SBS MUN 2018

African Union

Agenda: The Prevention of Overexploitation and Illicit Procurement of African Resources by Multi-National Corporations

Letter from the Executive Board

Dear Delegates,
It gives me immense pleasure to welcome you to the simulation of the African Union (AU) at the prestigious Step by Step Model United Nations Conference 2018.
The simulation of AU always turns out to be an extremely enthralling and interesting simulation. The issue at hand deals with certain set of practices employed by non-state actors known as Multi National Corporations, that is, foreign business ventures, practices that have proved out to extremely detrimental towards the developmental needs of the continent of Africa. The agenda "The Prevention of Overexploitation and Illicit Procurement of African Resources by MNCs" aims to deal with such set of practices and mechanism in place which allow these to thrive and propel further damage to the political, social and economic system of the various countries of the continent.

It's necessary for all of you to keep in mind that you as members of the African Union will have a different role to play than what you otherwise might do in a UN committee. You all shall have one common goal, that is, to guide Africa towards prosperity. You should note that each one of you are in this together and it's important that you address the issue by treating each other equal partners and allies while aiming to reach a common understanding and resolution of the issue, instead of focusing on differences. This committee should focus on the common theme of "investing versus exploiting" while trying to achieve a fair balance between the two. Each country can have their own set of perspectives and ideas, and its absolutely encouraged that you do so. But at the same time, it's important to make sure that they only help us reach closer to our common goal of ensuring Africa's Prosperity.

This background guide has been formulated as to give you a basic understanding of the agenda at hand. However, this in no way should be taken to be exhaustive in nature. You are expected to go beyond the content of this guide and do more in-depth research for a much better understanding and debate. With respect to the procedures, we will follow the UNA-USA format, however, in order to reflect the functioning of AU. All procedural matters will be dealt with in the first session, so you all need not worry about that aspect.

I look forward to an invigorating and an original debate. The latter is specifically a trait I value the most.

Feel free to reach out for any queries whatsoever.

Regards

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Vision for the Committee

Being a delegate in a committee like this makes it imperative for you to be able to not only have a sound understanding of all the political, legal, economic, humanitarian and social aspects attached to the agenda, but also demands of you to have a pragmatic approach to it. By having a pragmatic approach, I mean that you must pay rightful attention to the ground realities, the challenges involved and aim for providing a sound logical reasoning consistent with the realities of the situation for each argument that you make. Any discussion on the agenda will essentially be incomplete without having that.

Thus, we expect your arguments to be as inclusive as possible. Now, for an argument to be inclusive and complete in its form, it has to be stated with facts, reasoning and analysis. Once you make your argument within those three parameters, you can place yourself on the helm when it comes to content. And how you effectively cover those parameters is essentially by developing a good understanding of the committee and it's functioning and of your country in terms of basic facts like geography, geopolitical situation, system of government etc, the role of your country in the committee, where it stands on the issue and most important foreign policy/relations with other member states and non-members as well. You can research about your foreign policy/stances by looking at your countries past and present actions on the concerned topic and its dealings with other countries in the same domain.

Divide your research into "Thematic" and "Country" specific research. Thematic involves researching about the various themes that come under the agenda and country specific involves researching about the specific take of your and other countries with regards to the agenda. This way you can streamline your research well.

Also, make sure that you question yourselves on the argument that you wish to make. That helps serve two important purposes,
1) it makes you confident of the argument you are going to make.
2) It helps you defend your argument and stand by it. However, do not refrain from making one at all in case you are not able to serve the two above mentioned purposes. I say that because none the less, it does help you gain certain important insights about your own argument. Essentially what we all are here for.

All of you might have your own reasons for coming to this conference. And whatever they maybe, it's absolutely fair to have them. But when you are dealing with an agenda like the one we have, it presents you with a great opportunity which if done justice with, can positively change your perspective towards how you see and treat certain things and situations, eventually help you transform your personal understanding of global relations, issues and systems of international importance. So, yes, even though you all are coming as representatives of certain institutions and beliefs, having a mandate and stance of your own, but do not let any of it come in conflict with basic principles of humanity and neither do let yourselves be completely ignorant of them.

A good debater is not one who can only speak and argue well, but rather one who can also pay equally good amount of attention and listen to what others have to say. So, maybe this time, treat this committee as an opportunity where you make yourselves good listeners and take into consideration what others have to say, as well as lend appreciation, where its due.

Lastly, please treat this as a committee where you genuinely make an effort to learn!

Acceptable Sources of Information

News Sources:
REUTERS – Any Reuters article which clearly makes mention of the fact or is in contradiction of the fact being stated by a delegate in council.
http://www.reuters.com/

State operated News Agencies – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any Country as such but in that situation, they can be denied by any other country in the council.
Example: Algeria (APS) - http://www.aps.dz/en/

Government Reports: Government Reports can be used during the creation of position papers. Government reports of any country can be found on their website.
Example: http://nigerianstat.gov.ng/

UN Reports: All UN Reports are considered as credible information or evidence. Though opinions/statements of other member states as a part of any publication may be rejected if the member state concerned wishes to.

Under no circumstances whatsoever will sources such as
http://www.wikipedia.org/
www.telegraph.co.uk/
http://www.amnesty.org/
https://www.hrw.org/
or any related sources by accepted. None the less, we will consider whatever you present to you and rule upon on a case by case basis.

Note: Nothing contained in this background guide can be used as substantial proof/evidence in committee; this document is solely for research purposes and whatever content is written in the Background Guide, in no way limits the scope for research, it is merely to give direction to the council debate and proceedings.

COMMITTEE HISTORY

Prior to the formation of the African Union (AU), the Organization of African Unity (OAU) and the African Economic Community (AEC) were working in conjunction to build a better Africa. The OAU Charter was adopted on 25 May 1963 in Addis Ababa, Ethiopia with 32 signatory governments, its first two official members being South Africa and Libya.[1] Following its establishment, the OAU gained 21 more-member states, resulting in 53 members total. It had become evident shortly after the formation of the OAU in 1979 that the Assembly was not adequately geared to manage challenges of a transforming world. There was a growing realization of the need for greater efficiency and effectiveness by the OAU. The OAU was largely divided between the independent countries and those still depend on France. There was also a further split in ideology between support for the United States of America (USA) and the Union of Soviet Socialist Republics (USSR) during the Cold War. The leader of Ghana at the time, Kwame Nkrumah was the predominant voice of socialist philosophy while Felix Boigny of the Ivory Coast led the precapitalistic faction. These divisions ultimately made it difficult for the OAU to take unified action on internal conflicts.[2]

Thus, the Abuja Treaty establishing the AEC was adopted on 3 June 1991 and entered into force on 12 May 1994. Prior to its formation, the OAU was primarily concerned with the continent's political matters, leaving economic and developmental issues unaddressed. The formation of the AEC sought to foster economic, social, and cultural integration of the continent – concerns which the OAU lacked to address. On 9 September 1999 an OAU/AEC summit held in Sirte, Libya called for the establishment of the AU in compliance with the ultimate objectives of the OAU Charter and AEC Treaty.[3] However, despite numerous meetings, the OAU Charter Review Committee was unable to formulate the necessary amendments in order to alter its mandate to effectively address the new purview of the committee, including, the yearly surge of internal conflicts, playing a more active role in addressing the needs of the people, and maximizing the export potential of the continent's natural resources to improve living conditions. The OAU Charter Review Committee foresaw the need for a body that could jointly meet the demands of both the OAU and AEC. The OAU was officially disbanded in 2000 and immediately replaced by the AU, which entered into force on 27 February 2001. The formation of the AU finally allowed for the regional conflicts of member states to be overseen and dealt with by a partisan body that could resourcefully address its concerns.

To ensure a smooth shift from the OAU/EUC into the AU, The Constitutive Act was created to outline a transitional period between the two bodies.[4] The Constitutive Act entered into force with two-thirds of the 53 Member States of the OAU, replacing the OAU Charter of 1963. However, the Charter remained operative for one year prior to the ratification of the

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[1] "Organization of African Unity (OAU)/African Union (AU)," International Relations & Cooperation, last modified 12 Feb. 2014, http://www.dfa.gov.za/foreign/Multilateral/africa/oau.htm.
[2] 3 "Organisation of African Unity," South African History, last modified May 2009, http://www.sahistory.org.za/topic/organisation-african-unity-oau.
[3] Ibid, pt.2.
[4] "Transition From the OAU to the African Union," African Union Summit, last modified May 2002, http://www.au2002.gov.za/docs/background/oau_to_au.htm.

