

OXFAM AMERICA
RESEARCH BACKGROUNDER

Human Rights and Social Conflict in the Oil, Gas, and Mining Industries

Policy recommendations for
national human rights
institutions

Ben Collins and Lesley Fleischman



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Executive Summary

This report proposes a framework for evaluating national human rights institutions (NHRIs) in countries with significant human rights abuses associated with oil, gas, and mining projects. Through research and interviews with experts on business and human rights, we analyzed the successes and shortcomings of NHRIs in their work to resolve human rights-related social conflicts involving the oil, gas, and mining (extractive) industries. We then conducted a case study of Ghana's NHRI, the Commission on Human Rights and Administrative Justice (CHRAJ), through field interviews with representatives from civil society organizations, industry leaders, and government officials (including the deputy commissioner and other staff members at CHRAJ).

In this policy analysis, we analyze key challenges NHRIs face in their work involving extractive projects as a consequence of the unique social and environmental impacts of the extractive industries. We then propose a framework for evaluating a given NHRI's successes and shortcomings in its current work on human rights grievances related to extractive projects. Next, we discuss how to identify and prioritize potential actions that an NHRI can take to improve its effectiveness at addressing extractive industry human rights issues. Finally, we apply this framework to a specific NHRI by evaluating the work of Ghana's CHRAJ on extractive industry issues and proposing recommendations for Oxfam to consider integrating into its advocacy priorities for CHRAJ.

Context

The social and environmental impacts of extractive projects can have serious consequences for the rights, health, and livelihoods of nearby communities, and these projects frequently spark social conflict between project operators and affected community members. Recent developments in the international business and human rights field have outlined a role for NHRIs in mediating such human rights-related conflicts between companies and communities. However, existing research on NHRIs has not focused on the state of NHRI engagement with business and human rights issues related to the extractive industries.

Findings

We found that NHRIs can serve as credible and objective mediators between communities and companies on extractive industry disputes. However, several constraints limit the success of NHRIs in this role. We identified five key factors that influence an NHRI's effectiveness at protecting human rights and resolving social conflicts related to extractive projects. We use these five key factors as criteria with which to judge potential actions that NHRIs can undertake:

- **Independence:** Both the NHRI's actual independence from political pressure and the strength of its reputation for objectivity and integrity.
- **Power:** The ability of an NHRI to use its formally delegated mandate and authority, as well as its informal capacity, to influence the actions of other government agencies and extractive companies.
- **Promotion:** The extent to which an NHRI broadens public understanding of the state's responsibilities related to human rights, including the duty to protect and the corporate responsibility to respect human rights in the context of extractive projects.
- **Empowerment:** An NHRI's influence on the effectiveness of local, national, and international actors working to advance extractive industry human rights norms.
- **Remediation:** The efficiency, robustness, and perceived legitimacy of an NHRI's dispute-resolution process for human rights complaints involving extractive industries.

Recommendations

We propose that NHRIs use the evaluation framework outlined in this document to analyze their effectiveness working on extractive industry issues. In addition, we recommend the framework as a tool for nongovernmental organizations (NGOs) to use as they develop and prioritize advocacy recommendations for NHRIs.

Based on our application of this framework to the specific example of Ghana's CHRAJ, we recommend that CHRAJ take the following measures to improve its capacity to address the human rights impacts of Ghana's mining and oil industries:

- Develop a systematic communication strategy to report on its extractive industry-related education and enforcement work both to a national audience and to communities affected by oil and mining projects.
- Coordinate its educational, investigative, and complaint-handling work with both Ghanaian and international NGOs and extractive companies.
- Increase involvement in and conduct proactive investigations of emerging human rights risks involving the extractive industries (such as those posed by Ghana's offshore oil and gas discoveries).

CHRAJ currently faces serious resource constraints, but by implementing initial low-cost actions and pilot projects, it can demonstrate increased effectiveness in the short term. If it takes these short-term actions, then over the long run, it will be better able to expand its resource base through additional government and donor support.

Report structure

In the first three sections of this report, we provide context for NHRIs working in the area of business and human rights, explain our evaluation framework and key effectiveness factors for NHRIs working on extractive industry human rights issues, and assess options for improving NHRI effectiveness by drawing on a survey of global NHRI practices. In the final three sections of the report, we analyze the history and current status of CHRAJ and Ghana's mining and oil industries, use our framework to evaluate the strengths and weaknesses of CHRAJ's work on extractive industry issues, and prioritize recommendations for CHRAJ.

National human rights institution context

The pervasive and systemic social conflicts that often accompany mining, oil, and gas (extractive) operations harm both community members and companies. We have found that national human rights institutions (NHRIs) can play a positive role in resolving social conflict involving extractive industries alongside other government institutions with responsibilities in this area, including courts, executive agencies, minerals and energy commissions, environmental protection agencies, and legislative bodies. NHRIs face several barriers to protecting human rights effectively in this context.

This policy analysis document seeks to answer the following questions:

- What can other NHRIs learn from the experience of the Ghanaian Commission on Human Rights and Administrative Justice (CHRAJ) in addressing human rights in the extractive industries?
- What should NHRIs do to be more effective at promoting and protecting human rights in communities affected by the extractive industries?

We have sought to answer these questions through an extensive review of the literature on NHRIs and through in-person and phone interviews with experts in the NHRI field. We surveyed the activities of a targeted group of NHRIs, and we then chose CHRAJ as a subject for an in-depth case study. (For more on our approach, see Appendix I, “Methodology.”)

Structural and functional diversity of NHRIs

NHRIs are institutions created by national governments and tasked with protecting and promoting human rights (see Appendix III, “International Coordinating Committee-Accredited NHRI List”). In 1993, the United Nations General Assembly adopted the “Principles Relating to the Status of National Institutions,” more commonly known as the Paris Principles, which define the structure and responsibilities of NHRIs. Among other things, the Paris Principles

task NHRIs with implementing international human rights norms at the national level.¹

According to a recent survey of NHRIs undertaken by the United Nations Office of the High Commissioner for Human Rights (OHCHR), hereafter referred to as the NHRI Survey, NHRIs include human rights commissions (58 percent), human rights ombudsman offices (30 percent), human rights institutes (7 percent), and hybrid institutions (5 percent).² Some of these institutions are charged with a narrow mandate to protect the human rights of particular groups (e.g., minorities or persons with disabilities) or to protect particular rights (e.g., anti-discrimination), while others have a broad mandate to protect and promote all human rights for all persons.

The variety in the names of these institutions matches the variety of their institutional forms. Emile Short, the former commissioner of Ghana's CHRAJ, noted in a paper that "It is not the name by which the ombudsman institution is called that matters. Indeed, in Africa, some countries have refrained from using the designation 'ombudsman', preferring instead to adopt a title that best describes its role and functions, and with which the population can readily identify."³ The following sample exemplifies of the range of names for these institutions:

- Tanzanian Commission for Human Rights and Good Governance
- Peruvian Defensoría del Pueblo
- Mexican Comisión Nacional de los Derechos Humanos
- Human Rights Defender of Armenia
- Danish Institute for Human Rights
- Namibian Office of the Ombudsman
- Comité Sénégalais des Droits de l'Homme⁴

The Paris Principles define the functions that these institutions are tasked with performing, although specific functions vary among countries. The most important functions include the following:

1. UN General Assembly Resolution 48/134, "Principles Relating to the Status of National Institutions" (Paris Principles), December 20, 1993, <http://www2.ohchr.org/english/law/parisprinciples.htm>, accessed March 1, 2012.

2. UN Office of the High Commissioner for Human Rights (OHCHR), "Survey on National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide" (Geneva, 2009), 9.

3. Emile Francis Short, "The Development and Future of the Ombudsman Concept in Africa" (paper presented at the Seventh International Ombudsman Institute Conference, Durban, South Africa, October–November 2000), 62.

4. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), "Chart on the Status of National Institutions," December 2011.

- Advising government agencies and/or legislative authorities on human rights issues;
- Promoting international human rights norms at the national level;
- Implementing the human rights treaties to which a country has agreed;
- Formulating and running human rights public education programs;
- Hearing, responding to, and/or resolving complaints about human rights abuses (which include nonjudicial grievance mechanisms and alternative dispute resolution processes); and
- Enforcing remedies to human rights abuses.⁵

Some NHRIs, like Ghana's, have a formal mandate to investigate complaints about human rights abuses by private entities, including businesses.⁶ Others, like Peru's Defensoría del Pueblo, do not have this formal mandate, but in practice have undertaken investigations of human rights abuses by businesses.⁷ Thus, as business and human rights norms become more established, the mandates of some NHRIs may be updated to include abuses by private sector actors, but more likely, NHRIs will begin to take on these issues even without a formal mandate to do so.

