

WOMEN, GENDER AND EXTRACTIVISM IN AFRICA
A COLLECTION OF PAPERS

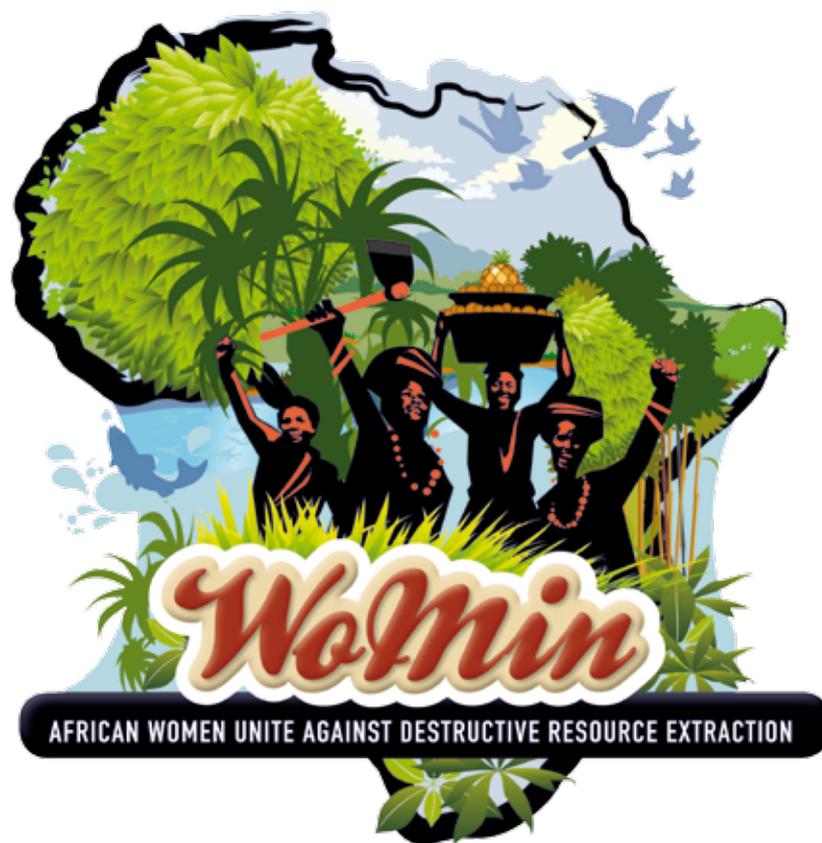
ADVOCACY TOOL



AN  **IANRA** INITIATIVE
International Alliance on Natural Resources in Africa

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INTERNATIONAL AND REGIONAL PROVISIONS OF RELEVANCE TO WOMEN, GENDER AND EXTRACTIVES AT A GLANCE

In this Advocacy Tool you will find a consolidated summary of the different types of instruments and frameworks and how they can be used by marginalised women and their support organisations to claim rights or effect change. This should be a helpful tool for organisers, campaigners and policy researchers working in the area of women, gender and extractives, as well as the related areas of women's health, land and natural resources, and women's economic empowerment. The tool can assist you in policy research and analysis; devising an influencing strategy (lobbying, advocacy or campaigns, for example) targeting relevant institutions at national, continental or global levels; and beginning to think through a possible legal strategy as a tactic for effecting a specific legal or policy change. The next seven sections look at the various instruments and frameworks and asks of each: What they are and how we can use them?

1. TREATIES

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

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

HOW WE CAN MAKE USE OF THESE TREATIES

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

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

2. UN GENERAL RECOMMENDATIONS AND GENERAL COMMENTS

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

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

HOW WE CAN MAKE USE OF THESE TREATIES

- We can target the Treaty-monitoring bodies to influence the contents of General Recommendations or General Comments to bring in women's rights and gender issues as they relate to extractives. There are different ways to do this: (a) write shadow reports to assist committees to consider states party reports more critically; (b) attend committee sessions that are considering state party reports and personally meet with committee members between sessions; or (c) make presentations to the committees or pre-session working groups of the committees, where possible.
- General Recommendations or General Comments can influence governments to implement similarly worded legal and policy provisions (Ipas, 2006).