AU for the purpose of allowing the OAU/AEC to undertake necessary measures that would submit its current responsibilities at the time and other relative matters to the AU.[5]

Members

The AU assumed all 53 members of the OAU and covers the entirety of the African continent with the exception of Morocco who withdrew its membership in May of 1982. Morocco withdrew membership over the admission of the Sahrawi Arab Democratic Republic (SADR) in the AU in 1982. This was due to a civil conflict between SADR and Morocco concerning the ownership of the Western Sahara territory. Morocco refuses to become a member unless SADR withdraws membership. The Central African Republic was temporarily suspended from the AU from March 2013 to April 2016, after rebels seized power of the country and Egypt was temporarily suspended after the rebel leader Al-Sissi ousted President Mohammed Morsi in 2013. Guinea Bissau also temporarily lost membership in 2012 due to rebel takeover. South Sudan, which seceded from Sudan on 9 July 2011, was the last country to join the AU on 27 August 2011 and makes up its 54th member state.

Mandate

The Assembly is the AU's primary decision-making body, meeting at least once a year and adopting decisions by two-third majority vote.[6] The powers established in the OAU Charter were translated into the AU Constitutive Act Article 9 during the transition period. The AU has many specific, smaller goals that support its primary vision: "An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena." The AU is the world's only regional or international organization that explicitly recognizes the right to intervene in a member state on humanitarian and human rights grounds. The AU drew this guideline among with many others based on the recommendations of a 2001 report from the International Commission on Intervention and State Sovereignty titled The Responsibility to Protect. The report asserts that "Sovereign states have a responsibility to protect their own citizens from unavoidable catastrophe from mass murder and rape, from starvation-but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community states." However, the Assembly of the AU is only able to decide on intervention in or sanctions against Member States according to specific circumstances provided for in the AU Constitutive Act. The AU has displayed this commitment to peacekeeping with its involvement in the AU/UN joint peacekeeping force in Darfur since 2003 when it helped mediate a cease-fire between the government of Sudan and rebel groups. The AU has also had semi-successful peacekeeping interventions in Burundi and Uganda. Given the AUs limited experience with peacekeeping on the continent relative to other UN bodies, the Assembly requires extensive political and material support from the international community to deliver on its own regional commitments to peace and security.

The Commission of the AU is the Secretariat entrusted with executive functions. The Commission accompanies the Assembly as a key organ that plays a central role in managing the AU, it is guided by principles to ensure it acts transparently, accountably, and unbiasedly.

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[5] Ibid.

[6] "The African Union," Council on Foreign Relations, last modified 1 Sep. 2009, http://www.cfr.org/africa-subsaharan/african-union/p11616.

Assembly members elect a Chairperson each year that holds office for a one-year term.[7] The Commission in its entirety consists of the Chairperson, deputy Chairperson, 9 Commissioners, and staff members. In concurrence with other, smaller organs, the Commission drafts and prepares strategic plans for the Executive Council, designed to prepare Assembly sessions and make decisions on policies in areas of common interest to the member states. The Commission involves eight common subdivisions, including: peace and security, political affairs, infrastructure and energy, social affairs, human resources – science and technology, trade and industry, rural economy and agriculture, and economic affairs.[8] With all of its internal bodies and subdivisions, the AU is concerned with all prevalent matters of the continent that hinder its welfare.

Present Projects

In July 2001 the New Partnership for Africa's Development (NEPAD) was adopted by Algeria, Egypt, Nigeria, Senegal, and South Africa. NEPAD's primary objectives are poverty eradication, sustainable development, and integrating Africa into the global economy.[9] It focuses on establishing partnerships with industrial countries for increased aid, foreign investment, and market access. In 2002, NEPAD was placed under the purview of the AU. In March of 2007, NEPAD leaders decided the partnership should be integrated into the regular structures and processes of the AU. The AU's Peace and Security Council (PSC) was formed in 2004. This body has the ability to intervene in conflicts to protect the security of the continent. It has fifteen-member states, elected for two or three terms, with equal voting rights. The PSC also oversees the establishment of a permanent African security force, the AU Standby Force (AUSF). The AUSF Headquarters are currently in Addis Ababa, Ethiopia. It had planned to have five or six brigades of 3,000 to 5,000 troops stationed around Africa by 2010. The goals for 2010 were not fully met and were extended until 2015 when the AUSF hoped to reach Full Operational Capability (FOC).

The AU is also aiming to eliminate all remaining civil conflicts within the continent that have continued to hinder achieving the AU's goals. The conflict in the Democratic Republic of the Congo has concerned many of its bordering states, particularly over the unremitting battle for control of its basic natural resources including valuable rich minerals. This conflict is also similar to that between SADR and Morocco, who invaded and occupied Western Sahara in 1976 through the present.[10] Talks between Morocco and SADR resumed in 2008 for the possibility of integrated rule of the West Sahara but no progress was made in this effort to compromise.

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[7] "Organization of African Unity (OAU)/African Union (AU)," International Relations & Cooperation.
[8] Ibid.
[9] "The African Union," Council on Foreign Relations
[10] "AU in A Nutshell," African Union A United and Strong Africa, last modified June 2014, http://www.au.int/en/about/nutshell.

Agenda: *"The Prevention of Overexploitation and Illicit Procurement of African Resources by Multi-National Corporations"*

Understanding Key Terms in the Agenda:

Multi-National Corporations: It is difficult to define an MNC or a TNC (Transnational Corporation). Variations in company attributes make it difficult to define MNCs/TNCs. Some pertinent criteria's that can help us deem a company as to be "multinational" are: (i) it has "many foreign affiliates or subsidiaries in foreign countries"; (ii) it operates "in a wide variety of countries around the globe"; (iii) its "proportion of assets, revenues, or profits accounted for by overseas operations relative to total assets, revenues, or profits is high"; (iv) its "employees, stockholders, owners, and managers are from many different countries"; and (v) its "overseas operations are much more ambitious than just sales offices, including a full range of manufacturing and research and development activities". UNCTAD defines a TNC as "an entity composed of a parent enterprise that controls the assets of entities in countries other than its home country plus the foreign affiliates of that parent enterprise". So, the most important prerequisite for calling a firm multinational is no longer the ownership of overseas assets but rather direct participation in overseas value-added activities.

Resources: A resource can be defined is a variety of ways. It can be defined as a useful or a valuable possession, as a source or supply from which a benefit is produced to a country, an organization or an individual. Resources can be broadly classified upon their availability they are renewable and non-renewable resources. They can also be classified as actual and potential on the basis of level of development and use, on the basis of origin they can be classified as biotic and abiotic, and on the basis of their distribution, as ubiquitous and localized (private resources, community owned resources, natural resources, international resources). Typically, resources are materials, energy, services, staff, knowledge, or other assets that are transformed to produce benefit and, in the process, may be consumed or made unavailable. Benefits of resource utilization may include increased wealth, proper functioning of a system, or enhanced well-being. From a human perspective a natural resource is anything obtained from the environment to satisfy human needs and wants. Hence, considering these factors, it's important to understand that we are not dealing with only issues of exploitation or over use of natural resources, but rather also of other pertinent resources like human labour, technology, economic resources and other major forms of assets.

The other terms mentioned in the agenda, like "prevention", "overexploitation" and "illicit procurement" are fairly simple to understand and are not to be construed as anything other than what their simple literal meaning suggest.

Introduction to the Agenda

History:

It is generally recognised that the African nations, apart from being the cradle of the human race, compared to the rest of the world, is the best endowed with the richest natural resources the world has ever seen. Africa has landmass several times the size of Europe. The continent is rich in oil deposits, gold, diamond, iron or copper, various types of wood etc. And for centuries Africa and Africans built an economy able to produce its own food and its own tools including weapons. The Europeans who came to Africa in the 15th and 16th centuries were interested mainly in goods like gold and other natural products like pepper, spices and ivory for which there was a great demand in Europe. Politically, most of the third world nations have been free for a long time. But economically, an enormous position of the continent remains in chains. Basic economic realities remain unchanged from the colonial period. To fully appreciate the role of the multinational enterprises in the exploitation of the third world nations, it is necessary to understand the character of the new states, its level of development, and basic thrust of their foreign policy. For many years after independence of many third world nations and up till now, they continued by and large with policies which at the international level ensured close collaboration with the metropolis emphasising the special relationship between them and their colonisers. The industrial sector was dominated by low technology and the pattern of relationship between her and multi-nationals being based primarily on joint ventures did not encourage the development of an auto centric industrial base. New states lacked the capacity to exploit local raw materials, work intermediate industries and produce capital goods, which along could provide the basis for production and reproduction required for national development. Import substitution policy initiated in many African states during the colonial period and confirmed by subsequent governments, which hardly took into account the local endowment, led to increased dependence on imported raw materials, industrial inputs, machinery and equipment, technology and expatriate personnel. The transformation in development pattern and policy contributed to the present state of acute disparity and unbridled exploitation of resources of the continent.

Understanding the Agenda:

In Africa, and indeed in most developing countries across the globe, extractive industries have sparked much controversy and debate. While these industries bring with them the promise of economic growth and social development, they have, in many cases, instead contributed to the devastation of the countries' governance systems and economic structures, which has led to an increase in poverty in resource-rich areas. This has seen a rise in human rights abuses, and at times irreversible damage to the environment. Indeed, that promise of economic and social transformation has rarely come to fruition.

