country gained independence in 1961.[672] Accordingly, "It is estimated that artisanal mining and related activities provide livelihood support to at least 300,000 Sierra Leoneans and that upwards of 10 percent of Sierra Leoneans are impacted by artisanal diamond mining."[673]But it is not without problems, such as environmental degradation and other activities that directly impact individuals' human rights and fundamental freedoms. In particular, the role of diamonds remains critical in this regard in Sierra Leone. For instance, Conteh has argued that diamonds, which were meant to become a boom, are a curse on the nation.[674]

In particular, studies have shown that despite recent advances in environmental governance, environmental problems and associated social problems continue to proliferate in Sierra Leone's mining regions.[675] For instance, some of the issues regarding environmental governance

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[668] BBC, Sierra Leone Country Profile, 27 November 2023. Available at: https://www.bbc.com/news/world-africa-14094194

[669] World Bank, Republic of Sierra Leone *Priorities for Sustainable Growth and Poverty Reduction Systematic Country Diagnostic Report*, World Bank 2018

[670]Human Rights Watch, Whose Development? Human Rights Abuses in Sierra Leone's Mining Boom (2014)

[671] Sierra Leone Extractive Industries Transparency Initiative (SLEITI) 2017-2018 Report December 31st , 2019

[672] SLEITI; See also: https://parliament.gov.sl/dnn5/LinkClick.aspx?fileticket=JObYz7ErwJk%3d&tabid=83&mid=766), Nov. 2019.

[673]SLEITI; See World Bank http://documents.worldbank.org/curated/en/272761511578835426/pdf/SIERRA-LEONE-PAD11032017.pdf). (November 2019)

[674] Conteh S.J, The Diamonds. New York: Lekon Dimensions Publishing (2001).

[675] Nketti Hannah Mason**,** *Environmental Governance in Sierra Leone's Mining Sector: A Critical Analysis, Elsevier Ltd. 2014, Resources Policy 41 (2014) 152–159.*

concern the loss of property rights, compensation, and resettlement; the efficacy of Environmental Impact Assessments as an environmental regulatory and management tool; and the capacity of the Environmental Protection Agency.[676]In addition, it has been observed that the role of neoliberal structures, neoliberal powers, and relations of influence have also constrained environmental governance in the country.[677]In this regard, several scholars have argued that at the crux of the ineffectiveness of the environmental governance is the neoliberal ideology that underpins it, [678]which has been spearheaded by institutions such as the World Bank, International Monetary Fund (IMF), European Union (EU) and United Nations Environment Programme (UNEP).[679] In the case of the World Bank, for instance, in September 2021, the World Bank Mining and Legal teams participated in reviewing the draft Bill that later became the Mines and Minerals Development Act 2022, together with the Ministry of Mines and Mineral Resources, senior government officials, relevant Departments and Agencies, in which valuable changes on Sierra Leone's mining market were made such as the revision of license categories and promotion of mining as an integrated segment of the economy.[680] However, it is essential to know that such interventions are driven by ideology.[681]

An environmental license is required to carry out mining activities. To obtain such a license, mining companies or corporations, including large and small companies, must conduct an environmental impact assessment, coupled with a plan to mitigate or manage the impacts and, public disclosure of

[676] Nketti Hannah Mason, *Environmental Governance in Sierra Leone's Mining Sector: A Critical Analysis, Elsevier Ltd. 2014, Resources Policy 41 (2014) 152–159.*

[677] Nketti Hannah Mason, *Environmental Governance in Sierra Leone's Mining Sector: A Critical Analysis, Elsevier Ltd. 2014, Resources Policy 41 (2014) 152–159*

[678]Okereke, C., 2008. *Introduction. Global Justice and Neoliberal Environmental Governance. Ethics, Sustainable Development and International Co-operation*. Routledge, USA and Canada; Paterson, M., 2008. In: Park, J, Conca, K, Finger, M (Eds.), *Sustainable Consumption? Legitimation, Regulation and Environmental Governance. The Crisis of Global Environmental Governance. Towards a New Political Economy of Sustainability*. Routledge, London and New York; Park, J., et al., 2008. In: Park, J, Conca, K, Finger, M (Eds.), *The Death of Rio Environmentalism. The Crisis of Global Environmental Governance, Towards a New Political Economy of Sustainability*. Routledge, London and New York; Paterson, M., 2008. In: Park, J, Conca, K, Finger, M (Eds.), *Sustainable Consumption? Legitimation, Regulation and Environmental Governance. The Crisis of Global Environmental Governance. Towards a New Political Economy of Sustainability*. Routledge, London and New York; Pellizzoni, L., 2011. *Governing through disorder: neoliberal environmental governance and social theory. Global Environ.* Change 21, 795–803.

[679]See Maconachie and Binns, 2007; Government of Sierra Leone, 2008; Brown et al., 2012; Delegation of the European Union to Sierra Leone, 2012).

[680]Sierra Leone Extractive Industries Transparency Initiative (SLEITI), EITI Report 2020-2021 (30 March 2023)

[681]For instance, Keynesianism advocated for state intervention and regulating markets, neoliberalism calls for free markets and minimal government intervention as a strategy for facilitating sustained accumulation of capital called for deregulation of the state and its powers, a fall in government expenditure, privatisation and liberalisation to promote market-enabling foreign direct investment in struggling economies, especially in sub-Saharan Africa. Neoliberalism gained momentum in the 1980s, with the widespread adoption of Structural Adjustment Programs (SAPs), implemented under the auspices of the World Bank and International Monetary Fund.

details of the project and presentation of a community development plan.[682]This means the government can award licences as it deems fit under the relevant regulations.[683]As a result, those with such licences, commonly referred to as 'mineral rights holders' are given exclusive rights to minerals and access to land at the expense of landowners or occupiers of such lands.[684] Moreover, as in many other African countries, ownership and control of all mineral resources in and under any lands in Sierra Leone are vested in the state.[685] In other words, the state exercises dominant control and ownership of natural resources.[686]

4.6.2 Environmental Governance in Sierra Leone

The institutional framework of environmental governance focuses on implementing laws and regulations. The rationale for including governance is to show how the environmental laws make provision for the empowerment of institutions on environmental protection and human rights. This section outlines the ecological regulators in Sierra Leone, which are the bodies responsible for monitoring and regulating environmental laws in the country. Thus, below are the key institutions of environmental governance in Sierra Leone.

4.6.2.1 The Ministry of Environment and Climate Change (MECC)

The Ministry of Environment and Climate Change (MECC) is the key institution on environmental issues. Its primary focus is the development of environmental policies and facilitating the implementation of environmental strategies.[687]The Ministry operates in line with the Directorate of Health Security and Emergencies (DHSE) and non-governmental organizations.

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[682]Nketti Hannah Mason, *Environmental Governance in Sierra Leone's Mining Sector: A Critical Analysis, Elsevier Ltd. 2014, Resources Policy 41 (2014) 152–159.*

[683] See Section 114 of Sierra Leone's Mines and Minerals Act 2009.

[684]Government of Sierra Leone, 2009. The Mines and Minerals Act. Vol. CXLI, No. 3. The Sierra Leone Gazzette. Sierra Leone Government of Sierra Leone (GoSL).

[685] Victoria R Nalule, *Land Law and the Extractive Industries: Challenges and Opportunities in Africa* (2021), Global Energy Law and Policy: Volume 7

[686]In non-dominial jurisdictions, the resources are controlled by the States or Provinces. For instance, in Canada, Section 109 of the 1867 Constitution Act vests ownership rights to extractive resources with the Provinces in which they are located. As noted previously, all African countries exercise dominial ownership. As such, investors who wish to acquire rights over natural resources must deal directly with the relevant government to obtain the required licences or concessions. Most African countries follow the sovereign-inspired system, where the natural resources are vested in the custody of the state to be managed on behalf of the citizens of the country.

[687] Betts, Samuel Ulric, An Overview of Sierra Leone's Environmental Laws: A Legal Framework (June 11, 2023). Available at SSRN: https://ssrn.com/abstract=4475796 or http://dx.doi.org/10.2139/ssrn.4475796

4.6.2.2 The Environmental Protection Agency (EPA)

The Environmental Protection Agency is the lead regulatory body established by the EPA Act 2022.[688]It is responsible for creating and enforcing a strict environmental regulation framework in Sierra Leone. Its mandate is to coordinate, monitor, and evaluate the implementation of national environmental policies, programs, and projects, including the issuance of Environmental Impact Assessment (EIA) licenses. It also monitors companies with EIA licenses and investigates illegal operations that have environmental impacts. EPA also advises the Minister of Environment and Climate Change on environmental and related matters. [689]

4.6.2.3 Local Councils in Sierra Leone

Local Councils are empowered by the Local Government Act 2022 (previously Local Government Act 2004)[690]under the Third Schedule, which mandates the Ministry of Environment to devolve specific functions to the Local Councils as follows:

> *Land Surveying Land Registration, ii) Control of illegal sale of land, iii) leasing government land, iv). Strategic local plans, v). Issuance of building permits, vi). Sand dues, vii) Preparation of land use plans, and viii).Education and sensitisation on environmental issues.*[691]

In addition, the Local Councils are complemented by Ward Environment and Chiefdom Environmental Committees, which are responsible, but subject to the direction of the Executive Chairman of the Environmental Protection Agency, for conservation, protecting the environment for health and safety, and promoting sustainable development.[692]In other words, the Local Councils are assisted by Ward Committees and Chiefdoms, which carry out specific tasks, including the protection of the environment.

4.6.2.4 Other National Regulatory Bodies

Other subnational regulatory bodies include the Multilateral Environmental Agreements Implementation Coordination Committee (MEAICC), the National Environmental Compliance and

[688] Environment Protection Agency Act 2022 (Act No.15 of 2022), sec. 12(1)
[689]EPA: https://epa.gov.sl
[690] Local Government Act of No.26 of 2022.
[691] Ibid.
[692]Therefore, suppose a person destroys growing trees, shrubs, bushes or forests either by burning or cutting without notifying the Ward Environment Committee or the Chiefdom Environment Committee. In that case, such a person commits an offence and is liable upon conviction to a fine not less than Le10,000,000.00 or to imprisonment for a term of not less than 2 years or to both such fine and imprisonment.

Enforcement Coordination Committee (NECECC), and the National Protected Area Authority and Conservation Trust Fund (NPPA).

4.7 Environmental Laws in Sierra Leone

Generally, Sierra Leone's environmental laws are outlined in a framework law, which is enacted as legislation and supplemented by other related laws passed by Parliament.[693] Therefore, the first significant legislation on environmental protection in post-war Sierra Leone was the Environmental Protection Act (EPA), enacted in 2000. This legislation provides for the adequate protection of the environment, and the administrative machinery to ensure such protection, as well as related matters.[694] This was followed by the National Commission for Environment and Forestry (NaCEF), which was established in 2005 to coordinate Environmental Governance in the country.[695] However, due to the inadequacies of NaCEF in addressing environmental issues, the Environmental Protection Act of 2008 (as amended in 2010) was enacted, which established the Environmental Protection Agency (EPA) for the adequate protection of the environment.[696] The Act of 2008 was replaced by the Environmental Protection Agency Act of 2022. In addition, despite domestic laws on environmental matters, treaty law also applies to Sierra Leone after ratification and domesticated as provided for under the 1991 Constitution of Sierra Leone.[697] Thus, one could argue that the legal regimes governing environmental matters in Sierra Leone comprise domestic laws, including framework laws as well as international law, with a particular focus on international environmental law.

4.7.1 The Constitution of Sierra Leone 1991

Accordingly, Sierra Leone's current constitution was adopted in 1991 as the supreme legal authority from which all other laws, powers, and authorities are derived.[698] However, the 1991 constitution does not provide specific provisions for protecting the environment and environmental rights.[699] But,

[693] A. Koroma, Critical Appraisal of the Legal Framework for Environmental Impact Assessment in Sierra Leone, 2024

[694] The Environmental Protection Act, 2 March 2000

[695] The National Commission for Environment and Forestry was established in 2005 as the new forestry and environment authority in Sierra Leone, undertaking day-to-day environmental management and forestry functions in the country. But the Conservation Society of Sierra Leone established in 1986, Sierra Leone's most prominent biodiversity conservation organisation. Its main aim is to promote the wise use and management of Sierra Leone's natural resources through education, advocacy and support for research, management activities and sustainable development programmes. CSSL is the Sierra Leone partner of Bird Life International.

[696] The Environmental Protection Act, 2008. *Supplement to the Sierra Leone Gazette Vol. CXXXIX, No. 44 dated 11th September, 2008* (hereafter: The EPA Act 2022)

[697] See The Constitution of Sierra Leone, 1991, Act No. 6 of 1991, sect. 40 (4).

[698] Constitution of Sierra Leone 1991, Act No.6 of 1991, sect. 171 (15)

[699] Constitution of Sierra Leone 1991, Act No.6, of 1991

Section 7 of the 1991 constitution affirms the State's commitment to ''*harness all the natural resources of the nation to promote national prosperity and an efficient, dynamic and self-reliant economy.''*[700]In addition, Section 18 of the constitution provides that all laws must be consistent with the constitutional interests of public health and the conservation of natural resources, including minerals, marine, forest, and other resources of Sierra Leone.[701]Furthermore, Section 5 reaffirms the State's duty to guarantee and protect citizens' land rights to exercise freedom, liberty, and decision-making over the use of their lands.[702]Also, Section 17 (3)(a) categorised environmental offences as felonious offences.[703]Hence, it is unsurprising that environmental laws comprise legislative frameworks such as specific Acts of Parliament and regulations, among others.

In summary, the 1991 constitution of Sierra Leone does not provide specific environmental rights, which could serve as a guarantee for legal certainty in promoting and protecting these rights. This means that environmental rights and the protection of the environment are established through legal frameworks, as highlighted below.

4. 8 Legal Framework on Mining in Sierra Leone

Generally, Sierra Leone's environmental regulations govern mining operations. These regulations primarily focused on large-scale mining, with little attention to small-scale mining or extraction. The implication could be leaving artisanal mining without regulatory oversight beyond licensing processes. Thus, the following key legislations are worth considering:

4.8.1 The Environmental Protection Agency Act 2022 (Sierra Leone)

The EPA Act 2022 is the principal and current legislation of the Environmental Protection Agency as the parent environmental Agency in Sierra Leone. Primarily, the EPA Act 2022 was enacted to continue the operation of the Environment Protection Agency (EPA), with a focus on more effective and efficient protection and management of the environment and related matters.[704]

As far as the EPA Act is concerned, it not only reaffirms the continuity of the Environmental Protection Agency of Sierra Leone, which is the principal agency established after the Ministry of Environment, to issue licences on environmental activities and monitor compliance with environmental regulations and policies and ensure a quality environment for the wellbeing of all in

[700] The Constitution of Sierra Leone 1991, Act No.6 of 1991, sect. 7(1)(1a)
[701] Ibid. Sec. 18(3)(a)
[702] The Constitution of Sierra Leone, 1991, Sec. 5 (2).
[703] Constitution of Sierra Leone, 1991 (Act NO. 6 Of 1991), art. 17(3) (a); See Constitutional Instrument No. 4 of 4th April 2019; The High Court Order, 2019.
[704] The EPA Act, 2022.

the country.[705]but it is also the principal legal instrument for the protection of the environment in the country. Part III of the EPA Act outlines the functions and powers of the Agency, and Part VI is on Environmental Impact Assessment.[706] Under this Act, the focus of the Environmental Impact Assessment includes the obligation to obtain an EIA,[707]the imposition of fines,[708]and the recognition of public participation.[709]

4.8.2 The Mines and Minerals Development Act 2022

The Mines and Minerals Development Act 2022 was enacted as part of Sierra Leone's legal framework to regulate the mineral sector.[710] This Act replaced the Mines and Minerals Act of 2009 to provide for improved provisions on exploration, mining, and mineral development, as well as sale and export, for the socio-economic benefit of the people of Sierra Leone, in line with international best practices.[711]It seeks effective measures to mitigate the harmful effects of mining activities on individuals, property and the environment.[712] For instance, the Act obliges holders of mining licences to assist in developing mining communities affected by their operations, enhance the general welfare and quality of life, [713]and provide for community development agreements with host communities.[714] Therefore, obtaining the people's informed consent is mandatory, which involves specifying the consultative and monitoring framework between the holder and the primary host community and ensuring that they participate in planning, implementing, managing and monitoring activities carried out under such agreements.[715]In addition, the Act applies to both onshore and offshore minerals,[716]and reaffirms the state's ownership of minerals within the country.[717]However, Section 35 of the Act provides for compensation for disturbances of rights, including economic loss, loss of livelihood, and damage to land.[718] Generally, the Act provides for the protection of the environment. This is reflected under Section 133 of the Act as:

[705] Environmental Protection Agency Sierra Leone. Available at: www.epa.gov.sl
[706] Ibid.
[707] EPA Act 2022, sec. 24(1)
[708] EPA Act 2022, sec. 24(2), 27(2)(a)(b)
[709] EPA Act 2022, sec. 28 (1)
[710] The Mines and Mineral Development Act, No.16, 12 May, 2022
[711] Ibid
[712] Ibid
[713] The Mines and Minerals Development Act, 2022: Section 140.
[714] Ibid. sec. 141(1).
[715] The Mines and Minerals Development Act, 2022: Section 141(5)(a).
[716] Ibid.,sec.2(a)
[717] Ibid., sec.4 (1)
[718] Ibid.

> *A holders and its affiliates shall conduct licence activities in accordance with the laws of Sierra Leone and in a manner that is practicable to minimise, mitigate and manage the environmental and social impacts of licence activities.*[719]

Additionally, the Act mandates the public disclosure of environmental reports, including environmental screening reports,[720] environmental impact assessments,[721] and environmental and social management plans.[722]The Act also obligates rights holders to provide and promote safe operations and a healthy working environment.[723]It also prohibits rights holders from discriminating against employees.[724] The Act provides penalties for non-compliance with licensing obligations, but, more importantly, it obliges holders not to violate human rights. For instance, Section 175 prohibits the use of children in mining activities as: '*''Notwithstanding any other law, a holder shall not employ or in way use child labour.*''[725] In addition, the Act outlines the various licences required for mining activities in Sierra Leone and specifies to whom a right holder should pay surface rent. [726]

4.8.3 The Mines and Minerals Corporation Act 2023

The Act aims to regulate the operations of the national mining corporation. This Act provides for the establishment of the Sierra Leone Mines and Minerals Development and Management Corporation to carry out, through a project company, minerals and mining development, management, and related activities under the Mines and Minerals Development Act, to promote and facilitate state participation and investment in minerals and related matters.[727]

4.8.4 The Customary Land Rights Act 2022

In Sierra Leone, Customary Land means land that is owned, governed by or administered under customary law in the provinces.[728]In addition, Customary Land Rights refers to:

> '*the full range of primary rights (the right to exclude, transfer, transact, bequeath, manage and make decisions about the land) and secondary rights (rights of way, access to use natural*

[719] Ibid., sect.133
[720] Ibid., sect. 134 (2) (a)
[721] Ibid., sect. 134(2)(b)
[722] Ibid., sect. 134 (2) (c)
[723] Ibid., sect. 145
[724] Ibid., sect. 150
[725] Ibid., sect.175 (1)
[726] Mines and Minerals Development Act 2022.
[727] National Minerals Agency
[728] Customary Land Rights Act, 2022, Vol. CXLXIII, No. 69

resources, right to drive cattle, right to obtain water from a river) to land under customary law.'[729]

The Customary Land Rights Act of 2022 focuses on protecting customary land rights, eliminating discrimination under customary law, administering land under customary law, and addressing related provisions.[730]

Accordingly, this Act guarantees and preserves all customary land rights, ensures access without discrimination, ensures transparency and accountability in the allocation and management of land rights, and preserves land resources for future generations. In particular, the act provides for informed and collective consent, requiring the head of a land-owning family wishing to enter into any land transaction under customary law to seek the written informed consent of at least 60% of the adult family members before entering into the transaction.[731] This means the consent of most members of the land-owning family is required before any agreement on the said land is reached.[732]

The Act also provides communities with the right to informed consent. Section 28 of the Customary Land Rights Act prohibits an investment from taking place on any land subject to customary law unless the investor obtains the written free, prior, and informed consent of at least 60 % of the male and female adult members of the family or a fair representation of the community with rights to the land.[733]Similarly, in enforcing responsible investment by private groups or companies on communal land or land owned by families in the community, it states that the acquisition of community land for investment shall not be valid unless the investor obtains the written informed consent of a fair representation of the male and female adult members of the community during a community meeting on the investment as referred to under section 28 of same.[734] In addition, the Act also obliges investors to ''provide to concerned communities … relevant information relating to the investment before the start of negotiation to acquire the land.''[735]Such information includes the nature, scope, risks, and opportunities of the investment, business plan, and government approvals, among others.[736]

Additionally, Section 31 requires that all investors must sign a lease agreement with the community or family members on whose land the investment will take place before the commencement of such

[729] Customary Land Rights Act, 2022, Vol. CXLXIII, No. 69
[730] Customary Land Rights Act, No. 20, 23rd September, 2022.
[731] The Customary Land Right Act, 2022: Sec. 11.
[732] The Customary Land Rights Act 2022, Sec.11
[733] The Customary Land Rights Act, 2022: Section 28.
[734] The Customary Land Right Act, 2022: Section 32.
[735] Ibid, sect.29
[736] Ibid, sect. 29 (a-d).

investment.[737]Section 34 of the Act sets out the conditions to be incorporated into any lease agreement between the investor and communities or family members, including gender, environmental, social, and health conditions.[738]In addition, section 25 of the Act prohibits an investment in protected areas, unless in compliance with the National Protected Area Authority Act, 2022, the Environmental Protection Agency Act, 2022, and the laws on marine protection.[739]

Notably, this act not only recognises the right to acquire land and eliminate discrimination, but it also provides compensation for the disturbance of rights.[740]a leasehold term limit and a maximum land area for investment,[741] and the right to informed consent, which prohibits investors from investing in any land without the written free, prior and informed consent of at least 60% of male and female adult members of the family or fair representation of the community's right to land.[742] This act guarantees corporate land acquisition for mining activities and also provides compensation for affected communities of mining activities in the extractive industry.

4.8.5 The Extractive Industries Revenue Act, 2018

The Extractive Industries Act of 2018 provides for coordinating various tax regimes and charges on extractive industries, regulates fiscal aspects of extractive industry agreements, and other related matters.[743]However, it does not explicitly address human rights and environmental issues, but it provides for rehabilitation funds.[744]

4.8.6 The National Protected Area Authority and Conservation Trust Fund Act, 2012 (No. 11 of 2012).

This Act establishes the National Protected Area Authority and Conservation Trust Fund. It aims to promote biodiversity conservation, wildlife conservation and research.[745]The Act reinforces the preservation of protected areas and the conservation of biodiversity.

4.8.7 Other Legislation

The Mines and Minerals Development Regulations, 2023 (No. 9 of 2023), which repeals the Mines and Minerals Regulation of 2009.[746]The National Minerals Agency Act, 2023, which provides for the

[737] Ibid., sect. 31
[738] Ibid., sect.34
[739] Ibid., sect. 25 (a)(b)(c).
[740] Ibid, sect. 38
[741] Ibid, sect. 26 and 27
[742] Ibid, sect.28
[743] The Extractive Industries Revenue Act 2018
[744]Ibid., sect. 10
[745] https://www.sierra-leone.org/Laws/2012-11.pdf
[746] National Minerals Agency. Available at: https://www.nma.gov.sl/legal-regulatory-instruments/

continuance of the National Minerals Agency, repeals the National Minerals Agency Act 2012.[747]Also, the Sierra Leone Mines and Minerals Department Corporation (Allocated Mineral and Mineral-Related Assets) Regulations 2024.[748]The Artisanal Mining Policy 2018 is also part of the legal framework governing Sierra Leone's mining sector. The National Land Commission Act is an Act that provides for the establishment of the National Land Commission, the District Land Commission and other administrative bodies to secure effective and holistic land administration and to provide for other related matters.[749]Also worth considering is the Forestry Act 2022, which amends the Forestry Act of 1988.[750]

Additionally, Sierra Leone participates in regional and international initiatives such as the United Nations Guiding Principles for Business and Human Rights, the African Mining Vision, the Economic Community of West African States (ECOWAS) Mining Directives, the IFC Performance Standards, the Extractive Industries Transparency Initiative (SEITI), the Kimberley Process Certification Scheme, and the Natural Resource Charter.[751] It became a member of the Kimberley Process in 2003 to legitimise the trade of rough diamonds.[752]

4.8.8 Summary

This section presents Sierra Leone's environmental governance and the laws governing environmental protection. In environmental governance, both the state government and the Local Councils share responsibility. However, the state government remains pivotal through the Ministry of Environment and the Environmental Protection Agency. In other words, the governance of environmental protection is centralised, and the Environmental Protection Agency (EPA) remains the leading institution on environmental issues. This suggests a more centralised or executive-dependent environmental governance system in the country.

The Sierra Leone Constitution of 1991 does not provide for environmental rights. Therefore, environmental regulations are provided in legislative frameworks. In this regard, the Environmental Protection Act of 2022 remains the country's principal legislation on environmental and related matters.

[747] Ibid.
[748] NMA available at: https://www.nma.gov.sl/legal-regulatory-instruments/
[749] National Land Commission Act, No.19, 23rd September, 2022
[750] Ibid.
[751] Government of Sierra Leone, Ministry of Mines and Mineral Resources: The Sierra Leone Minerals Policy, November 2018.
[752] SLEITI, Report 2020-2021, 30 March 2023.