3. AFRICAN COMMISSION RESOLUTIONS AND GUIDELINES

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

DOCUMENT	LEGAL STATUS	HOW WE CAN MAKE USE OF THESE TREATIES
<p>Resolution on a Human Rights-Based Approach to Natural Resources Governance (2012)</p>	<p>This was adopted by the ACHPR at its 51st Ordinary Session held from 18 April to 2 May 2012. This thematic resolution is similar to the General Comments of UN Treaty bodies. It elaborates in greater detail specific human right themes or a particular substantive right covered in the African Charter (CHR & ACHPR, 2011). This implies that since the Resolution is produced by the body established to enforce the African Charter, its interpretative guidance is highly authoritative.</p>	<p>Among other things, the Resolution can be used to press for gender-sensitive environmental impact assessments in our respective countries.</p>
<p>Principles and Guidelines on the Interpretation of Economic, Social and Cultural (ECOSOC) Rights in the African Charter (2010)</p>	<p>The Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter (adopted at the African Commission's 47th Ordinary Session held in Banjul, the Gambia, from 12 to 26 May 2010) provide detailed guidance to states on drafting and implementing development policies on ECOSOC rights. Together with the state party reporting guidelines below, they are supposed to guide states in developing state party reports. The Principles and Guidelines are highly authoritative since they are developed by a body that has been trusted to monitor compliance with the African Charter</p>	<p>The Principles and Guidelines can be used by advocacy and litigation non-governmental organisations (NGOs) to apply ECOSOC rights guaranteed under the Charter to obtain redress for women, and ensure the progressive development of standards related to women's experiences in regard to extractives. This work can be done at national and regional levels.</p> <p>Civil Society Organisations (CSOs) may also find the Guidelines helpful in formulating alternative and shadow reports that focus on women and extractives-related issues. They can also use them as benchmarks against which national policies can be assessed (Ipas, 2006; Interrights, 2011).</p>
<p>State Party Reporting Guidelines for ECOSOC Rights in the African Charter (2010)</p>	<p>Another function of the ACHPR is to issue guidelines for state reports. The 2010 State Party Reporting Guidelines assist states in their reporting on economic, social and cultural rights under the African Charter. They were adopted at the 48th Ordinary Session held in Banjul, the Gambia from 10 to 24 November 2010 (Interrights, 2011). They are to be used in conjunction with the 1989 Guidelines for National Periodic Reports under the African Charter. Though they are not legally binding, they are highly authoritative because they have been formulated by a body that has been trusted to monitor compliance with the African Charter.</p>	<p>CSOs can use the Reporting Guidelines to formulate alternative and shadow reports to expose violations of women's rights in and due to extractives, and influence the Commission's concluding observations that it issues after examining each state party report. The Guidelines can also be used to critique state party reports that have failed to integrate analysis related to extractives and women's rights.</p>

4. DECLARATIONS

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

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

HOW CAN WE MAKE USE OF DECLARATIONS?