The powers that NHRIs have been given and the efficacy with which they use these powers also vary. NHRIs can be established by executive order, legislation, or constitutional mandate. All NHRIs can wield the power of persuasion (soft power) to attempt to enforce and implement human rights norms. However, the degree to which NHRIs have formal enforcement power (hard power) varies. According to the NHRI Survey:

- 90 percent had the authority to handle complaints from individuals;
- 85 percent could inform complainants of their rights and remedies available and help provide access to remedy;
- 84 percent had the authority to transmit complaints to other complaint-handling authorities;
- 72 percent could receive complaints against businesses;
- 66 percent had the authority to seek an amicable settlement through conciliation or mediation; and
- 16 percent could make binding decisions.⁸

5. Paris Principles.

6. Constitution of the Republic of Ghana, ch. 18, art. 218, <http://www.ghanaweb.com/GhanaHomePage/republic/constitution.php?id=Gconst18.html>, accessed March 1, 2012.

7. Defensoría del Pueblo, "Informe extraordinario: Los conflictos socioambientales por actividades extractivas en el Peru" (Lima, 2007).

8. OHCHR, "Survey on National Human Rights Institutions," 28.

Relevant international mechanisms and bodies

NHRIs coordinate and function with other country NHRIs as well as in conjunction with several regional and international bodies and forums.

In 1993, the International Coordinating Committee of National Human Rights Institutions- (ICC)⁹ was established to coordinate the activities of NHRIs around the world. The ICC, operating under the auspices of the UN Office of the High Commissioner for Human Rights (OHCHR), maintains regional coordinating bodies in the Americas, Africa, Asia-Pacific, and Europe, and grants accreditation to NHRIs based on their compliance with the standards set out in the Paris Principles.¹⁰

In 2005, representatives of 24 NHRIs met in New Delhi for the International Round Table on National Institutions Implementing Economic, Social, and Cultural Rights (ESCR). At the meeting, participants agreed on the need to develop national plans of action on ESCR implementation, to create ESCR focal points in NHRIs, to enhance community dialogue on these issues, and to conduct outreach to vulnerable groups.¹¹

NHRIs also operate in the context of the emerging international norms related to business and human rights. John Ruggie, the United Nations Secretary-General's special representative for business and human rights, has synthesized these norms. The ICC has worked to put these human rights norms into operation.

In June 2011, the UN Human Rights Council unanimously endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," which had been drafted by Ruggie. But, following the emergence of these norms regarding business and human rights, NHRIs have been faced with the challenge of implementing them at the national level.

This implementation process began in October 2010 when the 10th International Conference of National Human Rights Institutions adopted the Edinburgh Declaration, which made explicit the link between business and human rights and NHRIs. The Edinburgh Declaration also called upon the ICC regional

9. This organization is also known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

10. UN Office of the High Commissioner for Human Rights (OHCHR), "OHCHR and NHRIs," <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>, accessed March 1, 2012.

11. International Round Table on National Institutions Implementing Economic, Social and Cultural Rights, "Concluding Statement" (New Delhi, November 29–December 1, 2005).

networks to convene in order to continue to work in this area.¹² Since then, several conferences of NHRIs on business and human rights have been convened: a regional summit of African NHRIs in Cameroon in October 2011, a regional summit of Asia-Pacific NHRIs in South Korea in October 2011, a regional summit of NHRIs in the Americas in Guatemala in November 2011, and a global conference of NHRIs in Jordan in November 2012.¹³

UN High Commission on Human Rights has also sponsored training sessions for NHRIs, targeted at helping them implement the aspirations of the Edinburgh Declaration. The Ugandan Human Rights Commission, the Institute for Human Rights and Business and the OHCHR hosted a workshop titled “Capacity Building for NHRIs from East Africa, Malawi and Ghana” in January 2012 in Uganda.¹⁴

NHRIs have several reasons for engaging with the international NHRI community, including the following, as described by human rights lawyer Chris Sidoti:

- Setting the international human rights agenda, thereby increasing the pressure on a state to address significant human rights issues at home
- Developing international law and practice, to provide a legal basis for national debates in favor of better human rights performance
- Increasing the state’s international accountability for its human rights performance, which in turn can increase domestic accountability
- Reinforcing the principle of the universality of human rights, enabling it to call on international standards when confronted with domestic traditional and cultural practices that violate human rights
- Identifying human rights issues of common concern within a region or across regions and developing strategies to address them on a regional or international basis

12. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Edinburgh Declaration, October 2010, http://www.scottishhumanrights.com/application/resources/documents/ENG_Sep_2010_Edinburgh_Declaration_FINAL_1010_1417h.doc, accessed March 1, 2012.

13. Network of African National Human Rights Institutions, “Action Plan” September 29–October 1, 2011, http://www.humanrightsbusiness.org/files/News/ICC%20news/nanhri_plan_of_action_business_and_human_rights.pdf, accessed March 1, 2012; Asia-Pacific Forum, “Action Plan,” October 11–13, 2011, <http://humanrightsbusiness.inforce.dk/files/ICC%20working%20group/Regional%20Workshops/1.%20Seoul%20Conference%20Statement.docx>, accessed March 1, 2012; ICC Americas Network, “Action Plan,” November 9–10, 2011, <http://www.humanrightsbusiness.org/files/ICC%20working%20group/AMERICASBHRREGIONALDECLARATIONANDACTI> ONPLAN(ENGLISH).DOCX, accessed March 1, 2012; International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), “11th International Conference,” November 5–7, 2012, <http://nhri.ohchr.org/EN/ICC/InternationalConference/11IC/Pages/default.asp>, accessed February 23, 2013.

14. Institute for Human Rights and Business et al., “Capacity Building for NHRIs from East Africa, Malawi and Ghana” (summary report of a workshop for NHRIs from East Africa, Malawi, Ghana, and South Sudan, Kampala, Uganda, January 25–26, 2012), http://www.ihrb.org/pdf/Uganda-Workshop-Final_Summary_Report.pdf, accessed March 1, 2012.

- Fostering international and regional alliances around particular human rights issues, including nongovernmental organizations, academics and other civil society actors, that can be active partners of the institution in working on those issues
- Building international solidarity among national institutions so that it receives support from its peers when under pressure from its own government
- Learning best practices from other national institutions, to be adapted and applied in its own work.¹⁵

As can be seen, NHRIs are diverse institutions, and they operate in an international system that is continually evolving. However, these disparate bodies are increasingly coordinating with each other. Human rights issues related to corporations are not confined within national borders; it is logical that the norms of business and human rights are emerging as a focal point for collaboration among NHRIs worldwide.

In this report, we focus specifically on how NHRIs can be effective at mitigating and resolving human rights abuses in the extractive industries. As will be discussed in the next section, this industry presents a unique set of challenges, owing to the long duration of projects and the remote location of a typical extractive project. Other industries also pose significant human rights threats in developing countries, but the industry context and therefore recommendations for NHRI effectiveness may vary. Some of the lessons learned about NHRI efficacy in the extractive industries can be applied more broadly to other business and human rights contexts. Instead of seeking to develop recommendations applicable to the entire business and human rights sphere, however, this report focuses on the extractive industries to enhance the clarity and usefulness of its ultimate recommendations.

Given this context, we have developed a framework for evaluating what makes NHRIs effective, what NHRIs can do to enhance their efficacy, and how this framework can be applied in individual country contexts. This framework will enable NHRIs to prioritize the actions that will have the most impact on enhancing their effectiveness at promoting and protecting human rights in the context of the extractive industries.

15. Chris Sidoti, "National Human Rights Institutions and the International Human Rights System," in *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, eds. Ryan Goodman and Thomas Pegram (New York: Cambridge University Press, 2012), 99–101.

Evaluation criteria

In this section, we present our evaluation framework for assessing NHRI effectiveness at addressing extractive industry human rights issues. Then we examine one of the central components of this framework: the evaluation criteria. We sort through the secondary literature on this topic, discuss the unique characteristics of the extractive industries, and conclude by explaining the five most important evaluation criteria for our analysis of NHRIs.

Evaluation framework

Our proposed evaluation framework has two components: evaluation criteria and potential recommendations. Evaluation criteria are the standards with which we judge how well an NHRI is able to promote and protect human rights in the extractive industries. The potential recommendations are the strategies that the NHRI can use to improve its performance according to these criteria.

Using a systematic evaluation framework is essential: given all of the potential recommendations and the contextual factors involved with analyzing the performance of a specific NHRI, recommendations for different NHRIs will vary. We developed this framework following the policy analysis method described by Eugene Bardach.¹⁶ We then demonstrate this evaluation process by using the case of Ghana's NHRI, the Commission on Human Rights and Administrative Justice (CHRAJ). Below are the steps that we propose for evaluating potential recommendations for an NHRI's work on extractive industry human rights issues:

Evaluation framework steps

1. Use the framework template found in Appendix II, "Evaluation Framework and Scoring Key."
2. Based on a thorough understanding of the work that the NHRI has done, determine which potential recommendations are already being implemented (business-as-usual).