4.9 Chapter Summary and Conclusion

This chapter presents environmental laws of Italy and Sierra Leone. However, it is not exhaustive because it does not include the general environmental laws in Italy and Sierra Leone. Rather it focuses on environmental laws that are relevant to the extractive industries in Italy and Sierra Leone. Hence, the following is worth noting:

As a starting point, the chapter presents a brief background information on Italy and then an overview of the Italian environmental laws. However, information presented shows, environmental laws are made at both the state and regional levels. Nevertheless, the State enjoys exclusive competence on environmental protection, ecosystem and cultural heritage. This is reflected under Article 117 of the Italian Constitution. The case law of the Constitutional Court has also indicates that under Italian law, the state has exclusive power to implement regulations on environmental protection, but the regions can authorise complementary rules on environmental protection.[753] which develops both domestic and European laws.[754]The Italian Constitution makes provisions for environmental protection. In particular, the 2022 Constitutional amendment of Articles 9 and 41 of the Italian Constitution does not only provide guarantee for sustainable development and intergenerational responsibility, by imposes duty on the state to protect nature, biodiversity, and ecosystems, including the guarantee for to carry out private economic activities without compromising environmental sustainability.[755]Moreso, it is also revealed that the regions have autonomy within their localities on specific environmental issues. These include planning, setting standards, authorising environmental activities, and monitoring for compliance, among others.

Additionally, evidence above shows environmental protection issues are also addressed in various legal frameworks in the form of 'Legislative Decrees,' addressing diverse issues relating to environment. Prominent among them is the Legislative Decree No.152 of April 2006, which harmonised and codified Italian environmental law with EU Directives and legal framework on environmental impact assessment. Other legislations include: Legislative Decree No. 231 of 8 June, 2001(as amended by Legislative Decree No.121 of 7 July, 2011); Administrative Procedure Act (Law No 241/1990); Administrative Sanctions Act (Law No 689/1981; and Legislative Decree No 195/2005, among others.

In the case of Sierra Leone, the chapter also presents a background information of Sierra Leone and environmental laws. Also, information presented shows, both the State government and the Local

[753] Case No.: Constitutional appeal no. 88/2012, judgment No.: 246/2013
[754] MINLEX - Italy Country Report, 2017 (Updated 2019)
[755] Constitutional Law of 11 February 2022, No. 1, in Official Gazette No. 44 of 22 February 2022.

Councils share responsibility on environmental issues. However, the State government, through the Ministry of Environment and the Environmental Protection Agency, remains pivotal on environmental protection and related issues. In other words, the governance of environmental protection is centralised, in which the Environmental Protection Agency (EPA) remains the leading institution on environmental issues. This suggests a more centralised or executive-dependent environmental governance system in the country.

Additionally, it could be concluded that, unlike Italy, the Sierra Leone's Constitution of 1991 does not provide for environmental rights, rather, the Constitution, under Section 7, reaffirms the State's right to permanent sovereignty over its natural resources and the responsibility to harness such resources for prosperity and an efficient, dynamic and self-reliant economy. Additionally. Section 18 of the Constitution provides that all laws must be consistent with the constitutional interests of public health and the conservation of natural resources, including minerals, marine, forest, and other resources of Sierra Leone, while Section 5 reaffirms the State's duty to protect citizens' land rights to exercise freedom, liberty, and decision-making over the use of their lands. [756]Also, Section 17 (3)(a) Categorized environmental offences as felonious offences.[757]

Consequently, environmental regulations are provided in legislative frameworks. Paramount among them is the Environmental Protection Act of 2022, which remains the country's principal legislation on environmental and related matters. Other legislative frameworks include: the National Protected Area Authority and Conservation Trust Fund Act, 2012; the Customary Land Rights Act 2022; the Mines and Minerals Corporation Act 2023; and the Mines and Minerals Development Act 2022.

The next Chapter presents an overview of the extractive industries of Italy and Sierra Leone.

[756] The Constitution of Sierra Leone, 1991, Sec. 5 (2).
[757] Constitution of Sierra Leone, 1991 (Act NO. 6 Of 1991), art. 17(3) (a); See Constitutional Instrument No. 4 of 4th April 2019; The High Court Order, 2019.

CHAPTER FIVE: EXTRACTIVE INDUSTRIES IN ITALY AND SIERRA LEONE

5.1 Introduction

In Chapter Two above, a general overview of the extractive industry is presented. This enables us to understand various types of the extractive industry, the processes, and the impacts of extractive activities on communities in areas of operation. This chapter presents an overview of the extractive industries of Italy and Sierra Leone. The first part introduces the Italian extractive sector. It further presents an overview of its legal framework, the obligation to conduct an environmental impact assessment (EIA), and personal observations made at *Cava Consona*, an extractive company specialising in quarrying, located in the city of Bagheria. The second part presents an overview of Sierra Leone's extractive industry, its legal framework, the obligation to conduct an environmental impact assessment (EIA), and Marampa Mines Limited (MML) as a case study, in the town of Marampa close to the town of Lusar.

5.2 Mining in Italy

In examining the Italian mining industry, it is pertinent to note that Italy has a modest extractive sector, with limited large-scale mining operations compared to those of resource-rich countries. Nevertheless, it has a long mining history, dating back to pre-Roman times.[758]Some suggest that the country has more than 3,000 identified mining sites since its unification in 1870 and 2018.[759] The exploitation of metallic minerals was widespread in the Alps, Tuscany, Calabria, and Sardinia, while sulphur mines were located in Sicily and, to a lesser extent, in Marche and Romagna.[760]For instance, until 1950, Sicily was regarded as the world's largest sulphur producer.[761] Coal, mainly lignite, was exploited along the alluvial plain of central Italy.[762]It is estimated that of the 107 active mining concessions, only 67 mines are operating to extract industrial minerals, mainly for the ceramic industry, cement marls and salt.[763]

[758] Carta, R., Dacquino, C., Di Leginio, M., Fratini, M., Fumanti, F., Lettieri, M.T., Lucarini, M., Patanè, A., Serra, M., 2017a. Verso l'inventario geominerario e ambientale delle risorse minerarie solide Italiane (Towards the geomineral and environmental inventory of Italian solid mineral resources). Rapporto Ambiente-SNPA 01/2017, Ambiente in Primo Piano. doi:10.13140/ RG.2.2.11625.95845

[759]Ibid.

[760]Ibid.

[761]Ibid.

[762]Carta, R., Fumanti, F., 2019. The Mineral Resources Database of Italy (GeMMA). Congresso SIMP-SGI-SOGEI, Parma 2019, Società Geologica Italiana.

[763]Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy*. European Geologist 56, December 2023.

Generally, the legal regime governing mining activities in Italy is complex, but environmental protection is given priority.[764]Therefore, the fundamental principles of the mining activities are embedded in legislation RD No. 1443 of 1927[765]which sets out the legislative norms on the country's exploration and exploitation of mines.[766]The exploration and exploitation of minerals are divided into mining and quarrying.[767]Moreover, there is a difference between state-owned deposits in mining, which fall under public law and are subject to a concession procedure and quarries, which are subject to an authorisation process, belong to land owners, and fall under private law.[768]

Additionally, a permit is required for mining because it is part of the non-transferable patrimony of the state or the region.[769] In contrast, quarries and peat bogs are available to landowners under Article 45 of RD No.1443.[770]This is also provided for under Article 117 of the Constitution.[771]In its judgment No.176 of 2001, the Constitutional Court held that the exploitation of quarries is also within the scope of the application of Directive 2006/123/EC.[772]

However, under Presidential Decrees 2/1997 and 616/1977, the responsibilities for the governance of extractive activities shifted from the central State to the Regional Government, facilitating the transfer of functions and competencies of quarry management to the regions.[773]In particular, Presidential Decree No. 382 of 18 April 1994 governs mining activities, research concessions, and exploration permits.[774]Later, Constitutional Law No. 3/2001 granted authority to the regions by assigning orientation and coordination activities to the central government.[775]

Under Italian law, the prospecting and exploration of mineral deposits requires a license.[776]This means securing a permit is mandatory for exploration and extraction activities. However, the issuing

[764]Stefano Grassi, Marcello Cecchetti, Alessandro Andronio, Antonio Borzì, Gianni Taddei and Andrea L. Davis, *Environmental Law in Italy* (Second Edition, Wolters Kluwer, 2019).
[765] Royal Decree No 1443 of 29 July 1927
[766] Royal Decree No 1443 of 29 July 1927
[767] Ibid. art. 2
[768]Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy.* European Geologist 56, December 2023.
[769] Royal Decree No 1443 of 29 July 1927
[770] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*
[771]Constitution of the Italian Republic 1947, art.117
[772] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*
[773] Ibid.
[774] Ibid.
[775] Ibid.
[776] The Title II (Mines) – Chapter I (Mining explorations) of Royal Decree 1443/1927, Presidential Decree 620/1955 (decentralised competencies for concessions on mineral oils and liquefied petroleum gases), and Presidential Decree 382/1994 (permits and concessions)

of exploration permits is subject to an environmental impact assessment administered by the Ministry of Environment and Energy Security (MASE).[777]Upon favourable results of the exploration process, a mining license for ore extraction will be issued.[778]

Accordingly, each extraction activity requires an environmental impact assessment (EIA), which is divided into a national-level EIA for prospecting, researching, and producing offshore oil and a regional-level EIA for inshore quarries and peat bogs covering an area greater than 20 hectares.[779]However, this has generated diversified regional planning approaches and heterogeneous databases, which require harmonising mining activities and available data at the national level.[780]In other words, given the country's current decentralisation of mining-sector regulations, the competent ministries and public authorities should collaborate in a coordinated manner, taking into account the national, regional, and provincial dimensions. The authorities should provide clear guidelines and strategic programmes for future reactivation of mining activities.'[781]

Consequently, the enactment of the Legislative Decree no. 152 of 3 April 2006 has harmonised and codified national environmental law with the EU Directive. This Environmental Code (EC) sets out various legal frameworks, including environmental impact assessments, waste management, containment land and sanctions, among others.[782]In particular, on special procedures relating to environmental impact assessment (EIA), Directive 2003/35/EC is worth noting.[783]

From the above, it is apparent that mining in Italy comprises different categories, including metals and other mineral resources. There are also categories of quarries and other minerals used by various industries.

[777]Ibid
[778]Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*
[779] Ibid
[780] Ibid
[781] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023.*
[782] European e-Justice Portal, Access to Justice on Environmental Matters, Access to Justice at Member State Level, 22 May, 2025
[783]*Directive 2003/35/EC of The European Parliament And of The Council of 26 May 2003: providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.*

5. 3 Italy's Extractive Industry

The history of the Italian extractive industry, which has developed over the years, can be traced back to pre-Roman times.[784] For instance, more than 3000 extraction sites were identified between 1870 and 2018. [785]Currently, many mines are operating with the extraction of industrial minerals, mainly for the ceramic industry, cement marls and salt.[786]

The extractive industries, comprising *mines* and *quarries*, have provided and continue to provide raw mineral materials essential to downstream industries and economic sectors, but they have also generated vast quantities of mining wastes.[787] These wastes may include waste rocks such as overburden or wall rock, mineral processing wastes such as tailings sand, and exploration and resource drilling wastes, which may also contain valuable recoverable mineral substances.[788]Wastes are potential secondary sources of critical and other mineral raw materials, which are in growing demand and for which the EU depends on imports.[789]

However, below is an illustration of an overview of the distribution of the mining industry in Italy between 1870 to 2018:[790]See FIGURE 2:

[784]Mauro Lucarini, Roberta Carta, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Mineral raw materials in Europe; Chances and challenges for domestic production*; *Geological Survey of Italy (ISPRA), Via Vitaliano Brancati 48, 00144 Rome, Italy. European Geologist Journal 49 .*

[785]Ibid.

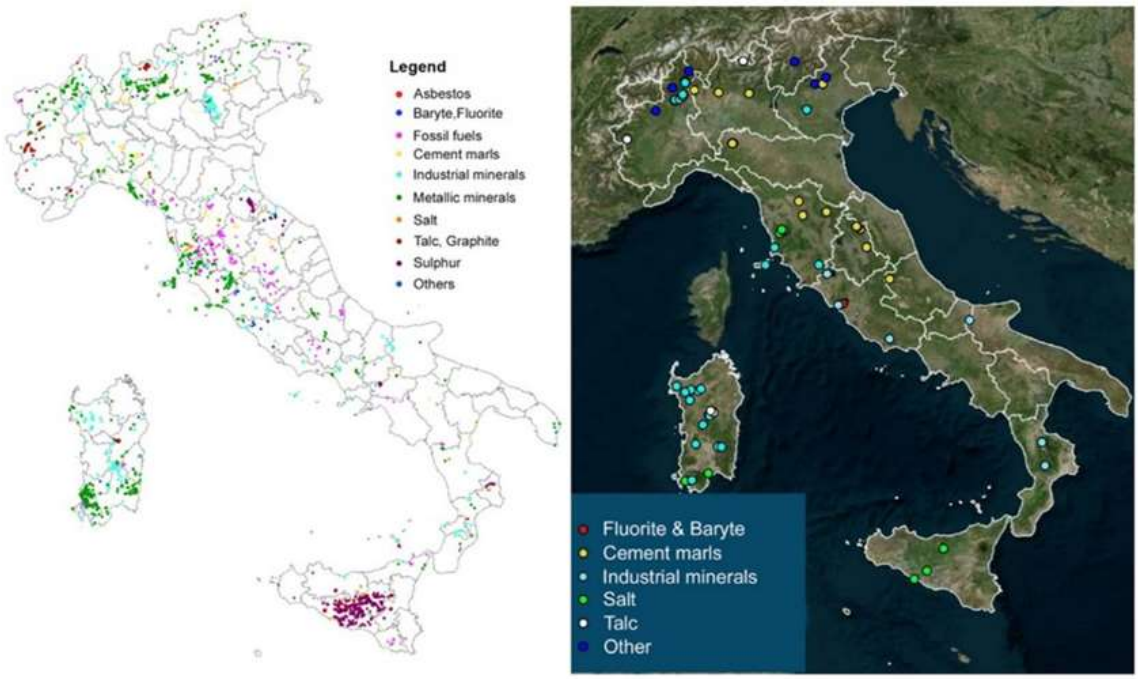
[786] Carta, R., Dacquino, C., Di Leginio, M., Fumanti, F., Lettieri, M.T., Lucarini, M., Patanè, A., Serra, M., Vittori, E., 2017b. La Banca Dati Geologico Mineraria Ambientale (GeMMA) (The Geological, Mining and Environmental Database (GeMMA)). *Patrimonio industriale (Rivista AIPAI)*, **1**.(17-18). 44-57.

[787] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy. European Geologist 56 | December 2023*

[788]Ibid.

[789]Mauro Lucarini, Roberta Carta, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Mineral raw materials in Europe; Chances and challenges for domestic production*; *Geological Survey of Italy (ISPRA), Via Vitaliano Brancati 48, 00144 Rome, Italy. European Geologist Journal 49 .*

[790] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy,* European Geologist 56, December 2023.



Source: *The Italian Database GeMMA: from monitoring production to cataloguing mining wastes, a starting point for recovering critical raw materials from abandoned mines?*

5.4 Laws and Policies on the Extractive Industry in Italy

As indicated earlier, the governance of natural mineral resources in Italy is decentralised.[791]This means the central authorities and the various regions share competence.[792] Regarding the regions, each has its own relevant regional laws (RL) governing extraction and environmental permitting procedures.[793] The legal regime covering mining activities in Italy is particularly complex, but environmental protection is prioritized.[794]It is, therefore, essential to note that regulations governing Italy's mineral extraction activities comprise national and regional legislation. This is to enhance our understanding of how these legal frameworks are organised and categorised at the various levels. Hence, an overview of the key national legislations that are generally applicable to the extractive industry in Italy is given:[795]

[791]European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016, available at: https://data.europa.eu/doi/10.2873/920344

[792] See Royal Decree 1443, art.2

[793] European Commission, Study Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU, May 2017.

[794] Stefano Grassi, Marcello Cecchetti, Alessandro Andronio, Antonio Borzì, Gianni Taddei and Andrea L. Davis, *Environmental Law in Italy* (Second Edition, Wolters Kluwer, 2019).

[795] Mauro Lucarini, Fiorenzo Fumanti, Lucio Martarelli and Monica Serra, *Policymaking and geosciences: the case of Critical Raw Materials in Italy,* European Geologist 56, December 2023.

5.4.1 Mining Law (Regio Decreto) No. 1443 of 1927

This law outlines the fundamental principles of mining activities at the national level.[796] This law sets out the legislative norms on the country's exploration and exploitation of mines.[797] Under this law, mining activities are categorized into mines, quarrying and peat bogs, and mineral and thermal waters, which depend on materials extraction and are independent of the system's use of extractions. [798]Accordingly, Article 45 of the Royal Decree 1443 of 1927 also states that: ‘’the right of use of quarries and peat bogs shall fall to the owner of the land.’’[799]In other words, this law recognises these minerals as the property of landowners.[800]

Nevertheless, in an event where the exploitation of quarries and peat bogs poses a danger, such as a risk to people’s safety and human settlements, the region may prescribe, by order of the president, safety measures for which the operator shall be responsible.[801]However, in the case of non-compliance with such an order, the region may, by a reasoned decision of the Council, order the immediate revocation of the authorization and the acquisition of the quarry by regional authorities as public property of the region, and in cases where the quarry is a public property of the region, it is the Regional Council that ‘shall’ order revocation of concession.[802] In addition, RD 1443 also made provision for compensation in cases where, due to proximity or any other cause, the working of a mine, quarry, or peat bog causes damage.[803]

5.4.2. Legislative Decree 112/98 804and Constitutional Law 3/2001[805]

These legislations are relevant to permitting non-energy minerals and administering permitting procedures for solid minerals delegated to the regions.[806]Constitutional Law 3 sets out the passing of competence on mining from the State to the Region.[807]

[796] ROYAL DECREE No 1443 of 29 July 1927
[797] ROYAL DECREE No 1443 of 29 July 1927
[798] Ibid.
[799] European Commission, Study Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU, May 2017.
[800] RD No. 1443 of 1927, art. 45
[801] Ibid., art. 45
[802] Ibid.
[803] Ibid. art. 46
[804] Legislative Decree 112/98
[805] Constitutional Law 3/2001
[806] European Commission, Study Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU, May 2017.
[807] Constitutional Law 3/2001

5.4.3 Legislative Decree 152/06

This legislation sets out the legislative framework applicable to all matters concerning environmental protection, including Environmental Impact Assessment (EIA) and other related issues.[808]

5.4.4. D.P.R (Presidential Decree) 2/72 [809]and D.P.R. 616/77

These regulations set out the regions' permitting authority for quarry materials, peat, and mineral water.[810]In other words, the regulations outline the authorities responsible for issuing permits for quarry and other related materials.

5.4.5. Presidential Decree 128/59

The legislation sets out standards for policing mining and quarrying activities.[811]In other words, the legislation outlines the standards.

5.4.6 Other Legislations

Other laws include ***Legislative Decree no. 624/1996****, on the* health and safety of workers;[812] **Legislative Decree no. 117/08**, on transposing Directive 2006/21/EC and for the management of extractive waste.[813] Decree 117/2008, on the law on mineral waste;[814] Decree 626/94, Safety during working activities;[815] Decree 624/96: Rules for safety in mining activities;[816] Decree 81/2008, Safety and health during working activities;[817] Decree 21/1979, on explosive rules for mining extraction.[818]

In summary, it is worth noting that due to the decentralised nature of mining laws, each of the 21 regions has its own regulations on environmental and related issues, as well as on the exploration and extraction of minerals. However, it is beyond the scope of this study to highlight all regional regulations governing mining activities in Italy.

[808] Legislative Decree 152/06. (Decreto Legislativo 3 Aprile 2006, n. 152)
[809] *D*.P.R (Presidential Decree) 2/72
[810] European Commission, Study Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU, May 2017.
[811] Presidential Decree 128/59
[812] *Legislative Decree no. 624/1996*
[813] Legislative Decree no. 117/08
[814] Decree 117/2008
[815] Decree 626/94,
[816] Decree 624/96
[817] Decree 81/2008
[818] Decree 21/1979

5.5 The Obligation To Conduct Environmental Impact Assessment By Corporations In The Extractive Industry In Italy

This section presents the obligation to conduct environmental impact assessments before an extractive industry undertaking can be started in Italy. Under Italian law, [819]certain mining activities require an Environmental Impact Assessment (EIA) before commencing.[820]In other words, an EIA is required before the commencement of certain extraction activities. This means corporations in the extractive industry wishing to engage in the extraction of natural resources must conduct an environmental impact assessment before the commencement of the project. Therefore, an environmental impact assessment is required, which can be obtained at the EIA regional office.[821]

Accordingly, Article 5 of the Legislative Decree No 152/2006 defines environmental impact assessment to mean the preparation of a study concerning the impact on the environment that may result from the construction and operation of a project which is subject to authorisation, the carrying out of consultations, the evaluation of the environmental study and consultations in the decision-making process for authorising the project work and the provision of information on the decision. [822] An environmental impact assessment must contain specific components. These components are listed under Article 27 of Legislative Decree No.152 of 2006, which stipulates that an environmental impact study shall include at least the following:

- (i)'A description of the project, which includes its characteristics, its location and size
  (ii) a description of the planned measures to avoid, mitigate, and, if possible, compensate for significant adverse effects.
- (iii) Data will be used to identify and assess the effects on the environment and cultural heritage of the project upon implementation
- (iv) A summary description of the main alternatives, reasons for the choice, and environmental impact.
- v) An assessment of the project's cost-benefit ratio from environmental, economic, and social aspects.'[823]

From the above, it is stated that an EIA must contain a description of the project, such as its location and size, an overview of measures planned to mitigate possible adverse effects of the project and

[819] Regional Law 18 May 1999, n.9 ((LR 9/99).
[820] Ibid
[821] Ibid
[822] Legislative Decree No 152/2006, art. 5 (b & c)
[823] Ibid., art 7 (5)(a)(b)(c)(d)(e).

compensation, an assessment of the project's environmental and cultural heritage, alternatives considered for environmental impact, and a cost-benefit analysis on environmental, economic, and social effects.[824]In addition, the environmental impact assessment must be submitted along with a summary of the work plan and data information on the study.[825]The law also provides the public or private individuals interested in the project with the right to access data during the environmental impact assessment.[826]This is in accordance with Principle 10 of the Rio Declaration, which states that:

> 'Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.'[827]

The right to access information is also guaranteed in the Aarhus Convention.[828]Italy is a member of the EU and a party to the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters.[829]Within the EU, access to information ensures that the authorities make environmental information available to the public.[830] Therefore, Member States must take the necessary measures to ensure that public authorities organise the relevant environmental information to disseminate to the public.[831]The right to access information focuses on the state of the environment, policies or measures affecting the environment, and public health and safety, where these are affected by the state of the environment.[832]

Generally, the governance of natural mineral resources in Italy is categorised under the first and second categories.[833] Therefore, permitting procedures for exploring and extracting mineral resources

[824] Ibid., art. 27
[825] Ibid., art. 27 (6)
[826] Ibid., art.27 (7)
[827] The Rio Declaration on Environment and Development (1992), Prin.10
[828] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Aarhus, Denmark, 25 June, 1998, art. 4.
[829]Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
[830] European Commission, Aarhus Convention and the EU. Available: https://environment.ec.europa.eu/law-and-governance/aarhus_en. Accessed 25 January 2025.
[831] Ibid, art.7
[832] Ibid.
[833] Legislative Decree No 152/2006

are also considered along such categorizations.[834]The regions are responsible for issuing permits to explore first-category materials (all solid minerals excluding offshore), followed by an extraction concession.[835]Nevertheless, each region has its own permitting laws and procedures.[836]This difference in regulations and procedures remains a problem because the documents requested and presented in one region may differ or may not be sufficient in another region if one wishes to extract the same material across regions, [837]for instance. On the other hand, the national state government is responsible for issuing licenses for offshore minerals.[838]

An exploration permit application must include a research plan and information on the applicant's technical, economic, and expertise.[839]However, no exploration permits are required for second-category materials because the area is already defined by Mining Plans (areas already explored) and directly concerns landowners.[840]Therefore, those seeking to engage in extraction activities must either buy the land or get permission from the landowner, who is also responsible for securing extraction licenses.[841]However, the request must include, among others, the following:

- Availability of the land; An exploitation plan; A restoration plan
- Economic and financial resources plan; Director of exploitation and restoration plan
- Geological and hydrogeological relation; The type and amount of materials to be extracted; Extension and maximum depth; Date of end of extraction; Restoration plan.[842]

In addition, the landowner must adopt measures to prevent damages to other property and assets, provide annual payments per the volume of materials extracted according to the rate set in the region, establish a financial guarantee, and ensure proper implementation of the work plan and a final restoration plan.[843]In the case of the first category of minerals, an application for an exploration

[834] Ibid
[835] Ibid.
[836] For instance, in the Emilia-Romagna the competent regional structure issues the permit within 45 days of submission of the application.
[837] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. Legal *framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016.
[838] Ibid
[839] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016, available at: https://data.europa.eu/doi/10.2873/920344
[840] Ibid.
[841] Ibid.
[842]Ibid.
[843] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016.

license must be submitted with a document indicating the applicant's expertise. The applicant must also submit documents, including the name of the director of exploitation and restoration work and the request to undertake the mining project according to the EIA, among others.[844]

Italy is a member of the European Union, and EU law is integral to its legal regimes covering the mining industry and environmental protection.[845]Article 5 of the EU Directives on Assessment of the Effects of Certain Public and Private Projects on the Environment states that an environmental impact assessment should identify, describe, and assess appropriately, on a case-by-case basis, the direct and indirect effects of a project on human beings, soil, climate, landscape, material assets, and cultural heritage.[846]In line with this, the Regional Law on the Regulation of the Environmental Impact Assessment Procedure states that an Environmental Impact Assessment (EIA) aims to improve the quality of life and health, maintain species, conserve ecosystems, and ensure the sustainability of resources.[847]In conclusion, this section highlights the licence requirements for exploring and extracting mineral resources in the Italian extractive industry.