The continent of Africa endows a large amount of natural resources that has been extracted and exploited for centuries. However, many African countries still rank among the poorest nations on the globe. In addition, there are social issues, economic issues, and environmental issues that evolved over time from the sale and exploitation of resources. This is called the Resource Curse. The NRGI (National Resource Governance Institute) defined the Resource Curse as "the failure of many resource-rich countries to benefit fully from their natural resource wealth, and for governments in these countries to respond effectively to public welfare needs

If African governments do not struggle for its people, then foreign companies have no interest in doing so. Instead they seek where the interest fit the best and go as far as engaging in fraudulent activities with government officials. Corporations target unstable and economically poor nations. Poverty and lack of education are few of the many causes of this corruption. The corruption, occurring at all levels, greatly destabilizes the economy of these underdeveloped countries. Since many of the western companies highly depend on the raw materials of the continent. Therefore, they play in the different forms of corruption. The most common is the bureaucratic corruption, it is when officials of government establish laws and policies through the political system to accumulate wealth for themselves. Foreign organisations collaborate with illegal transnational networks that facilitate the illicit flows of extractives from impoverished countries. The result is the persistence of grinding poverty in areas that appear to be blessed with plentiful resources. This paradox is visible in Angola, the Democratic Republic of the Congo (DRC), Nigeria and a dozen other African nations.

As the United Nations observed in 2002[11], Western mining companies that deal in rare metals, gems and other resources have been deeply involved in the large-scale and systematic robbery of the DRC's mineral wealth. These companies worked with a network of cross-border elites from neighbouring countries, including rival groups of politicians, military leaders and criminal elements. This facilitated a self-financing war economy centred on mineral exploitation.[12] Worldwide, many states have financed their development through resource extraction. However, this has not worked well in Africa. By some estimates, the continent holds as much as 30% of global mineral reserves, and even higher percentages of the world's gold, platinum, diamonds and manganese. New exploration continues to reveal

[11] https://www.wsws.org/en/articles/2002/10/cong-o26.html

[12] http://www.pcr.uu.se/digitalAssets/96/a_96819-f_congo_20021031.pdf

ever-larger reserves, yet poverty and underdevelopment continue to deepen in resource-rich states.

According to the 2014 Human Development Report, 18 of the 20 countries ranked the lowest according to the Human Development Index (HDI) are in Africa[13], with Niger in the bottom position (187) followed by the DRC (at 186). This is the result of poor natural resources governance, corruption, illegal cross-border networks, illicit financial flows and money laundering – especially in the extractive industry, where MNCs play a huge role. It is estimated that Africa loses a total of US $38.4 billion a year through trade mispricing and US$25 billion through other illicit flows. This is more than what Africa receives through aid and foreign direct investment. A joint report by the African Development Bank and Global Financial Integrity found that a staggering 60-65% of this lost revenue disappears in commercial transactions by multinational companies.[14]

Corruption is arguably the most important driver of the misappropriation of natural resources, inefficient revenue flows and abysmally low levels of economic growth. Anti-corruption commissions have been created in several African states but have had limited, if any, success in curbing corruption. Unreasonable resource extraction contracts and payments made to public authorities and officials easily go under the radar. Intra-company transactions are also often unsupervised and can become a vehicle for tax avoidance.

Five to Six decades after independence, Africa's aspiration to overcome underdevelopment inherited from the colonial period remains unfulfilled. There are both internal and external causes for this. African governments lacked political and policy capabilities to organize and lead a socio-economic transformation for sustainable and equitable development. The asymmetric integration of Africa into the global economy in the colonial period remained unchanged. Africa continued exporting unprocessed primary commodities and mineral resources without diversifying and upgrading the technological basis of its economy. In addition to structural constraints faced by late developers, Africa was also confronted by policy constraints in the form of policy conditionalities attached to aid within the context of international development cooperation. As a result, Africa remains economically underdeveloped and its people live in abject poverty.

Indiscriminate overexploitation and illicit procurement of natural resources as raw materials has caused grave strains to the financial architecture of the African continent, led to corruption, erosion of public trust and public institutions, immense suffering to human labour as MNCs have been accused of not adhering to labour laws and of not employing decent standards of conditions towards native employers, leading to further human rights abuses and wars in the continent. It's critical for all the delegates to take note of these factors and debate the possible causes and consequences of the same and what can possibly be the future course of action.

[13] http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf
[14] https://issafrica.org/iss-today/clamping-down-on-corruption-in-africas-extractive-industries

Resources in Question

Natural Resources:

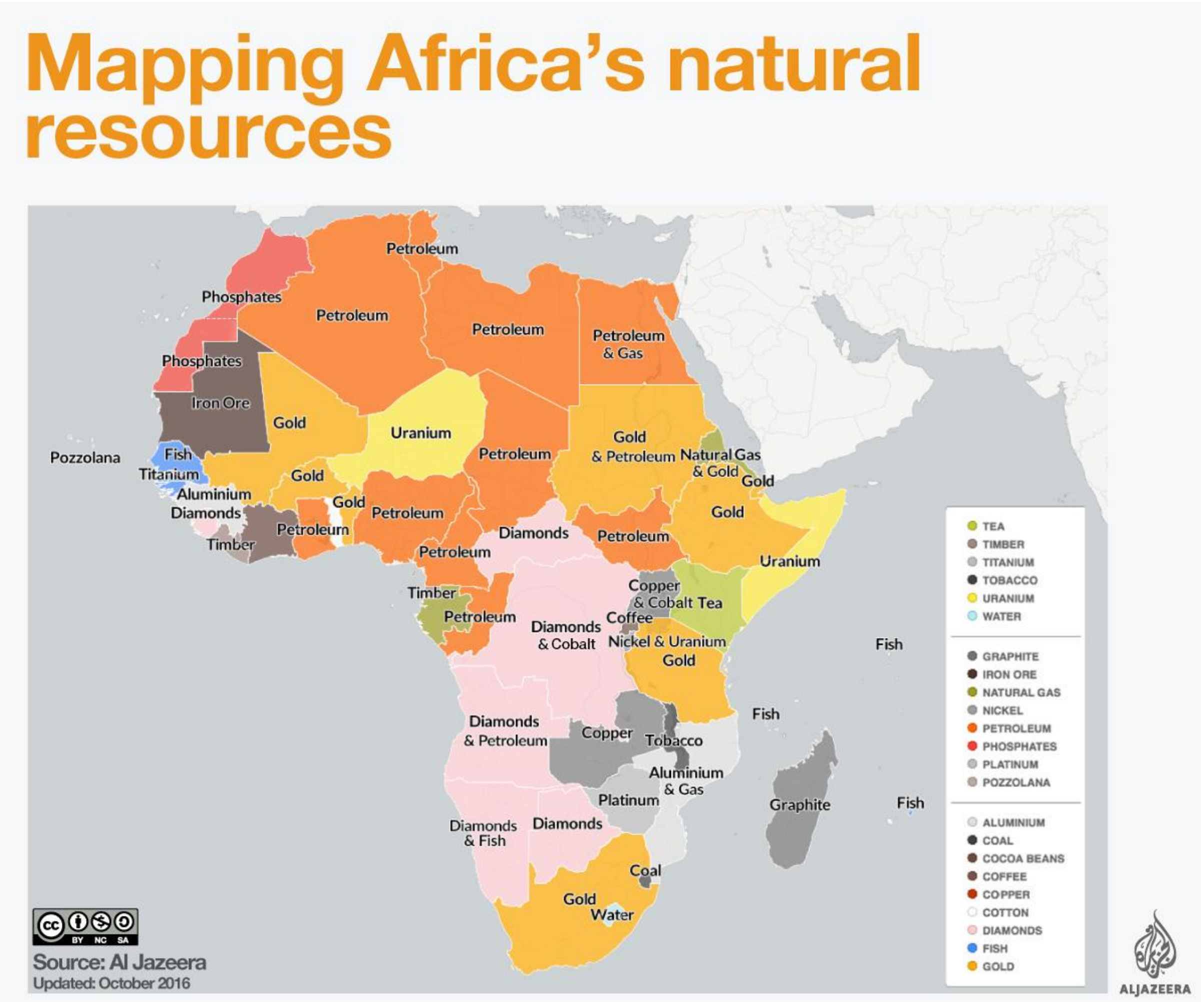
Rich in oil and natural resources, Africa is the world's fastest-growing region for foreign direct investment. It has approximately 30 percent of the earth's remaining mineral resources. North Africa has vast oil and natural gas deposits, the Sahara holds the most strategic nuclear ore, and resources such as coltan, gold, and copper, among many others, are abundant on the continent. The region is full of promise and untapped riches - from oil and minerals and land to vast amounts of people capital. It is estimated that 57 percent of Africa's export earnings come from hydrocarbons. Proven oil reserves have grown by almost 150 percent, increasing from 53.4 billion barrels since 1980, to 130.3 billion barrels by the end of 2012.