16. Eugene Bardach, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving* (Washington, DC: CQ Press, 2005).

3. Based on an understanding of the social, political, and economic context of the country in question, determine which potential recommendations are politically infeasible.
4. Evaluate the recommendations, one category at a time (accessibility, communication, coordination, mandate, and resources) along each of the evaluation criteria (independence, power, promotion, empowerment, and remediation) using the evaluation scoring key found in Appendix II.
5. Add the total points for each recommendation to determine which to prioritize.¹⁷

Reasons to assess effectiveness factors

In addition to the literature on the structural and functional diversity among NHRIs, there is a growing literature on effectiveness factors for NHRIs. The presence of this literature is telling, as it indicates that although NHRIs have achieved some successes, they have not been as effective at remedying or preventing human rights violations as had been hoped. A variety of hurdles might account for this lack of effectiveness. Where individuals do not have access to a fair and impartial legal system, NHRIs may be able to fill this gap. However, the factors that make a legal system weak and biased (such as a lack of resources, corruption, or poor governance) may also impair the effectiveness or objectivity of an NHRI. Thus, expecting a new institutional form to be effective at protecting human rights without addressing these systemic governance problems may be unrealistic.

NHRIs are often created with lofty ambitions and therefore seem strong on paper. However, if they are not given adequate financial support they may never become established organizations. Both the amount and consistency of an NHRIs financial support are crucial. Even if an NHRI has exceptional leadership and a broad mandate, it may nevertheless prove ineffective if it cannot hire and support the qualified staff needed to receive and investigate complaints. And as some NGOs have noted, governments may establish NHRIs to quell their critics, with no intention of ever giving the NHRI power to do its job.¹⁸

Even with adequate support, NHRIs face several other potential challenges. In countries without competitive multiparty political systems, an NHRI may lack

16. We assigned equal weight to each of the five evaluation criteria. However, the framework could be easily modified to accommodate unequal weights for the evaluation criteria.

18. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa* (2012) <http://www.hrw.org/legacy/reports/2001/africa/contents.html>, accessed March 1, 2012.

independence from dominant political parties, executive authorities, or the military. NHRIs with narrow mandates may become siloed and marginalized within the government. In contrast, NHRIs with broad mandates may be stretched so thin that they are unable to address all the issues within their mandate with their limited resources. A broad mandate may further strain an NHRIs limited resources and result in inadequate training for NHRI personnel on investigation techniques, conciliation and mediation, case management, and public education.

These difficulties for NHRIs may be especially acute in developing countries or countries with weak political institutions. Within a government that lacks functional checks and balances, NHRIs may be unable to assert their independence or may lack the legitimacy to act authoritatively to resolve human rights issues. In a country in which there is little tradition of governmental transparency, an NHRI may lack the incentive or resources to be transparent about its activities, which can affect its credibility for both national and international audiences. Finally, in countries that face major corruption or other significant governance challenges, these issues might be so severe that they make action on human rights issues untenable.

Range of effectiveness factors

The literature on “effectiveness factors” is a good starting point with which to judge the work of various NHRIs. But, as can be expected, as a consequence of the large structural and functional diversity of NHRIs, the range of effectiveness factors that have been identified is extensive and the terminology to describe similar ideas varies widely. Table 1 below attempts to summarize the factors identified by key scholars and practitioners in this field.

Although there is no consensus around any single factor, scholars and practitioners in the field suggest that the strength of the institution’s mandate and the procedures for selection of its leadership is crucial. There is also agreement that an NHRI must be accessible to the population, and that it should work with civil society organizations. Lastly, most scholars and practitioners highlight the importance of adequate budget resources.

Table 1. Summary of the range of effectiveness factors from literature

Reference	Legitimacy	Predictability	Transparency	Accountability	Accessibility	Integrity of personnel	Strong mandate	All-encompassing jurisdiction	Selection of commissioners	Equitable access to information	Civil society coordination	International links	Political / government support	Treat human rights issues systematically	Clear and strategic plan	Handle complaints speedily and effectively	Adequate budget resources	Human capital resources	Monitor compliance with recommendations
UN, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" ¹⁹	x	x	x		x					x									
Richard Carver, <i>Assessing the Effectiveness of National Human Rights Institutions</i> ²⁰	x		x		x	x	x				x	x		x		x	x		x
Rachel Murray, "National Human Rights Institutions: Criteria and Factors for Assessing Their Effectiveness" ²¹					x	x		X	x		x		x		x		x	x	
Human Rights Watch, <i>Protectors or Pretenders</i> ²²					x		x		x		X						x		
Anne Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing?" ²³	x		x	x			x		x				x				x		
UN Office of the High Commissioner for Human Rights (OHCHR), <i>A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights</i> ²⁴				x	x		x	X	x		X	x	x			x			

19. John Ruggie, UN Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>, accessed March 2012.
20. Richard Carver, *Assessing the Effectiveness of National Human Rights Institutions* (Versoix, Switzerland: International Council on Human Rights Policy, 2005).
21. Rachel Murray, "National Human Rights institutions: Criteria and Factors for Assessing Their Effectiveness," *Netherlands Quarterly of Human Rights* 25, no. 2 (2007):189–220.
22. Human Rights Watch, *Protectors or Pretenders*.
23. Anne Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing?" *Human Rights Quarterly* 28, no. 4 (November 2006): 904–946.
24. Center for Human Rights. *Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*. Professional Training Series 4. Geneva: 1995.

Effectiveness factors in the specific context of extractives

Although all of the effectiveness factors identified are important, some are more crucial for addressing human rights abuses related to the extractive industries than others. In order to prioritize, therefore, it is essential to understand what makes human rights abuses involving the extractive industries different from other types of abuses handled by NHRIs. The following paragraphs discuss the key characteristics of extractive projects that we considered.

Economic, social, and cultural rights

The types of human rights violations at extractive industry sites are more likely to be economic, social, and cultural (ESC) rights violations, as opposed to civil and political human rights violations. In general, ESC rights are not as widely recognized as civil and political rights.

Large scale

Extractive projects require large amounts of land for both their direct and ancillary operations. An open-pit mine most clearly impacts a large surface area. However, underground mines still require vast transportation networks and processing facilities, and offshore oil drilling operations require pipelines, industrial ports, and onshore refining plants. Given the scale of extractive projects, their associated human rights issues can impact entire communities rather than isolated individuals. In addition, these large-scale operations often have significant and hard-to-reverse effects on water quality, agricultural land, and the livelihoods of community members. Thus, these projects entail issues of economic, social, and cultural rights.

Long duration

Extractive projects often last for decades, including exploration, production, closure, and postclosure remediation (where required) phases. Gold mines in certain regions of Ghana have been operating continually for hundreds of years, and capital-intensive, mechanized mining has been taking place for more than 20 years.²⁵ As these projects last for a generation or longer, the culture and lifestyle of the surrounding communities are fundamentally altered by their presence. Except for the case of newly discovered mineral, oil, or gas reserves, many social

25. La Verle Berry, ed., "A Country Study: Ghana," Area Handbook Series (Washington, DC: Library of Congress, 1995), <http://lcweb2.loc.gov/frd/cs/ghtoc.html>, accessed March 1, 2012.

conflicts between communities and companies have a long and contentious history.

Remote location

Extractive projects are often, although not always, located in remote regions. In addition, these remote regions are often inhabited by minority groups, indigenous peoples, or otherwise vulnerable populations. Further, in these remote regions, extractive companies often wield much more power than the local government or extensions of national government.

Lack of accountability

There is often an alignment of interests between a country's political elites and extractive firms involved with major projects. Even when a country has a strong governance framework, this nexus of power may make it difficult for the government to adequately regulate the extractive industry.

Evaluation criteria

In our analysis, we have separated items listed in the effectiveness factor literature into two distinct groups. First are evaluation criteria, which are factors that we can use to evaluate how well an NHRI is able to perform its duties. Second are potential recommendations, which are actions that an NHRI can take that may improve its effectiveness.

The ultimate tests of an NHRI's effectiveness are whether or not it can prevent human rights abuses, or reduce their severity, and provide a just resolution for victims when abuses do occur. However, measuring the causal link between an NHRI's actions and these outcomes poses daunting data collection and interpretation challenges. Therefore, we build on the existing literature on NHRI effectiveness and focus on key intermediate determinants of how well an NHRI prevents, mitigates, and resolves human rights violations.

Given these specific characteristics of the extractive industries, we have identified five evaluation criteria with which we can evaluate the effectiveness of NHRIs faced with the challenge of addressing human rights abuses associated with extractive operations. These criteria are discussed in the following paragraphs.

Independence

Independence refers both to an NHRI's actual independence from political pressure and to the strength of an NHRI's reputation for objectivity and integrity.