5.6. Processes and Practices of MNCs in the Extractive Industry and Human Rights

This section presents two case studies in the extractive industries in Italy and Sierra Leone. Therefore, two corporations are presented below:

5.6.1. Case Study 1: Quarry Consona (Cava Consona) - Italy

As part of this study, six-month research was conducted at various times at the Quarry Consona (Cava Consona) in Bagheria. Cava Consona is the short name for the Cava Giardinello Limited, a subsidiary of the Limestone Quarry "*Giardinello" in C.da Giardinello, Termini Imerese*. The corporation mines, produces, and markets aggregates in a limestone quarry named "Giardinello." It is located in Contrada Giardinello in the Municipality of Termini Imerese (PA) municipality, operated by Cava Giardinello Srl, with a registered office in the city of Bagheria. The corporation extracts and transforms raw materials through crushing processes in mining activities. See the picture 1 photos of the mine site below:

[844] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016.

[845]European Union, Social and environmental impacts of mining activities in the EU (2022), available at: http://www.europarl.europa.eu/supporting-analyses

[846]Council Directives on the Assessment of the Effects of Certain Public and Private Projects on the Environment, (85/337/EEC), 27 Jund 1985, art.5

[847] Regional Law 18 May 1999, N. 9, *Regulation of The Environmental Impact Assessment Procedure, Official Regional Bulletin N. 66 Of 21 May 1999, art 2*

FIGURE 3: *Contains Two photos of Mine Sites at Quarry Consona. On-site photos 22 November 2022.*

FIGURE 4: Limestone Deposits. On-site photos, 22 November 2022

i). Mining, Processing And Marketing of Limestone Material

At Cava Consona, various processing activities are carried out to extract limestone deposits and materials for the production and marketing of aggregates used in the manufacture of cement or bituminous mixes. The production cycle consists of material extraction, processing, and marketing of the same, which is characterised by the following ten key activities:

- Execution Perforations By Drilling Machine
- Blasting Mines
- Execution of Excavation By Excavator (With Bucket and Hammer)
- Handling Tout Venant By Mechanical Shovel
- Material Transport By Dump Truck
- Frantuation
- Loading And Unloading Machinery
- Repair and Maintenance of Vehicles, Facilities And Equipment
- Auto Transport
- Office Work

These activities are carried out sequentially in order of priority, as the case may be, and dependent on the stage at which the mine is. It was observed and recorded as follows:

> *Having obtained the necessary permits to carry out the mining activity, it must equip itself with the appropriate mining equipment, find the workers and employees, have the necessary financial resources to start operations, and after a thorough study of the target market and competitors, find solutions to produce products of higher quality than the market at a competitive price, while also giving due emphasis to you quality controls and certifications obtained.*[848]

[848] Carollo Fidel Jose, Administrative and Commercial Manager, Interview response at *Cava Consona*, Bagheria, 04 October 2023.

FIGURE 5: Activity uses Hydraulic Drilling Machine to perform drilling in soil and the preparation of mines to be exploded later.

FIGURE 6: Activity uses Hydraulic Drilling Machine to perform drilling in soil and the preparation of mines to be exploded later.

FIGURE 7: Extraction Process - photo from May 2017 report.

Health: The corporation subjected all individuals (workers) at Cava to pre-medical examinations before hiring and thereafter annually, which is also a legal requirement. This is in accordance with the health and safety regulations prepared by the ministries, regions and other relevant authorities.[849]Therefore, the guidelines considered are based on the following aspects and activities:

- Examination of the work environment (workroom requirements, access routes, equipment safety, microclimate, lighting, noise, physical and harmful agents);
- Identification of tasks performed in the workplace (to identify hazards arising from individual tasks)
- Examination of the way the work is carried out (to check compliance with procedures and whether they involve additional hazards)
- Examination of the environment to detect external factors that may adversely affect the workplace (microclimate, ventilation)
- Examination of work organization.
- review psychological, social and physical factors that may contribute to stress at work and study how they interact with each other and with other factors in the organization

[849]See ISPESL and INAIL and autonomous provinces of Trento and Bolzano.

and work environment. The observations are compared with criteria established to ensure health and safety, primarily based on national and international legal standards.[850]

Additionally, the company also offers health insurance to its employees. In particular, the corporation fully complies with the National Collective Labour Agreement (*Contratto Collettivo Nazionale*, or CCNL) rules. It has a Code of Ethics in place to ensure compliance with these rules.

ii). Participating Bodies

Bodies set up at the initiative of one or more associations of employers and employees comparatively more representative at the national level, as privileged venues for the planning of training activities and the elaboration and collection of good practices for prevention purposes; the development of actions concerning health and safety at work; the assistance to companies aimed at the implementation of the relevant obligations; any other activity or function assigned to them by law or by the relevant collective agreements. Thus, the following bodies:

- **Orima Service Srl** - handles routine and extraordinary maintenance of quarry vehicles and equipment in general that are part of the aggregate crushing plant.
- **Azienda Agricola Torrazza**, - responsible for the environmental recovery of the quarry sites where the extraction phase has been exhausted, by planting trees and plants.
- **Fenner Dunlop Italia Srl**, - for work related to the extraordinary maintenance of belts, pulleys and rotating systems that are part of the crushing plant.
- **Civem Srl**, - for all ordinary and extraordinary electrical and lighting maintenance work on the various parts of the crushing plant, storage areas and other office premises.

iii). Prevention

Under the corporation's terms, prevention refers to the measures necessary, according to the particularities of the work, experience, and technique, to avoid or reduce occupational hazards while respecting individuals' health and the integrity of the external environment**.** Therefore, the following preventive measures apply:

- *Elimination of hazards and related risks;*
- *Replacement of what is dangerous with what is not dangerous or is less dangerous;*
- *Risk intervention at the source;*

[850] Ibid.,

- *Application of collective protective measures rather than individual ones;*
- *Adaptation to technical progress and changes in the field of information;*
- *Improving the level of prevention and protection over time.*[851]

This aligns with the Precautionary Principle. Principle 15 of the Rio Declaration states that

> 'where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.[852]

The precautionary principle requires that activities posing a threat to the environment be prevented from adversely affecting the environment, even if no conclusive scientific evidence links those activities to environmental damage. Additionally, developmental activity must be halted and prevented if it causes severe and irreversible environmental damage. It is better to be cautious and prevent environmental harm, which may become irreversible. Environmental measures must anticipate, prevent and attack the causes of environmental degradation.

As part of its ccorporate social responsibility, the corporation voluntarily integrates social and environmental concerns into its business activities and stakeholder relations.

vi). Environmental Recovery

It relies on the work of other external companies for extraordinary maintenance services in the plant and some environmental recovery work on the already completed fronts. In this regard, it relies on Azienda Agricola Torrazza, with its operational headquarters in Torrazza, a municipality of Termini Imerese, which is responsible for carrying out environmental recovery in areas where the extraction phase has been exhausted or closed. The main activity for environmental recovery is planting trees and plants in the quarry sites.

[851] Report, Coordinated S.S.D. May 2017, p. 19
[852] Rio Declaration, 1992, principle 15

FIGURE 8: ***Tree Planting as part of Environmental Recovery at the completed Mines. Photo taking on site, 18 November 2022.***

FIGURE 9: Tree Planting as part of Environmental Recovery at the completed Mines. Photo taking on site, 18 November 2022.

Regarding environmental activities, it was confirmed that there are **legal obligations r**elated to atmospheric emissions, compliance with regulations on noise and electromagnetic fields, the disposal of waste water, oil and all other pollutants. The corporation is obligated to restore the environment in the mining areas by replanting vegetation and planting trees, all of which are regulated by the mining

authorisation. All obligations are regulated by law, which requires reporting to the monitoring authorities on specific dates.[853]

5.7 Summary and Conclusion

The first part of this chapter provides an overview of the Italian extractive industry.
First, a brief and general background of the Italian mining industry is presented. This is followed by an explanation of the governance of the Italian extractive industry, which is decentralised in nature and has numerous laws. The section also provides information on the key institutions that govern the mining industry in Italy. This is to appraise the institutional buildup governing the extractive industry in the country. It also describes the licensing procedures for obtaining a permit to extract natural minerals.

5.8 Sierra Leone's Extractive Industry

This section provides an overview of the extractive industry in Sierra Leone, a country renowned for its rich mineral resources, including diamonds, rutile, bauxite, gold, iron ore, limonite, platinum, chromite, and coltan. [854]However, these resources have been linked to the instability and civil war that the country has suffered in the past.[855] The civil war, which began on 23 March 1991, lasted for 11 years and left over 50,000 people dead.[856]It is not surprising that in 2004, the Sierra Leone Truth and Reconciliation Commission (SLTRC) reported that the central cause of the civil war had been the endemic greed and corruption of political elites, who *'plundered the nation's assets, including its mineral riches,.. robbed the nation of its dignity and reduced most people to a state of poverty.'*[857]Sierra Leone also exhibits a negative correlation between economic growth and natural resources, despite having one of the poorest endowments of natural resources, similar to the Democratic Republic of Congo.[858] Nevertheless, the development of the extractive industry in Sierra

[853] Ibid.
[854] Vitoria R Nalule, *Land Law And The Extractive Industries: Challenges and Opportunities in Africa. Global Energy Law and Policy: Volume 7,p.21*
[855]Merle Sowman and Rachel Wynberg, *Governance for Justice and Environmental Sustainability: Lessons across natural resource sectors in sub-Saharan Africa* (Routledge, 2014).
[856] Isiani, MC and Ihediwa, NC, 'War and Gender: Socio-Economic Reflections on the Sierra Leonean Civil War' (2019) (3) Cogito: Multidisciplinary Research Journal 133–59
[857] SLTRC, Witness to truth: report of the Sierra Leone Truth and Reconciliation Commission, Volume 2 Chapter 2, 'Findings', 2004
[858]Boschini, AD, Pettersson, J and Roine, J, 'Resource curse or not: A question of appropriability' (2007) 109(3) Scandinavian Journal of Economics 593–617; Vitoria R Nalule, *Land Law And The Extractive Industries: Challenges and Opportunities in Africa. Global Energy Law and Policy: Volume 7.; M. Fayiah, Mining and Environmental Degradation: a Gift Brings Grief Scenario for Mining Communities in Sierra Leone. Journal of Mining and Environment (JME), Vol. 11, No. 2, 2020;*

Leone can be understood within the context of its colonial past, its link to the political economy, the discovery of minerals, and the development of the mining industry.

5.8.1 Mining in Sierra Leone

Sierra Leone has a vast endowment of minerals, including diamonds, rutile, bauxite, gold, iron ore, limonite, platinum, chromite, coltan, tantalite, columbite and zircon.[859]Mining began in 1930 when the Sierra Leone Development Company Limited (DELCO) obtained the rights to mine the iron ore deposit at Marampa, located in the Port Loko District of the Northern Province, which had been identified by a colonial geological survey a few years earlier.[860]DELCO built a shore-to-ship offloading facility at Pepel in the Sierra Leone River estuary and a railway connected directly to the mine site.[861]

Artisanal mining of diamonds and gold in Sierra Leone had a much broader socio-economic impact than industrial mining due to its low technology and labour-intensive methods.[862]When diamond deposits were discovered in the 1930s, the Sierra Leone Selection Trust (SLST) was granted an exclusive exploration license for mining and marketing to a wholly-owned subsidiary of Consolidated African Selection Trust.[863]However, due to the dispersed nature of the diamond deposits, unauthorised peasant mining using tools (such as buckets, spades, etc.) and, in rare cases, mechanical pumps became a common practice.[864]

It is pertinent to note that understanding the extractive industry in Sierra Leone requires an examination of the political economy and the governance of the extractive industry. The reason for this is the country's colonial period of government. Expanding on this, Fanthorpe and Gabelle have observed that the concentration of power and wealth in the capital city, Freetown, and the deprivation of rural areas are fundamental features of the political economy of Sierra Leone.[865]The divide is rooted in the established geographical footprint of the British Crown Colony of Sierra Leone, whose origins and philanthropic efforts to re-settle liberated African slaves on African soil.[866]By the end of the 19th century, Freetown had become a thriving city with a municipal council and 30,000 inhabitants. However, it was not until 1896 that the Sierra Leone Protectorate (now the provinces)

[859] Sierra Leone Extractive Industries Transparency Initiative (SLEITI) , EITI Report 2020-2021, 30 March 2023.
[860] H. Jarrett, 'Lunsar: a study of an iron ore mining centre in Sierra Leone', Economic Geography, 32, 1956.
[861] Ibid.
[862] Ibid.
[863] Ibid.
[864] Ibid.
[865]Richard Fanthorpe and Christopher Gabelle, *Political Economy Of Extractives Governance In Sierra Leone.* World Bank, July 2013.
[866] Ibid

became part of the British Crown. While the Protectorate represented only a tiny part of Freetown's historic trading hinterland, colonial administrators entertained the hope that British rule would facilitate the intensification of the local economy.[867]

In particular, during the colonial period, land law in Sierra Leone prohibited 'non-natives' from owning land in the Protectorate (provinces) but allowed them to lease it.[868] The 'non-native' category included the colonial government and the Krio community of the Colony, who were described as descendants of freed slaves. This discriminatory administrative system helped to lay the foundations of a political economy based on the extraction of rents from landowning peasants.[869] Since independence in 1961, the political economy has been directed towards managing scarcity and extractive rents at all costs. This has left many wondering whether the influx of mining revenues into the state's coffer will change the political economy and, if so, how. It is not surprising that in recent years, the government, its international partners, and other interested parties have scrutinised the award of contracts and licences.[870] However, throughout the 1990s until 2002, an 11-year civil war engulfed the state, and many believe revenues from the minerals sector funded the war, leading to the infamous blood diamonds.[871] which left thousands of deaths, destruction of property, infrastructures and a severe contraction in the economy.[872]The sector was also greatly affected by the dual shock of the drop in iron ore prices and the Ebola epidemic in 2014.[873]At present, several foreign operators are involved in mining different minerals despite being challenged by the current adverse world supply and demand conditions.[874]

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[867] T.J. Alldridge, *A transformed colony: Sierra Leone as it was and as it is its progress*, *people, native customs and undeveloped wealth*, London, 1910.

[868]Richard Fanthorpe and Christopher Gabelle, *Political Economy Of Extractives Governance In Sierra Leone.* World Bank, July 2013.

[869]Ibid.

[870] *The Koroma administration established an Environmental Protection Agency (EPA), which was based in the Office of the President.* The agency's functions, as set out in the EPA Act of 2008, include: a) advising the Minister responsible for the environment on policies relating to the environment and environmental protection; b) coordinating the activities of bodies concerned with the technical or practical aspects of the environment; c) issuing environmental permits and pollution abatement notices; d) prescribing standards and guidelines relating to ambient air, water and soil quality, e) ensuring compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects; f) imposing and collecting environmental protection levies and g) promoting the establishment of national environmental standards.

[871] Audrie Howard, 'Blood Diamonds: The Successes and Failures of the Kimberley Process Certification Scheme in Agnola, Sierra Leone and Zimbabwe' (2016) 15 Wash U Global Stud L Rev 137

[872] Sierra Leone Extractive Industries Transparency Initiative (SLEITI) , EITI Report 2020-2021, 30 March 2023.

[873] Ibid

[874] SLEITI, 2023

5.8.2. Laws and Policies on Extractive Industry in Sierra Leone

Sierra Leone's 1991 constitution does not provide specific environmental rights like many countries. This means laws relating to the environment are provided for in legal frameworks such as Regulations, Acts, and Policies. However, the 1991 constitution recognises that the state has permanent sovereignty over natural resources.

In recent years, the government, development partners, and non-governmental organisations have scrutinised the extractive industry in Sierra Leone. This includes enacting laws and formulating policies on environmental and mining matters. As a result, many laws have been adopted, with some for regulating mining activities and environmental protection, as highlighted in Table four below.

5.8.3 Legal Frameworks on the Extractive Industry in Sierra Leone

- *The Mines and Minerals Development Act 2022*
- *The Sierra Leone Mines and Minerals Development and Management Corporation Act, 2023*
- *The Mines and Minerals Development Regulations, 2023 (No.9 of 2023)*
- *The National Minerals Agency Act, 2023.*
- *The Sierra Leone Mines and Minerals Development and Management Corporation (Allocated Minerals and Mineral-Related Assets) Regulations 2024.*[875]

5.8.4. Corporations /Companies in the extractive industry in Sierra Leone

The following are the key mining companies in the extractive industry in Sierra Leone.[876]See Table 4:

Corporations	Corporations
1. *Cheng Li Trading Mining*	10. *Seawright Mining Co*
2. *Dayu Mining Co*	11. *Sierra Diamond Limited*
3. *FG Gold Ltd*	12. *Sierra Mineral Holdings 1 Limited*
4. *KaSino Mining Company Limited*	13. *Sierra Rutile Limited*
5. *Kingho Mining Company Limited*	14. *Sierramin Bauxite (SL) Limited*
6. *Koidu Limited*	15. *Supreme Minerals Corp*
7. *Marampa Mines Limited*	16. *Tonguma Limited*
8. *Meya Mining Limited*	17. *Wongor Investments and Mining Corporation Limited.*[877]
9. *Pan African Rare Metal Mining Co*	

[875] National Minerals Agency: Available at: https://www.nma.gov.sl/legal-regulatory-instruments/
[876] Sierra Leone Extractive Industries Transparency Initiative (SLEITI), EITI Report 2020-2021 (30 March 2023)
[877] SELITI 2023.

From the above, it is evident that Sierra Leone's extractive industry has become involved over time, which colonialism had influenced, and neocolonial institutions continue to influence.

5.9 Obligation To Conduct Environmental Impact Assessment By Corporations In The Extractive Industry In Sierra Leone

This section outlines the obligation to conduct environmental impact assessments before an extractive industry undertaking can commence in Sierra Leone. Under Sierra Leone law, an environmental impact assessment (EIA) is required for certain mining activities[878]before they can commence. This obligation is reflected in Section 24 of the Environmental Protection Agency Act 2022, which states that:

''A person shall not undertake or cause to be undertaken activities set out in the First Schedule unless he holds a valid environmental impact assessment licence issued by the Agency for that purpose.''[879] This means that there is an obligation to obtain an EIA before the commencement of any activity prescribed under the First Schedule.[880] Failing to fulfil this requirement is an offence and, therefore, liable on conviction.[881]

5.9.1 Activities Requiring Environmental License in Sierra Leone

Under Sierra Leone law, the activities requiring an environmental impact assessment are prescribed under the EPA 2022, which are described as follows:

> ***(a). Land use change*** *(conversion of land to large scale agricultural production, forestry or to pasture land, rural development, timber production.*
>
> ***(b). changes in farming and fisheries practices*** *(introduction of new crops, large-scale mechanisation or use of chemicals in agriculture.*
>
> ***(c). exploitation of hydraulic resources*** *(dams, drainage and irrigation projects, water basin development, water supply);*
>
> ***(d). infrastructure (****roads, bridges, airports, harbors, transmission lines, pipelines, railways, water transport;*

[878] EPA Act, 2022, First Schedule (Section 24(1), 25(1)) Projects Requiring Environ Ment Impact Assessment Licence.
[879] EPA Act, 2022, sec. 24(1).
[880] EPA Act 2022, First Schedule.
[881] EPA Act 2022, sect. 24(2)

(e). industrial activities *(metallurgical plants, wood processing plants, chemical plants, power plants, cement plants and packaging, fuel stations, refinery and petrochemical plants, agro-industries, cold room.*

(f). extractive industries *(mining, quarrying, exploration, extraction of sand, gravel, salt, peat, oil and gas).*

(g). waste management and disposal *(sewerage systems and treatment plants, landfills, treatment plants for household and hazardous waste, incinerators).*

(h). housing construction and development schemes *(designation of new townships; establishment of industrial estates; establishment or expansion of recreational areas; establishment or expansion of recreational townships in mountain areas, national parks and game reserves; shopping centres and complexes; laboratories, block factories.*

(i) ***establishment of places of entertainment, hotels, motor repair garages and welding shops.***

(j). Importation Of Second Hand Vehicles.

(k). manufacturing activities or establishments, including waste recycling;

(l). Urban Development Planning, including the designation *and management of landfills, green parks, lorry parks, and construction of houses in mountain harbours;*

(m). the use of agrochemicals. [882]

The above section shows that any individual or corporate body wishing to undertake the stated activities must obtain an EIA from the Environmental Protection Agency. In addition, there are specific factors that the EPA must consider when determining an EIA, as follows:

(i) 'The Environmental Impact On The Community;

(ii) The location of the project;

(iii) Whether the project transforms the locality;

(iv) Whether the project has or is likely to have a substantial impact on the ecosystem of the locality;

[882] EPA Act, 2022, First Schedule (Section 24(1), 25(1)) Projects Requiring Environmental Impact Assessment Licences

(v) Whether The Project Results In The Diminution of The Aesthetic, Recreational, Scientific, Historical, Cultural or Other Environmental Quality of The Locality;

(vi) Whether the project will endanger any species of flora or fauna or the habitat of the flora or fauna;

(vii) The scale of the project;

(viii) The extent of the degradation of the quality of the environment;

(ix) Whether the project will increase the demand for natural resources in the locality;

(x) The cumulative impact of the project and other activities or projects on the environment.'[883]

The above highlights the factors determining whether a project requires an EIA in Sierra Leone. Primarily, it shows that factors such as the impact of the project on the community, project location and environmental changes it will bring in the community, project effects on the ecosystem, culture and endangered species, the project scale and extent of environmental degradation, increased demand in natural resources in the area, and cultivation impacts and other activities projects on the environment, among others. Where an EIA is approved, a license is issued to the applicant.[884] However, suppose a decision is made that a particular project does not require an EIA. In that case, the EPA will issue a valid license to the applicant authorising the proceeding with such project activity.[885]

5.9.2 Procedure to obtain an EIA in Sierra Leone

The procedures to follow for obtaining an environmental license in Sierra Leone are listed under the Environmental Protection Agency Act 2022 as follows: First, section 25, paragraph 1, of the EPA Act 2022 stipulates that a person who wishes to undertake or cause to undertake a project that falls under any of the activities in the first schedule must apply to the Environmental Protection Agency for a license for that purpose.[886]

[883] EPA Act 2022, Second Schedule (Section 26(2)) Factors Determining Whether A Project Requires Environmental Impact Assessment
[884] Ibid, sect. 29
[885] Ibid
[886] EPA Act 2022, sec. 25(1)

Secondly, Section 25, paragraph 2 of the EPA Act 2022 states that the application must be accompanied by supporting documents, including a description of the project to be undertaken, an environmental statement, the likely impact of the project, and the proposed mitigation measures.[887]

Thirdly, Section 27, Paragraph 1, of the EPA Act 2022 requires the applicant to prepare and submit an Environmental Impact Assessment (EIA) of the project concerned to the Environmental Protection Agency (EPA).[888]

Fourth, Section 27, paragraph 2 of the EPA Act 2022, provides for sanctions upon conviction for failing to prepare and submit an EIA of the project concerned to the EPA, or for falsifying an EIA, which is an offence and is liable on conviction.[889]Accordingly, the following steps are to be followed for an EIA application process in Sierra Leone:

- Decide whether your project falls withing the First Schedule of the EPA Act 2022
- If it does, you write an application letter to the EPA for an EIA Licence.
- Wait for a period of fourteen days (14 days) for the EPA to assess your application and determine whether or not a licence is required for your project. The Executive Chairman will communicate to you if your project does not require a licence.
- If it does, you must prepare and submit an environmental impact assessment (EIA) to EPA.
- The EPA, upon receiving the EIA of your project, publishes it on its website or newspaper for inspection and public comments.
- Public comments must be submitted within fourteen days (14 days) to the Executive Chairman.
- The Executive Chairman then submits the assessment and the public disclosure report to the Board for consideration.
- The Board may then either direct the Executive Chairmen to issue a license or require the applicant to provide additional information or reject the EIA.
- Additionally, the information is required to be submitted to the EPA withing twenty one days (21 days) from the day of the request.[890]

[887] EPA Act 2022, sect 25 (2)
[888] EPA Act 2022, sect. 27 (1)
[889]The law provides for different fines: In case of '(a) an individual, to a fine of not less than 50,000,000.00 Leones or to a term of imprisonment of not less than 2 years or to both such fine and imprisonment; and (b) a body corporate, to a fine of not less than 100,000,000.00 Leones. EPA Act 2022, sect. 27 (2).
[890] Environmental Protection Agency, *An Abridged Version of the Environmental Protection Act 2022*, May 2025.

In summary, it is apparent that under Sierra Leone's environmental law, a license is required before the commencement of any mining activity. This means an individual or a corporation wanting to engage in environmental activities stipulated under the First Schedule of the EPA Act 2022 must prepare and submit an application to the EPA for such purpose, which includes a description of the project, including an environmental statement, its potential impacts, and the mitigating measures. Thus, failing to submit such an application or providing false information to that effect is an offence that, upon conviction, results in a fine, imprisonment, or both.