The export of forest products, especially high-grade woods like mahogany and okoume, brings in significant revenue. These woods are mostly found in the countries of the Congo Basin—Cameroon, Central African Republic, Republic of the Congo, Democratic Republic of the Congo, Gabon, and Equatorial Guinea—where there is a dense rain forest. Okoume, for example, accounts for 90 percent of the trees logged in Gabon. These woods are generally exported to Japan, Israel, and the European Union. Mahogany and okoume are used to make everything from homes to musical instruments to lightweight aircraft. Africa's forest sector, however, suffers from illegal logging and overharvesting of certain tree species. Many species of both mahogany and okoume are endangered. Experts argue that overharvesting will eventually destroy forest habitats. Saplings planted to replace the logged trees do not grow fast enough to be harvested on a regular basis, and the rain forest habitat in which these trees thrive is being destroyed for agriculture and development.Today, Africa is torn between developing its forests to their fullest economic potential and protecting these natural landscapes from over-development and overexploitation caused by the activities of MNCs.

Africa is one of the most economically important fishing zones in the world, producing 4.5 million tons of fish in 2000. Namibia and South Africa are also major players in the marine fish market, exporting between 80 and 90 percent of their fish annually. The Eastern African countries of Eritrea, Djibouti, Somalia, and Kenya have well-established fisheries in the Red Sea and Indian Ocean. Small fish such as herring and sardines are the most common catch on the African coastline. However, larger fish, such as tuna, cod, hake, and haddock, are the most profitable. Africa's extensive inland fisheries contain more than 3,000 fish species and account for two-thirds of global inland fish production. Africa's Great Lakes support the largest inland fisheries on the continent. Lake Victoria is the most productive freshwater fishery in the world, producing more than 500,000 tons of fish worth $600 million every year. Much like the forestry sector, Africa's fishing sector suffers from overharvesting. As a result, in the past century, fish stocks have declined by up to half in some coastal zones.

The major areas where the potential and resources of Africa are being highly exploited by MNCs is the mining sector. It is a major producer of important metals and minerals. Metals exported by African countries include uranium, used to produce nuclear energy; platinum, used in jewelry and industrial applications; nickel, used in stainless steel, magnets, coins, and rechargeable batteries; bauxite, a main aluminum ore; and cobalt, used in color pigments. Africa's two most profitable mineral resources are gold and diamonds. In 2008, Africa produced about 483 tons of gold, or 22 percent of the world's total production. South Africa accounts for almost half of Africa's gold production. Ghana, Guinea, Mali, and Tanzania are other major producers of gold. Africa dominates the global diamond market. In 2008, the continent produced 55 percent of the world’s diamonds. Botswana, Angola, South Africa, the Democratic Republic of the Congo, and Namibia are Africa’s largest producers of diamonds. Unfortunately, several African conflicts and civil wars have been caused and funded by the diamond industry, which have allegedly been further perpetuated by indiscriminate extraction by MNCs. Diamonds that come from these regions are known as conflict diamonds or blood diamonds.

Oil and Natural Gas are other major resources which are extensively drilled by MNCs for energy and fuel, as well as exported. In 2007, the continent produced 12.5 percent of the world’s total oil production and 6.45 percent of the world’s total natural gas production. Nigeria, Libya, Algeria, Egypt, and Angola dominate Africa’s oil industry. Oil exploration has significantly increased on the continent, and many countries are looking to become first-time producers. Oil and natural gas production have also been connected to civil conflict. In Nigeria, guerrilla groups have attacked oil infrastructure and stolen oil from pipelines since the early 1990s. These groups, primarily ethnic minorities, say foreign oil companies have exploited their labour while keeping most of the wealth. They also charge that out-of-date equipment has severely polluted air, soil, and water resources. This pollution has led to losses in arable land and fish stocks.



Financial: Such a state with this developmental role needs adequate financial resources to provide essential services to its citizens and to promote inclusive and sustainable development. However, the prevailing situation is rather different. The ability of the state to raise adequate revenue is hampered internally by self-seeking elites at the help of power and tax dodging practices of multinational corporations. It is widely accepted that the current International Financial Architecture that determines the flow of resources between nations is skewed in favour of rich countries and not fit for purpose from the perspective of Africa's sustainable development. It encourages aggressive tax planning especially by wealthy elites and Multinational Corporations (MNCs) operating in Africa. This aggressive tax planning constitutes the bulk of illicit outflow of resources from Africa, which has resulted in it having lost an estimated $1 trillion in illicit financial flows (IFFs)[15]. This sum is roughly equivalent to all of the official development assistance received by Africa during the same timeframe.[16]

At around 2015, Africa was estimated to be losing more than $50 billion annually in IFFs. But these estimates may well fall short of reality because accurate data do not exist for all African countries, and these estimates often exclude some forms of IFFs that by nature are secret and cannot be properly estimated, such as proceeds of bribery and trafficking of drugs, people and firearms. The amount lost annually by Africa through IFFs is therefore likely to exceed $50 billion by a significant amount.[17]

Outdated and ineffective international tax rules combined with a race to the bottom tax competition between countries remain the biggest challenge to enhance Domestic Resource Mobilisation. Further, the widely tolerated existence of tax havens that offer financial secrecy and low or zero tax rates exacerbates the situation. MNCs exploit with ease loopholes in the global tax system to shift profits to jurisdictions with low or zero tax rates severely erode tax bases of developing countries and continues to undermine their efforts to raise domestic revenue. Efforts to reform global tax rules are yet to yield any tangible results. The Organization for Economic Cooperation and Development (OECD) led Base erosion Profit shifting (BEPS) project is one such recent effort to redesign international tax rules to protect the tax bases of both developed and developing countries. The BEPS project has however been criticized for being a rich country led initiative which failed to effectively involve and include the concerns and priorities of developing countries. It is against this backdrop that there is an increased demand from G77 countries and global CSO for an inclusive intergovernmental global tax body under the auspices of the United Nations which will have the legitimacy to clamp down on tax havens and to reform the international tax system in an equitable manner so that developing countries really benefit.

According to the UN's Economic Commission for Africa's Report on the High-Level Panel on Illicit Financial Flows from Africa[18], there was a US$40 billion outflow from Africa due to trade mispricing in 2010. With corporate tax rates averaging out at 28 per cent in Africa this equates to nearly $US11 billion in lost tax revenues. Given that companies and investors from G7 countries are responsible for more than half of the foreign direct investment in Sub-

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15 Kar and Cartwright-Smith 2010; Kar and Leblanc 2013

16 Some $1.07 trillion of official development assistance was received by Africa between 1970 and 2008 (OECD 2012a)

17 http://www.taxjusticeafrica.net/wp-content/uploads/2016/02/AU-UNECA-High-Level-Panel-on-IFF-Report-ENG-20151.pdf

18 http://www.uneca.org/iff

Saharan Africa, companies from G7 countries may be responsible for robbing African governments of around $6 billion every year from just one tax trick alone. A case in point is the issue of tax breaks provided to the six largest foreign mining companies in Sierra Leone which add up to 59 per cent of the countries budget or eight times the country's health budget. [19]

The international legal and institutional framework for dealing with corruption and exploitation in the extractive industries by multinational corporations is deficient. Despite some progress in enhancing money laundering controls and improving financial regulatory regimes, numerous scandals involving international banks opening and maintaining accounts for politicians and heads of corporations diverting ill-gotten gains illustrate that banks continue to be a key enabler of corruption in the extractive industries. Further complicating matters are secrecy jurisdictions that allow individuals to incorporate companies without disclosing key information such as the identities of beneficial owners. The use of anonymous shell companies anchored in these jurisdictions prevents outsiders—potential business partners, banks, regulators, and law enforcement officials—from identifying who truly controls and benefits from the operations of unscrupulous corporations.

[19] http://christianaid.org.uk/images/Sierra-Leone-Reporttax-incentives-080414.pdf

Consequences of Overexploitation and Illicit Procurement:

➢ **Conflict: A case of Democratic Republic of Congo**

The Democratic Republic of the Congo is the largest country in Sub-Saharan Africa and the eleventh largest country in the world. It is also one of the world's richest countries in terms of natural resources, with abundant deposits of copper, gold, cobalt, uranium, coltan/tantalite, diamonds, and oil. Because of this, since 1996 the Democratic Republic of the Congo has been ravaged by violence, accounting for the loss of at least six million lives. The First Congo War took place from October of 1996 and lasted until September of 1997. The Second Congo War, also known as the Great African War, began in August of 1998 and is said to have ended in July of 2003 upon the signing of a new constitution; however, conflict in eastern Congo continues to this day. Violent militant groups are constantly raiding towns and villages leaving little to spare while a domineering central government in Kinshasa closely monitors foreigners providing aid and political activism amongst individuals. Political matters aside, ethicality is hardly taken into account in the western world when such desirable natural resources are at stake. Gigantic corporations like Apple are allegedly held responsible for using unethically sourced coltan from Congo to make iPhones, thus consumers are unknowingly financing this conflict. Many people accredit the past two decades of conflict to the effects of neo-colonialism, the assertion of economic, political, or cultural pressures to control other countries, which is plausible considering that a majority of African countries were dependent colonies until the 1960s.