- The large-scale and long-term nature of extractive projects means that extractive companies often exert a great amount of power over local and national governments. Therefore, it is essential that an NHRI remain independent of pressures from both companies and government bodies. It is also important that the NHRI is perceived by the public as being independent.
- In remote regions, extractive companies often face minimal oversight from regulators. Thus, it is essential for NHRIs operating in these communities to be and to be perceived to be independent from company power.

Promotion

Promotion encompasses the extent to which an NHRI broadens public understanding of both the state duty to protect human rights and the corporate responsibility to respect human rights in the context of extractive projects.

- NHRIs should work to ensure that individuals are aware of the potential for extractive projects to impact their livelihoods or otherwise violate economic, social, and cultural human rights such as the right to water, the right to health, and the right to housing, among others. NHRIs should work to ensure that individuals are aware that extractive projects may lead to violations of civil and political human rights, including the right to bodily integrity and the right to due process of law.
- NHRIs should also promote business and human rights principles to ensure that both communities and companies understand human rights-related responsibilities of extractive companies before potential violations occur. These responsibilities include the corporate responsibility to respect human rights outlined by the UN Human Rights Council's "Guiding Principles on Business and Human Rights."

Empowerment

Empowerment refers to an NHRI's influence on the effectiveness of local, national, and international actors working to advance extractive industry human rights norms.

- NHRI should be sensitive to the political marginality of many populations that are affected by extractive projects. Through its work, the NHRI should increase awareness about human rights, and it should empower these groups to advocate for their rights.
- Even if an NHRI is not powerful on its own, its work will be enhanced if it is able to empower a broader community of human rights advocates.

Remediation

Remediation refers to the efficiency, robustness, and perceived legitimacy of an NHRI's dispute-resolution process for human rights complaints involving extractive industries. (Or, in the case of NHRI that do not have the power to hear complaints, the degree to which an NHRI promotes access to other dispute-resolution processes.)

- In addition to responding to individual complaints, NHRI should target their actions to address the systemic and large-scale nature of extractive industry human rights impacts. Engaging in proactive investigation can enable NHRI to mitigate and respond to the systemic social and environmental risks posed by extractive projects.
- While pre-emptive investigations are preferable to reactive complaint-handling, the social and environmental impacts of extractive projects can be difficult to anticipate, so the NHRI must also be adept at remediating these abuses once they occur.
- When an NHRI starts to work to address allegations of human rights abuses, it should be sensitive to potential mistrust between the community and company. It should also be able to demonstrate how it is improving the human rights situation, and it should act in a way that is acceptable to both community and company stakeholders.

Power

Power is reflected in the ability of an NHRI to use its formally delegated mandate and authority, as well as its informal influence, to affect the actions of other government agencies and extractive companies.

In addition to remaining independent of corporate and government influence, an NHRI should have and exert its own power in order to be able to respond to the strong and entrenched power of extractive companies.

...

Our literature and case study research indicates that if an NHRI performs well along these five criteria, it is likely to be effective at promoting and protecting human rights abuses associated with extractive industries. However, most NHRIs fall short of these ideals. In the following sections, we describe a range of potential recommendations for NHRIs to improve their effectiveness at handling extractive issues, and we provide examples of effective actions that some NHRIs are currently implementing.

Range of potential recommendations

This section provides an overview of the broad range of potential actions that an NHRI can take to improve its ability to respond to human rights issues associated with extractive industry projects. Oxfam should prioritize among these options in its advocacy work with an NHRI. This prioritization is accomplished through the use of our evaluation framework.

Findings from targeted survey and interviews

The potential recommendations should be evaluated with respect to the business-as-usual scenario of the particular NHRI and the country's social, economic, and political circumstances. (For example, Nigeria's NHRI already has a high level of coordination with domestic civil society and may get a greater benefit from prioritizing recommendations in other categories.)

We surveyed the current practices of NHRIs, with a focus on NHRIs in 27 targeted countries. The targeted list includes countries in Latin America, Africa, and Southeast Asia that have ICC-accredited NHRIs as well as significant extractive industry operations. In addition, to ensure that our analysis is useful for Oxfam, we added three countries that did not meet the preceding criteria but in which Oxfam America has regional offices (see Appendix IV, "Targeted NHRI List and Descriptions"). NHRIs vary widely in terms of how well (if at all) they fulfill the evaluation criteria. From our review of the NHRI literature we have compiled anecdotes that elucidate both good and bad practices. This survey of current practices is not meant to be a comprehensive study of global NHRI practices and does not purport to show "best" and "worst" practices. While we are particularly interested in the ways that NHRIs deal with extractive industries, many of our anecdotes are drawn from other NHRI experiences that could be applied to addressing extractive industry issues. Our surveyed NHRIs are primarily in developing countries, but we included some anecdotes from NHRIs in developed countries. Although it may not be possible for all NHRIs to replicate these developed-country NHRI activities, these activities may serve as models.

We compiled the following potential recommendations after conducting an extensive literature review and interviewing relevant stakeholders. We have focused on the most important potential actions that NHRIs can take. Thus, although we have attempted to make this list as comprehensive as possible, it is not exhaustive.

Categories of recommendations

We have divided the potential recommendations into five broad categories in order to make the long recommendation list more understandable. For each category of recommendations, we describe and categorize the range of potential recommendations, examine the contextual factors that should be considered in order to prioritize the recommendations within each category for a specific NHRI, and highlight current practices of NHRIs that fall within each category.

Accessibility

NHRIs must be accessible to the populations they are supposed to serve. Accessibility involves educating people about human rights and ensuring that the NHRI's staff is adequately trained to meet the population's needs. An NHRI will not be as effective if the public is not aware of the human rights that they enjoy, nor will an NHRI be effective if the public is not aware that it exists to promote and protect these rights. An NHRI's education efforts should be targeted at communities and regions that are vulnerable to extractive industry-related human rights abuses. In particular, these efforts could prioritize the following accessibility strategies:

- Expanding public education efforts in extractive communities;
- Aiding public education efforts being conducted by local civil society groups in extractive communities;
- Maintaining physical offices in or near extractive communities;
- Facilitating remote education by producing written and multimedia education materials;
- Training extractive company managers and employees about business and human rights issues;
- Training NHRI staff on the relevant human rights and how to address them;
- Training NHRI staff on international human rights norms; and
- Training NHRI staff on mediation and conflict resolution.

The specific recommendations that should be prioritized in a given country for the category of accessibility depend on social and cultural factors. In some countries that have high levels of literacy, printed educational materials may be sufficient. However, these printed materials may not reach the populations that are most vulnerable to human rights abuses, and thus, educational materials in other media may be more appropriate. In-person trainings and meetings may be more effective, but these are also more expensive and time-consuming for the NHRI. Extensive and targeted public education and media outreach may be necessary, as rights violations from resource extraction such as water pollution may not be understood as actionable grievances by the individuals who are most affected by resource extraction.

There are a variety of examples of NHRIs taking steps to ensure that individuals know their rights, are able to access the NHRI, and are adequately served by NHRI employees. The NHRI Survey found that many NHRIs have developed informal education materials, including pamphlets, booklets, posters, DVDs, and other promotional materials to educate targeted community groups.²⁶ Mexico's NHRI has produced public service announcements for television on a variety of human rights issues.²⁷ South Africa's NHRI has worked with the South African Broadcasting Corporation radio stations to run public service announcements and short radio "dramas" highlighting human rights issues.²⁸ Also in South Africa, the NHRI is given free advertising in large newspapers to help it reach a wide audience.²⁹ The NHRI in Uzbekistan organizes seminars and trainings on human rights issues targeted at representatives of local communities, farmers, and businesses.³⁰ Canada's NHRI has organized human rights trainings for corporate managers and employees to help avoid and redress human rights problems associated with business operations.³¹ Other NHRIs make themselves accessible through establishing a physical presence in communities. The Nigerian NHRI maintains zonal affiliates in each of the country's six political regions.³² The NHRI in Peru operates 28 offices and 10 satellite sites throughout the country.³³ Namibia's NHRI has implemented an initiative to encourage

26. OHCHR, "Survey on National Human Rights Institutions," 35.

27. Richard Carver, *Performance & Legitimacy: National Human Rights Institutions* (Versoix, Switzerland: International Council on Human Rights Policy, 2004), 95–96.

28. Carver, *Performance & Legitimacy*, 95.

29. Carver, *Performance & Legitimacy*, 80–81.

30. Yann Wyss, *Assessment of the Existing and Potential Role of National Human Rights Institutions in the Field of Business and Human Rights: Results from a Survey Distributed by the Office of the United Nations High Commissioner for Human Rights* (2007).

31. Wyss, *Assessment*.

32. US Department of State, "2010 Country Report on Human Rights Practices: Nigeria," 2011, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154363.htm>, accessed March 1, 2012.