5.10 Processes and Practices in the Extractive Industry in Sierra Leone.

This section presents the processes and practices used in Sierra Leone's extractive industry. Therefore, Marampa Mines Limited (MML) is used as a case study, which is presented as case 2 below:

5.10.1 Case Study 2: Marampa Mines Limited As A Case Study Sierra Leone

The Marampa Mines Limited (MML), commonly referred to as 'Marampa Blue,' in the Port Loko District, Northern Province of Sierra Leone. MML is incorporated in 2021 as a subsidiary of the 'Gerald Group', which engaged in the exploration, development, and production of high-grade iron ore concentrate, Marampa Blue[891]at Marampa village. Accordingly, the MML focuses on building a resilient and long-lived iron ore mine in Sierra Leone by integrating mining, processing, infrastructure, and export logistics, while also playing a responsible role in the region's economic and social stability.[892]MML optimises the sustainable use of mineral resources by building a resilient mine and creating prosperity in nearby communities.[893]

Regarding compliance, the MML adheres to Sierra Leone's laws, policies, and regulations governing environmental management. Thus, compliance with the Sierra Leone regulatory framework, including international conventions that Sierra Leone has ratified, is obligatory.[894] On human rights, MML maintains and upholds high standards of human rights, such as labour rights, and the rights of host communities in and around the concession area. In addition, MML is fully committed to the UN's Guiding Principles of Business and Human Rights and the Universal Declaration of Human Rights.[895]

[891] Marampa Blue, our premium grade >65% iron ore concentrate, enables customers to produce greener steel for a cleaner environment.
[892] Marampa Mines: Available at: https://marampamines.com/about-us/
[893] Craig Dean, Chairman and CEO, Gerald Group.
[894] MML 2023 Sustainability Report.
[895] MML 2023 Sustainability Report

i.) Health and Safety Policy

MML is committed to ensuring the health and safety of its staff and personnel on the mine site and all others affected by its activities. MML strives to provide a safe environment for all by upholding best health and safety practices and working conditions standards at the mine site through the implementation of controls and interventions to minimise health and safety risks arising from environmental activities.[896] The health policy covers individuals who are staff working at all levels and grades on the mine site, including senior managers, officers, directors, employees, consultants, contractors, trainees, home-workers, interns, and part-time and fixed-term employees.[897]

ii). Environmental Policy

In its environmental policy, MML is committed to the well-being of the environment and the communities in which it operates. MML continuously seeks to mitigate the impact of its activities by minimising the negative impacts of its operations and activities across the board. In this regard, MML adheres to the "do no harm" policy approach, generating economic, social, and environmental benefits.[898]The specific environmental activities carried out include:

- Environmental Impact Assessment
- Progressive Rehabilitation
- Water Quality Analysis (water management)
- Water Quantity Assessment /Water Efficiency-Flow Matter To Avoid Flood
- Pollution Control
- Noise Control/monitoring
- Air quality monitoring –Dust
- Carbon monitoring – (Smoke pollution).
- biodiversity monitoring,
- land use and nature-based solutions[899]

Generally, Environmental Impact Assessment is monitored by regulatory bodies such as the Environmental Protection Agency (EPA) and the National Mineral Agency (NMA) every 3 months.

[896] This policy outlines the provision and maintenance of a safe workplace, plant, and equipment; ensuring the safe handling and use of substances; consultations with our staff; providing appropriate information, training, and supervision of staff members; and taking steps to prevent accidents and cases of work related ill-health.
[897] MML
[898] MML, Environmental Policy. Available at: https://marampamines.com/mml-policies/Environmental-Policy.pdf
[899] Marampa Mines Limited, 2023 Sustainability Report. Available at: MML 2023 Sustainability Report.pdf

EIA is renewable every year. In compliance with measures concerning the environment and how they are adhered to by the corporation, the following was recorded:[900]

- Comply with all the licenses that are acquired from the government with each terms and conditions.
- Measures on occupational health and safety. That is we conduct pre-medical test before start working, we provide medical for employees, there is in house medical clinic coverage with well-equipped laboratory and with trained and qualified doctors and nurses.
- We do general environmental compliance monitoring such as Air Quality (for dust emission), noise monitoring (control level of noise emission), radiation monitoring (compliance with nuclear safety), Water quality analysis (certify portable water for workers) and surface water analysis (control water pollution like streams within area of operation).
- We submit quarterly reports to Environmental Protection Agency (EPA), National Mineral Agency (NMA), and National Water Resources Management Agency. Our report is being monitored by these regulators on quarterly basis to monitor our operations.
- Conduct toolbox talks/discussions on a daily basis with workers. That is we share topics on environment, Health and Safety to workers and we discuss them every morning before work commences.
- Conduct vehicle inspections to ensure the vehicles are operating within our area/operation meet safety requirements (everyday).
- Conduct daily safety and environmental inspections to ensure compliance with Marampa Mines Limited (MML) policies and procedures, including environmental policies, Health & Safety Policy, Drug & Alcohol Policy, and Vehicle Safety Policy.[901]

iii). Activities at Marampa Mines Limited

The primary processing activities carried out at Marampa Mines Limited include mining, crushing, milling, and processing, producing Marampa Blue, as well as transporting overland logistics, marine logistics, and marketing.[902]This aligns with the general activities of corporations in the extractive industry, as highlighted in Chapter Two above. In addition, the general activities carried out at MML are summarised into six categories:

- Mining:

[900] On sight Interview with the Environment Superintendent - Heath Safety Environment (HSE), Marampa Mines Limited (11 May 2023). In charge of environmental compliance Monitoring and reporting.
[901] On sight Interview with the Environment Superintendent - Heath Safety Environment (HSE), Marampa Mines Limited (11 May 2023). In charge of environmental compliance Monitoring and reporting.
[902] Ibid.

- Crushing,
- Milling and Processing,
- Producing Marampa Blue,
- Transporting Overland Logistics,
- Marine Logistics And Marketing

FIGURE 10: Mine site. Retrieved from MML Sustainability Report 2023

iv). Environmental Recovery /Final Closure

Accordingly, Marampa Mines Limited (MML) applies what it refers to as 'Progressive Rehabilitation (PR). This means that as you extract natural resources, you fill the pits with mine waste, commonly referred to as 'waste tailings,' which are later covered with topsoil, and finally, trees are planted. Additionally, there is a ''Rehabilitation Bond,'' This requires all Corporations to apportion a '**mine closure bond**,' usually a cash deposit to the government through the Environmental Protection Agency's account.[903]

[903] Ibid.

FIGURE 11: Tree Planting as the final stage in environmental recovery. Photo from 2023 Sustainability Report.

MML also established the Community Development Fund,[904] from which the corporation pays 1% of its yearly turnover to the community in which its operations take place.

[904] See Mines and Mineral Development Act 2022

FIGURE 12: *MML designates 1% of free-on-board export revenues for community development projects, through the Community Development Fund (CDF), which is payable at the beginning of the next financial year. The presentation was made to President Maada Bio. See 2023 Report.*

5.11 Chapter Summary and Conclusion

This chapter presents the extractive industries of Italy and Sierra Leone. In this regard the chapter presents an overview of these industries, followed by laws covering the extractive industry in both countries. It also examined the obligation and processes regarding environmental impact assessment (EIA) in Italy and Sierra Leone.

Furthermore, the chapter presents two case studies of corporations in the extractive industry from both states. The rationale behind this is to enables the researcher conduct a personal appraisal of the extractive industries regarding their adherence to obligations under domestic and international laws with respect to environmental protection and human rights, in Italy and Sierra Leone. Hence, the first Case Study concerns 'Quarry Consona (*Cava Consona*), an extractive company specialising in quarrying and produces limestone in Bagheria, Italy. The second Case Study concerns the 'Marampa Mines Limited (MML),' a mining corporation incorporated as a subsidiary of the Gerald Group, engaged in the exploitation, development and the production of high-grade iron ore mining, in Marampa, Sierra Leone. In both cases, the processes, environmental policies and licensing procedures

for mining permit were examined. The next chapter presents a comparative analysis of the environmental laws of Italy and Sierra Leone.

CHAPTER SIX: SIMILARITIES AND DIFFERENCES BETWEEN ITALY AND SIERRA LEONE'S ENVIRONMENTAL LAWS.

6. 1 Introduction

This chapter presents the similarities and differences between Italy's and Sierra Leone's environmental laws. The rationale for this is to compare the environmental laws of Italy and Sierra Leone. Outlining the similarities and differences helps us understand states' obligations and corporate accountability under domestic and international law. First, similarities between the two countries are presented, followed by the differences. The chapter then proceeds with a summary and conclusion.

6.2. Similarities Between Italy And Sierra Leone Environmental Laws

This section presents the similarities between Italy and Sierra Leone's environmental laws and related issues. Thus, the following similarities are worth noting:

6.2.1 The Right to Permanent Sovereignty Over Natural Resources

The study reveals there is **state sovereign rights over natural resources** in Italy and Sierra Leone. Accordingly, the principle of state sovereignty over natural resources allows states, within limits established by international law, to conduct or authorise activities within their territories, including those that may adversely affect the environment.[905]

Under Italian law, Article 9 of the Italian Constitution empowers the state to 'safeguard natural landscape and the historical and artistic heritage of the Nation.'[906]This means the Italian Constitution recognises the state's duty to safeguard the natural landscape, including the control of natural resources and the protection of the country's historical and artistic heritage. Similarly, Section 7 of the 1991 Constitution of Sierra Leone states that the state shall 'harness all the natural resources of the nation to promote national prosperity and an efficient, dynamic, and self-reliant economy.'[907]This means the constitution reaffirmed the state's power to control natural resources for national prosperity and economic development. Thus, in both cases (Italy and Sierra Leone), domestic laws confer the right to sovereignty over natural resources. These states can enact rules and formulate policies regarding the management and extraction of natural resources. For instance, in the case of Italy, the fundamental principles governing mining activities are set out in legislation RD No. 1443 of 1927,

[905] Philippe Sands, Jacqueline Peel, Adriana Fabra, and Ruth MacKenzie, *Principles of International Environmental Law* (Cambridge University Press, 2018), p.234
[906] Constitution of the Italian Republic, 201o
[907] The Constitution of Sierra Leone, 1991, Act No.6 of 1991, sec. 7

which outlines the legislative norms for the country's exploration and exploitation of mines. [908]Also, the codification of environmental law is within the state's exclusive legislative competence.[909]In that regard, Article 117 of the Italian Constitution (as amended in 2001) declares that the State enjoys exclusive competence in the area of, *inter alia*, the 'protection of the environment, the ecosystem and cultural heritage.'[910]Equally, in the case of Sierra Leone, the Mines and Minerals Development Acts of 2022 does not only provide for guidelines for exploration, development, sale, and export in Sierra Leone,[911]but it also promotes transparency, accountability, and sustainable management of Sierra Leone's mineral resources, ensuring the welfare of communities affected by mining activities and mitigating environmental impacts.[912]This Act also provided for measures to reduce the harmful effects of mining on the environment.[913]

6.2.2 Obligation to Conduct Environmental Impact Assessment (EIA)

The study also examines the obligation to conduct environmental impact assessments under domestic law. It reveals that the domestic laws of Italy and Sierra Leone require states and non-state actors, including multinational corporations in the extractive industry, to conduct an environmental impact assessment before commencing specific environmental projects, as applicable. This includes the exploration and extraction of mineral activities. In the case of Italy for instance, an overview of the laws covering the extractive industry in chapter five, reveals that, the Legislative Decree No 152/2006 defines environmental impact assessment as the preparation of a study concerning the impact on the environment that may result from an environmental project, which is subject to authorisation, the carrying out of consultations, the evaluation of the environmental study and consultations in the decision-making process for authorising the project work and the provision of information on the decision. [914]It is therefore not surprising that the LR 9/99 legislation requires an environmental impact assessment (EIA) before engaging in certain projects. Hence, Article 27 of Legislative Decree No.152 of 2006 outlines the contents of an environmental impact assessment which includes a description of the project, such as its location and size, an overview of measures planned to mitigate possible adverse effects of the project and compensation, an assessment of the project's environmental and cultural

[908] Royal Decree No 1443 of 29 July 1927
[909] Fabrizio Fracchia, ''*Codification" and the Environment*. Italian Journal Of Public Law (2009) 1-22, vol 1.
[910] The Constitution of the Italian Republic 1947, art.117
[911] Fabrizio Fracchia, ''*Codification" and the Environment*. Italian Journal Of Public Law (2009) 1-22, vol 1.
[912] https://www.iea.org/policies/18022-sierra-leone-mines-and-minerals-development-act-2022 Accessed on the 6th February, 2025 at 12:10
[913] ibid
[914] Legislative Decree No 152/2006, art. 5 (b & c)

heritage, alternatives considered for environmental impact, and a cost-benefit analysis on environmental, economic, and social effects.[915]

Similarly, under Sierra Leone law, the Environmental Protection Agency Act of 2022 requires an environmental impact assessment (EIA) for certain mining activities before they can commence. This obligation is reflected in Section 24 of the Environmental Protection Agency Act 2022.[916] Accordingly, an EIA is defined as '*a prior scientific foreseeable analysis of potential effects of an activity that would affect the environment and social conditions, including health and safety and which addresses certain issues through active and time-based mitigation and alleviation measures approved in accordance with the laws of Sierra Leone.*''[917] In short, an EIA means the approval issued by the Environmental Protection Agency.[918]This means that obtaining an EIA before the commencement of any activity prescribed under the First Schedule of the Environmental Protection Agency Act of 2022 is mandatory.[919]Failure to fulfil this requirement is an offence and, therefore, liable on conviction.[920] Hence, the contents of an EIA are prescribed under the Third Schedule of the EPA Act of 2022, which, among others, include the direct or indirect effects that the project is likely to have on the environment and the social, economic and cultural impacts that the project is expected to have on people and society.[921]

From the above, it is apparent that the laws of Italy and Sierra Leone require an environmental impact assessment to be obtained before the commencement of certain environmental activities. This means that an individual or corporation seeking to engage in environmental activities prescribed by the relevant domestic law must prepare and submit an EIA application. This includes exploration and the extraction of natural resources.

6.2.3 Public Participation and Access to Information on Environmental Matters.

The Italian law provides the public or private individuals interested in the project with the right to access information during the environmental impact assessment.[922]In decision-making on

[915]i). A description of the project, its characteristics, its location and size, (ii) a description of mitigation measures and compensate for significant adverse effects, iii). data will be used to identify and assess the effects on the environment and cultural heritage of the project upon implementation, iv). a summary description of the main alternatives, reasons for the choice, and environmental impact, and v). an assessment of the project's cost-benefit ratio from environmental, economic, and social aspects.
[916] Ibid, Sect. 24 (1)
[917] Mines and Minerals Development Act, 2023, Interpretation
[918] Mines and Mineral Development Act, 2023
[919]Environmental Protection Agency Act, 2022, First Schedule (Section 24(1), 25(1)) Projects Requiring Environmental Impact Assessment Licences.
[920] EPA Act 2022, sect. 24(2)
[921] EPA Act 2022, Third Schedule.
[922] Legislative Decree No 152/2006, art.27 (7)

environmental matters, data sources reveal a shared competence between the state government and regions, and between environmental associations in Italy, and Local Councils, Committee Wards, and Chiefdom Councils in Sierra Leone, respectively. In the case of the former, the domestic law empowers the regions to make laws and monitor environmental activities, including those in the extractive industry within their localities. These include planning, setting standards, authorising environmental activities, and monitoring for compliance, among others.[923] The Italian Constitutional Court has also reaffirmed such power, whose judicial activism has strengthened environmental rights to safeguard the country's individual rights and fundamental freedoms.[924] Under Italian law, the decentralised nature of the governance of the extractive industry and environmental protection between the state government and the regions is evident. Nevertheless, the case law has established the state's exclusive power to implement regulations on environmental protection, but regions can authorise complementary rules. [925]which have developed from domestic and European Union laws.[926]

In the case of Sierra Leone, Local Councils are empowered by the Local Government Act 2022,[927] which mandates that the Ministry of Environment delegate specific functions to Local Councils. The Local Government Act empowers the Local Councils to perform particular functions relating to the environment. These functions include land surveying, land registration, control of illegal sale of land, leasing government land, issuance of building permits, preparation of land use plans, and education and sensitisation on environmental issues. [928]Additionally, the Local Councils are complemented by Ward Environment and Chiefdom Environmental Committees, which are responsible, but subject to the direction of the Executive Chairman of the Environmental Protection Agency, for the conservation and protection of the environment for the health and safety of individuals. Ward Committees and Chiefdoms Councils assist the Local Councils by carrying out specific tasks, including protecting the environment. The Ward Committees and Chiefdoms are similar to the Italian Environmental Protection Associations. However, under Italian law, the legal recognition of these associations is based on specific criteria (for example, they must have existed for a certain period) that they must fulfil to be approved and recognised by the Ministry of Environment as environmental protection associations.[929] In sum, whilst the functions of the Ward Environment Committees and

[923] Administrative Procedure Act (Law No 241/1990) (APA);
[924] Case No.: Constitutional appeal no. 88/2012, judgment No.: 246/2013
[925] Case No.: Constitutional appeal no. 88/2012, judgment No.: 246/2013
[926] MINLEX - Italy Country Report, 2017 (Updated 2019)
[927] Local Government Act of No.26 of 2022.
[928] Ibid, Third Schedule.
[929]See, it must be represented in the region by its members and has regional headquarters, with a focus on environmental protection, in compliance with relevant laws and regulations, and its activities must have continued in the three year period preceding the application.

Chiefdoms on environmental protection are subject to the direction of the Executive Chairman of the Environmental Protection Agency, under Sierra Leone law, Italian law requires Environmental Protection Associations to fulfil specific criteria before the Ministry approves them to monitor environmental matters.

6.2.4 Decentralization of Environmental Legal Governance

It is worth noting that, despite being a unitary state, the Italian Republic recognises and promotes local governance autonomy through decentralisation of environmental governance and related matters. As indicated in chapter four, the country is divided into regions (*regioni*), which are the first-level divisions, comprising sub-units. These regions are further divided into provinces and municipalities (Communes). Hence, there are around 21 environmental regional agencies, each with its own environmental legislation named after its region. These regions make decisions within their municipalities. This is reflected under Article 117, paragraph 3, of the Italian Constitution, which gives the Regions concurrent legislative competence in different areas of the environment, including urban planning, health, and protection, among others.[930]This means the regions have autonomy in environmental decision making.

Additionally, the Regions' concurrent competence is also evident in the Legislative Decree 152/2006 (Environmental Code or 'EC'), permitting the Regions to introduce and maintain stringent environmental protective measures.[931]This, however, confirms the shared competence and the decentralised nature of the legal governance of the extractive industry and environmental protection between the Italian state government and the regions.[932]

Similarly, in the case of Sierra Leone, Local Government Councils are recognised and empowered under the Local Government Act of 2022[933](which replaced the Local Government Act 2004). Primarily, under its Third Schedule, the Ministry of Environment can confer specific functions to the Local Councils, such as *Land Surveying, Land Registration and Control of illegal sale of land, Leasing Government land, Strategic local plans, Issuance of building permits, Sand dues, Preparation of land use plans; and Education and sensitisation on environmental issues.*[934]In other words, although the Ministry devolved functions to the Local Councils, they are limited to specific

[930] The Italian Constitution
[931] EC,
[932] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU – Final report*, Publications Office, 2016, available at: https://data.europa.eu/doi/10.2873/920344
[933] Local Government Act of No.26 of 2022.
[934] Ibid.

activities. Nevertheless, environmental protection remains within the exclusive domain of the Environmental Protection Agency (EPA), whose vision is to ensure the sustainable use of natural resources that reduce poverty through adequate protection and management of the country's environment.[935]

Second, in the case of Italy, the codification of environmental law is within the scope of the state's exclusive legislative competence. In that regard, Article 117 of the Italian Constitution (as amended in 2001) declares that the State enjoys exclusive competence in the area of, *inter alia*, the "protection of the environment, the ecosystem and cultural assets."[936] Nevertheless, the Constitutional Court has consistently confirmed, in its judgment no. 407/2002, that regional legislative power exists in environmental matters.[937] This means there is shared competence on environmental matters between the State and the regions.

In addition, there is an affirmation of constitutional principles on environmental protection linking and conferring rights to property, health, and the preservation of cultural and landscape heritage, which the Constitutional Court has confirmed and upheld over time.[938] Similarly, in the case of Sierra Leone, the constitution not only affirms the state's commitment to harnessing all natural resources to promote self-reliant economic growth [939] but also grants the state ownership and control over all natural resources in the country.[940] In other words, the state exercises dominant control and ownership of natural resources.[941]Equally, regarding environmental governance, the state has exclusive competence in the area of, *inter alia,* working for soil conservation, including environmental protection in the country.[942]Nevertheless, domestic court jurisprudence on environmental issues remains aspirational. However, a division of the High Court of Sierra Leone has now been apportioned to matters relating to the Land, Property and Environmental Division.[943] In particular,

[935] Environmental Protection Agency. Available at: https://epa.gov.sl
[936] The Constitution of the Italian Republic 1947, art.117
[937] See Constitutional Court, judgment no.407/2002
[938] See *Corte costituzionale, Decision No. 183/1973; Corte costituzionale, Decision No. 115/1993; Corte costituzionale, Decision No. 170/1984.*
[939] The Constitution of Sierra Leone 1991, Act No.6 of 1991, sect. 7(1)(1a)
[940] Victoria R Nalule, *Land Law and the Extractive Industries: Challenges and Opportunities in Africa* (2021), Global Energy Law and Policy: Volume 7
[941]In non-dominial jurisdictions, the resources are controlled by the States or Provinces. For instance, in Canada, Section 109 of the 1867 Constitution Act vests ownership rights to extractive resources with the Provinces in which they are located. As noted previously, all African countries exercise the dominial ownership. As such, investors who wish to acquire rights over natural resources must deal directly with the relevant government to obtain the required licences or concessions. Most African countries follow the sovereign-inspired system where the natural resources are vested in the custody of the state to be managed on behalf of the citizens of the country.
[942] The Constitution of Sierra Leone, 1991, Act No. 6 of 1991, sect.21 (2)(h)(i)
[943] Constitutional Instrument No. 4 of 2019, sect. 5.

the Environment Division of the High Court hears and determines all real estate matters, including environmental issues, such as pollution, land use, refuse landfills, building permits, sewage works, exploration licences, and environmental impact assessments.[944] Unlike Italy, where the Constitutional Court has consistently affirmed shared competence between the state government and the regions on the one hand and advanced environmental rights, including the right to property, health and the recognition of cultural and landscape heritage on the other.

6.2.5 Rights to a healthy and safe environment

Generally, international human rights law not only recognises human rights for all, but it also imposes an obligation on States to ensure, secure or guarantee the effective enjoyment of human rights to all within their jurisdiction.[945] This means to provide mechanisms ensuring that the rights and freedoms recognised are enjoyed.[946] Case Study 1 in Chapter Five highlighted the health and safety measures implemented by Quarry Consona's management to ensure compliance with relevant laws at local and national levels. This includes, for example, conducting pre-medical and annual medical tests for workers at Cava, as well as measures to address the risks of workers' health and safety.

Similarly, Case 2 of Marampa Mines Limited (MML) highlighted a similar approach, whereby a pre-medical test is conducted and regular safety and environmental inspections are carried out in compliance with environmental policies, the Health and Safety policy, and the Vehicle Safety policy. For example, MML conduct toolbox talks and daily discussions with workers. This is done by sharing Environment, Health and Safety topics with workers and discussing them every morning before work commences. Also, there is general environmental compliance monitoring such as Air Quality (for dust emission), noise monitoring (control level of noise emission), radiation monitoring (compliance with nuclear safety), Water quality analysis (certify portable water for workers), and surface water analysis (control water pollution like streams within the area of operation). The MML submit quarterly reports to the Environmental Protection Agency, National Mineral Agency and National Water Resources Management Agency.[947]

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[944] Ibid, sect. 5 (m)

[945] M.N. Shaw, International Law (Ninth Edition, Cambridge University Press 2021)*;* Moeckli, D., Shah, S., Sivakumaran, S., Harris, D., *International Human Rights Law* (3rd Edition, Oxford University Press 2017)

[946] Rhona K.M. Smith, *Texts on International Human Rights* (4thEdition, Oxford University Press, 2010);

[947] MM Limited

6.2.6 Compensation for Environmental Liability

Italy, as well as Sierra Leone's law, provide compensation for environmental liability, which must include compensation for significant adverse effects.[948]The right to compensation is provided as part of the permitting requirements, which requires an applicant to fulfil when applying for a permit. Similarly, Sierra Leone's Mines and Mineral Development Act 2022 provides compensation for disturbance of rights or damage to land.[949]

In summary, the legal aspect of environmental governance and laws in Italy and Sierra Leone have developed incrementally. The state governments in both countries have central authority on environmental protection. Nevertheless, the laws provide shared competence between the state government and the regions in Italy and between the state government and the Local Councils in Sierra Leone. However, whilst there is a constitutional guarantee of environmental rights in Italy, the same could not be said in Sierra Leone, whose environmental rights laws are based on various legal frameworks rather than a constitutional guarantee.

6.2.7 Similarity in Legal Systems

Both countries have established environmental institutions and legal frameworks on environmental protection. This is evident in Chapters Four and Five above. For instance, in Italy, the Ministry of Environment and Energy and Security (*Ministero dell'Ambiente e della Sicurezza Energetica 'MASE'),* has the primarily responsible for the protection of the environment, together with other ministries. While the Institute for Environmental Research and Protection (ISPRA) or *Istituto superiore per la ricerca e la protezione dell'ambiente (ISPRA),* provides technical assistance on relevant administrative procedures, offers training on environmental issues, monitors and reports on environmental and related matters, and coordinates with Regional Agencies for Environmental Protection (ARPA), [950]and the Provincial Agencies for Environmental Protection, whose primary responsibilities of carrying out environmental research and monitoring, providing technical support on environmental impact assessment and conducting surveying the territorial impact of human activities.[951]

[948]i). A description of the project, its characteristics, its location and size, (ii) a description of mitigation measures and compensate for significant adverse effects, iii). data will be used to identify and assess the effects on the environment and cultural heritage of the project upon implementation, iv). a summary description of the main alternatives, reasons for the choice, and environmental impact, and v). an assessment of the project's cost-benefit ratio from environmental, economic, and social aspects.

[949] Mines and Minerals Development Act 2022, Sect. 35

[950] See for further information: https://www.isprambiente.gov.it/it

[951] European E-Justice Portal, *Access to justice at Member State level,* 22 May 2025.