The Katanga province is blessed with enormous natural wealth, including vast deposits of precious minerals such as diamonds, gold, and tantalum. Katanga saw a spectacular mining boom around the turn of the century, when President Laurent-Desire Kabila and then his son Joseph licensed international mining companies to tap its treasures. This arrangement generated riches for the Congolese elite, and vastly more for the prospectors, but offered little to the poverty-ravaged population. From 1999 to 2002, the Kabila regime transferred ownership of at least $5 billion of assets from the state-mining sector to private companies under its control with "no compensation or benefit for the State treasury".[20] The bonanza coincided with a ruthless crackdown on dissent. In 2004, a small, mostly civilian group took over a mine operated by the Australian firm Anvil Mining in Kilwa village, protesting that the company was making huge profits without rewarding the local workforce. Because of such factors, many multinational corporations and western governments take advantage of the resources being produced at low prices as a result of the continuous conflict.

➢ **Social: A case of Sub-Saharan Africa**

Sub-Saharan Africa's top five petroleum producers rank among the bottom third in the world in terms of child mortality. The continent's two largest producers—Angola and Nigeria—rank among the bottom ten countries in this category. Over the past decade, Africa has been among the world's fastest-growing continents – its average annual

[20] https://www.un.org/press/en/2002/sc7547.doc.htm

growth rate was more than 5 percent. Between 2000 and 2015, foreign direct investment (FDI) on the African continent increased fivefold. This can be partly attributed to the rising costs of labour in Asia leading to more firms moving production to Africa, where wages are still very low. Global demand for natural resources, and increased commodities exports and tourism, along with improvements in the region's regulatory framework and macroeconomic stability, are key factors accounting for this impressive growth. Yet sub-Saharan Africa remains the poorest region in the world. Forty percent of people in sub-Saharan Africa live in extreme poverty (on less than US$1.25 per day); this is more than four times greater than the world average. It is the region with the highest prevalence of people going hungry, and where – in contrast to global trends – the total number of people in hunger is still increasing. Nor are future poverty trends positive for the region. The absolute number of people living in extreme poverty in sub-Saharan Africa is projected to increase by over 50 million between 2011 and 2030, to 470 million people. Women are hit hardest. In sub-Saharan Africa, they earn on average 30 percent less than men, and continue to have limited access to productive resources, such as land, water and credit, which are drastically exploitation and overused by MNCs and to services including healthcare, education and agricultural training and support for small-scale farmers. High levels of inequality across Africa are slowing poverty-reduction efforts. Six African countries (South Africa, Namibia, Botswana, Zambia, Central African Republic and Lesotho) are among the top 10 most unequal countries in the world (as measured by their gini coefficients). In these six countries, the richest 10 percent of the population accounts for, on average, almost half of the combined total income, while the poorest 10 percent earn just one percent. Worse still, much of the income of the richest is leaving the continent's economies. The African elite have a higher level of capital flight relative to GDP than their equivalents in other parts of the world and keep a larger proportion of their wealth abroad.

- **Economic:**

Africa loses more than $500 billion yearly from illegal financial outflows due to multinational companies engaging in fraudulent strategies to avoid paying taxes. This denies some of the world's poorest countries many development projects and crucial services. The African Union's high-level panel on illicit financial flows[21], along with the UN Economic Commission for Africa (UNECA) reported that illicit transfers from African countries have tripled since 2001. The report estimates a loss of $217.7 billion from Nigeria, $105.2 billion from Egypt, and $81.8 billion from South Africa as illegal transfers during the period of 1970-2008.

Common strategies practiced by companies that hope to maximize profits include trade mispricing, profit shifting, and payments between parent companies and their subsidiaries. Sectors in which trade mispricing occurs include Nigeria's crude oil exports, mineral production in the Democratic Republic of the Congo and South Africa, and timber sales from Liberia and Mozambique. This report was the first African initiative to address illegal outflows from the continent.[22]

[21] Ibid.
[22] - Anderson, Mark. "Africa losing billions from fraud and tax avoidance." The Guardian, Guardian News and Media, 2 Feb. 2015.

- **Ecological and Labour Issues:**

South Africa: In 2012, more than R300bn (US$29.1bn) or close to 10 percent of GDP left South Africa in the form of illicit financial flows. Among the worst offenders were the countries' mining giants who used a variety of dubious accounting practices to sidestep paying taxes. This has led to the South African treasury losing out on US$359m a year. Meanwhile, poor mining communities are going without vital public services that these taxes could help pay for. Ermelo is an old mining town close to Johannesburg. The town is in a state of decay with residents suffering high levels of unemployment and often lacking basic services such as water and electricity. In addition, water pollution caused by mining operations is affecting crop production and many families are now struggling to feed themselves as they cannot afford to buy food to make up for loss of crops. Mine workers in Welkom, a gold mining town in Free State, are suffering from debilitating respiratory diseases such as tuberculosis or silicosis because of a lack of adequate protection in the mines yet struggle to access healthcare services, while they are paid less than adequate wages and made to work in harsh condition for longer hours. There is lack of compensation caused by leaking oil and collapsed mines, which not only affect the employees and local population but also have social implications on the inhabitants of the area. Indiscriminate dumping of toxic wastes from extracting industries cause destruction of wildlife and ecosystems. One of the prominent example is the case of dumping by Trafigura corporation. On August 20, 2006, toxic waste dumped at approximately 18 sites around the city of Abidjan in Côte d'Ivoire affected the health of tens of thousands of people, not to mention the resulting environmental pollution. That waste was carried on board the *Probo Koala*, a cargo ship chartered by Trafigura, an oil trading company based in Switzerland (operational base) and the Netherlands (corporate headquarters). More than 110,000 people were affected by the dumping.

To make matters worse, there is little to no regulation or limit on energy consumption and the burning of fossil fuel which are potential causes of major health hazards, most African nations have to suffer through. There is very little publication or regulation of environmental damage caused by MNCs in the form of deforestation, pollution of water with harmful substances and thus there's lack of effectives systems and institutions to hold them responsible and brink to books, not only for their carbon emissions but also for other forms of ecological damage and indiscriminate treatment of local labour. The issue of job less is further perpetuated when MNCs start bringing labour from their country of origin and the host countries like China and USA are also accused of shifting their highly polluting industries in Africa, to serve their environmental protection needs.

➢ **Neo-Colonialism:**

The term neo-colonialism was first coined by Kwame Nkrumah, the first post-independence president of Ghana. Nkrumah realized that the independence and sovereignty of his country were only token, stating: Neo-colonialism is…the worst form of imperialism Nkrumah believes certain elements are inherent in neo-colonialism:
1. The controlling state continues to actively interfere in the affairs of another independent state
2. The colonial state exerts economic or monetary influence on noncolonized territories, either by targeting those territories as destinations for goods or through other actors, such as international financial organizations or MNCs.
3. The ruling elites in the noncolonized territory prioritize the demands of the colonial master over the needs of their own populations.

The United Nations maintains its position that foreign investments are needed for the development of African economies, as seen by constant efforts of the United Nations Development Program to encourage foreign investments. However, it does realize that neo-colonialism can indeed be a consequence of foreign investments. As such, it would to like to issue regulations and introduce measures to prevent neo-colonialism in the aim of ensuring that respect for any involving nations' sovereignty, a fundamental principle of the United Nations as enshrined in Article 2 of the UN Charter, is upheld. The MNCs once established end up exerting a lot of influence in the political, social and economic structures of a country, especially in Africa as they end up controlling the powerful and strategic resources of the nation, thus being in a position to adversely affect the regions sovereignty and integrity.

NOTE: These are not supposed to be considered exhaustive in nature. There are various other consequences that you can look up (for example – cultural). The reason why they haven't been elucidated here particularly is because its not at all difficult to come across them as information regarding them is readily available on the internet and also because they might appear to be overlapping. Hence, don't hesitate to come up with other possible consequences. Rather, its important that you do come up with them and debate them as comprehensibly as you are expected to debate these.