33. US Department of State, "2010 Country Report on Human Rights Practices: Peru," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154516.htm>, accessed March 1, 2012.

women, who have been reluctant to seek help from the NHRI in the past, to use the NHRI's services.³⁴

Most NHRIs, however, could greatly improve their accessibility, particularly for vulnerable groups. The NHRI Survey found that although 98 percent and 95 percent of NHRIs have mandates for human rights education and human rights research, respectively, only 68 percent of the NHRIs implemented these mandates for human rights education and only 79 percent of them implemented these mandates for human rights research. The main reason cited for failing to conduct education and research was a lack of resources and materials.³⁵ Further, although South Africa's NHRI has taken steps to educate the population through radio and television ads, its offices are located in Cape Town and provincial capitals, which are far from many communities affected by extractive operations.³⁶

Communication³⁷

NHRIs should also communicate in a manner that is relevant and accessible to a variety of stakeholders. They should ensure that the public knows what they are doing and can hold them accountable. Different methods of communication will reach different audiences, so the NHRI should be deliberate about which audience it is trying to reach and tailor its communication strategy accordingly. Recommendations for improving an NHRI's communication include the following:

- Developing a systematic communication strategy aimed at a local audience (focused on communities near extractive project sites);
- Developing a systematic communication strategy aimed at a national audience;
- Developing a systematic communication strategy aimed at an international audience;
- Emphasizing controversial human rights issues;
- Creating a database to track and report on individual cases;
- Reporting on broad human rights issues and trends; and
- Utilizing and adapting international business and human rights literature to a local context.

34. Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Leiden, Netherlands: MartinusNuhoff, 2004), 234–236.

35. OHCHR, "Survey on National Human Rights Institutions," 34.

36. Carver, *Performance & Legitimacy*, 85.

37. There is some overlap between our categories of communication and accessibility, but we consider communication to entail the NHRI communicating about its own actions, while accessibility encompasses providing information to the public about human rights issues.

Objective communication will help build an NHRI's reputation for independence, and can prove that it is effectively remediating human rights concerns. It can empower the broader human rights community, and thereby bolster the power of an NHRI vis-à-vis other government institutions. Communication about NHRI operations to domestic stakeholders can also have spillover public education benefits.

NHRIs must proactively reach out to communities affected by extractive projects. These communities often lack resources and political power to protect themselves from the social and environmental costs imposed on them by resource extraction. In the absence of effective regulation and responsiveness from other parts of the government, NHRIs could serve as a crucial counterweight to the power imbalance between communities and project operators. In addition, language and communication barriers such as a lack of Internet access or electricity can complicate this outreach process. NHRIs should therefore tailor their education and communication efforts appropriately to reach communities that are affected by extractive projects.

Some NHRIs have communicated about extractive industry-related human rights issues in their countries. Peru's NHRI has issued a report on the socio-economic conflicts related to extractive activities.³⁸ The Bolivian NHRI reported that 3,800 children worked in mining in the country.³⁹ NHRIs in Kenya, the Philippines, Rwanda, and Northern Ireland publish information about human rights allegations and results of investigations.⁴⁰ The Peruvian NHRI publishes an annual report, and this and other documents are available on its web site.⁴¹ In Colombia, the NHRI allows citizens to access a list of actions it has taken to protect human rights.⁴² In 2010, the NHRI in El Salvador published 14 reports and issued numerous press releases on prominent human rights cases.⁴³ The Canadian NHRI collects data and produces reports on all complaints, including those involving businesses. However, it is not clear whether these reports are available to the public.⁴⁴

38. Defensoria del Pueblo, "Conflictos socioambientales."

39. US Department of State, "2010 Country Reports on Human Rights Practices: Bolivia," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154495.htm>, accessed March 1, 2012.

40. Wyss, *Assessment*.

41. Global Integrity, *Global Integrity Report: Peru—2010*, "Scorecard Category V-1 National Ombudsman," <http://www.globalintegrity.org/report/Peru/2010/scorecard>, accessed March 1, 2012.

42. Global Integrity, *Global Integrity Report: Colombia—2009*, "Scorecard Category V-1 National Ombudsman," <http://report.globalintegrity.org/Colombia/2009/scorecard/69>, accessed March 1, 2012.

43. US Department of State, "2010 Country Report on Human Rights Practices: El Salvador," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154505.htm>, accessed March 1, 2012.

44. Wyss, *Assessment*.

NHRIs could do much to improve their communication. The NHRI Survey asked all respondents to provide data on complaints received in 2008, but few were able to provide such data. The OHCHR concluded that this lack of data reporting “suggests a need for more developed processing and data systems.”⁴⁵ The Mexican NHRI has been criticized for utilizing overly broad confidentiality practices, which prevent it from publicizing the results of its investigations and mediations.⁴⁶ Finally, the Namibian NHRI issues reports, but they are only available in English and not the country’s local languages.⁴⁷

Coordination

NHRIs, where appropriate, should coordinate with relevant stakeholders such as local and national civil society organizations, companies, and other government agencies. Internationally, it may be beneficial for an NHRI to coordinate with international human rights institutions or other NHRIs facing similar extractive industry-related human rights issues. Thus, the NHRI must prioritize among a broad range of stakeholders:

- Domestic civil society organizations
- International civil society organizations
- Extractive companies
- International Coordinating Committee of NHRIs
- Peer extractive NHRIs
- Legislative branches of government
- Government agencies (e.g., environmental protection agencies, minerals commissions, or energy commissions)

Coordinating with domestic stakeholders can amplify an NHRI’s ability to promote human rights and can empower a broader human rights community in a country.

An NHRI should consider the reputational issues involved with coordinating with domestic and international stakeholders. If it coordinates with a powerful government agency, it must be sure to maintain its independence and not be dominated by its partner. Some challenges associated with coordinating with government agencies include a lack of appreciation for human rights issues by

45. OHCHR, “Survey on National Human Rights Institutions,” 27.

46. Human Rights Watch, *Mexico’s National Human Rights Commission: A Critical Assessment* 20, no. 1(B) (2008): 5.

47. Global Integrity, *Global Integrity Report: Namibia—2007*, “Scorecard Category V-1 National Ombudsman,” <http://report.globalintegrity.org/Namibia/2007/scorecard/71>, accessed March 1, 2012.

government agencies, the need to balance cooperation and independence, and the need to manage and address areas of overlapping responsibilities.⁴⁸

The extent to which an NHRI should coordinate with local civil society depends on the domestic political situation in the NHRI's country. Obiora Chinedu Okafor, a human rights lawyer, suggests the following: "The less democratic the governance framework within which a given NHRI must operate, the greater necessity there appears for that NHRI to be open to the possibility of being utilized more as a resource deployed by civil society agents and less as an institution that acts 'autonomously' for civil society or the general population."⁴⁹ Yet, there are many challenges associated with increasing coordination with civil society, including a lack of capacity in the NGO sector, perceptions by NHRIs that NGOs are political or ideological, and perceptions by NGOs that NHRIs are controlled by the government.⁵⁰

NHRIs could benefit by coordinating their actions with both domestic and international stakeholders. Monitoring the environmental and human rights impacts of extractive projects is resource- and time-intensive. Financially constrained NHRIs may therefore benefit from collaboration with other regulatory agencies or NGOs that have monitoring capacity and expertise, such as environmental protection agencies. Within the government, NHRIs may be able to pre-empt potential human rights violations by engaging with oil, gas, and mining regulatory agencies in the extractive project approval process in an advisory role to identify and potentially mitigate human rights risks. Finally, collaboration with other NHRIs through information sharing, peer review, or informal consultative relationships can help ground an NHRI's work in international human rights norms. These relationships can also provide additional credibility when dealing with companies or domestic regulatory agencies by providing informal international backing to an NHRI's decisions.⁵¹ These coordination efforts need to be undertaken in a manner appropriate to an NHRI's resources and the capacity of its civil society sector and peer agencies. However, they could potentially yield a significant net increase in an NHRI's effectiveness at addressing extractive industry-related issues over time.

A number of NHRIs actively coordinate with civil society. A high level of coordination exists between human rights NGOs and the NHRI in Nigeria. By

48. OHCHR, "Survey on National Human Rights Institutions," 38.

49. Obiora Chinedu Okafor, "National Human Rights Institutions in Anglophone Africa: Legalism, Popular Agency, and the 'Voices of Suffering,'" in *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, eds. Ryan Goodman and Thomas Pegram (New York: Cambridge University Press, 2012), 149.