Similarly, in Sierra Leone, although the responsibilities for the development of environmental policies and facilitating the implementation of environmental strategies are carried out by the Ministry of Environment and Climate Change,[952]the Environmental Protection Agency is the lead regulatory body as established under the EPA Act 2022.[953]The Agency is responsible for creating and enforcing Sierra Leone's legal environmental regulatory framework.[954] In both cases, these have established legal measures to protect the environment. Examples of such legal measures include the obligation to obtain an environmental impact assessment and the right to public participation in decision-making and access to information[955]on environmental matters. The next section is on the differences between Italy and Sierra Leone's environmental law.

6.3: Differences Between Italy And Sierra Leone's Environmental Laws.

This section provides an overview of the differences between Italy and Sierra Leone's environmental laws as follows:

6.3.1 Supranational Legal Oversight Mechanisms

It is pertinent to note that Italy is part of the European Union and, therefore, bound by European environmental directives. For instance, the Directive 2003/4/EC on public access to environmental information held by public authorities in the European Union is a case in point.[956]It requires full implementation by all EU Member States, which aligns with the Aarhus Convention.[957] This serves as supranational oversight on environmental matters. However, unlike Italy, Sierra Leone lacks supranational oversight mechanisms on environmental issues, although there is a general human rights obligation on State parties to recognise the rights under the African Charter on Human and Peoples' Rights.[958]Also, Article 24 of the African Charter on Human and Peopeles' Rights expressly states peoples' right to a general and satisfactory environmental favourable to their development, which guarantees environmental rights.[959]In addition, Article 13 of the Constitutive Act of the African Union grants the Executive Council the authority to coordinate and make decisions on policies in

[952] Betts, Samuel Ulric, An Overview of Sierra Leone's Environmental Laws: A Legal Framework (June 11, 2023). Available at SSRN: https://ssrn.com/abstract=4475796 or http://dx.doi.org/10.2139/ssrn.4475796
[953] Environment Protection Agency Act 2022 (Act No.15 of 2022), sec. 12(1)
[954] Ibid
[955] Legislative Decree No 152/2006, art.27 (7)
[956] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003, on public access to environmental information and repealing Council Directive 90/313/EEC, 14.2.2003.
[957]Access to Information, Public Participation and access to justice in environmental matters, Arhus, 25 June 1998
[958]African Charter on Human and Peoples' Rights, 1981, arts.1 and 25.
[959]Ibid. art.24

areas of common interest to member states, including, *inter alia,* environmental protection.[960] Consequently, the legal implications of a lack of supranational oversight mechanisms include the absence of stringent and effective enforcement and judicial independence measures on environmental matters at the national level. Additionally, the Italian judiciary has been utilised to prosecute environmental crimes; for instance, in the *ILVA* case, which concerns environmental issues surrounding the ILVA Steel Plant in Taranto, Italy, relating to environmental protection, human rights, and corporate responsibility.[961]Unlike Italy, Sierra Leone hardly has such landmark case. although the Appeals Court in October 2025, for the first time, has reaffirmed the locus standing of the appellants to institute proceedings against *Octea Limited,* et al,[962]which, at the time of writing, could be appealed before the Supreme Court by the Respondent but yet to happen.

6. 3.2 Constitutional Guarantee of Environmental Rights in Italy and Sierra Leone

Under Italian law, the Constitution provides for a legal safeguard and recognition of environmental rights, including the right to health, property rights,[963]and the right to cultural and landscape heritage.[964]It is, therefore, not surprising that the Constitutional Court has upheld these rights over time.[965]Additionally, the 2022 Constitutional amendment of Articles 9 and 41 of the Italian Constitution has further provides guarantee for sustainable development by imposing duty on the State to protect nature, biodiversity and ecosystems including implementing legal frameworks allowing private economic activities without compromising environmental standards. [966]Thus, the 2022 Constitutional amendment of Articles 9 and 41 of the Italian Constitution provides guarantee for sustainable development and intergenerational responsibility.[967]

However, unlike Italy, Sierra Leone's 1991 constitution does not provide for environmental rights; instead, it recognises the state's power to harness natural resources for economic development.[968] Consequently, environmental protection and rights are provided in various legal frameworks,

[960] Constitute Act of the African Union, *Adopted By The Thirty-Sixth Ordinary Session Of The Assembly Of Heads Of State And Government* 11 July 2000, art.13 (1) (e)
[961] Case C-626/22, Ilva and Others, ECLI: EU:C: 2024: XXX(judgment of the CJEU, 25 June 2024).
[962] *Aiah Fengai & 73 Others Appellant and Marginalised Communities Affected Property Owners Vs Octea Limited, The Manager Octea Limited, et al. Civ. App 73/2023, Judgment 16th October 2025.*
[963] Constitution of the Italian Republic 1948, arts.42 & 32
[964] Ibid. art.9
[965] Corte Costituzionale, Decision No. 183/1973; Corte Costituzionale, Decision No. 170/1984; Corte Costituzionale, Decision No, 115/1993.
[966] Constitutional Law of 11 February 2022, No. 1, in Official Gazette No. 44, of 22 February 2022, provided, by Art. 2, para. 1, letter a), for the amendment of Art. 41, para. 2; and, by Art. 2, para. 1, letter b), for the amendment of Art. 41, para. 3.
[967]Ibid.
[968] Constitution of Sierra Leone 1991, Act No. 6 of 1991, sect. 7; Section 18 of the Constitution provides that all laws must be consistent with the constitutional interests of public health and the conservation of natural resources, including minerals, marine, forest, and other resources of Sierra Leone.

commonly referred to as 'Acts' by the parliament. Also, jurisprudence on environmental matters is limited (although a section of the High Court has been designated to examine and rule on environmental matters),[969]but though not as restricted as in Italy, where the Constitutional Court has ruled on environmental issues over time.

In the author's view, having environmental rights protected under the constitution is beneficial because constitutional protection of human rights is essential, as constitutions represent the highest and most authoritative laws in domestic legal systems.[970] The constitution plays an important cultural role, reflecting a society's values and aspirations. Thus, including environmental rights in the constitution is more important than having them in the form of legislative frameworks, because constitutions are not easily amended.

6.3.3 The Role of Customary Law

Generally, Customary is absent in Italy. Unlike Italy, Section 170, paragraph 3, of the 1991 Constitution of Sierra Leone recognises Customary law as a source of law, which means ''the rules of law which by custom apply to particular communities in Sierra Leone.''[971]This means that there are various Customary Laws in Sierra Leone, practised by different communities across the country, which are generally unwritten. Consequently, Customary Laws lack uniform application in the country; it forms part of the legal system, which is often the first point of contact for members of the various communities in cases of disputes. Thus, there is a duality within the country's legal system. On the one hand, there are expressly written laws, such as the Constitution and other laws made by or made under the authority of Parliament, including the Environmental Protection Agency Act of 2022, among others. Whilst, there are Customary Laws which are generally unwritten. Fundamentally, the legal implications of such a dual system in terms of environmental protection are that it creates a clash between Customary Law and written laws. For instance, Customary Law recognises community ownership of land in the Provinces or rural areas. It gives Tribal Authorities, such as Paramount Chiefs and community elders, the power to settle disputes, including land disputes, with sole authority to decide in their local courts on titles of ownership to land in these rural areas.

[969] Constitutional Instrument No. 4 of 4th April 2019; The High Court Order, 2019; Section 17 (3)(a) Categorized environmental offences as felonious offences.
[970] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
[971] The Constitution of Sierra Leone, 1991 of Act No.6 of 1991, sect. 170 (3).

6.3.4 Decentralisation and Environmental Monitoring Between Italy and Sierra Leone

In Italy, the regions are empowered to monitor and make environmental decisions, including the issuing of permits. The Constitutional Court's case law has reaffirmed this power of the regions on environmental matters. Also, the Italian law made provision for Environmental Associations to monitor environmental activities, including those in the extractive industry, but subject to specific criteria which they must have fulfilled, such as having existed for a specific period in the relevant field, among others, before they can be approved to perform monitoring or oversight functions on environmental matters. However, in the case of Sierra Leone, the law (Local Government Act) made provisions for Ward Committees and Chiefdom Councils to help monitor environmental activities, including those by multinational corporations in the extractive industry, but subject to the direction of the Executive Chairman of the Environmental Protection Agency.

Notably, one will argue that, while both Italy's and Sierra Leone's environmental governance systems are decentralised, Sierra Leone's system is more centralised and executive-dependent. Consequently, centralising environmental governance to the executive could lead to political interference. This will affect compliance and the monitoring of activities of multinational corporations in the extractive industry by environmental regulators. Hence, Italy's decentralised system, in which the regions are empowered to take certain environmental decisions, is effective.

Italy is part of the EU and, therefore, bound by European Union environmental directives. Consequently, unlike Italy, Sierra Leone lacks supranational oversight mechanisms. There is also a difference in legal enforceability and judicial independence. For instance, whilst Italy's judiciary has been used to prosecute environmental crimes, Sierra Leone has had no landmark environmental crime case.

Also, unlike Italy, the recognition of customary law in Sierra Leone is significant, as it is part and parcel of its legal system.[972] The role of customary law is very significant in Sierra Leone. For instance, land acquisition in the provinces is predominantly determined by the customary law of the various communities. This is despite the enactment of the Customary Land Rights Act of 2022, which has strengthen decision making, especially for women in the provinces.[973]

6.3.5 Environmental Impact Assessment Adherence Between Italy and Sierra Leone

Basically, under Italian law, the regions are empowered to issue environmental permits for environmental and related purposes, including the extraction of raw materials within their localities.

[972] The Constitution of Sierra Leone, 1991, Act. No.6 of 1991, sect. 170.
[973] Customary Land Rights Act of 2022.

An example of this is Case study 1: The quarry area is in "Bagheria," and subject to permitting procedures under the regional District of Palermo, in the Sicilian Region.[974] Also, whilst the Italian permitting criteria to fulfil include compensation, the Sierra Leone law on permitting does not specify compensation as a criteria for permitting; rather, the right to compensation is provided under the Mines and Minerals Development Act of 2022. In the author's view, including compensation as part of an EIA permitting criteria is good. It helps applicants be aware, from the beginning, of the obligations they are required to fulfil. Thus, adhering to this criteria in permitting guarantees the right for remedies for victims of environmental degradation.

6.3.6 Environmental Litigations and Locus Standing

Under the Italian environmental legal system, both individuals and environmental NGOs, with a legitimate interest in the environmental decision-making process, have locus standi.[975] This means they can challenge the lawfulness of public actions in environmental matters. Also, individuals and NGOs are entitled to claim compensation in both civil and criminal courts for financial and non-financial damages they have suffered due to environmental degradation.[976]Unlike Italy, there is hardly any case law instituted by individuals or environmental NGO in Sierra Leone. Proceedings of this nature are not common. Thus, Italian environmental law stands out in this regard and could be emulated by Sierra Leone.

6.4 Consistency of Multinational Corporations' Practices with Domestic Law

The consistency of Multinational Corporations' actions with domestic law in the extractive industry should not be overemphasised. However, it is worth noting that domestic laws are key in regulating corporations' practices in the extractive industry.

6.4.1 Italy's Multinational Corporations' Practices Consistency Under Domestic Law

Under Italian law, there is an obligation to conduct an environmental impact assessment (EIA) before environmental projects, including the extraction of natural resources. Accordingly, Article 5 of the Legislative Decree No 152/2006 defines environmental impact assessment as the preparation of a study concerning the impact on the environment that may result from the implementation of a project which is subject to carrying out consultations, the evaluation of environmental research for approving or authorising the project and the provision of information on the decision.[977] Furthermore, Article

[974]See Palermo Mining District Office (*Del Distretto Minerario Di Palermo*); Sicilian Region Energy And Utilities Department Department of Energy.

[975] European E-Justice Portal, Access to justice at Member State level, 22/02/2025

[976] Civil Code: 'Compensation for unlawful acts' provides that 'Any intentional or negligent fact, Art. 2043

[977] Legislative Decree No 152/2006, art. 5 (b & c)

27 of the Legislative Decree No.152 of 2006, stipulates the components which an environmental impact study shall contain such as the description of the project, including its location and size, an overview of measures planned to mitigate possible adverse effects of the project and compensation, an assessment of the project's environmental and cultural heritage, alternatives considered for environmental impact, and a cost-benefit analysis on environmental, economic, and social effects.[978]

This is in line with the precautionary principle, which requires states to take measures to ensure that activities posing threats to the environment are prevented from adversely affecting it, even is there is no conducive scientific proof linking those particular activities to environmental damage.[979] It requires that developmental activities must be stopped and prevented if they cause serious and irreversible environmental damage.[980] Simply, it is better to be cautious and prevent environmental harm, which may indeed become irreversible. In summary, this principle requires that Environmental measures must anticipate, prevent, and attack the causes of environmental degradation.[981]

6.4.2 Sierra Leone's Multinational Corporations' Consistency Under Domestic Law

Under Sierra Leone law, there is an obligation to conduct an environmental impact assessment (EIA) before the commencement of environmental activities, including the extraction of natural resources. In this regard, Article 24, paragraph 1 of the EPA Act 2022 provides that:

> '*A person shall not undertake or cause to be undertaken activities set out in the First Schedule unless he holds a valid environmental impact assessment licence issued by the Agency for that purpose*.'[982]

Accordingly, an EIA means: '' a prior scientific foreseeable analysis of potential effects of an activity that would affect the environment and social conditions, including health and safety and which addresses specific issues through active and time-based mitigation and alleviation measures approved in accordance with the laws of Sierra Leone."[983]**and environmental impact assessment licence**" means approval issued by the Environment Protection Agency;[984]

The components of an EIA are described under the Third Schedule of the EPA Act 2022, which states that it shall contain a description of the location of the project and its surroundings, the principle,

[978] Ibid., art 27 (5)(a)(b)(c)(d)(e).
[979] Philip Sands, Jacqueline Peel, Adriana Fabra and Ruth MacKenzie, *Principles of Environmental Law* (Fourth Edition, Cambridge University Press 2018)
[980] Ibid
[981] Ibid
[982] EPA Act 2022. Art. 24 (1)
[983] Mines and Minerals Development Act, 2022, Part 1.
[984] Ibid.

concept and purpose of the project, the direct or indirect effects that the project is likely to have on the environment, the social, economic and cultural impact that the project is likely to have on people and society**,** and the communities, interested parties and Government ministries consulted, any actions or measures which may avoid, prevent, change, mitigate or remedy the likely effect on people and society; any alternatives to the proposed project, natural resources in the locality to be used in the project, the plans for decommissioning of the project, and other information necessary for a proper review of the potential environmental impact of the project.[985]

In the case of *Algom Resources Limited vs Sierra Leone Government,*[986]*the applicant, a limited liability company incorporated in Sierra Leone on 7 June 2016, accused officials of the government of Sierra Leone of engaging in malpractice that cost the company its gold mining licence and a* significant amount of investment. The company argued that it was granted a four-year gold exploration licence in January 2017 over the Baomahun exploration area.[987] It claimed it had spent 4.8 million US dollars on exploration activities during which it discovered gold in high commercial quantities. However, under Sierra Leone law, the company needed an EIA Licence to obtain a large-scale mining licence from the Environmental Protection Agency of Sierra Leone.[988] However, the EPA did not grant the EIA on the grounds that the project was located within a protected area forest reserve and, therefore, needed clearance from the National Protected Area Authority (NPAA). As a result, the applicant has been unable to secure the EIA due to numerous administrative hindrances and fraud. The applicant argued that it reapplied for a new large-scale licence on 25 February 2021 but was unsuccessful, and surprisingly, instead, a notification was published in a Gazette informing the public that a company named FG Gold Limited had obtained a licence over the same Baomahun Concession. The applicant argued that the respondent failed to allow it to make proposals to resolve the grounds of refusal under Section 108, paragraph 4, of the Mines and Minerals Act,[989] which will allow applicants of large-scale mining licenses the opportunity to remedy defective applications before a final decision is made on the application. The ECOWAS Court orders the government of Sierra Leone to pay 200,000 US dollars as compensation for violating the property rights. [990]

[985] EPA Act 2022, Third Schedule (a), (b), (c), (d),(e), (f), (g), (h), (I), (j)
[986]*Algom Resources Limited vs Republic of Sierra Leone Government (ECW/CCJ//03/23)*
[987] Ibid.
[988] Mines and Minerals Development Act, 2022, Sect. 105
[989] The Mines and Minerals Development Act, 2022.
[990] Ibid

6.5 Consistency of Multinational Corporations' Practices Under International Law

The international community has debated the need for international regulation and oversight of multinational companies for years.[991] These discussions have been mainly focused in the context of international environmental law, with the preamble to the 1972 Stockholm Declaration on the Human Environment making a broad reference to the environmental responsibility of enterprises.[992] In 1992, at the United Nations Conference on Environment and Development (UNCED), discussions focused on the role of business in the global protection of the environment and the necessity of integrating environmental concerns into corporate decision-making.[993] The resulting Agenda 21 dedicated an entire chapter to 'Strengthening the Role of Business and Industry', referring to responsible entrepreneurship.[994]In 2002, the World Summit on Sustainable Development (WSSD) referred for the first time to two separate concepts of corporate responsibility and corporate accountability.[995] Corporate accountability can be understood as a legitimate expectation that reasonable efforts will be put in place, according to international standards, by private companies[996] for the protection and the attainment of certain internationally agreed environmental objectives.[997] International environmental law, as such, is not binding on transnational corporations and consequently cannot lead to strictly legal consequences.[998]As a result, relevant international efforts have focused not on issues of

[991] Early attempts were undertaken in the context of the UN Economic and Social Council (ECOSOC), which adopted a resolution in 1972 acknowledging the lack of an international regulatory framework for multinational corporations and the need to institutionalize international debate on that issue. See ECOSOC Res. 1721 (LIII) (28 July 1972).
[992] Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972), (1972) 11 ILM 4116, para. 7 (hereinafter 'Stockholm Declaration').
[993]'Business and the UNCED Process', in ECOSOC, Report of the Secretary-General: Follow-up to the United Nations Conference on Environment and Development as related to Transnational Corporations, UN Doc. E/C.10/1993/7 (4 March 1993). H. Gleckman, 'Transnational Corporations' Strategic Responses to "Sustainable Development" ', in H.O. Bergenses, G. Parmann, and . B. Thommessen (eds), Green Globe Yearbook of International Cooperation on Environment and Development (1995) 95.
[994] Agenda 21', in Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (12 August 1992), Vol. I, Annex II, ch. 30; ECOSOC, Report of the Secretary-General, supra note 20, at 35 n. 44
[995] World Summit on Sustainable Development (WSSD), 'Resolution 1: Political Declaration', in Report of the World Summit on Sustainable Development, UN Doc. A/CONF.199/20 (26 August– 4 September 2002), paras 27 and 29 (hereinafter 'WSSD Declaration'); and WSSD, 'Resolution 2: Plan of Implementation of the World Summit on Sustainable Development', in Report of the WSSD, paras 49 and 140(f). The most recent UN environmental summit and policy (the UN Conference on Sustainable Development or Rio+20, held in Rio de Janeiro on June 2012), did not shed any new light on these questions: see discussion in E. Morgera and A. Savaresi, 'A Conceptual and Legal Perspective on the Green Economy', 22 RECIEL (2013) 14, at 26–27.
[996] D. Weissbrodt and M. Kruger, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', 97 AJIL (2003) 901, at 910.
[997] Morgera, supra note 3, at 19–22.
[998] Ibid., at 22–24.

compensation for environmental damage, but rather on the prevention of multinational companies' negative impacts on environmental human rights in the countries they operate.[999]

Under international law, the precautionary principle is reaffirmed in many instruments as follows: Principle 15 of the Rio Declaration, which states that:

> 'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'[1000]

Also, Principle 17 of the Rio Declaration provides for the need for EIA for projects that might have a significant adverse impact on the environment:[1001]

> 'Environmental impact assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of the competent national authority.'[1002]

In the *Pulp* case,[1003] the International Court of Justice has held that it is:

> 'now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact …, in particular, on a shared resource.'[1004]

The Court further emphasises that each State should determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment required in each case, having regard to the nature and magnitude of the proposed development and its likely adverse impact on the environment, as well as to the need to exercise *due diligence* in conducting such an assessment.[1005]Many domestic courts have also confirmed that international law

[999] D. Weissbrodt and M. Kruger, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', 97 AJIL (2003) 901, at 910.
[1000] Rio Declaration 1992.
[1001] RIO D*eclaration on Environment and Development (1992)*
[1002] RIO D*eclaration on Environment and Development (1992), Principle 17*
[1003]Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.
[1004]Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14, para. 204
[1005] Ibid, para. 205

requires the preparation of a prior environmental impact assessment before a state engages in or permits an activity that may have serious adverse environmental impacts.[1006]

6.5.1 Italy's Multinational Corporations' Practices Consistency Under International Law

As highlighted in Chapter Five above, under Italian law, specific environmental projects require an EIA before the commencement of such projects. This requirement is mandatory. This means there is an obligation to conduct EIA. This practice aligns with the precautionary principle, which requires states to ensure that activities posing environmental threats are prevented from adversely affecting them, even if there is no conclusive scientific proof linking those particular activities to environmental damage.[1007] It requires that developmental activities must be stopped and prevented if they cause serious and irreversible environmental damage.[1008] Simply, it is better to be cautious and prevent environmental harm, which may become irreversible. In summary, this principle ensures that Environmental measures must anticipate, prevent, and attack the causes of environmental degradation.[1009]

Observations made at Quarry Consona (Case 1 in Chapter Five), suggest that licences are obtained from the relevant authorities prior to the commencement of mining activities. This is confirmed as follows:

> *In Italy, the regulation of the sector is placed on the Regions, which authorize according to a Regional Plan of Quarries the mining activities and also have the task of supervising the compliance with the rules that regulate the mining sector the entity in charge is the Department of Energy Department of the Regional Mining Corps of Palermo. In addition to mining obligations our company is also subject to regulation in the environmental sphere through ARPA (Regional Environmental Protection Agency), the Forestry company for the preservation of nature and tree species to be reintroduced through environmental restoration, the Municipality of reference with the rules that also regulate the transit of vehicles in addition to the obligations dictated by labour laws and worker safety, and compliance with all tax and insurance regulations.[1010]In addition to legal obligations related to atmospheric emissions*

[1006] See *New Zealand's application to the ICJ concerning the resumption by France of underground nuclear testing (1995);* GabCikovo-Nagymaros Project (Hungary Slovakia), Judgment, 1. C. J. Reports 1997, p.7; *the dispute between Ireland and the United Kingdom concerning the MOX plant (2001); the ICJ decision in the Costa Rica v. Nicaragua cases (2015) and the recent South China Sea arbitration (2016);*

[1007] Philip Sands, Jacqueline Peel, Adriana Fabra and Ruth MacKenzie, *Principles of Environmental Law* (Fourth Edition, Cambridge University Press 2018)

[1008] Ibid

[1009] Ibid

[1010] Extract from responses by the administrative and commercial manager of -04 October 2023.

compliance with regulations on noise and electromagnetic fields, wastewater and oil disposals, and everything polluting, mining companies are also obligated to restore the environment in the mining areas with the filling of vegetated land and planting of trees, all of which is regulated by the mining permit.[1011]

On the right to health, Quarry Consona (Case 1) requires all workers to undergo medical examinations before hiring and thereafter on an annual basis as a legal requirement. In addition, workers have health insurance. In addition, Quarry Consona fully complies with the National Collective Bargaining Agreement (CCNL) and has established a Code of Ethics to ensure compliance.

6.5.2 Sierra Leone's Multinational Corporations' Practices Consistency under International Law

Under Sierra Leone law, specific environmental projects require an EIA before commencing.[1012] This requirement is mandatory. This means there is an obligation to conduct EIA. This practice aligns with the precautionary principle, which requires states to prevent activities posing environmental threats from adversely affecting them, even if there is no conclusive scientific proof linking those activities to environmental damage.[1013] It requires that developmental activities be halted if they cause serious and irreversible environmental damage.[1014] Simply put, it is better to be cautious and prevent environmental harm that may become irreversible.

Accordingly, Sierra Leone's constitution guarantees the state's right of sovereignty over natural resources.[1015]Such practice aligns with Principles 21 of the Stockholm Declaration[1016] and 2 of the Rio Declaration,[1017] respectively. Both principles provide *the sovereign right to exploit their own resources in accordance with their own environmental policies*.

Information obtained at Maram Mines Limited (MML) in Sierra Leone (Case 2 in Chapter Five) indicates that measures on occupational health and safety require that the corporation conduct a pre-medical test before starting work. It provides medical care for employees. An in-house medical clinic is equipped with a well-equipped laboratory and staffed by trained, qualified doctors and nurses.[1018] This reinforces the right to health of individuals within the MML.

[1011] Ibid.
[1012] EPA Act 2022, sect. 24
[1013] Philip Sands, Jacqueline Peel, Adriana Fabra and Ruth MacKenzie, *Principles of Environmental Law* (Fourth Edition, Cambridge University Press 2018)
[1014] Ibid
[1015] Constitution of Sierra Leone, 1991, Act No. 6 of 1991, Sec. 7
[1016]Stockholm Declaration 1972, prin. 21
[1017] Rio Declaration 1992, prin. 9
[1018] Responses from the Environment Superintendent - Heath Safety Environment, on sight, 11/05/2023 .

Considering the above, one would argue that the practices of Italy and Sierra Leone, by enacting laws that make it mandatory to conduct and obtain environmental impact assessment (EIA) for specific projects deemed to have adverse environmental effects, including those in the extractive industries, conform to established international obligations. In this regard, the obligation to conduct environmental impact assessments is directly related to safeguarding the rights *to life and health* of individuals and communities in areas where such environmental projects are carried out, which includes the activities in the extractive industry.