Key Players:

China:

Measuring China's FDI in Africa has been the primary way of examining the relationship between the two parties. Foreign Direct Investment (FDI) measures the direct investment from a company of one country into a company of another, which specifically entails: mergers, building new facilities, reinvesting profits earned from overseas operations, and larger monetary loans. In examining China's relationship with individual African countries, there has been evidence of both positive and negative FDI investment impact. In 2003 when China began to heavily send FDI to South Africa alone, it measured at USD 8.9 million, which multiplied considerably to USD 4807.9 million in 2008 and has fluctuated around that figure ever since.[23] Chinese investments in South Africa, as well as most other African countries, are mainly focused on sectors that create labour-intensive manufacturing opportunities, which opens up employment for locals. This significant increase in FDI in South Africa has allowed for the construction of new houses, education centres, hospitals, and even South Africa's First Automotive Works (FAW), a car factory, opened in July of 2014 to engineer popular car models.[24] The FAW is named to be China's largest single investment in the country to date. Although China is the single largest investor in all of Africa's business sectors, there is not a distinct regional composition of FDI inflow to Africa; instead, FDI inflows vary considerably by city, country, and region. For the two years after 2007, the countries of West Africa on average gained the fastest surge of FDI inflow with an increase of 63%. West Africa continues to receive the majority FDI inflow out of all of Africa's oil industries, however, 43% of the Western Africa region inflow has been entirely concentrated in the Democratic Republic of the Congo (DRC). North Africa, in contrast, was the most diversified in 2009 throughout the continent in terms of FDI allocation by sector and region. Southern Africa's FDI inflow is also unique and is predominately produced by Angola and South Africa, the two most prominent FDI-receiving countries within the entire continent.[25] Finally, Eastern African countries were reported to be the lowest recipient of FDI inflow out of Africa's four regions. This uneven distribution of FDI has put East Africa significantly behind in development efforts. East Africa's infrastructure is underdeveloped and has been the primary factor in holding back the region's development. China is currently investing in the necessary areas to reverse this. Beijing has been supporting the development of a railway through central Ethiopia to aid Chinese-backed textile manufacturers in exporting their products. When looking at this region's progress, infrastructure development of all types, including road, rail, ports, power plants, and water sanitation, are vital to

[23] Meibo, "A Study on the Employment Effect of Chinese Investment in South Africa."
[24] Eric Olander, "New Era of Chinese Manufacturing in South Africa Begins," China Africa Project
[25] Ibid, pt. 23.

supporting the region’s ability to integrate the economic development in the same capacity as other African countries.[26] Until now, East Africa has been unable to finance the necessary means to invest in infrastructure.

In addition to investment projects, China has quickly become the continent’s biggest trading partner[27], with trade volume of $166 billion in 2014. This is likely to continue to increase and reach an estimated $1.7 trillion by 2030. But despite the substantial investments, most of the them have been routinely cast as detrimental to Africa’s overall competitiveness. The projects are dependent on deals made at the highest political levels. They lack competitive and transparent bidding processes, and most of the work force employed at these ventures has been Chinese. Promises of job creation have not been fulfilled. Further, when Africans are hired, local rules and regulations are often flouted, leading at times to poor safety. For instance, at Chinese-run mines in Zambia’s copper belt, employees much work for two years[28] before they get safety helmets. Ventilation below ground is poor, and deadly accidents occur almost on a daily basis.

More frequently, jobs are lost to Chinese employees, who are ferried in project by project. For example, the growing Chinese presence in South Africa may have cost the country 75,000 jobs[29] from 2000 to 2011. In Nigeria, the influx of low-priced Chinese textile goods has caused 80% of Nigerian companies in this industry to close. Africans’ impression of Chinese firms could also be shaped by illegal practices

[26] “Understanding Chinese Investment In East African Infrastructure,” Business Council For Africa, last modified 19 Aug, 2013, accessed 9 Sep 2014, http://www.bcafrica.co.uk/news/828-understanding-chinese-investment-in-east-africaninfrastructure.
[27] http://www.economist.com/news/middle-east-and-africa/21574012-chinese-trade-africa-keeps-growing-fears-neocolonialism-are-overdone-more
[28] https://www.economist.com/briefing/2011/04/20/trying-to-pull-together
[29] Ibid, pt. 27.

carried out by them. For example, by law, mining on small plots of 25 acres or less is restricted to Ghanaian nationals. However, many Chinese continue to explore for gold in conjunction with local landowners, even though regulations[30] have made it clear that such practice is illegal. The result: Many Africans see themselves to be exploited by the newcomers. Perhaps making matter worse, the kinds of goods that the two partners trade with each other have done little to change such perception. Whereas China buys from Africa mainly natural resources—minerals and metals—African countries import primarily the finished results, ranging from machinery and electrical goods to plastics and rubber. Such an arrangement could benefit both parties, but it's more often seen as China exploiting Africa's natural resources to feed its need for industrial output. At the same time, by exporting cheap—and often shoddy—manufactured goods to African countries, local companies not only become less competitive but they also grow increasingly dependent on China, which leads to an erosion of domestic industry.

Recent research[31] has also suggested that the Chinese presence has failed to bring significant skill developments, adequate technological transfer or any measurable upgrade to the productivity levels to this part of the world. With an estimated 800 Chinese companies active in Africa, they too need to be part of this dialogue. There are important environmental and health concerns surrounding Chinese corporate involvement in such areas as mining and hydroelectric dam construction in Africa, as well as worries over Chinese corporate conduct in dealing with African officials.

Consequently, it is essential both for Africa and for China's reputation as a responsible actor in world affairs that Chinese companies take steps to demonstrate that they are constructive corporate players and it's crucial for AU to determine how they can be better regulated and what means can be employed to ensure better terms of reference and rules of engagement, which not only protect human rights but also ensure equitable development and progress for the region. Also note that, along with China, role of MNCs of member states comprising the BRICS should also be looked into. Why they haven't been specifically addressed here is because their investments patterns are similar to those of China and often in collaboration.

It is also extremely important to take into account the various bloc positions and developmental needs. Developmental needs of East Africa differ greatly from West Africa and so on and so forth.

Western and European Stakeholders:

Lately, Western investors/MNCs and even aid agencies such as the United States Agency for International Development (USAID) as well as budgetary NGOs including the World Bank are not willing to invest in economic sectors in countries that will not have an immediate, positive turnout such as physical infrastructure, industry, and agriculture: three of the most prominent areas of Africa's development and future self-dependence. The commitment to uproot Africa out of its developing stages is simply too large of an investment for western countries whose economies are less successful than China's booming markets. Post-1975 era, MNCs have not put forth any significant funding towards the infrastructure projects in Africa.

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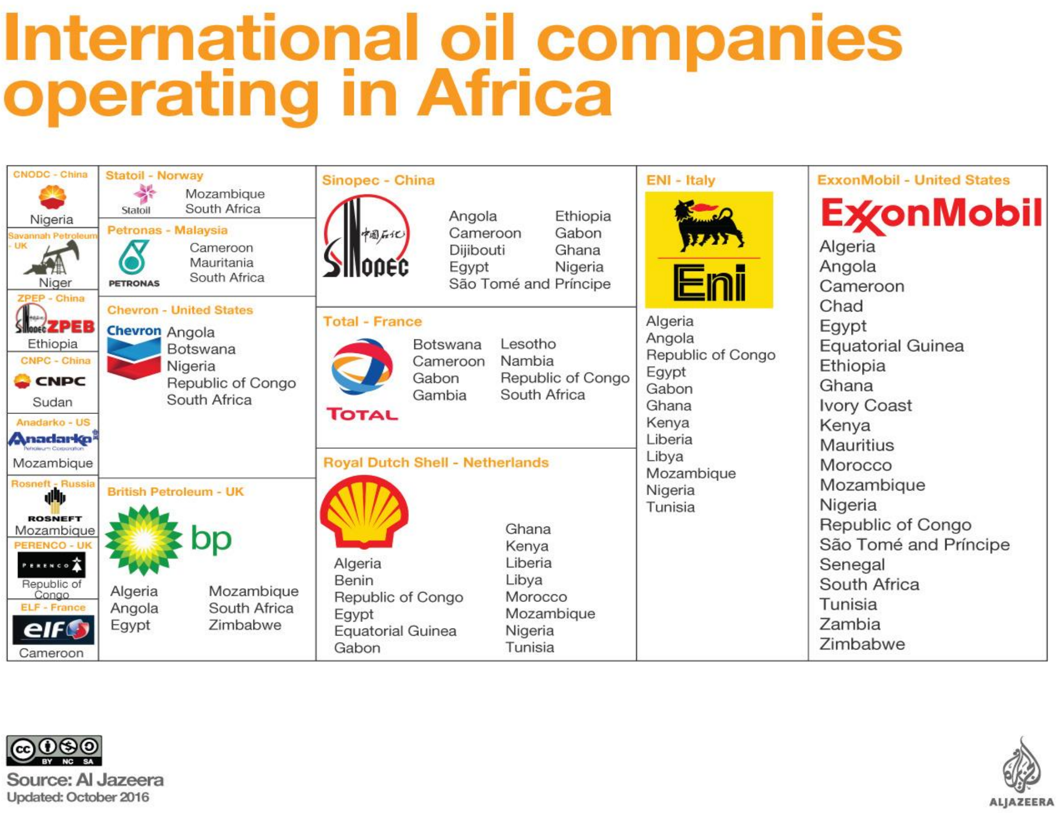
30 https://www.weekinchina.com/2013/05/shangliners-not-welcome/
31 https://www.africaresearchinstitute.org/press-room/press-releases/between-extremes-china-and-africa-2/

Countries such as USA, UK, Germany and Italy have turned their attention away from such projects fearing it to be too large an investment risk and will result in inadequate returns, offsetting the potential benefit for both parties.