50. OHCHR, "Survey on National Human Rights Institutions," 36.

51. OHCHR, "Survey on National Human Rights Institutions," 40.

working with the NHRI, NGOs have had more freedom to conduct their advocacy work. In turn, by working with NGOs, the NHRI has gained credibility with domestic and international observers.⁵² El Salvador's NHRI has also worked closely with NGOs, specifically in educational programs to combat violence against women.⁵³ NGOs in Mexico play an active role in highlighting instances where government institutions fail to comply with the recommendations of the country's NHRI.⁵⁴ In Timor-Leste, a network of NGOs called the Human Rights Monitoring Network cooperates with the national NHRI.⁵⁵ South Africa's NHRI has also cooperated with local NGOs and community leaders, and presents itself as a resource for these NGOs to use as they advocate for human rights.⁵⁶

In their efforts to implement business and human rights standards, some NHRIs have coordinated their activities with businesses. Kenya's NHRI has participated in the development of ISO 26000, an international standard that provides guidance on how businesses and organizations can operate in a socially responsible way, and it has worked with the UN Global Compact to develop a self-assessment tool and human rights codes for salt mining companies.⁵⁷ The NHRI in Denmark has worked with business to develop and implement human rights standards.⁵⁸

There may also be benefits to coordinating with state institutions and national government actors. The NHRI in Peru coordinates with the ministry of health when it conducts investigations in which environmental or public health studies are needed.⁵⁹ Mexico's NHRI has established a coordination committee, as required by its mandate, which is composed of members of the executive branch of government, legislature, judiciary, and civil society.⁶⁰

Finally, some NHRIs have established formal mechanisms for coordinating with the international human rights community. The NHRI in Sierra Leone has created a working group in the OHCHR to coordinate its response to human rights abuses.⁶¹

52. Carver, *Performance & Legitimacy*, 97; Okafor, "National Human Rights Institutions," 136–137.

53. US Department of State, "El Salvador."

54. US Department of State, "2010 Country Report on Human Rights Practices: Mexico," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154512.htm>, accessed March 1, 2012.

55. US Department of State, "2010 Country Report on Human Rights Practices: Timor-Leste," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154404.htm>, accessed March 1, 2012.

56. Okafor, "National Human Rights Institutions," 134–135.

57. Wyss, *Assessment*.

58. Danish Institute for Human Rights web site, <http://www.humanrightsbusiness.org>, accessed March 1, 2012.

59. Wyss, *Assessment*.

60. OHCHR, "Survey on National Human Rights Institutions," 37.

61. US Department of State, "2010 Country Report on Human Rights Practices: Sierra Leone," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154368.htm>, accessed March 1, 2012.

Mandate

This set of recommendations involves a formal revision of or amendment to the mandate of the NHRI. Depending on the country, mandates need to be changed through an amendment of the constitution, legislative action, or executive decree. Thus, changing an institution's formal mandate can be a slow and onerous process. In different countries, it may be more or less feasible for civil society organizations to play a role in this revision process, either through a formal comment and consultation process or through external advocacy and pressure.

A strong mandate gives an NHRI formal authority to carry out its work. However, a strong mandate, in and of itself, is not enough to ensure that an NHRI is effective; there are cases of NHRIs having strong mandates on paper, but being ineffective in practice. Potential mandate revisions include the following:

- Strengthening the formal independence of executive leadership of the NHRI;
- Strengthening budget independence;
- Explicitly including human rights abuses involving corporations;
- Enhancing enforcement power;
- Broadening the mandate (for NHRIs with a mandate over a small set of human rights areas);
- Expanding the mandate to include a complaint-handling capacity;
- Expanding the mandate to include human rights education, information, and awareness-raising campaigns;
- Expanding the mandate to include unilateral investigatory powers; and
- Expanding the mandate for broader investigative powers including access to information and the ability to issue subpoenas and summon witnesses.⁶²

A strong and explicit mandate is often a necessary prerequisite for an independent and powerful NHRI, and certain mandate revisions can also help an NHRI to better empower domestic civil society organizations that work on human rights issues and to better remediate human rights abuses. However, all recommendations regarding an NHRI's mandate come with a caveat: if the changes are made on paper but not implemented or funded, they will not be effective. There are many examples of NHRIs not having the resources or ability to carry out their current mandates. Thus, expanding and strengthening a mandate can be helpful, but may not be effective in all circumstances.

62. OHCHR, "Survey on National Human Rights Institutions," 26.

There are also potential dangers connected to the expansion and strengthening of an NHRI's mandate. There may be a tradeoff between the moral and persuasive "soft power" that an NHRI is able to wield and its coercive and binding enforcement authority, or "hard power." If an NHRI is given more enforcement and quasi-judicial authority, the character of the institution and its public reputation may be fundamentally altered. The NHRI may lose support from some segments of society if it begins to act more like a law court or a policing office. For NHRIs that already enjoy a large amount of public confidence, like Ghana's CHRAJ, it may be unwise to take this risk. But, for NHRIs that have weaker reputations, this risk may be more worthwhile.⁶³

The Namibian NHRI has a unique mandate that includes powers to investigate human rights abuses, including abuses by corporations. Among other things, it can investigate claims about the overutilization of natural resources, irrational exploitation of nonrenewable resources, the degradation and destruction of ecosystems, and the failure to protect the beauty and character of the country.⁶⁴

Several countries have NHRIs with formal mandates to handle complaints made against private companies; these countries include Chad, Egypt, Ghana, Kenya, Namibia, Nepal, Nigeria, and Paraguay.⁶⁵ Other NHRIs are formally restricted to dealing with companies that are providing public services, including NHRIs in Bolivia, Colombia, Mexico, Peru, South Africa, and Togo. Nigeria and Peru have mandates to provide remedies to victims through unilateral recommendations. Kenya, Niger, and Paraguay have NHRIs that are mandated to conduct follow-up on-site visits to ensure that their recommendations have been implemented. The NHRIs in Canada, Kenya, Niger, the Philippines, Rwanda, and Togo also have the ability to go to court to enforce their decisions.⁶⁶

Despite these examples, there are NHRIs that may not have strong enough mandates to ensure the promotion and protection of the human rights of individuals affected by extractive projects. Some NHRIs, like those in Senegal and Zambia, do not have a formal mandate to handle complaints against nonstate actors.⁶⁷ The NHRI in Bolivia has handled complaints related to the right to health. However, although it is commendable that the Bolivian NHRI has branched out to this new area, this task is not included in its formal mandate, so

63. Ghana Commission on Human Rights and Administrative Justice (CHRAJ), Names of interviewees are provided in Appendix I, "Methodology."

64. Reif, *Ombudsman*, 234-236.

65. Wyss, *Assessment*; Caroline Rees. "Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps" (Corporate Social Responsibility Initiative Working Paper 40, Kennedy School of Government, Harvard University, Cambridge, MA, 2008), 40.

66. Wyss, *Assessment*.

67. Wyss, *Assessment*.

there is a danger that this policy could be reversed in the future once the NHRI's leadership changes.⁶⁸

In many countries, NHRIs are not granted formal independence in their mandates. For example, in Guatemala, the Guatemalan Congress sets the budget allocation for the NHRI each year.⁶⁹ Mexico's NHRI has also been cited as being influenced by public criticism or praise from the government, and political parties play a significant role in the appointment of the commissioner.⁷⁰ The president of Tanzania can order the NHRI to begin or cease investigations.⁷¹

Resources

An NHRI should have adequate resources to fulfill its mandate; however, most NHRIs are severely and perpetually underfunded. NHRIs have the following options for increasing financial resources:

- Advocate for more financial resources domestically; and
- Advocate for more financial resources from international donors.

NHRIs face a circular dilemma: they must prove that they are effective in order to be allocated a larger budget, but they cannot take actions to become more independent without a larger budget allocation. When we discuss *how* Ghana's CHRAJ can implement the recommendations we propose, we will come back to this issue and propose strategies for resolving this dilemma. It must also be noted that advocating for an increased budgetary allocation is distinct from advocating for more budget independence (see the section on mandate). An increased budgetary allocation may come with strings that hinder an NHRI's independence, and an independent budget source may still be inadequate to meet an NHRI's operational needs.

NHRIs should assess whether it is feasible to ask for more money from the national budget. In governments that receive significant tax revenues from the extractive industries, NHRIs may be able to make the case that they should receive some of this money to promote and protect human rights surrounding these projects. This argument may be a stretch, however, as other uses of tax

68. International Council on Human Rights Policy, *Local Government and Human Rights: Doing Good Service* (Versoix, Switzerland: International Council on Human Rights Policy, 2005), 78.

69. Global Integrity, *Global Integrity Report: Guatemala—2010*, "Scorecard Category V-1 National Ombudsman," <http://www.globalintegrity.org/report/Guatemala/2010/scorecard>, accessed March 1, 2012.

70. Global Integrity, *Global Integrity Report: Mexico—2009*, "Scorecard Category V-1 National Ombudsman," <http://report.globalintegrity.org/Mexico/2009/scorecard/69>, accessed March 1, 2012.