6.6. Chapter Summary and Conclusion

This chapter presents the commonalities and differences between Italy's and Sierra Leone's environmental laws. It therefore shows that there are commonalities on environmental laws between Italy and Sierra Leone concerning the right to permanent sovereignty over natural resources, the obligation to conduct environmental impact assessment, public participation and access to information on environmental matters, decentralisation in environmental governance, the recognition of the right to health and a safe environment and compensation for environmental liabilities. The chapter further outlines some of the differences between Italy and Sierra Leone on environmental laws. These differences include: firstly, the constitutional guarantee of environmental rights in Italy which is absent in Sierra Leone; secondly, supranational legal oversight in Italy due to binding nature of EU law; thirdly, the role and application of customary law in Sierra Leone which is absent in Italy; fourthly, decentralisation and environmental monitoring in which Italian regions are empowered to monitor and make autonomous environmental decisions including the issuing of permits; fifthly, adherence to environmental impact assessment adherence, in which under Italian law the regions are empowered to issue permits and compensation is included as part of fulfilling permitting criteria which is absent in Sierra Leone; and sixth, environmental litigations and locus standing as both individuals and NGOs can institute proceeding on environmental issues in Italy in which the Constitutional Court has ruled on environmental issues over time, as opposed to Sierra Leone, where there is hardly any case law instituted by individuals and NGOs. As a result, environmental proceedings are uncommon.

Finally, it presents the consistency of multinational corporations in the extractive industry in Italy and Sierra Leone, as well as the consistency of corporations under domestic law and international law. Notably, this comparative analysis reveals structural, legal, and institutional disparities that shape the ability of each state to regulate extractive activities and protect human rights. Thus, one could argue that both countries (Italy and Sierra Leone) are trying to balance environmental protection and

development. Nevertheless, the supranational oversight mechanism, the constitutional guarantee of environmental rights, and judicial activism in environmental cases practised under the Italian system are worth emulating by Sierra Leone to realise environmental compliance and corporate accountability for the protection of human rights. Additionally, while both countries' environmental governance is decentralised, Sierra Leone's system is more centralised and executive-dependent. Consequently, centralising environmental governance to the Executive could lead to political interference. In the author's view, this could affect compliance and the monitoring of activities of multinational corporations in the executive industry by environmental regulators. Hence, Italy's decentralised system in which the regions are empowered to take certain environmental decisions devoid of centralised control is effective, therefore, worth emulating by Sierra Leone.

The final chapter presents the final analysis, conclusions, lessons learned, and recommendations.

CHAPTER SEVEN: FINAL ANALYSIS, CONCLUSIONS AND RECOMMENDATIONS

7.1 Introduction

This chapter undertakes a legal analysis of the obligations of states and multinational corporations in the extractive industry, in Italy and Sierra Leone, under domestic and international law. Therefore, the legal analysis enhances our understanding of the relationship between environmental activities and the protection of human rights under domestic and international law. In other words, the activities of multinational corporations in the extractive industry could affect human rights and fundamental freedoms.[1019] In particular, the main aim of this study is to examine the obligations of states and multinational corporations in the extractive industry under both domestic and international law in relation to human rights and environmental protection. To achieve this aim, the study focuses on the following objectives:

- it examines the legal frameworks governing the extractive industry under both domestic and international law;
- it examines corporations' policies and actions and compare them to their obligations under domestic and international law; and
- it identifies the obligations for accountability of states and corporations in the extractive industry.
- It examines the processes and practices of corporations in the extractive industry regarding environmental impact and human rights, investigates the treatment of workers by multinational corporations in the extractive industry.
- Identifies gaps in the legal frameworks governing corporations in the extractive industry.

[1019] See Andrew Clapham, Human Rights Obligations of Non-state Actors. Oxford, New York: Oxford University Press, 2006; Jan Klabbers, *International Law* (Third Edition, Cambridge University Press, 2021); Malcolm N. Shaw, International Law (Ninth Edition, CUP 2021); Oyeniyi Abe & Ada Ordor, 'Addressing Human Rights Concerns in the Extractive Resource Industry in Sub-Saharan Africa Using the Lens of Article 46 C of the Malabo Protocol' (2018) 11 Law & Dev Rev 843; Knox J. H. and Pajan R. (2018), Introduction, The Human Right to a Healthy Environment, Cambridge University Press, Cambridge, p. 1. See also UN General Assembly, 'Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (30 December 2019), UN Doc. A/HRC/43/53

Considering the above, the main research question in this study, based on relevant literature reviewed on the obligations of states and non-state actors in the extractive industry under domestic and international law, is:

> *What are the specific obligations of states and non-state actors with respect to multinational corporations in the extractive industry for upholding human rights and environmental protection under domestic and international law, and how have they respected these obligations*?

However, to ascertain the consistencies of states (principally, Italy and Sierra Leone) and multinational corporations actions, the analysis centres on analysing three types of obligations under international human rights law:

(i) obligation to protect and to ensure the fulfilment of human rights,
(ii) the obligation to prevent violations of human rights, and
(iii) *the principle of non-discrimination under the law*.

The above-stated obligations are analysed in light of the rights **to life** and **to health**, respectively. These obligations are examined taking into account three fundamental principles:

(i) 'Good faith' under human rights law,
(ii) (ii) the Precautionary principle, and
(iii) (iii) the Preventive principle recognised under environmental law.

However, the above obligations and human rights are analysed within the context of the responsibility to conduct an environmental impact assessment (EIA) under domestic and international law. The reason for this is twofold:

Firstly, the obligation to conduct an EIA does not only aligns with key environmental principles, such as the precautionary principle and the principle of prevention, but it also enhances the ability of states and communities to achieve sustainable development, which depends on robust and effective EIA legislation and implementation as a significant tool for overcoming implementation gaps and achieving better environmental outcomes.[1020]For instance, Vomáčka argues that preventing environmental damage is preferable to restitution after the damage has occurred, because such damage is often impossible to repair the environment, and the costs of prevention are lower than the

[1020] UN Environmental Programme, Assessing Environmental Impacts- A Global Review of Legislation, 2018.

costs of repairing the damage.[1021]In this regard, conducting an EIA serves as a pre-assessment criterion that determines whether an environmental project should proceed.[1022]

Evidence presented in Chapter Five shows, both Italy and Sierra Leone's environmental laws obliged individuals and corporations wanting to undertake or undertaking certain environment activities require an environmental impact assessment. For instance, in Italy, the obligation to conduct an EIA is embedded in Part Two of the Legislative Decree No 152/2006, also known as 'the Environmental Code,'[1023]which is in line with EU Directive 2011/92/EU as amended Directive 2014/52/EU.[1024]The same is equally true in Sierra Leone, in which, Article 24 of the Environmental Protection Agency Act of 2022 provides for the obligation to conduct Environmental Impact Assessment,[1025]for certain environmental activities as prescribed in the First Schedule Annexed to the EPA Act,[1026]before such activities commence. Thus, the environmental laws in Italy and Sierra Leone impose the obligation to conduct an environmental impact assessment (EIA) which both individuals and corporations are bound to fulfilled, if they are to undertake certain environmental activities to mitigate environmental degradation and for the protection of human rights.

Secondly, in the author's opinion, performing an environmental impact assessment (EIA) is the 'primary' obligation as far as environmental protection and safeguarding human rights in the extractive industry are concerned. This does not only helps to avert environmental degradation, but also preserves human rights. Hence, the analysis that follows is significantly based on an environmental impact assessment.

7. 2. Legal Analysis

Given the cross-cutting nature of environmental issues and human rights, this study considers the relevant specialised rules of international law and the totality of legal obligations imposed by an integrated system of international law. This approach is consistent with Article 31 (3) (c) of the Vienna Convention on the Law of Treaties; ''*any relevant rules of international law applicable in the relation between parties''* [1027]Therefore, the approach adopted in this analysis is general.

[1021] Vojtěch Vomáčka, Principles of EU Environmental Law, Preventive Principle
[1022] Abubakar Koroma, *A Critical Appraisal Of The Legal Framework For Environmental Impact Assessment In Sierra Leone,* University of Makeni, 2024.
[1023] Legislative Decree No 152/2006, art. 5 (b & c)
[1024] Directive 2011/92/EU
[1025] EPA Act 2022, art.24.
[1026] EPA Act 2022, First Schedule.
[1027] VCLT 1969, art.31 (3)(c)

In the author's view, the question posed in this study requires identifying and considering the relevant rules of international law, including those related to human rights and the environment, applicable to the interpretation of obligations under human rights treaties. This requires an interpretation of the various relevant treaties in accordance with the Vienna Convention on the Law of Treaties,[1028] which reflects customary international law.[1029]

In addressing the study's primary aim, it reveals that under international law, the general human rights obligations include *respecting, protecting, and fulfilling human rights*.[1030] In particular, international human rights law does not only recognises human rights for all, but it also establishes an obligation on States to ensure, secure or guarantee the effective enjoyment of human rights to all within their jurisdiction.[1031] The purpose of this obligation is to ensure that the rights and freedoms recognised are enjoyed.[1032]This obligation is enshrined in many instruments. For example, Article 1 of the African Charter on Human and Peoples' Rights, [1033] Article 2 of the International Covenant on Civil and Political Rights;[1034] Article 2 of the Convention for the Elimination of Racial Discrimination;[1035] Article 2 of the Convention for the Elimination of Discrimination against Women; Article 2 of the Convention on the Rights of the Child;[1036] Article 4 (1) of the Convention on the Rights of Persons with Disabilities;[1037] Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (MWC);[1038]and Article 1 of the European Convention on Human Rights,[1039] respectively. Thus, states are required to adhere to these obligations in 'good faith,' as stipulated under Article 26 of the Vienna Convention on the Law of Treaties.[1040]

[1028] Vienna Convention on the Law of Treaties (Signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art.31.
[1029] As confirmed by the ICJ in Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Judgment) [2010] ICJ Rep. 14, para. 65 ("Pulp Mills Judgment"); Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) (Judgment) [2009] ICJ Rep. 213. Para.47; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep. 136, para. 94;
[1030] M.N. Shaw, International Law (Ninth Edition, Cambridge University Press 2021)*;* Moeckli, D., Shah, S., Sivakumaran, S., Harris, D., *International Human Rights Law* (3rd Edition, Oxford University Press 2017
[1031] M.N. Shaw, International Law (Ninth Edition, Cambridge University Press 2021)*;* Moeckli, D., Shah, S., Sivakumaran, S., Harris, D., *International Human Rights Law* (3rd Edition, Oxford University Press 2017)
[1032] Rhona K.M. Smith, *Texts on International Human Rights* (4thEdition, Oxford University Press, 2010);
[1033] ACHPR, 1981, art. 1
[1034] ICCPR, 1966, art. 2
[1035] CEDAW, 1979, art. 2
[1036] CRC 1989, art.2
[1037] CRPD, 2006, art.4 (1)
[1038] ICMWC,1990, art. 7
[1039] ECHR 1950, art. 1
[1040] Vienna Convention on the Law of Treaties, 1969, art. 26

To start with, the ***obligation to respect human rights*** means the duty to respect human rights.[1041] It is a negative obligation restraining states not to take any measure that violates human rights by the organs or agents of states.[1042]The obligation to refrain from acts or omissions that would violate human rights.[1043] However, the obligation to respect human rights is applicable in the extractive industries. For instance, mining companies have been criticized for their complicity in the human rights abuses of people and indigenous populations.[1044]In particular, some of the issues of human rights violations by multinational corporations in the extractive industry revolve around the use of security companies to protect operations, the rights of Indigenous Peoples in mining operations, and labour rights.[1045] For instance, in the **Nigeria**'s oil region, reports revealed that multinational corporations do influence and manipulate the government into excessive use of coercive powers by using the Nigerian military and police to torture, dehumanize and assault protesters under the pretext of attempting to disperse the civil action. [1046]Their mandate is to protect the extractive industry facilities at all costs, so during such duties, they fire live ammunition, resulting in the murder of protesters at the behest of the multinational corporations.[1047]Similarly, in *Kadie Kalma and others v African Minerals Limited,*[1048]*the* African Minerals Limited operated a mine in Tonkolili, North of Sierra Leone. On two occasions in November 2010 and April 2012, unrest among local communities erupted in connection with the operations of African Minerals Limited (AML) in the area.[1049] The incidents involved beatings, shootings, robbery, sexual assault and one death.[1050]During these incidents, AML employed the service of the Sierra Leone police (SLP), made payments and provided them with logistical assistance, including using the corporation's vehicles and premises. The Claimants (142 individuals) alleged that they suffered injuries at the hands of the SLP. The claimants contended that, AML was directly involved in the violence and should be held liable for the acts of the Sierra Leone Police.[1051] Victims of the attacks brought claims against AML in the English courts

[1041] CESCR General Comment No. 3: The Nature of State Parties Obligations (Art. 2, Para.1 of the Covenant). Adopted at the Fifth Session of the Committee on Economic Social and Cultural Rights, on 14 December 1990, E/1991/23.
[1042] Moeckli, D., Shah, S., Sivakumaran, S., Harris, D., *International Human Rights Law* (3rd Edition, Oxford University Press 2017
[1043] Ibid
[1044] Simon D. Handelsman, 'Human Rights in the Minerals Industry' (2002) 2002 Glob Envtl L Ann 106
[1045] Ibid
[1046] Cayford, S. (1996). The ogoni uprising: Oil, human rights, and a democratic alternative in Nigeria. Africa Today.
[1047] Ufuoma Veronica Awhefeada & Kingsley Omote Mrabure, 'Prevailing Human Rights Issues in the Nigerian Extractive Industry: A Critical and Comparative Discourse' (2023) 26 J Legal Ethical & Rights Issues 1
[1048] Kadie Kalma & Others. v. African Minerals Ltd And Ors [2020] EWCA Civ 144.
[1049]*Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) Limited and Tonkolili Iron Ore (SL) Limited* [2020] EWCA Civ 144.
[1050]*Ibid*
[1051]*Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) Limited and Tonkolili Iron Ore (SL) Limited* [2020] EWCA Civ 144.

for alleged abuses of human rights by the Sierra Leone police.[1052]However, the claims were dismissed by the Court of Appeal of England and Wales, as the Court held that African Minerals Limited could not be held responsible for the actions of the Sierra Leone police.[1053]Thus, as the cases show, it is evident the complicit actions by both states and multinational corporations violate the obligation to respect human rights of individuals within these communities.

However, evidence from the two case studies in Chapter Five shows that corporations do respect environmental laws by citing compliance with the laws of the host country. For example, in Case 1 (Cava Consona) it was noted that:

> *In Italy the regulation of the sector is placed on the Regions, which authorize according to a Regional Plan of Quarries the mining activities and also have the task of supervising the compliance with the rules that regulate the mining sector the Entity in charge is the Department of Energy Department of the Regional Mining Corps of Palermo. In addition to mining obligations our company is also subject to regulation in the environmental sphere through ARPA (Regional Environmental Protection Agency), the Forestry company for the preservation of nature and tree species to be reintroduced through environmental restoration, the Municipality of reference with the rules that also regulate the transit of vehicles in addition to the obligations dictated by labour laws and worker safety, and compliance with all tax and insurance regulations. In addition to legal obligations related to atmospheric emissions compliance with regulations on noise and electromagnetic fields, wastewater and oil disposals, and everything polluting, mining companies are also obligated to restore the environment in the mining areas with the filling of vegetated land and planting of trees, all of which is regulated by the mining permit. All obligations are regulated by law, which requires on specific dates to report to the controlling agencies.*[1054]

Case 2, MML it was acknowledged that:

> ''*The government needs to set the rules, and Multination must comply. We are in compliance with all the licenses that we have acquired from the government with each terms and conditions. We conduct safety and environmental inspections on a daily basis for compliance with Marampa Mines Limited (MML) policies and procedures (such as Environmental*

[1052] Ibid

[1053] *Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) Limited and Tonkolili Iron Ore (SL) Limited* [2020] EWCA Civ 144.

[1054] Excerpt from the interview and response by C.F.J., at Cava Consona, Bagheria, 04 October 2023

Policies, Health and Safety Policy, Drug and Alcohol Policy, Vehicle Safety Policy, etc.).''[1055]

Secondly, the **o*bligation to protect***, human rights which imposes a duty on states to protect individuals from human rights violations.[1056] This means to proactively engaging to prevent violations of individuals' human rights in their jurisdictions, including ensuring that private entities do not violate human rights.[1057] In the context of the extractive industries, case law has demonstrated the direct applicability of the obligation to protect human rights. For instance, in *Kotov and others v Russia,*[1058] a case that concerned a challenge by 14 residents of the town of Klin against the Russian authorities' failure to effectively regulate a waste management facility at Aleksinskiy quarry, run by a private company under a lease agreement with the Klin municipal administration. The residents complained of foul odour emanating from the quarry and alleged that the waste management facility was operating in violation of applicable environmental regulations.[1059]The Court held that it is not necessary to demonstrate impacts on physical health to succeed in a claim under Article 8 of the European Convention on Human Rights as:

> '*severe environmental pollution may affect individuals' well-being in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.'*[1060]

Additionally, *in Pavlov and others v Russia, a case involved a claim by residents of Lipetsk against the state for failing to regulate several industrial undertakings in the city, including steelworks, a cement plant,* and a tractor factory.[1061] The applicant argued that the operations had been carried out in violation of domestic environmental standards, raising several issues concerning the precise scope of protection afforded by the European Convention on Human Rights (ECHR) on matters of environmental pollution cases.[1062] Specifically, linking this to Italy and Sierra Leone, the two case studies in the extractive industry in Chapter Five show the adherence to the obligation **to protect** with respect **to health**. For instance, in the case of *CAVA CONSONA*, it was observed that:

[1055] Interview of 28/3/2023 – Between 10:30 -12:30 – At the Marampa Mines; Interview with the Environmental Superintendent - Health Safety Environment (HSE), at Marampa Mines Limited, 11/05/2023.

[1056] Ibid

[1057] Ibid.

[1058] Case of Kotov and others v Russia (Kotov), Applications nos 6142/18 and 13 others, Judgment, European Court of Human Rights, Third Section, 11 January 2023

[1059] Case of Kotov and others v Russia (Kotov), Applications nos 6142/18 and 13 others, Judgment, European Court of Human Rights, Third Section, 11 January 2023

[1060] Ibid 108

[1061] Case of Pavlov and other v Russia (Pavlov), Application no 31612/09, Judgment, European Court of Human Rights, Third Section, 11 January 2023.

[1062] European Convention on Human Rights(1953) 213 UNTS 221

> The corporation subjected all individuals (workers) at Cava to pre-medical examinations before hiring and thereafter annually, which is also a legal requirement. This is in accordance with the health and safety regulations prepared by the ministries, regions and other relevant authorities.[1063]Additionally, the company also offers health insurance to its employees. In particular, the corporation fully complies with the National Collective Labour Agreement (*Contratto Collettivo Nazionale*, or CCNL) rules. It has a Code of Ethics in place to ensure compliance with these rules.[1064]

In Sierra Leone, evidence obtained in Case study 2 on Marampa Mines Limited shows that:

> Marampa Mines Limited is committed to ensuring the health and safety of its staff and personnel on the mine site and all others affected by its activities. MML strives to provide a safe environment for all by upholding best health and safety practices and working conditions standards at the mine site through the implementation of controls and interventions to minimise health and safety risks arising from environmental activities.[1065] The health policy covers individuals who are staff working at all levels and grades on the mine site, including senior managers, officers, directors, employees, consultants, contractors, trainees, home-workers, interns, and part-time and fixed-term employees.[1066]Concerning measures on occupational health and safety, the following is worth noting that at MML: ‘‘*we conduct pre-medical test before start working, we provide medical for employees, there is in house medical clinic coverage with well-equipped laboratory and with trained and qualified doctors and nurses*.’’[1067]

Together, the two case studies show that, these corporations proactively engaged in to prevent violations of individuals'(workers) rights which demonstrate the direct application of the obligation to prevent human rights. However, this is possible due to the States (Italy and Sierra Leone) proactiveness in ensuring that private entities do not violate human rights.[1068]

[1063]See ISPESL and INAIL and autonomous provinces of Trento and Bolzano.

[1064] C. F. J., Administrative and Commercial Manager, Interview response at *Cava Consona*, Bagheria, 04 October 2023.

[1065] This policy outlines the provision and maintenance of a safe workplace, plant, and equipment; ensuring the safe handling and use of substances; consultations with our staff; providing appropriate information, training, and supervision of staff members; and taking steps to prevent accidents and cases of work related ill-health.

[1066] MML

[1067] Interview with the Environmental Superintendent - Health Safety Environment (HSE), at Marampa Mines Limited, 11/05/2023.

[1068] Ibid.

Thirdly, the ***obligation to fulfil*** **human rights** also includes to proactively engage in activities to ensure the enjoyment of human rights by adopting appropriate laws that implement their international commitments.[1069] Thus, this encompasses judicial, administrative, and educational aspects, providing remedies for violations.[1070] In the extractive industries, the obligation to fulfil human rights can be understood as a state's obligation to adopt appropriate laws that incorporate its international environmental and human rights obligations. Thus, this includes judicial, administrative, and educative, and provides remedies for violations. In *SERAC v Nigeria*, the African Commission on Human and Peoples' Rights addressed breaches of human rights caused by environmental degradation and health problems resulting from the contamination of the environment by oil spills and toxic waste in the Niger Delta.[1071] The African Commission found Nigeria in violation of various human rights under the African Charter on Human and Peoples' Rights, including health, and requests to the government to ensure the protection of the environment and ensure adequate compensation to the victims of such human rights violations.[1072]Hence, the obligation to fulfil is applicable regarding environmental degradation that violates of human rights, as the case law suggests.

In the cases under review, evidences showed in Chapters Four and Five suggest that both Italy and Sierra Leone have adopted environmental laws and on the extractive industries, requiring certain actions from individuals wanting or engaging in environmental activities to mitigate environmental degradation, in order to fulfil human rights, which corporations in the extractive industries are bound to adhere to without exceptions.

7.2.1 Analysis on The Obligation to Conduct Environmental Impact Assessment (EIA)

Generally, states typically conduct assessments in accordance with their domestic laws and procedures.[1073] The two case studies (Italy and Sierra Leone) examined in this study revealed that domestic laws require individuals and corporations, especially those in the extractive industries, to conduct and obtain an environmental impact assessment (EIA) before commencing activities such as the exploration and extraction of natural resources. For instance, in the case of **Cava Consona** in Italy, it was recorded that:

[1069] Ibid

[1070] Moeckli, D., Shah, S., Sivakumaran, S., Harris, D., *International Human Rights Law* (3rd Edition, Oxford University Press 2017

[1071] Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) V. Nigeria (2001) ACHPR Comm. 155/96.

[1072] Ibid.

[1073] Leslie Johns, *Politics and International Law, Making, Breaking, and Upholding Global Rules* (Cambridge University Press 2022)

Having obtained the necessary permits to carry out the mining activity, it must equip itself with the appropriate mining equipment, find the workers and employees, have the necessary financial resources to start operations, and after a thorough study of the target market and competitors, find solutions to produce products of higher quality than the market at a competitive price, while also giving due emphasis to you quality controls and certifications obtained.[1074]

In the case MML (Case 2) in Sierra Leone, the following was stated that at MML:

''*We are in compliance with all the licenses that we have acquired from the gov't with each terms and conditions. We do General environmental Compliance monitoring such as Air Quality (for dust emission), noise monitoring (control level of noise emission), radiation monitoring (compliance with nuclear safety), Water quality analysis (certify portable water for workers), and surface water analysis (control water pollution like streams within area of operation). We Submit quarterly reports to EPA, National Minerals Agency, and National Water Resources Management Agency, and our report of being monitored by these regulators on quarterly basis to monitor our operations.''*[1075]

In the author's view, this aligns with the established general principles of international environmental law. In particular, the precautionary and preventive principles in this regard. Accordingly, the ''precautionary principle' has been employed by states over the years to address environmental issues.''[1076]This principle requires taking measures to prevent, reduce, or control proven harm to the environment, such as through emission standards or limits on the handling of a substance.[1077]It provides guidance on the development and application of the law in cases of scientific uncertainty.[1078] In other words, where there is no scientific evidence available to support a particular theory, precautions should be taken**.**[1079]This principle is reflected in Principle 15 of the Rio Declaration, which states that:

''In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible

[1074] C.F.J., Administrative and Commercial Manager, Interview response at *Cava Consona*, Bagheria, 04 October 2023.
[1075]Interview with the Environmental Superintendent - Health Safety Environment (HSE), at Marampa Mines Limited, 11/05/2023**.**
[1076] Rebecca Wallace, Franser Janeczko and Karen Wylie, International Law, 3rd Edition, Sweet and Maxwell, 2013.
[1077] *Environmental Law Lecture Notes and eBook*
[1078] Ibid
[1079] Ibid

> *damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*[1080]

In addition, Principle 17 of the Rio Declaration states that environmental impact assessment (EIA), as a national instrument, shall be undertaken for proposed activities deemed to adversely impact the environment, which is subject to the decision of the competent national authority.[1081]This is evident in both Italy and Sierra Leone. In the case of the former, the regions are empowered to issue an environmental impact assessment, whilst in the case of the later, the competence to issue an environmental impact assessment is centralised under the Environmental Protection Agency. However, the requirement for environmental impact assessment has also been provided for in the Convention on Biological Diversity (CBD), [1082]and the UN Framework Convention on Climate Change.[1083]

The case law on EIA has also confirmed that states' obligations and competence to conduct environmental impact assessments is mandatory. For instance, the International Court of Justice, in its judgement concerning the *Pulp Mills on the River Uruguay*,[1084] which arose from a bilateral environmental agreement between Argentina and Uruguay, known as the Statute of the Uruguay River. The Statute requires each state to inform the other of new projects that might affect the river between them and to consult to promote cooperation in addressing adverse effects.[1085] It requires states to prevent river pollution.[1086] The ICJ has reaffirmed that it is:

> 'now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact …, in particular, on a shared resource.'[1087]

The Court further notes that each State is to determine in its domestic legislation or the authorisation process for the project the specific content of the environmental impact assessment required in each case, having regard to the nature and magnitude of the proposed development and its likely adverse impact on the environment, as well as the need to exercise due diligence in conducting such an

[1080] Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, Prin. 15
[1081] Rio Declaration on Environment and Development 1992, prin. 17.
[1082] Convention on Biological Diversity, 5 June 1992, United Nations, Treaty Series, vol. 1760, p. 79.
[1083] United Nations Framework Convention on Climate Change, 9 May 1992, United Nations, Treaty Series, vol. 1771, p. 107.
[1084]Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.
[1085] Ibid
[1086] Ibid
[1087]Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14, para. 204

assessment.[1088]The two case studies presented in this study (in Chapter Five) revealed that Italy and Sierra Leone employ different environmental impact assessment approaches. For example, whilst an EIA application can be submitted to a regional office under Italian environmental law, Sierra Leone's environmental law stipulates that an EIA must be submitted to the Environmental Protection Agency, which is the only national authority responsible for issuing permits.