However, they haven't turned away from investing in areas related to natural mineral exploration, like the mining and oil exploration sectors, despite their commitments to phase out the of fossil fuels subsidies by 2025, as being part of the G7. Rather, investments in fossil fuels have only increased, especially in the case of US.[32] The region is home to five of the top 30 oil-producing countries in the world, and nearly $2 trillion of investments are expected by 2036. Due to these conditions, the interest of Europeans and American companies remain huge. American oil company ExxonMobil is one of the largest foreign investors in Africa. Over the last years, it has committed more than $24bn to energy exploration and development. Italy remains close. ENI, an Italian multinational oil and gas company, plans to invest around $25bn mainly in oil and gas, representing 60 percent of the company's investment.

Even though the areas that American and European are targeting might differ from those targeted by Chinese firms, however, they have been criticized on the same grounds, like those of labour laws violations, ecological damage, illegal procurement of resources by flouting domestic laws etc, as has been elucidated about the Chinese in the previous section.



[32] https://www.euractiv.com/section/energy-environment/news/g7-countries-pour-100bn-a-year-into-oil-gas-and-coal-study/

Institutional and Regulatory Measures In Place:

In the past two decades, there has been a proliferation of external codes of corporate conduct. The Global Sullivan Principles (GSP)[33], which were launched at the UN in 1999, have been joined by the Global Compact of the UN[34], the Extractive Industry Transparency Initiative[35], the Voluntary Principles[36] and others. While each of these codes has its own objectives and methods of implementation, there is no shared set of indicators which demonstrate how companies contribute to Africa's development. Moreover, there are enduring perceptions that multinationals, especially in the extractive sectors, are doing little more than contributing to environmental degradation, as in the Niger Delta, or poor governance, as in Equatorial Guinea.

At the level of AU, there has been immense criticism of the apparent lack of a co-ordinated regulatory framework with regards to MNCs. However, some semblance of regulatory capacity can be extrapolated from AU conventions and mechanisms. For example, an indirect regulatory framework can be implied from the provisions of some AU treaties such as the African Convention on the Conservation of Nature and Natural Resources (revised)[37] and the African Union Convention in Preventing and Combating Corruption 2003.[38] Furthermore, some modicum of MNC regulation is localised in the African Peer Review Mechanism (APRM)[39].

Furthermore, notwithstanding the paucity of research on AU regulation of MNCs, it should be acknowledged that the AU is one of the most potent and underutilised regulatory frameworks in the regulation of MNCs. This view finds support in the work of the African Commission Working Group on Extractive Industries, Human Rights and the Environment[40] which has been at the forefront in developing mechanisms on the control of MNCs operating in Africa. One major reason why the AU regulatory regime in respect of MNCs is ineffectual is the near absence or inadequate collaboration with civil society organisations (CSOs) in the process. Arguably, CSO involvement in AU regulatory paradigm will enhance the legitimacy of the regulatory process.

It is crucial for the member-states to identify key developments at AU level that could be enhanced to better facilitate the role of CSOs in MNC regulation.

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[33] http://hrlibrary.umn.edu/links/sullivanprinciples.html

[34] https://www.unglobalcompact.org/what-is-gc/mission/principles

[35] https://eiti.org/

[36] http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/

[37] 1 The African Convention on the Conservation of Nature and Natural Resources (Revised Edition) 2003, http://www.au.int/en/sites/default/files/AFRICAN_CONVENTION_CONSERVATION_NATURE_NATURAL_RESOURCES.pdf

[38] The African Union Convention in Preventing and Combating Corruption [July 11 2003] 43 ILM 2004., https://au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf

[39] 3 Generally, see Eghosa Ekhator, Roles of Non State Actors in the regulation of Multinational Corporations in the Oil and Gas Industry in Nigeria (PhD Thesis 2015).

[40] http://www.achpr.org/mechanisms/extractive-industries/

These are just some of the conventions and commissions/working groups which have been proactive in enhancing regulation of the activities of MNCs. Do look into working done by other Agencies/Commissions like the African Commission on Human and People's Rights (African Commission) etc, along with what other regulatory mechanism and conventions/treaties exists that can be applied in the same domain with respect to their impact, functioning, potential pitfalls and loopholes etc.

The Way Forward:

Ensuring Prevention

While the solution to Africa's situation would have to come mainly from the continent, many of its citizens believe that the system was not broken, but rather built that way. It has been widely argued and alleged that multinational companies have on many occasions provided weapons to warlords who committed gender-based violence to displace entire communities so that those organizations could control resources in those lands. Meanwhile, many African countries believed they had to protect foreign direct investors, but not labourers. The global taxation system does not seem fair and just generates wealth in rich countries.

There is a need for a significant paradigm shift and a new model for financing that was much more sustainable and could better address a decline in resource availability. While there were clear signs of economic recovery on the continent, it had not been equal. There were several African countries driving the continent's growth, which meant that conflict, drought and famine could threaten gains on a mass scale. Policies that favour inclusive growth and pay special attention to conflict prevention are needed while also, the impact of the illicit financial flows and illicit procurement of resources warranted cooperation at the highest level of Government.

The last decade has further seen a proliferation of initiatives aimed at improving the governance of the extractives sector. This includes the Extractive Industry Transparency Initiative (EITI)[41]; the Kimberly Process Certification Scheme in 2003[42]; Publish What You Pay[43]; the Revenue Watch Institute[44] and many others. EITI, for example, has established a global standard whereby countries are required to fully disclose taxes, royalties and other fees their governments derive from oil, gas and mining. However, despite these global efforts, things have not changed much. While some countries have ratified initiatives such as the EITI, others, including Kenya, are yet to do so.

The Africa Progress Panel[45] has on several occasion called on G8 countries – and their fellow G20 members, including China and Brazil – to enforce corporate transparency so that citizens in developing countries can see exactly who owns the companies involved in mining deals. They would also like to see a crackdown on the international tax rules that allow multinationals to shift profits from one country to another with impunity.

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[41] https://eiti.org/
[42] https://en.wikipedia.org/wiki/Kimberley_Process_Certification_Scheme
[43] http://www.publishwhatyoupay.org/
[44] http://www.revenuewatch.org/rwindex2010/index.html
[45] http://africaprogressgroup.org/

As a starting point, African governments should adopt national strategies that clearly set the terms for the development of their natural resources, and which are aimed at poverty reduction and inclusive growth. Natural resources must be managed efficiently and the revenues shared fairly, and strategies must focus on projects that can generate more jobs through links with the local economy, which should include human capital development.

Processing natural resources prior to export would further bring more value and benefits to the poor. Investment in the extractive sector should therefore be a priority for governments to ensure that there is sufficient local skills and capital to extract, process and export these resources. Building on the Africa Mining Vision[46], governments should put transparency and accountability at the heart of their extraction policies.

Capacity Development for Natural Resource Management, is the third publication in the African Capacity Building Foundation's (ACBF) Africa Capacity Indicators (ACI) series. It debunks the so-called resource phenomenon and points to success stories from Botswana, Liberia, Sierra Leone, Mozambique, Ghana, Ethiopia and other countries to conclude that with proper management, natural resource wealth can promote development advances in African countries.

One of the major solutions that have come are aimed at reducing the dependency of African nations on MNCs for various function by instituting better "Resource Management". Various stakeholders are getting involved in instating better and more independent resources management. The UN Peacebuilding Commission has been involved in examining where and how it can contribute to better management of natural resource development, as part of its newly enhanced mandate[47] to seek prevention of global conflict. In Liberia, for example, the UN Peacebuilding Fund is looking to help improve resource contract management and community complaint mechanisms to ameliorate tensions that may lead to conflict.

The African Union is also looking to develop greater community involvement in the extractive sector as it takes on more responsibility for ensuring peace and security on the continent. The AU adopted the African Mining Vision[48] in 2009, followed by a corresponding Action Plan[49] in 2011 and Country Mining Vision Guidebook[50] in 2014. African regional economic communities have also developed additional governance frameworks. Notably, the Economic Community of West African States' 2008 Conflict Prevention Framework[51] includes initiatives for bolstering community involvement and empowerment around natural resources. These various plans all link natural resources to conflict prevention and stress the importance of community negotiation.