71. Global Integrity, *Global Integrity Report: Tanzania—2010*, "Scorecard Category V-1 National Ombudsman," <http://www.globalintegrity.org/report/Tanzania/2010/scorecard>, accessed March 1, 2012.

revenues from extractive projects might seem to be more pressing. NHRIs should also assess the potential impacts of accepting international donor money. On the one hand, international funding may make the NHRI more independent of national political pressures. But, depending on domestic attitudes about international organizations, international funding may diminish the NHRI's public reputation.

The NHRI in Mexico had a budget of approximately \$73 million in 2007, which is one of the largest budgets of an NHRI in the Americas.⁷² Mexico, which already has significant financial resources, should re-evaluate the best ways to use these resources, rather than advocating for more. The NHRI in Tanzania, in contrast, which is severely underfunded, may need to prioritize advocating for more resources. It has also been reported that the NHRI in El Salvador has "adequate resources," but this claim should be investigated further.⁷³

The secondary literature has suggested that most NHRIs are significantly underfunded (including those in Burkina Faso, Ghana, Guatemala, Nigeria, Nigeria, South Africa, Tanzania, and Zambia). The NHRI in Tanzania is almost entirely dependent on donor funding from the UN Development Programme (UNDP) and the Danish International Development Agency (DANIDA) for operating expenses.⁷⁴

Like mandate revisions, increased budgets are not guaranteed to solve an NHRI's problems. For example, although Mexico's NHRI has significant resources, critics have claimed that it has still been ineffective at "securing remedies and promoting reforms to improve Mexico's dismal human rights record."⁷⁵

...

In this section, we explored *what* NHRIs can do and have done to enhance their effectiveness. In the next section we provide context for the case study of Ghana's CHRAJ. And following this discussion, we provide an example of *how* to prioritize these potential recommendations and *how* an NHRI may be able to implement the chosen recommendations.

72. Human Rights Watch, *Mexico's National Human Rights Commission*, 1.

73. US Department of State, "El Salvador."

74. Global Integrity, *Tanzania—2010*.

75. Human Rights Watch, *Mexico's National Human Rights Commission*, 1.

Ghana's CHRAJ: A case study of an NHRI in extractive issues

As the preceding sections have outlined, NHRIs in countries with significant extractive operations vary widely in terms of their structure and function. Accordingly, two NHRIs that both adequately address extractive industry human rights issues in their respective countries might look and operate very differently. Country context matters for NHRIs, and the remaining sections of this report apply the evaluation framework to a specific NHRI, Ghana's CHRAJ. Based on an in-depth case study of CHRAJ discussed in this section, we evaluate CHRAJ's strengths and weaknesses and recommend actions to improve its effectiveness at resolving human rights controversies related to Ghana's extractive projects.

Putting theory into practice: Ghana's NHRI

Ghana's CHRAJ has been deeply involved in disputes between the country's mining industry and communities affected by mine projects. As a well-established NHRI with robust power to investigate both public sector and private sector actors, CHRAJ serves as an illustrative example of both the strengths and shortcomings of these institutions as mechanisms for resolving extractive industry-related social conflicts. Among NHRIs, CHRAJ is noteworthy both for its broad mandate and its hard-earned reputation for independence. With a nationwide network of district and regional offices, CHRAJ has served as a useful dispute-resolution option for Ghanaian citizens who seek redress for public or private injustices.

Although CHRAJ has cultivated a strong reputation as an objective and independent authority on human rights and corruption issues in Ghana, its track record on mining issues has been mixed. Our research and interviews revealed that CHRAJ's extensive work on mining industry issues has yielded few tangible results to date. CHRAJ has proactively investigated human rights and environmental complaints against mining companies, releasing a major report on the issue in 2008. However, the follow-up to this report by CHRAJ, civil society organizations, and government agencies has yet to result in significant reforms or redress for many victims of alleged wrongdoing highlighted in the report. CHRAJ's efforts to address mining issues have been hampered by a lack of

visibility, leverage, and resources necessary to address the contentious human rights and environmental conflicts involved with the extractive industries.

CHRAJ in context: History, structure, and accomplishments

CHRAJ was created in 1992, but Ghana has had similar government accountability institutions since the 1960s. After overthrowing Ghana's first independent postcolonial government led by Kwame Nkrumah in 1966, the National Liberation Council regime empowered an "Expediting Committee" to receive and investigate complaints against public officials.⁷⁶ In 1979, Ghana's third constitution formalized this investigatory role by mandating the establishment of an ombudsman office with the power to "investigate, criticise and recommend corrective actions" related to complaints of wrongdoing or injustice by government agencies.⁷⁷ While the ombudsman was granted wide-ranging investigatory powers, the office did not have the power to enforce its decisions either directly or through referral to the courts. Owing to this lack of enforcement power, chronic underfunding, and frequent noncompliance with the ombudsman's rulings by government agencies, CHRAJ's predecessor agencies fell short of their goal of improving the responsiveness of Ghana's government.⁷⁸

As part of Ghana's transition to democracy in 1992, Ghana's fourth constitution created CHRAJ and vested it with wide-ranging powers of investigation and enforcement. In contrast to its predecessor agencies, which could only investigate wrongdoing by the government, CHRAJ has the authority to investigate violations of Ghana's constitution as well as "violations of fundamental human rights and freedoms" by government officials, individuals, and private enterprises.⁷⁹ The commission was also granted the authority to refer its recommendations to the judicial system for enforcement if they are not implemented within three months of a ruling by CHRAJ on a complaint. To encourage accessibility for all citizens, CHRAJ's offices are geographically decentralized, with district and regional offices throughout the country. Complaints or grievances can be brought to CHRAJ without retaining a lawyer, and the commission typically handles complaints through investigations,

76. Sam K. Asibuo, "The Role of the Commission on Human Rights and Administrative Justice (CHRAJ) in Promoting Public Service Accountability Under Ghana's Fourth Republic," *African Administrative Studies* 58 (2002): 3–4.

77. Asibuo, "Role of the Commission," 4.

78. Asibuo, "Role of the Commission," 5–7.

79. Asibuo, "Role of the Commission," 7.

referrals to agencies, mediation, or nonbinding recommendations. In 2010, CHRAJ handled 12,900 complaints on issues ranging from government corruption to access to antiretroviral drugs for individuals living with HIV in poor, rural regions, to corporal punishment practices in schools.⁸⁰ Finally, CHRAJ conducts extensive education and outreach as part of its mandate to increase awareness of human rights issues in Ghana.⁸¹

CHRAJ is led by a commissioner and deputy commissioners who are appointed by Ghana's president. Appointees have security of tenure until age 70 for commissioners and age 65 for deputy commissioners.⁸² This arrangement was intended to safeguard the independence of the commission by shielding its commissioner from political retaliation for potentially controversial actions. CHRAJ's previous commissioners have cultivated a reputation for independence and assertiveness, as exemplified by Commissioner Emile Short's high-profile fraud investigation in 2006 that implicated high-level executive branch officials and led to their resignation.⁸³ In this and other controversial cases, the courts have upheld CHRAJ's nonbinding recommendations in the face of administrative defiance, thus solidifying the commission's power as an independent and potent force for accountability within the government. Despite this well-protected independence, CHRAJ has rarely sought overt confrontation with executive agencies or high-profile private enterprises.

Under the leadership of Short and, more recently, Anna Bossman, CHRAJ's interim commissioner who stepped down in 2011, the commission has established a reputation as an objective, independent, and reasonably accessible resource for Ghanaian citizens. While CHRAJ has demonstrated its ability to challenge the executive up to a point, it has proven most adept at resolving low-level disputes, grievances, and instances of misconduct for citizens who lack the time or resources to pursue legal action. The commission also remains chronically underresourced, short-staffed, and unable to retain top employees, who often depart to better-paying positions at other government agencies.⁸⁴

CHRAJ recently completed a leadership transition from interim commissioner Bossman to its new commissioner, Laretta Lamptey. The year 2012 was an

80. Ghana Commission on Human Rights and Administrative Justice (CHRAJ), "Highlights of the 2011 CHRAJ Report on the State of Human Rights in Ghana" (December 9, 2011), 7, 10, 21.

81. Asibuo, "Role of the Commission," 8, 15.

82. Constitution of the Republic of Ghana, ch. 18, art. 221–225, and ch. 12, art. 146.

83. Anna Bossman, "Promoting and Protecting Human Right, Ensuring Administrative Justice and Fighting Corruption in Ghana" (paper presented at the Commonwealth Conference of National Human Rights Institutions, London, February 26–28, 2008), 10, http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/783FC49E-D904-4AC4-BD55-785E4EF00E0C_GHANA.pdf.