Also, in interpreting the obligation under Article 192 of the UNLCOS, in its May 2024 Advisory Opinion concerning the specific obligations of States to the UNCLOS to prevent, reduce and control marine pollution, the ITLOS has emphasised that this provision imposes a legal obligation on states that underpins the legal order for the protection and preservation of the environment under the UNCLOS.[1089] It reaffirmed the obligation of conduct that requires States to act with ''due diligence'' in taking the necessary measures to prevent, reduce and control marine pollution.[1090] ITLOS further states that the obligation of due diligence requires states to put in place domestic legislation, administrative procedures, and enforcement mechanisms necessary to regulate environmental activities and exercise adequate vigilance to ensure that such system functions efficiently and achieves the intended objective.[1091] In the *Southern Bluefin Tuna* case, which concerns a dispute over an experimental fishing programme conducted by Japan, the ITLOS implicitly applied the precautionary principle by ordering Japan to halt its experimental fishing programmes due to the depleted state of the tuna stock and the need for environmental conservation.[1092] It states that:

> "*Considering that, although the Tribunal cannot conclusively assess the scientific evidence presented by the parties, it finds that measures should be taken as a matter of urgency to preserve the rights of the parties and to avert further deterioration of the southern Bluefin tuna stock.''*[1093]

Other cases have also confirmed that international law requires the preparation of a prior environmental impact assessment before a state engages in or permits an activity that may have severe

[1088] Ibid, para. 205

[1089] *Request For An Advisory Opinion Submitted By The Commission of Small Island States On Climate Change And International Law Advisory Opinion. International Tribunal For The Law of The Sea. No. 31,* 21 May 2024, para.184

[1090]*Request For An Advisory Opinion Submitted By The Commission of Small Island States On Climate Change And International Law Advisory Opinion. International Tribunal For The Law of The Sea. No. 31,* 21 May 2024, para.134

[1091] Ibid. para. 135

[1092]Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p.280, para.80

[1093] Southern Bluefin Tuna Case (Australia an New Zealand v. Japan)

adverse environmental impacts.[1094]This means individuals and corporations in the extractive industry wishing to engage in the extraction of natural resources must conduct an environmental impact assessment before commencing the project. In other words, there is an obligation to conduct an environmental impact assessment prior to the commencement of environmental activities.

7.2.1.1 Obligation to protect and to ensure the fulfilment of human rights.

Accordingly, the obligation to protect requires proactive engagement by states to ensure non-violation of human rights of individuals in their jurisdictions.[1095]On the other hand, obligations to ensure the fulfilment of human rights require proactively engaging in activities that ensure the enjoyment of human rights.[1096]An obligation to the state to adopt appropriate laws that implement their international commitments.[1097]International human rights law does not only recognises human rights for all, but also establishes an obligation on States to ensure, secure, or guarantee the effective enjoyment of human rights for all within their jurisdiction.[1098] The purpose of this obligation is to ensure that the rights and freedoms recognised are respected and protected.[1099] This obligation is enshrined in many instruments. For example, Article 2 of the International Covenant on Civil and Political Rights;[1100]Article 1 of the European Convention on Human Rights,[1101] and Article 1 of the African Charter on Human and Peoples' Rights. [1102]

The obligation to protect human rights imposes a duty on states to protect individuals from human rights violations.[1103] This includes protecting against human rights violations from third parties, including private entities.[1104] such as multinational corporations. This means creating an environment where human rights are enjoyed, but failing to do so, a state can be held responsible for such failure, if it is proven that such failure is due to its shortcomings, for instance, failing to adopt a law makes

[1094] See *New Zealand's application to the ICJ concerning the resumption by France of underground nuclear testing (1995);* GabCikovo-Nagymaros Project (Hungary Slovakia), Judgment, 1. C. J. Reports 1997, p.7; *the dispute between Ireland and the United Kingdom concerning the MOX plant (2001); the ICJ decision in the Costa Rica v. Nicaragua cases (2015) and the recent South China Sea arbitration (2016);*

[1095] Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumara (eds). *International Human Rights Law* (OUP, Oxford, 2010)

[1096] Ibid.

[1097] Malcolm N Shaw, International Law (Ninth Edition, CUP, Cambridge, 2021); Daniel Moekli, et al. *International Human Rights Law* (OUP, Oxford, 2010)

[1098] M.N. Shaw, International Law (Ninth Edition, Cambridge University Press 2021)*;* Moeckli, D., Shah, S., Sivakumaran, S., Harris, D., *International Human Rights Law* (3rd Edition, Oxford University Press 2017)

[1099] Rhona K.M. Smith, *Texts on International Human Rights* (4thEdition, Oxford University Press, 2010);

[1100] ICCPR, 1966, art. 2

[1101] ECHR 1950, art. 1

[1102] ACHPR, 1981, art. 1

[1103] Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumara (eds). *International Human Rights Law* (OUP, Oxford, 2010.)

[1104] Ibid.

the violation impossible or failing to do something that could have prevented the breach from taking place.[1105] This is commonly referred to as the indirect horizontal effect of human rights. [1106]Also, due diligence obligation requires States to put in place domestic legislation necessary to regulate environmental activities and exercise vigilance to achieve the intended objectives[1107]of human right protection. For instance, by employing a restrictive policy on the issuing of licenses, frequent monitoring and inspections of environmental activities, and litigations for environmental crimes.

Regarding the obligation to fulfil, it requires that states take positive steps that will enhance the enjoyment of human rights.[1108]This includes the obligation to adopt laws that strengthen the implementation of international commitments by incorporating such laws into domestic law.[1109]The obligation also includes remedies for all victims of human rights violations.[1110]In the *Velásquez-Rodríguez v. Honduras* case, the Inter-American Court of Human Rights ruled that:

> '*The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the person within its jurisdiction.*'[1111]

Considering the above, enacting laws on the obligation to conduct an environmental impact assessment aligns with states' obligations to protect and fulfil human rights. Additionally, community development programmes such as adequate compensation packages, due to loss of livelihoods by communities due to extractive activities by corporations, could also aligns with the obligations to fulfil.

7.2.1.2 The obligation to prevent violations of human rights

Accordingly, this principle means to prevent environmental damage by acting before it has already occurred.[1112]That is the prevention of environmental damage, preferable to restitution after the

[1105] X and Y v The Netherlands (1986) 8 EHRR 235

[1106] Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumara (eds). *International Human Rights Law* (OUP, Oxford, 2010)

[1107] *Request For An Advisory Opinion Submitted By The Commission of Small Island States On Climate Change And International Law Advisory Opinion. International Tribunal For The Law of The Sea. No. 31,* 21 May 2024, , para.135

[1108] Ibid.

[1109] Ibid.

[1110] Ibid.

[1111] -American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras Judgment of July 29, 1988 (Merits),

[1112]Vojtěch Vomáčka, Principles of EU Environmental Law, Preventive Principle

damage has occurred, due to the impossibility of repairing environmental damage and the lower costs associated with prevention compared to the costs of repairing the damage. This is endorsed in various international and national laws in different forms, such as the Setting Environmental Standards and Environmental Impact Assessment.

Principle 21 of the Stockholm Declaration,[1113]and Principle 2 of the Rio Declaration,[1114] established states' responsibility to ensure that activities in their territory do not cause damage to the environment of other States.[1115] This obligation has become part of general international law.[1116] The ICJ, in its *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*[1117] and in its *Pulp* Judgment, has endorsed this obligation as a rule of international customary law and a state's obligation to prevent it as one of due diligence. [1118]Thus, enacting domestic laws that make it mandatory to conduct an environmental impact assessment for activities with adverse environmental impacts conforms with the preventive principle, which requires taking action to prevent human rights violations.

7.2.1.3 Obligation to conduct EIA and right to life

It could be argued that the obligation to conduct an environmental impact assessment (EIA) reinforces the right to life. Accordingly, the right to life is recognised in many international instruments as follows: Article 3 of the UDHR 1948 states that "everyone has the right to life, liberty and security of person."[1119]Additionally, Article 6 of the International Covenant on Civil and Political Rights (1966) stipulates that "every human being has the inherent right to life." This right shall be protected by law. No one shall be arbitrarily deprived of his life."[1120] At the regional level, Article 2 of the European Convention on Human Rights stipulates that:

> "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.''[1121]

[1113] Stockholm Declaration 1972, prin. 21
[1114] Rio Declaration 1992, prin. 2
[1115] Günther Handl, *Declaration Of The United Nations Conference On The Human Environment (Stockholm Declaration), 1972 And The Rio Declaration On Environment And Development, 1992.* United Nations 2012. Available at: www.un.org/law/avl
[1116] Günther Handl, *Declaration Of The United Nations Conference On The Human Environment (Stockholm Declaration), 1972 And The Rio Declaration On Environment And Development, 1992.* United Nations 2012.
[1117] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1. C.J. Reports 1996, p. 226
[1118] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010.
[1119] Universal Declaration of Human Rights, 1948, art. 3
[1120] International Covenant on Civil and Political Rights, 1966, art.6
[1121] ECHR, 1950, art.2

Also, Article 4 of the African Charter on Human and Peoples' Rights 1981 stipulates that ''*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right*."[1122]

Accordingly, the right to life is protected under various instruments as specified above.[1123] The right to life imposes a positive obligation on States to take appropriate steps to protect the lives of individuals within their jurisdiction.[1124] This means that the States' authorities must take steps to guarantee the rights under the ECHR, even when these rights are threatened by private persons or activities that are not directly connected to the state.[1125]The right to life is increasingly recognized as inextricably linked to environmental protection, as a healthy environment is crucial for its enjoyment.[1126]This is because environmental degradation can directly threaten the right to life.[1127] In the author's view, this reasoning is consistent with the obligation to conduct environmental impact assessments, which requires individuals, including corporations in the extractive industry, to conduct environmental impact assessments before the commencement of and extraction of natural resources. As the ITLOS noted, due diligence requires States to enact laws and enforcement mechanisms to regulate the environment[1128] and preserve rights. Thus, due diligence obligation is relevant in environmental activities by private persons and entities.[1129]

Some treaties explicitly define environmental protection as a human right. For instance, the African Charter on Human and Peoples' Rights (ACHPR) 1981 states that:

> *'All people shall have the right to a general satisfactory environment favourable to their development*.'[1130]

[1122] African Charter on Human and Peoples' Rights, 1981, art.4
[1123] See UNHR 1948, art. 3; ICCPR, 1966, art. 6; ECHR 1950, art. 2 and ACHPR 1981, art. 4
9[1124] L.C.B. v. the United Kingdom, judgment of 9 June 1998, § 36; Paul and Audrey Edwards v. the United Kingdom, judgment of 14 March 2002, § 54; Öneryıldız v. Turkey [GC], judgment of 30 November 2004, § 71; Budayeva and Others v. Russia, § 128.
[1125] Manual on Human Rights and the Environment: *containing principles emerging from the case law of the European Court on Human Rights and the conclusions and decisions of the European Committee of Social Rights* (3rd Edition, Council of Europe, February 2022).
[1126] UN Office of the High Commissioner for Human Rights (OHCHR), United Nations Environment Programme (UNEP), United Nations Development Programme (UNDP*), What is the Right to a Healthy Environment? Information Note. Available at:* https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf
[1127]Ibid.
[1128] ITLOS, Report No. 31, 21 May 2024
[1129]Ibid.
[1130]African Charter on Human and Peoples' Rights, 1981, art.24

The ECOWAS Court's case law has confirmed this. For instance, an environmental activist used this provision in a lawsuit to challenge oil drilling in the Niger Delta.[1131] In this case, the applicant, an NGO, argued that Nigeria was responsible for the environmental damage caused by oil spills from pipelines, even though these pipelines were operated by foreign-owned businesses and damaged by private individuals.[1132] In its defence, Nigeria argued that it had enacted extensive laws to regulate the oil industry and had created government agencies to enforce them. Nonetheless, the ECOWAS Court ruled that Nigeria had violated the ACHPR. It argued that the 'right to a generally satisfactory environment' was an 'obligation of result', meaning that environmental outcomes (rather than policies) mattered.[1133] The Court then concluded that Nigeria had 'defaulted in its duty in terms of vigilance and diligence' by failing to prevent oil spills and other environmental damages.[1134] Thus, enacting domestic laws that make it mandatory to conduct an environmental impact assessment reinforces the right to life of individuals and communities within and around areas with adverse environmental impacts associated with environmental projects. In other words, an EIA requirement provides safeguards to the right to life.

7.2.1.4 The principle of non-discrimination under the law.

In its General Comment, the Committee on Civil and Political Rights, defines discrimination as used in the Covenant Should be understood to imply:

> ''*any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*."[1135]

Shaw has argued that the principle of non-discrimination requires the establishment of both factual equality and legal equality.[1136] International human rights law holds that all human beings have the same set of fundamental rights. Almost all general human rights instruments guarantee the right to equality and non-discrimination.[1137] Thus, international law prohibits discrimination in both treatment

[1131] ECOWAS, SERAP, Judgment of 14th December 2012,
[1132] Ibid.
[1133] ECOWAS, SERAP, Judgment of 14th December 2012, para.100
[1134] Ibid. para.112
[1135] Committee on Civil and Political Rights General Comment No. 18: Non-discrimination (1989), para.7:
[1136] M.N. Shaw, International Law, (Ninth Edition, CUP 2021), pp. 257-58
[1137] Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumara (eds). *International Human Rights Law* (OUP, Oxford, 2010)

and outcome, as well as indirect discrimination, regardless of whether it is intended or unintended.[1138] Therefore, the following explains the right of individuals to non-discrimination in environmental law.

Under environmental law, non-discrimination means that every person has equal access to a clean, safe, and healthy environment. [1139]Accordingly, the right to a healthy environment has evolved gradually since the 1972 Stockholm Declaration, in which its first Principle states: "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."[1140]Therefore, the Stockholm Declaration has served as a catalyst for the recognition of the right to a healthy environment at the national and regional levels.[1141] This has also been confirmed today by UN Special Rapporteur David Boyd, who pointed out that the right to a healthy environment:

> "*is included in regional human rights treaties and environmental treaties binding more than 120 States. It enjoys constitutional protection in more than 100 States and is incorporated into the environmental legislation of more than 100 States. In total, 155 States have already established legal recognition of the right to a healthy and sustainable environment*."[1142]

Accordingly, the right to a clean, healthy and sustainable environment includes the right to enjoy clean air, safe and sufficient water, healthy and sustainably produced food, a safe climate, healthy biodiversity and ecosystems, and a non-toxic environment where people can live, work, learn and play.[1143] This right is guaranteed in different ways and various instances. For example, the UN General Assembly Resolution 70/300, "The Human Right to a Clean, Healthy, and Sustainable Environment," recognises that sustainable development, its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations.[1144] It further reaffirms the importance of a clean, healthy, and sustainable environment

[1138]Ibid.
[1139] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. 24 February –20 March 2020, A/HRC/43/53
[1140] *Stockholm Declaration 1972*
[1141] Report, General Developments: Yearbook of International Environmental Law, Oxford University Press, 2022, 33, 29–305
[1142] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. 24 February –20 March 2020, A/HRC/43/53
[1143]Ibid.
[1144] UN GENERAL ASSEMBLY Resolution 70/300, The Human Right to Clean, Healthy, Sustainable Environment, Resolution adopted by the General Assembly on 28 July 2022.

for the enjoyment of all human rights, thereby recognising the right to a healthy environment as a fundamental human right.[1145] which is interrelated with other rights and existing international law.[1146]

The legal recognition of the right to a healthy environment is a good practice through constitutional protection, inclusion in environmental legislation and ratification of a regional treaty that includes the right to a healthy environment.[1147] However, for this analysis, the focus is on the treaty provisions on the protection of the right to a healthy environment. At the regional level, 126 States have ratified treaties, of which 52 States are parties to the African Charter on Human and Peoples' Rights and 16 States are parties to the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. [1148]Additionally, this right to a clean and healthy environment comprises both procedural (which include access to environmental information, public participation and access to justice), and the substantive element (which include various rights as the right to clean air, a safe climate, healthy and sustainably produced food, access to safe water and adequate sanitation, Non-toxic environments, healthy ecosystems and biodiversity).[1149] Implementing the right to a clean and healthy environment requires the equal application of environmental laws across all levels of society and to everyone. Thus, it must be considered at all times.

7.4.1.5 Analysis on the Right to Permanent Sovereignty over Natural Resources

It could be argued that the laws of Italy and Sierra Leone, according to states' sovereign right over natural resources, are in line with established rules under international law for the following motivating points:

Primarily, the extension of the sovereignty doctrine into environmental matters predates the Stockholm Declaration and is rooted in the doctrine of permanent sovereignty over natural resources, as formulated in various United Nations General Assembly resolutions adopted from time to time after 1952.[1150] Moreover, a state's right to sovereignty over natural resources reinforces the 'public trust doctrine,' which maintains specific resources are preserved for public use and that the

[1145] Ibid. para.1
[1146] Ibid., para.2
[1147] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Good practices on the right to a safe, clean, healthy and sustainable environment, 30 December 2019, A/HRC/43/53
[1148]Ibid.
[1149] Ibid.
[1150]General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources; Integrated Economic Development [1952] UNGA 4; A/RES/521 (VI) (12 January 1952)

government is required to retain them for the reasonable use of the public.[1151] The state is the 'Trustee' of all natural resources, which are by nature meant for public use and enjoyment.[1152] This right is reflected in many international legal instruments; Principle 21 of the Stockholm Declaration provides that:

> '*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction*.'[1153]

This provision does not only recognizes states' sovereign right over natural resources, but it also imposes the responsibility to ensure that activities within their jurisdiction or control, while exercising this right, do not cause damage to the environment of other states or of areas beyond the limits of their jurisdictions.[1154]

Also, the right to state sovereignty over natural resources is also enshrined under Principle 2 of the Rio Declaration, which stipulates that states have the 'right to exploit their own resources pursuant to their own environmental and developmental policies.'[1155]However, it is pertinent to note that although some of these provisions are enshrined in declarations that are usually non-binding, they are fundamental in environmental law, as they contribute to the development of binding norms and serve as a means by which treaty rules are extended.[1156]

In addition, Article 193 of the UNCLOS recognises states' rights to exploit their natural resources in accordance with each state's environmental policies, while also fulfilling its duty to protect and preserve the environment.[1157]This means that, under international law, states have permanent sovereignty over their natural resources, including the authority to manage these resources by enacting laws and policies for the maintenance, extraction, and protection of the environment. This is evident in cases of Italy and Sierra Leone, whose laws reaffirmed not only these states' sovereign

[1151]The ancient Roman Empire developed a legal theory known as 'The Doctrine of Public Trust', which was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by government in trusteeship for the free and unrestricted use of the general public.
[1152] Environmental Law Lecture Notes and eBook
[1153]Stockholm Declaration, prin., 21
[1154]Ibid
[1155] Rio Declaration, prin., 2
[1156] Cecily Rose, *et al., An Introduction to Public International Law* (Cambridge University Press, 2022)
[1157] United Nations Convention on the Law of the Sea, art.193

right over natural resources but also the power to make laws and policies for the management of these resources and environmental protection.

7.4.1.6: Analysis on Decision - making and Public Participation on Environmental Matters.

Decision-making processes in environmental matters and public participation require that public officials' decision-making take into account the interests of those who may be affected by such decisions.[1158]It is therefore fundamental that individuals can make representations to public officials regarding their concerns, and public officials involve individuals in investigations and studies of complex environmental issues that involve conflicting interests at stake to strike a balance.[1159] Public participation is stipulated under Principle 10 of the Rio Declaration, which states that:

> 'Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.'[1160]

The right to access information is also guaranteed in the Aarhus Convention.[1161] Italy is a member of the European Union and a party to the Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.[1162]Within the EU, access to information means ensuring that the authorities make environmental information available to the public.[1163]Therefore, Member States must take the necessary measures to ensure that public authorities organise the relevant environmental information to disseminate to the public.[1164]The right to access information focuses on the state of the environment, policies or measures that affect the

[1158] Hatton and Others v. the United Kingdom [GC], judgment of 8 July 2003, § 99; Chapman v. the United Kingdom [GC], judgment of 18 January 2001, § 92.
[1159] Hatton and Others v. the United Kingdom [GC], § 128.
[1160] The Rio Declaration on Environment and Development (1992), Prin.10
[1161] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Aarhus, Denmark, 25 June, 1998, art. 4.
[1162]Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
[1163] European Commission, Aarhus Convention and the EU. Available: https://environment.ec.europa.eu/law-and-governance/aarhus en. Accessed 25 January 2025.
[1164] Ibid, art.7

environment, and public health and safety, particularly when environmental conditions have an impact on these.[1165]

7. 5 Final Conclusions and Lessons Learned

This study examines the obligations of states and non-state actors under domestic and international law regarding corporations in the extractive industry in Italy and Sierra Leone.

In other words, the study examines the obligations of states and multinational corporations in the extractive industry under domestic and international law concerning human rights and environmental protection. This is because the activities of multinational corporations in the extractive industry could affect human rights.[1166]However, to deliberate on the aim, the study set the following six key objectives:

- *to examine the legal frameworks governing the extractive industry under domestic and international law.*
- *to examine the policies and actions of corporations and compare them to their obligations under domestic and international law.*
- *to identify obligations for accountability of states and corporations in the extractive industry.*
- *to establish gaps in the legal frameworks governing corporations in the extractive industry.*
- *to examine the processes and practices of corporations in the extractive industry concerning the environment and human rights.*
- *to examine the treatment of workers by multinational corporations in the extractive industry.*

In considering the above, the following conclusions is made:

It could be concluded that both states and non-state actors, particularly multinational corporations, have obligations to protect, respect and fulfil human rights through environmental protection. The general obligations include protecting, preventing and fulfilling human rights. Therefore, specific obligations examined include the *obligation to protect and ensure the fulfilment of human rights, the obligation to prevent human rights violations, and the principle of non-discrimination* under international human rights law, taking into account the environmental impact assessment. These obligations have emerged from domestic laws and international law, particularly treaties, as well as from general principles and declarations. The specific obligations were analysed in consideration of the *right to life* and the *right to health*, with a focus on environmental impact assessment. Thus, one

[1165] Ibid.

[1166]See Howard Mann, *International Investment Agreements, Business and Human Rights: Key issues and Opportunities, International institute for Sustainable Development* (February 2008)

could argue that states typically enact laws on environmental management and protection to fulfil human rights, which multinational corporations in the extractive industry mainly adhere to. Paramount among these laws is the law on environmental impact assessment, which corporations in the extractive industries comply with under their domestic laws and procedures.[1167] The two case studies (Italy and Sierra Leone) examined in this study revealed that domestic law requires multinational corporations in the extractive industries to conduct and obtain an environmental impact assessment (EIA) before commencing activities such as the exploration and extraction of natural resources. Adhering to this practice reinforces respect for the rights to life and health of individuals as mandated by law. However, there is no internationally legally binding instrument to hold multinational corporations in the extractive industry directly accountable for their actions, even though they do comply with treaty obligations that the host countries have signed and ratified. Hence, the following lessons were learned:

Firstly, it could be stated that states and non-state actors, especially multinational corporations, in the extractive industry have obligations under domestic law regarding environmental and human rights. States mainly have various laws regulating the environment to safeguard human rights. These laws outline the obligations that corporations operating in the extractive industries in these countries must follow. This is evident in the cases of Italy and Sierra Leone. In the case of former, Legislative Decree 152/2006 (the Code), remains central, whilst in the case of the later, the EPA Act of 2022 remains central.

These states have enacted laws addressing environmental management, environmental degradation, and related matters to safeguard the human rights of individuals and communities. However, while the Italian Constitution provides a constitutional guarantee of environmental rights, the same cannot be said for Sierra Leone, whose laws relating to environmental management and protection are enacted in a legislative framework that can be easily amended by parliament.

Secondly, the study also reveals that, although there are treaties in the form of declarations on safeguarding and protecting the environment, these are directed to states, which have a responsibility to ensure that environmental activities undertaken in their territories respect human rights. This includes activities by third parties in states' territories.' However, there is no binding international instrument that binds multinational corporations operating in the extractive industry. In the author's view, one of the reasons is the lack of political will by states to hold corporations in the extractive

[1167] Leslie Johns, *Politics and International Law, Making, Breaking, and Upholding Global Rules* (Cambridge University Press 2022)

industry directly accountable for human rights violations through the necessary legal means. For instance, at the domestic level, government officials, especially in weak economies like Sierra Leone, must balance individuals' interests with revenue contributions to national economic development, which may involve compromising environmental activities that could adversely affect the human rights of individuals and communities. There is also weak institutions in the country that affect effective implementation of environmental laws to safeguard human rights.

Thirdly, it can also be argued that decision-making regarding the management and protection of the environment is decentralised and involves multiple entities within the state. This is evident in the cases of Italy and Sierra Leone. For instance, under Italian law, the regions are permitted to make autonomous decisions on environmental protection issues to safeguard the environment and human rights, a decision upheld by the Italian Constitutional Court. In the case of Sierra Leone, local councils, assisted by Ward Committees and Chiefdoms, are empowered by the Local Government Act to safeguard protected areas, monitor environmental activities, and report to the Environmental Protection Agency.