The UN and AU have in turn combined efforts to target illicit financial flows out of Africa. This is in keeping with the findings of February 2015's Mbeki Report[52], which stressed the need for resource revenues to remain within their country of origin. The report also highlights

[46] http://www.africaminingvision.org/about.html
[47] https://www.un.org/press/en/2016/sc12340.doc.htm
[48] http://www.africaminingvision.org/about.html
[49] http://www.africaminingvision.org/amv_resources/AMV/AMV_Action_Plan_dec-2011.pdf
[50] https://www.uneca.org/sites/default/files/PublicationFiles/country_mining_vision_guidebook.pdf
[51] https://www.law.cornell.edu/sites/www.law.cornell.edu/files/andjusticeforall/ECOWAS-Conflict-Prevention-Framework.pdf
[52] https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

unequal contracts that fuel bribery, tax avoidance through abusive transfer pricing[53], and the complicity of international financial institutions in these practices.

By restructuring natural resource contracts and limiting illicit financial flows, African countries may gain additional capacity to boost development and peacebuilding project spending. But well can these benefits local communities need to be assessed more clearly.

According to the African Development Bank 2014 Annual Report[54], the extractive sector, which is highly dominated by MNCs accounts for over half of Africa's exports, and in some countries up to 90%. This level of dependency creates significant risks during commodity market downturns.

Increasing interaction between communities and the extractive industries can help to diversify the types of extractive activities that take place and better cater to companies' procurement and labour needs. The African Minerals Development Centre, has outlined the value of dedicated local content policies[55] within extractive operations, as a means of achieving this.

Increased community engagement can also improve social resilience. Greater dialogue and coordination between communities, companies, and governments may serve to prevent social tensions. As an October 2015 assessment[56] of mining in Mali's Kayes region notes, disputes between communities can arise over employment opportunities and the distribution of other benefits such as health centers or schools. In Kayes, company-community consultation processes failed to adequately consider negative impacts on villages outside of the mines' direct areas. This heightened tensions over perceptions of unequal benefit distribution. Additionally, companies' selective consultation and recognition of land title disagreements stirred inter-community disputes.

Increased land ownership and initiatives to formalize the extractive sector could reduce potential violence over natural resources, especially among vulnerable or marginalized groups. For example, a 2016 panel[57] noted how legal frameworks could provide land rights and access to dispute resolution mechanisms for "artisanal" female miners. Additionally, formalization of this nature may offer avenues for dividends from the inclusion of women[58] in peacebuilding processes. Improved and formalized community interaction with companies and governments around natural resources can prevent development of informal economies that may be more easily used to finance criminal or armed groups, and thus decrease fragility. Positive and mutually beneficial relations between communities and companies have, nevertheless, proven elusive until now.

From a business point of view, investing in responsible and locally focused operations can ensure a social licence to operate, as well as compliance with international standards such as

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53 http://www.un.org/esa/ffd/documents/UN_Manual_TransferPricing.pdf

54 https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Annual_Report_2014_-Full.pdf

55 http://ecdpm.org/wp-content/uploads/ECDPM-Discussion-Paper-193-Local-Content-Policies-Mineral-Rich-Countries-2016.pdf

56 https://www.international-alert.org/sites/default/files/Mali_ImpactMiningKayes_EN_2015.pdf

57 https://www.wilsoncenter.org/event/women-artisanal-mining-and-peacebuilding-africa-call-to-action

58 https://postconflict.unep.ch/publications/UNEP_UN-Women_PBSO_UNDP_gender_NRM_peacebuilding_report.pdf

the UN Guiding Principles on Business and Human Rights[59] and those contained in the UN Global Compact[60], principles which the AU should make sure MNCs operating in the region adhere to.

The Pan-African Investment Code[61] being developed by several of the continent's governments offers an improved legal framework for companies operating in Africa. But further political commitment is needed to end the view of Africa as merely a lucrative business opportunity. Meanwhile, the mining sector and affected communities are facing new challenges such as climate change, making social and economic stability even more important for conflict prevention. Indeed, the African Development Bank's High-Level Panel on Fragile States[62] identifies issues around extractive industries, climate disruption, and resource conflicts as key drivers of fragility in Africa. Peacebuilding strategies must therefore promote conflict- and climate-sensitive contracts between all parties, making sure that MNCs engaged in extractive work adhere to the principles essential to peace building and human rights.

In October 2017, the third session of UN Human Rights Council's Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights was opened at the United Nations Office at Geneva (UNOG).[63] Under the terms of Resolution 26/9 of June 26, 2014, adopted and implemented by the Human Rights Council, this working group's mandate is to "elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises." This treaty could, at last, protect local populations against the human rights violations committed by multinational corporations and guarantee access to justice for their victims. However, the States, which usually present themselves as champions of democracy and the rule of law, have opposed this initiative and are refusing to set up a more restrictive legal framework that would make corporations and their executives accountable for human rights violations, in the same way as the States and any other players in the public sphere. And more unfortunate has been the absence of African nation apart from a few like South Africa, Ecuador, Nigeria, Ghana, Tunisia. Progress with respect to this can help African Nations hold MNCs responsible for malpractices.

One recent instrument for protecting human rights and ensuring justice to victims of illegal procurement or overexploitation of resources by MNCs or any other forms of International Crimes committed in Africa is the recently proclaimed, Malabo Protocol[64], which aims to create the African Court of Justice and Human Rights. Over and above its widely publicized extension of the African Court's jurisdiction to international crimes, it also contains a number of innovations that express the changes desired by African States. For example, its text

59 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
60 https://www.unglobalcompact.org/what-is-gc/mission/principles
61 https://www.ictsd.org/bridges-news/bridges-africa/news/the-quest-for-a-pan-african-investment-code-to-promote-sustainable
62 https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/high-level-panel-on-fragile-states/
63 https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session3/Pages/Session3.aspx
64 https://au.int/sites/default/files/treaties/7804-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e-compressed.pdf

expands the category of international crimes beyond the traditional crimes (genocide, crimes against humanity, war crimes and aggression) to also punish, for example, illegal trafficking in hazardous waste (Article 28L) and the illicit exploitation of natural resources (Article 28L bis). More interesting still, Article 46C defines corporate criminal liability. This represents a real evolution in international law, enacted by the African continent, worthy of universal extension. The Protocol, when ratified by 15-member states, would grant criminal jurisdiction to the existing African Court of Human and Peoples Rights (ACHPR), which is proposed to be merged with the African Court of Justice (ACJ) to create the African Court of Justice and Human Rights (ACJHR). As of May 2018, the Protocol has only been signed by 11 AU member states, namely Benin, Chad, Comoros, Congo, Ghana, Guinea-Bissau, Kenya, Mauritania, Sierra Leone, Sao Tome and Principe and Uganda.

Thus, it is extremely essential for the delegates to recommend measures that help build the resilience of the continent and suggest ways to further build upon and strengthen the mentioned and existing policy instruments, as it’s important to recognize that the UN might not be able to start this kind of global approach on extractive industries because it will be faced with opposition from countries that have big multinational corporations that benefit from discriminating practices.

Questions to be answered?

- What can the International Community and more so the AU do to address accelerate sustainable growth and address illicit financial flow and procurement of resources?
- How can better trade and resource mobilization be ensured within the continent of Africa itself?
- How to achieve a balance between sustainable investment and curbing over-exploitation of Africa's resources by MNCs?
- How to achieve diversification of Investment from mining and natural resources to social sectors, along with structural transformation within host nations?
- Should there be more stringent and effective regulation of MNCs in African nations? If so, then why? And how?
- How to ensure better collaboration, networking and trust building amongst various stakeholders like the Governments, MNCs, NGOs, Civil Society, Laborers, etc?
- How can global tax rules that allow MNCs to dodge taxes be reformed?
- What measures can AU take to better regulate MNCs operating in member states and ensure transparency?
- How can AU ensure better community driven business practices and what recommendation can be made which create approaches that foster effective community-business partnership?
- What are the loopholes in the present existing mechanisms, conventions, domestic laws etc and how can they be better strengthened?
- How to better direct policy with respect to the strengths, shortcomings and developmental needs of specific regions/blocs or countries within the continent?
- What kind of legally binding instruments can be put in place to hold MNCs accountable for malpractices?

Note: Again, these aren't meant to be exhaustive in nature. You are required to take into account other question too that you might be able to ascertain during the course of your research. Feel free to look up various sources, especially more scholarly articles, opinion pieces, policy instruments, books, videos, news sources etc. Basically, anything that you can find. Just make sure it's credible, relevant to the agenda and substantive in nature. And you may not religiously follow what you read. Feel free to not consider a few points about which you may have better knowledge of or you think aren't substantive or credible enough.

Most importantly, question everything that you read or listen. And try to find appropriate answers to those questions. Again, the answers might not be right, but make sure they are at least appropriate in their content, form and context. And above everything else, research to gain some valuable insights, to broaden your horizons, to learn a few important things about something important and to enable yourselves to learn something substantive and valuable in life. Do not just concern yourself with the outcome or the end product. I am not saying that do not care at all about that. Please do. But the process is above everything. Engage yourself diligently and with a genuine zeal in the process of this activity. Once you are able to make the process enriching in nature, the outcome will be fruitful as well. All the Best!

Happy Researching!
May the force be with you!