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

5. OTHER AFRICAN FRAMEWORKS

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

6. SPECIAL MECHANISMS: UN SPECIAL RAPPOORTEURS AND AU WORKING GROUPS

DOCUMENT	LEGAL STATUS	HOW CAN WE MAKE USE OF THESE SPECIAL MECHANISMS?
<p>Report of the Special Rapporteur on Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste (2012)</p>	<p>UN Special Rapporteurs are independent experts appointed by the UN Human Rights Council (formerly the UN Commission on Human Rights). They may be assigned different titles like Independent Expert or Special Representative. They have a mandate to monitor, advise and publicly report on human rights situations in specific countries (country mandates) and on human rights violations worldwide (thematic mandates) (ACLU, 2007).</p>	<p>Country visits by a Special Rapporteur are a good opportunity for NGOs to raise national awareness and to shine the international spotlight on human rights, including women's rights violations, arising from extractives industries.</p>
<p>Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (2011)</p>	<p>A report and recommendations of a Special Rapporteur are not legally binding. However, they still carry moral authority and obligation in terms of country commitments to universal human rights standards. In the conclusions and recommendations provided by the Special Rapporteur, pressure may be applied on governments to rectify the situation and meet universally recognised standards of fairness, due process and minimum respect to human rights in a specific context (adapted from ACLU, 2007).</p>	<p>CSOs can use conclusions and recommendations of a Special Rapporteur to sustain pressure on a government to adopt policies and practices that address challenges encountered by women in extractives-impacted environments (adapted from ACLU, 2007).</p>
<p>UN Guiding Principles on Internal Displacement (2001)¹</p>	<p>Regardless of their non-binding nature, Guidelines developed by Special Rapporteurs/ Representatives have been known to be applied by UN bodies, intergovernmental organisations, NGOs, regional organisations and individual states by incorporating them into resolutions, recommendations, reports, policies and laws (IDMC, 2013).</p>	<p>CSOs can also use the reports of a Special Rapporteur to highlight 'good practices' in other parts of the world and to advocate for the adoption of needed guidelines and policies to protect and safeguard women's interests.</p>
<p>UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007)²</p>	<p>Regardless of their non-binding nature, Guidelines developed by Special Rapporteurs/ Representatives have been known to be applied by UN bodies, intergovernmental organisations, NGOs, regional organisations and individual states by incorporating them into resolutions, recommendations, reports, policies and laws (IDMC, 2013).</p>	
<p>AU Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (under the ACHPR)</p>	<p>This is a Special Mechanism under the African human rights system established under the African Charter mandating the ACHPR to: employ any method of investigating human rights violations, research human rights issues, and undertake promotional activities through country visits. This particular Working Group was created in 2009 to investigate the impact of extractive industries in Africa within the context of the African Charter (CHR & ACHPR, 2011). Like other Special Mechanisms, the reports of the Working Group form the basis of the African Commission's resolutions (CHR & ACHPR, 2011).</p>	<p>CSOs can lobby the Working Group to make its terms of reference gender sensitive, and encourage missions specifically oriented to investigating gender aspects of the extractives industry. They can also lobby for the participation of women's rights CSOs in the work of the Working Group, where possible.</p>

1 Developed by the Representative on Internally Displaced Persons.

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

7. OTHER INTERNATIONAL FRAMEWORKS

DOCUMENT	LEGAL STATUS	HOW CAN WE MAKE USE OF THESE OTHER INTERNATIONAL FRAMEWORKS?
Berlin II Guidelines for Mining and Sustainable Development (2002)	These Guidelines are not legally binding, and are intended to provide general guidance for the sound and sustainable management of mines to regulators, practitioners, managers, government officials, mining companies and others with an interest in the mining industry.	Activists can draw on these to campaign for guidelines and programmes to ensure that regulation, administrative control and mine management achieve an acceptable level of environmental performance, which can in particular address women's needs.
UN Global Compact Principles	These principles are not legally binding, but they derive from the Rio Declaration and several other declarations and conventions and set standards for businesses to be environmentally conscious and responsible (among other issues). They were developed under the Global Compact, which was launched in 2000. The Global Compact asks companies to embrace universal principles so that business “can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere” (UN Global Compact, Overview). Over 7,000 companies based in more than 135 countries have signed onto the Global Compact (see Box 1 at end for a critique of the Global Compact).	Given legitimate critique about the Global Compact, CSOs could add their voice to calls for the Compact to build in monitoring and sanction mechanisms, and for the exclusion of those companies whose practices do not align with the principles. The principles may have some utility at national level where CSOs could use the ‘moral authority’ of the UN to call on governments to build these principles into regulatory frameworks that are monitored for compliance, with suitably onerous penalties applied when corporates flout these standards.
Women Empowerment Principles (2011)	The Women Empowerment Principles (WEPs) are not legally binding, and were developed by UN women and the UN Global Compact. They complement the UN Global Compact Principles by bringing a gender lens to business practice. The same critiques of the Global Compact apply (see Box 1.)	A similar strategy to the one outlined above would apply to the WEPs.
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the context of National Food Security (2012)	These Voluntary Guidelines are not legally binding. Their purpose is to serve as a reference and guide to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realisation of the right to adequate food in the context of national food security (FAO et al, 2012).	Since the Guidelines draw on international and regional instruments, including the Millennium Development Goals (MDGs) that address human rights and tenure rights, CSOs can use them in advocacy interventions aimed at improving state practices that impact on women's land rights, including extractives.
ICARRD Declaration (2006)	This is a non-legally binding framework that was adopted by member states that gathered at the International Conference on Agrarian Reform and Rural Development (ICARRD) of the UN Food and Agriculture Organization (FAO), hosted by the government of Brazil.	It can be used as an advocacy tool guiding states to address the extractives industries and the challenges they issue in relation to agriculture and sustainable development, in particular: the realisation of women's human rights, food security, poverty eradication, and the strengthening of social justice.