Fourthly, it can be concluded that corporations in Italy's extractive industries, as well as in Sierra Leone, comply with their obligations concerning conducting environmental impact assessments. The data presented in Chapters Four and Five, shows that in both countries, domestic laws impose on multinational corporations in the extractive industry, the obligation to conduct environmental impact assessments for specific environmental projects. In the case of Italy, an EIA is required before the commencement of extraction activities. Accordingly, Article 5 of the Legislative Decree No 152/2006 defines environmental impact assessment as the concerning the impact on the environment that may result from the construction and operation of a project which is subject to authorisation, the carrying out of consultations, the evaluation of the environmental study and consultations in the decision-making process for authorising the project work and the provision of information on the decision. [1168]Therefore, Article 27 of Legislative Decree No.152 of 2006, stipulates components an EIA which includes a description of the project, such as its location and size, an overview of measures planned to mitigate possible adverse effects of the project and compensation, an assessment of the project's environmental and cultural heritage, alternatives considered for environmental impact, and a cost-benefit analysis on environmental, economic, and social effects. [1169]

[1168] Legislative Decree No 152/2006, art. 5 (b & c)
[1169] Ibid., art. 27

The law also provides the right to access data information to the public or private individuals interested in the project during the environmental impact assessment. [1170]This is in accordance with Principle 10 of the Rio Declaration, which states that:

> 'Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.'[1171]

The right to access information is also guaranteed in the Aarhus Convention.[1172]Italy is a member of the European Union and a party to the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters.[1173]Within the EU, access to information ensures that the authorities make environmental information available to the public.[1174] Therefore, Member States must take the necessary measures to ensure that public authorities organise the relevant environmental information to disseminate to the public.[1175]The right to access information focuses on the state of the environment, policies or measures that affect the environment, and public health and safety, particularly when environmental conditions impact these.[1176]

Additionally, it can be concluded that although environmental laws and initiatives aim to address various challenges and opportunities related to biodiversity loss, pollution, resource management, and human rights,[1177]the scope, effectiveness, and implementation of these initiatives vary widely depending on different jurisdictions' legal, political, and socio-economic contexts.[1178]Nevertheless, the field of environmental law can no longer be seen as a niche area of the law, the bailiwick of

[1170] Ibid., art.27 (7)
[1171] The Rio Declaration on Environment and Development (1992), Prin.10
[1172] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Aarhus, Denmark, 25 June, 1998, art. 4.
[1173]Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
[1174] European Commission, Aarhus Convention and the EU. Available: https://environment.ec.europa.eu/law-and-governance/aarhus en. Accessed 25 January 2025.
[1175] Ibid, art.7
[1176] Ibid.
[1177] Ibid.
[1178] Ibid

lawyers, academics, environmental activists and politicians seeking electoral approval.[1179] Instead, it should now be considered an integral part of every global, intergovernmental, and national initiative, top-down and bottom-up.[1180]This has also been echoed in Principle 4 of the Rio Declaration, which prioritizes environmental protection as central to the development process, a principle that cannot be ignored.[1181]

Thus, only through a concerted interdisciplinary approach could the preservation and rebuilding of what is left of the environment be realised.[1182] Information sources examined in this study reveal that Italy and Sierra Leone have enacted laws aimed at addressing environmental issues that impact human rights. However, the scope and implementation of such laws vary due to a range of differences in political, socio-economic, and institutional contexts of these countries.

Conclusively, this analysis confirms that while legal obligations exist, implementation failures continue to expose communities to rights violations by extractive corporations. Despite robust normative frameworks, accountability mechanisms are fragmented, under-resourced, and often inaccessible to affected populations. The study finds that under international human rights law there is a consensus on states' responsibility to uphold human rights. It is also clear that the state not only bears a duty to respect the human rights of individuals on its territory but must also ensure that private actors do not violate those rights. However, the same cannot be said for multinational corporations in the extractive industry, who have rights under international law; yet, holding them directly accountable for human rights violations remains a grey area. Additionally, non-state actors do not possess international legal personality under international law. Nevertheless, corporations enjoy rights and should be subjected to duties under human rights law. Ultimately, the efficacy of legal regimes will depend on political will, civil society pressure, and international cooperation.

7.6 Recommendations for Legal Reform and Policy Action

This section presents the recommendations for legal reform and policy action proffered in this study. However, these are not exhaustive; rather, they proffer my perspective on the environmental activities of multinational corporations in the extractive industry and the need to uphold human rights. Thus, the following are worth considering:

[1179] Ibid
[1180] Ibid.
[1181] Rio Declaration 1992, Prin. 4
[1182] ibid

7.6 General Recommendations for Legal Reform

7.6.1 International Legal Personality:

It is recommended that states' international legal personality be applied to multinational corporations. The literature suggests that states can recognise non-state actors as subjects of international law if they want to do so. This is mainly because they are primary and original subjects of international law. Therefore, the extension of such a law depends on their willingness to accept new entities. Accepting non-state actors, particularly multinational corporations, also implies granting them international legal personality. This means corporations will be directly accountable internationally for their actions. However, such a personality should be limited to the extent of only achieving their activities. In other words, it should be restrictive and functional. Hence, this recommendation applies to both Italy and Sierra Leone. This could be achieved by supporting a binding treaty that could confer international legal personality to multinational corporations in the extractive industry, for instance.

7.6.2 Holding the home state directly accountable for Multinational Corporations' activities in the host countries.

As Palombo has argued, holding the home states where multinational corporations are incorporated but operate elsewhere is crucial.[1183] It is, therefore, not surprising that litigators of environmental crimes have increasingly sought to use national laws to hold parent companies incorporated in the West accountable for transnational human rights abuses committed by their subsidiaries and supply chains in the global south.[1184] In other words, the idea is that the home state or the state where parent corporations are registered should be held accountable for the actions of subsidiary companies, especially in countries where the rule of law and the economy are weak**.** This recommendation is geared towards achieving accountability for home states, excluding Sierra Leone, which is a host state.

7.6.3 Enactment of Binding Regional Treaty:

As noted above, environmental protection is now considered an integral part of every facet of society, from the top down.[1185] This requires a concerted interdisciplinary approach to preserving and rebuilding what is left of the environment to be realised. [1186]However, reaching consensus on a binding global instrument, especially one that holds multinational corporations

[1183] Diala Pabomlo, *Transnational Business and Human Rights Litigation: An Imperialist Project? Human Rights Law Review, 2022, 22, 1–25.*
[1184] Ibid.
[1185] Ibid.
[1186] ibid

in the extractive industry directly accountable for human rights violations, remains difficult, if not impossible. There are several reasons why this is the case. These include, for instance, differences in the availability of natural resources, geographical location, cultural differences, and economic benefits. For instance, whilst countries with abundant natural resources stand to benefit from the economic proceeds of these resources, they also face serious environmental challenges that those without them will not experience, simply because there is no reason for such challenges due to the lack of natural resources, which might result in environmental degradation. Simply put, he who has it feels it. It is therefore prudent and much easier to calvinize support at the regional level, for binding laws to be enacted that hold multinationals directly accountable for environmental activities that adversely affect human rights. One reason for this could be the shared sense of cultural values and geographical commonalities. In other words, the more people share the same or similar ancestral boundaries and similar cultural practices, the easier it will be to agree on binding rules. This is evident in the European Union, for instance, where the ECHR preamble notes that European states share a common heritage of political tradition, ideals, freedoms, and the rule of law.[1187] Already, within the European Union, there are binding environmental regulations which Member States must abide by, regardless of their domestic laws. This best practice could be emulated elsewhere, particularly in other regional blocks, such as Africa and globally.

7.7 Country Specific

7.7.1 Harmonization of Environmental laws

The legal regimes covering Environmental governance in Italy are decentralised. Each region has its own laws on environmental protection with specific competencies and power to legislate within its area of designation. This means there are various environmental laws in the country. Thus. There is a need to harmonise such laws, especially on the same natural mineral resources, to enhance legal certainty in enforceability.

7.7.2 International Donors and Development Banks

In the context of Sierra Leone, International donors play a significant role in the extractive industry, particularly in supporting governance, transparency and technical assistance. For instance, the World Bank has funded projects such as the Extractive Industries Technical Assistance Projects (EITAP) to strengthen governance, improve geological knowledge and support artisanal mining.[1188] Serra Leone is also a member of the Extractive Industries

[1187] European Convention on Human Rights, 1950, preamb.

[1188] World Bank Group, Extractive Industries Technical Assistance Project, 03 October.2022

Transparency Initiative (EITI).[1189]It is therefore believed that international donors are directly complicit in the corporate activities in the extractive industry. Thus, it is recommended that they be held accountable for the accomplices of corporations in the extractive industries.

7.7.3 Community Level Grievance Redress Mechanism

It is recommended that the establishment of community-level grievance redress mechanisms between corporations in the extractive industry and the local communities be prioritised. This is especially applicable in the case of Sierra Leone, where differences in Customary Laws across communities in rural areas remain in force.

7.7.4 Local Legal Empowerment

One of the challenges to environmental protection is the lack of understanding of environmental laws by the local communities. The following actions are therefore recommended:

- Regular workshops and seminars for law enforcement officers focusing on key environmental laws (such as EPA Act 2022, Mines and Minerals Act, etc.).
- Procedures for investigation, arrest, and prosecution of environmental offenses.
- Educate locals on environmental rights and principles (e.g., sustainable development, precautionary principle).
- Development of Simplified Legal Materials of Environmental Compliance
- Preparation and distribution of pocket-sized guides summarizing major environmental laws.
- Providing posters and infographics on environmental offences and penalties. Develop manuals on procedures for handling environmental cases.

7.8 Looking to the Future Developments in the Law on MNCs' accountability

This section highlights the developments in environmental law at the time of writing this thesis. Within the UN system, a debate is ongoing regarding a binding convention on business and human rights, which is still being negotiated and amended to reach a compromise among states.[1190]The Human Rights Council spearheads this process through its Resolution 26/9, which mandates the

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[1190]See *Overview of the Proposed Binding Treaty on Business and Human Rights.* Available at: https://www.law.georgetown.edu/transnational-business-center/blog/an-overview-of-the-proposed-legally-binding-instrument-to-regulate-in-international-human-rights-law-the-activities-of-transnational-corporations-and-other-business-enterprises/#_ftn41

elaboration of international, legally binding human rights law regarding the activities of transnational corporations and other business enterprises.[1191]

At the time of writing this dissertation, an updated draft legally binding instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises[1192]is being negotiated but not yet in force.[1193]However, developments in other areas are worth measuring here in passing, although not entirely linked to the extractive industry. These include, for instance, the global biodiversity conservation's conclusion of a new legally binding agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable use of Marine Biological Diversity of areas Beyond National Jurisdiction, colloquially referred to as the 'BBNJ Agreement.'[1194]Specifically, on environmental issues, the BBNJ Agreement covers four main substantive issues, namely Marine Genetic Resources (MGRs), area-based management tools, environmental impact assessment (EIA), and technology transfer and capacity building.[1195]

In addition, at the time of writing, other developments worth mentioning include the need for mechanisms that hold all actors accountable and drive behavioural change at the global level. [1196]Also, the panel recommends, inter alia, annual reporting to the UN General Assembly for all environmental conventions, the establishment of a Special Rapporteur to investigate alleged violations of the right to a clean and healthy environment and inclusion of ecocide in the Statute of

[1191] Elaboration of an International legally binding instrument on transnational corporations and other business enterprises with respect to human rights.(14/07/2014) A/HRC/RES/26/9

[1192] The text is submitted in accordance with paragraph 25 (g) of A/HRC/52/41, and in line with para paragraph 25 (i), will form the basis for State-led direct substantive intergovernmental negotiations during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

[1193] See The ninth session of the open-ended Intergovernmental working group (OEIGWG) took place from 23 to 27 October 2023 . Available at: https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session9 Accessed 07/04/24

[1194] See Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable use of Marine Biological Diversity of areas beyond National Jurisdiction (BBNJ Agreement), Document A/CONF.232/2023/4*, 19 June 2023 (*reissued for technical reasons on 30 June 2023). The Agreement is designed to address perceived gaps in coverage or implementation of the 1982 United Nations Convention on the Law of the Sea.

[1195] Ibid

[1196] High-Level Advisory Board on Effective Multilateralism, A Breakthrough for People and Planet: Effective and Inclusive Global Governance for Today and the Future (Ney York, United Nations 2023), 24. Available at: https://highleveladvisoryboard.org/breakthrough/pdf/highleveladvisoryboard breakthrough_fullreport.pdf accessed 31/08/24 High-Level Advisory Board on Effective Multilateralism (HLAB), A Breakthrough for People and Planet: Effective and Inclusive Global Governance for Today and the Future (New York: United Nations University, 2023).

the International Criminal Court.[1197]In addition, in July 2022, the UN General Assembly recognised the right to live in a clean, healthy and sustainable environment as a human right.[1198]

At the regional level, in March 2024, a coalition of organizations[1199] is calling for the adoption of an Additional Protocol to the European Convention on Human Rights regarding the right to a clean, healthy, and sustainable environment.[1200] This is in recognition of the right to a healthy environment in the European human rights legal framework, ensuring that Europe no longer lags behind in the fight for environmental protection. It also sends a message 'to national and international communities, affirming Europe's commitment to tackling the environmental crisis and providing its citizens with an enforceable right to a clean, healthy, and sustainable environment.'[1201]Accordingly, recognising this right will reinforce the obligations to respect, protect, and fulfil human rights to a clean and healthy environment.[1202] The section below highlights the duties under EU law and policies.

- *In the EU, Directive 2024/1203 of the European Parliament and the Council should be considered.[1203]*This Directive establishes minimum rules regarding the definition of criminal offences and penalties for the adequate protection of the environment, measures to prevent and combat environmental crime and the enforcement of Union environmental law.[1204]It obliges the Member States to ensure that conduct relating to the environment constitutes a criminal offence where it is unlawful and intentional.[1205]
- In Europe, since 2018, the Non-Financial Reporting Directive (NFRD) has required large European companies to report on the policies, outcomes, risks and key performance indicators relating to environmental, social and employee issues.[1206] The NFRD imposed a dual

[1197] Ibid
[1198] See The human right to a clean, healthy and sustainable environment. Resolution adopted by the General Assembly on 28 July 2022. A/RES/76/300, at 1.
[1199] Working for human rights, environmental protection, gender equality, social inclusion, as well as trade unions and faith-based organizations.
[1200] See Call for the adoption of an additional Protocol to the European Convention on Human Rights on the right to a clean, healthy, and sustainable environment - Global Pact for the Environment (globalpactenvironment.org). Accessed 31/08/24
[1201] Ibid, para. 3
[1202] Ibid,
[1203] *Directive (EU) 2024/1203 of The European Parliament And of The Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC.*
[1204]*DIRECTIVE (EU) 2024/1203 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC*, art. 1
[1205] *DIRECTIVE (EU) 2024/1203 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC,* art. 3(2)
[1206] Edite Ligere, Environmental Law 2023, Chambers Global Practice Guides, Chambers and Partners

materiality obligation, requiring disclosure of sustainability-related risks to business and the impact of a company's activities on society and the environment.[1207]

7.8.1 Looking Forward to International Criminal Law and Environmental Crimes

It could be recalled that, on Monday, 9 September 2024, three Pacific Island States, Vanuatu, Fiji and Samoa, jointly submitted[1208] a proposal to amend the Rome Statute of the International Criminal Court to the UN Secretary-General and the Working Group on Amendments of the Assembly of States Parties (ASP). The three Pacific Island States call upon the international community to add the crime of 'ecocide' to the canon of internationally outlawed atrocities.[1209] Accordingly, Ecocide is defined by the Independent Expert Panel as "*unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.*"[1210] Specifically, an amendment to the Rome Statute of the International Criminal Court was proposed to include a crime of 'ecocide' by holding senior officials and decision-makers accountable for crimes against the environment as an international crime.[1211]It is a significant step in the global effort to enshrine mass environmental destruction as a crime under international law.[1212] even though the Rome Statute narrowly considers the natural environment under Article 8(2)(b)(iv) on war crimes.[1213] However, this is yet to materialise. As concluded above, the efficacy of legal regimes will depend on political will, civil society pressure, and international cooperation.

[1207] Ibid.

[1208] See *Mass destruction of nature reaches International Criminal Court (ICC) as Pacific island states propose recognition of "ecocide" as international crime***.** 09 September 2024. Available: https://www.stopecocide.earth/2024/mass-destruction-of-nature-reaches-international-criminal-court-icc-as-pacific-island-states-propose-recognition-of-ecocide-as-international-crime Access 23/09/24

[1209] See Daniel Bertram, *Should Ecocide be an International Crime? It's Time for States to Decide*. 09 September, 2024, EJIL, Available at:

[1210] See *Independent Expert Panel for the Legal Definition of Ecocide COMMENTARY AND CORE TEXT***.** Stop Ecocide Foundation, June 2021. Available at: https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf Accessed 23/9/24.

[1211] *Mass destruction of nature reaches International Criminal Court (ICC) as Pacific island states propose recognition of "ecocide" as international crime***.** 09 September 2024.

[1212] Ibid.

[1213] Rome Statute of the International Criminal Court 1998, art. 8(2)(b)(iv)

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ANNEXES

ANNEX 1: The Questionnaire

1. *Could you please tell me about yourself, full name, age, background, etc.?*
2. *What is your role / function /title in this Corporation (CAVAS CONSONA)?*
3. *What is the historical background of your corporation?*
4. *How do you secure the land to carry out your mining activities?*
5. *How do you understand the obligations of your corporation under Italian Law?*
6. *What measures has your company/corporation put in place with respect to the environment?*
7. *How are these measures implemented and monitored?*
8. *What are the health policies for workers in the company? How do you comply with such policies?*
9. *How do you (your corporation) ensure that workers are treated fairly?*
10. *How can you describe the relationship between the people in this community and the corporation? What about the land owners?*
11. *What is your understanding of the relationship between (Multinational) corporations and the Italian government in relation to responsibility for wrongful acts or violations of the law?*
12. *Should the government have more control over Corporations in the extractive industry to hold them responsible for their conducts?*
13. *What are the key processes that are involved in carrying out the extractive activities*?
14. *Which role does the state (Italian) have in regulating the activities and conducts of your Corporation in its territory?*

END

ABUBAKAR KOROMA

ANNEX 2: A Brief Summary of the Report on PhD Activities

Annual Report on the Activity Carried Out as of the PhD scholarship on Human Rights: Evolution, Protection, and Limits 2021/2022 cycle XXXVII.

PhD Student	Abubakar Koroma
Tutor	Prof. Gullo; Prof. Isabel Trujillo & Prof. Curtis Doebbler
Coordinatore	Aldo Schiavello
Corso di Dottorato in	Diritti umani: Evoluzione, Tutela e Limiti
Ciclo	XXXVII
Annualità della borsa	1
Tipologia Green/Innovazione	Innovazione
	"PON Ricerca e Innovazione" 2014-2020" Azione IV.5 "Dottorati su tematiche Green"
Titolo Progetto	The Obligations Of States And Non-State Actors In Relation To Multinational Corporations Under Domestic And International Law: *A Case Study On The Legal Regimes Concerning Corporations In The Extractive Industries In Sierra Leone And Italy.*

Subject: End of Year (2022) Report - Abubakar Koroma

In accordance with the activities envisaged by the project in which the PhD scholarship was financed, I hereby present the annual report of the activities carried out in the first Year.

In my First Year of the PhD, I collected some relevant scientific articles and other academic contributions aimed at deepening my knowledge of the obligations of multinational corporations in the extractive industry in Sierra Leone and Italy, I developed a research plan that will be used for the draft of the thesis. I also submitted a table of contents for the PhD Thesis. Furthermore, I attended compulsory PhD lectures on various themes held in different locations at the University of Palermo. These include the following:

- Participated online via Zoom lectures between 13-17 June 2022
- Participated in person (compulsory) Lectures on '**Documenting Legal Multiculturalism: An Historic Perspective'** – This comprises various lecture series held between 20-22 June 202- Summer School. Lectures Include:
    - Repression, Tolerance, Acceptance: Legal Responses to Cultural and Religious Pluralism Between the Middle Ages and the Early Modern Age
    - Multiculturalism in the Late Antique Rome: Syrian Jews, Persians
    - Islamic law in Norman Sicily: the historical context
    - The Byzantine legal tradition in Norman Sicily: Texts, practice, ideology
    - Repurposing Islamic legal formula in Norman Sicily
    - Legal practice and political ideology in al-Andalus
    - What is Legal Multiculturism? Responses from the trans-periodical life of the *Siete Partidas*.
    - Legal transplants in the Late Roman Empire. The example of military justice.
- PhD **Programme in Human Rights Introductory Course** between 28 -29 November 2022, which include:
    - Critical Approaches to Human Rights
    - The Interdisciplinary Approach in the Research work

- Methodology of Social Science
- How to write A Doctoral Thesis
- Introduction to Clinical Legal Education

- I Participated in the **PhD Symposium 2022, on the theme: Filling Gaps in Current Challenges Between Regional and Global Perspectives.** It was held on 7- 8 November 2022, in Palermo. Specifically, I was the 'DISCUSSANT' on the topic: '*Inter-State Complaints in the Field of International Human Rights Law: Adapting States' Interest to the Individual Dimension*.
- I did an internship work at the CAVAS CONSONA in Bagheria, as part of the activities to be carried out in the mining/extractive industry for the PhD. - End.

Annual Report on the Activity Carried Out as of the PhD scholarship on Human Rights: Evolution, Protection, and Limits 2021/2022 cycle XXXVII.

Subject: End of Year (2023) Report - Abubakar Koroma

In accordance with the activities envisaged by the project, in which the PhD scholarship was financed, I hereby present the annual report of the activities carried out in the Second Year.

In my Second Year of the PhD, I collected some relevant scientific articles and other academic contributions to deepen my knowledge of the obligations of multinational corporations in the extractive industry in Sierra Leone and Italy. I developed a research plan that will be used for the thesis draft. I also submitted a table of contents and the first chapter of the PhD Thesis. Furthermore, I attended compulsory PhD lectures on various themes held in different locations at the University of Palermo. These include the following:

- I participated in the Ph.D. Symposium 'H*uman Rights In Play: Responses From The Northern & Southern Perspectives'* -16 -17 November 2023. - Specifically, I made a presentation of my Thesis on: 'The Obligations of States And Non-state Actors In Relation To Multinational Corporations Under Domestic And International Law: *A Case Study On The Legal Regimes Concerning Corporations In The Extractive Industries In Sierra Leone And Italy.'*
- I participated in the Ph.D. in Human Rights Summer School at the Department of Law from 19th - 23rd June 2023, on the Theme: '*Human Rights Reloaded. Thirty Years of Ph.D. Programme in Human Rights at the University of Palermo.'* This comprises various lecture series held between 20-22 June 202- Summer School. Lectures Include:
  - Global Constitutionalism and Human Rights
  - 'The Law Born with Us'. The Legacy of Roman Legal Tradition
  - The Principle of Legality in the ECHR
  - Sereny Project: Human Rights and Prevention of Youth Radicalization
  - Social Rights as Human Rights
  - Human Rights in the Anthropocene; Mental Health and Human Rights
  - War and International Criminal Justice
  - The Execution of Judgments of the European Court of Human Rights
  - Human Rights and Judicial Review: C.S. Nino's Approach
  - Human Rights Crisis or Development? The Point of View of an International Legal Scholar
  - The Three Regional Human Rights Courts and the Majoritarian Will of Democratic Societies
  - The Rule of Law – A Cornerstone of the European Convention on Human Rights
  - Family and Child Law: The Case Law of the European Court of Human Rights.
- I participated in the Winter School: Theory and Practice I: 20-24 February & 27 February – 03 March 2023
- I participated in the Summer School: Theory and Practice II: 23-26 May 2023 and 13-23 June 2023.
- I did an internship work at the CAVAS CONSONA in Bagheria as part of the activities to be carried out in the mining/extractive industry for the PhD.
- I did research at the Marampa Mines in Sierra Leone.

RELAZIONE ANNUALE SULL'ATTIVITA' SVOLTA

Subject: End of Year (2024) Report - Abubakar Koroma

In accordance with the activities envisaged by the project in which the PhD scholarship was financed, I hereby present the annual report of the activities carried out in the Third Year.

In my Third Year of the PhD, I read and selected portions of relevant scientific articles and other academic contributions to deepen my knowledge and write about the obligations of multinational corporations in the extractive industry in Italy and Sierra Leone. I adopted the research plan developed in the second year and wrote my thesis. I submitted the various chapters of the PhD Thesis. Furthermore, I participated in the PhD symposium on numerous themes at the University of Palermo. These include the following:

- I participated in the Ph.D. Symposium ''Democracy and Climate Change Justice: An Interdisciplinary Approach' in 05 -6 July 2024. In this symposium, I presented on 'The Right to Healthy Environment.''
- I researched at the quarry (Cava Consona) in Bagheria in February and March 2024.
- I also participated in a seminar on 29 February 2024 at CAVAS CONSONA in Bagheria on the theme: Companies Confiscated from Crimes are Community Assets as a Case Study- Topic: Companies Confiscated from Crimes are Community Assets: A Case Study.
    - **Objective of the Symposium**: The Objective of the Meeting is to identify the best lines of intervention for administrative and legislative interaction and the adoption of standards and models management systems that allow the success of the target companies.
    - **Scope**: The aim of the symposium (round table) is to delve deeper into a case study of the maintenance and improvement of assets in the form of a company confiscated from organised crime and their possible destination to workers' cooperatives
- I read books, relevant journal articles, and case law, wrote my Dissertation and submitted substantive chapters to my supervisors in September/October. I received feedback and worked on it.
- Now finalising my Dissertation.

END

Submitted by

Abubakar Koroma