<p>Cochabamba Declaration (2010)</p>	<p>In April 2010, approximately 30,000 of the world's citizens gathered at the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia to present a people's and planet Earth alternative to the failed Conference of the Parties (COP 15) climate meeting in Copenhagen.³ The Universal Declaration on the Rights of Planet Earth calls for the forging of a "new system that restores harmony with nature and among human beings" (Cochabamba, 2000), for developed countries to commit to quantifiable goals of emission reduction that will return the concentrations of greenhouse gases to 300 ppm⁴, and for developed countries to honour their climate debt to the rest of the world.</p>	<p>The Cochabamba Declaration is an inspiring document, which speaks directly to the experiences and perspectives of indigenous people, peasants and poor women across the developing world. It can serve as a rallying point for organising and solidarity building between excluded peoples, and inform the development and promotion of a radically different development model, which promotes equity and justice between all peoples, protects the planet and supports the reproductive labour, particularly of women, so critical to the restoration of the planet and the well-being of humanity etc.</p>
<p>The Earth Charter (2000)</p>	<p>This is a non-binding instrument that was launched by the Earth Charter Commission to set common standards for the conduct of individuals, organisations, businesses, governments, and transnational institutions with regard to the environment.</p>	<p>Thousands of local, national, and international organisations, including hundreds of local governments, have endorsed the document and are using it as an educational tool and guide to a sustainable way of living.</p>

³ For the full Cochabamba Declaration see PWCCC (2004).

⁴ Parts per million (pmm) refers to the amount of carbon dioxide in the Earth's atmosphere. Carbon dioxide is the most common greenhouse gas, which is what creates global warming. Carbon dioxide and other heat trapping gases are emitted into the atmosphere when fossil fuels like coal and oil are combusted (or burnt) to generate energy for cooking, heating, cooling, propelling vehicles etc. Global warming disturbs the fragile balance that supports life on the planet, and as temperatures rise whole species, including humanity, are threatened (350.org, n.d.).

ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AfDB	African Development Bank
AMV	African Mining Vision
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSO	civil society organisation
ECOSOC	Economic, Social and Cultural (Rights)
ECOWAS	Economic Community of West African States
FAO	Food and Agriculture Organization
IANRA	International Alliance on Natural Resources in Africa
ICARRD	International Conference on Agrarian Reform and Rural Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
MDGs	Millennium Development Goals
NGO	non-governmental organisation
SADC	Southern African Development Community
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
WEP	Women Empowerment Principles

BOX 1: A BRIEF NOTE ON TERMS

The Global Compact was launched in 2000 as a strategy aimed at influencing business to align its activities with the UN's principles. It has been extensively critiqued by CSOs who maintain that (a) the compact does not have mechanisms through which member companies can be sanctioned for non-compliance with the Compact's principles; (b) that a corporation can continue to participate even if it has not demonstrated progress in meeting the principles; and (c) the Global Compact has accepted members with highly questionable environmental and human rights in direct contravention of the Compact principles.⁵

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

⁵ See Global Compact Critics for more information
<<http://globalcompactcritics.blogspot.com/>>.

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