84. Asibuo, "Role of the Commission," 6.

election year in Ghana, so Lamptey was not expected to introduce major reforms or new initiatives early in her tenure.⁸⁵ However, the commission is currently involved with a range of complaints and disputes involving Ghana's mining industry. According to CHRAJ's leadership and NGO interviewees, CHRAJ may soon face disputes involving the environmental and social impacts of offshore oil and gas operations in the country's recently developed Jubilee field.⁸⁶

Ghana's mining industry: Environmental and social impacts

Gold mining has been a major part of Ghana's economy for centuries. Prior to its independence in 1957, the country was called "the Gold Coast" owing to its rich gold deposits. Today, mining remains a core economic engine for the country, accounting for approximately 5.5 percent of the country's GDP and 35 percent of its foreign exchange earnings.⁸⁷ The country's major surface and subsurface gold mines were formerly state-run, but are now operated by major international gold mining companies such as AngloGold Ashanti, Newmont, and Gold Fields. Although some of these operations have been developed during the past few years, such as Newmont's Ahafo mine, others have been operational for decades, such as AngloGold Ashanti's Obuasi mine, which has been the site of large-scale mining since the 1890s.

As a consequence of the significant environmental and social disruption associated with mining, the industry has been involved in a long-standing pattern of disputes with communities near mining operations. The development or expansion of open-pit surface mines typically requires the relocation of villages near mining sites. Land tenure laws in Ghana are such that although local residents can own the land's surface, the government controls the subsurface mineral reserves. This arrangement is further complicated by overlapping systems of control over land tenure, whereby in many communities, local chiefs have a significant degree of control over land rights. Thus, the land rights of individuals whose home or farm is located on a future mine site are often highly circumscribed.⁸⁸ Some companies do conduct extensive community

85. CHRAJ, interview.

86. CHRAJ, interview; Wassa Association of Communities Affected by Mining (WACAM), interview with the authors, January 8, 2012.

87. David Nguyen-Thanh and Maya Schnell, "Reviewing Half a Decade of EITI Implementation in Ghana's Mining Sector: Achievements, Challenges and What Can Be Learned from It," GEITI, Ghana Extractive Industries Transparency Initiative (April 3, 2009), 2, http://www.geiti.gov.gh/downloads/gheiti_mining_040309.pdf, accessed March 1, 2012.

88. University of Texas School of Law Human Rights Clinic, "The Cost of Gold: Communities Affected by Mining in the Tarkwa Region of Ghana," June 2010, http://www.utexas.edu/law/clinics/humanrights/docs/Ghana_report.pdf, accessed March 1, 2012.

engagement and seek to consult communities prior to relocation, and occupants are legally entitled to compensation for the loss of crops or buildings. Nevertheless, companies and government agencies have not fulfilled the standard of respecting the free, prior, and informed consent of affected communities.⁸⁹ Relocation therefore has led to bitter disputes between companies and communities over a lack of consultation, insufficient compensation, or a lack of water or employment at resettlement sites.⁹⁰

The cumulative environmental impacts of gold mining in Ghana from decades of surface mining have significantly degraded ecosystems near mine sites. To extract gold from excavated ore, gold mines use large quantities of cyanide, which can spill or leach into groundwater in the absence of careful containment and environmental management systems. The mining process can also cause groundwater contamination from mine tailings, which can potentially leach heavy metal-laced acidic runoff into streams and underground water sources. Mining activities can also cause more immediate environmental damage through dust and noise pollution resulting from blasting and rock crushing. In some instances, CHRAJ has documented extensive structural damage to buildings from blasting at nearby mine sites.⁹¹

Finally, police and security forces at mine sites have used violent tactics to respond to illegal artisanal mining on company land and community protests against perceived abuses by mining companies. Small-scale mining (colloquially known as *galamsey*) has frequently taken place on mining company property, and both mine security forces and police have used extremely aggressive tactics to deter illegal miners. As described by a 2008 CHRAJ report on the mining industry, security forces used dogs to attack and kill *galamsey* miners in one instance, and have shot and killed other trespassers on company land.⁹² Representatives of mining companies, police officials, and community members have noted that individuals involved with illegal mining operations have also attacked mine employees and security forces in the past.⁹³ Police have also responded violently to nonviolent community protests against mining companies, deepening the long-standing mistrust of mining operations in mine-affected communities.⁹⁴ The *galamsey* mining issue is further complicated by the fact that illegal miners often use mercury to separate gold from the surrounding

89. Ghana Commission on Human Rights and Administrative Justice (CHRAJ), *The State of Human Rights in Mining Communities in Ghana* (2008), 22, 37, 42; NGOs in Ghana, interview with the authors, January 8–16, 2012.

90. NGOs in Ghana, interview.

91. CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 36, 41, 45, 48, 51.

92. CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 36–37, 85–86.

93. CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 70, 85; CHRAJ, interview; Ghana Chamber of Mines, interview with the authors, January 16, 2012.

94. NGOs in Ghana, interview.

rock, a practice that is extremely damaging to the environment and has been abandoned by major mining companies in favor of less-damaging techniques.

Despite these serious social and environmental consequences of mining, the operations do provide some economic and social benefits to communities. At major mine projects, operators in Ghana have built improved roads, provided electrical services, and built schools and other infrastructure in multiple communities near mining concessions.⁹⁵ Owing to the capital-intensive nature of surface mining, however, mine projects have not created plentiful employment opportunities for local communities. Jobs at mine sites also typically require significant education or technical skills, which community members often do not possess. Some mine operators have attempted to develop local businesses by purchasing food and other supplies for the mine locally.⁹⁶ However, unemployment in mining communities remains a pressing problem, and galamsey miners trespassing on mine company property are often unable to find other means to generate income.⁹⁷

On balance, although communities in Ghana near mine sites have borne extensive social and environmental costs, they have received few benefits, especially when compared with the immense value of gold extracted and processed by mine operations. And although some major mining companies have overhauled and improved their environmental management and community engagement practices in recent years, the cumulative impact of decades of unresolved grievances has contributed to ongoing hostility and mistrust between mining companies and the communities in which they operate.

CHRAJ's role in addressing social conflict

Although CHRAJ has been deeply involved in addressing mining-related complaints, it is only one of several government agencies involved in the mining regulatory process. Ghana has a patchwork of regulatory bodies governing the extractive industries, creating several parallel enforcement channels for social and environmental issues associated with mining operations. Ghana's Minerals Commission is responsible for granting and overseeing mining leases. These leases require an environmental impact assessment, which must be approved by

95. AngloGold Ashanti, interview with the authors, January 10, 2012; CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 23, 40, 97.

96. Senior-level extractive industries community affairs executive, interview with the authors, December 8, 2011.

97. Ray Bush, "Soon There Will Be No-One Left to Take the Corpses to the Morgue: Accumulation and Abjection in Ghana's Mining Communities," *Resources Policy* 34 (2009): 57, 59–62; CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 22.

Ghana's Environmental Protection Agency (EPA). The EPA is also responsible for overseeing environmental management practices and environmental impacts at mines on an ongoing basis. Like CHRAJ, the EPA faces severe funding and resource constraints. Owing in part to this lack of capacity, Ghana's EPA has been criticized by several NGOs for failing to proactively monitor and address critical environmental problems at mine sites.⁹⁸

In addition to the formal oversight authority of these agencies and the complaint-handling mandate of CHRAJ, major mining companies also operate parallel internal grievance mechanisms for addressing community complaints. Although the details of these mechanisms vary from company to company, they typically function as a first option for complaints, which are occasionally brought to CHRAJ if a complainant is unsatisfied with the outcome of the internal grievance resolution process.⁹⁹ Finally, some NGOs have filed lawsuits on behalf of communities against mining companies, alleging environmental damage and human rights violations. The legal system provides a much more visible platform for NGOs seeking to raise the profile of community grievances related to mining, particularly in comparison to the lower-profile nature of a CHRAJ complaint or investigation. However, these legal remedies are much slower and more expensive than taking complaints to CHRAJ, as mining companies have successfully used delaying tactics to drag out lawsuits for up to a decade.¹⁰⁰

Although CHRAJ has handled mining-related complaints since its inception, CHRAJ's involvement in mining issues has deepened during the past decade. In 2008, CHRAJ released a report, *The State of Human Rights in Mining Communities in Ghana*, which synthesized years of field research on the social and environmental impacts of mining operations in the country. The report was the first major stand-alone research project conducted by CHRAJ, and it was prompted by both the volume of mining-related complaints received by the commission and the years of awareness raising by civil society organizations. These organizations included the Wassa Association of Communities Affected by Mining (WACAM), a community-based NGO led by advocates from mining communities in western Ghana. In addition, the Third World Network, a global organization that focuses on social justice advocacy, pushed for more systematic involvement of CHRAJ in mining issues through its Ghanaian affiliate, the

98. NGOs in Ghana, interview. Several of the NGOs interviewed expressed criticism of the EPA's effectiveness at regulating the environmental impacts of the mining industry.

99. AngloGold Ashanti, interview; CHRAJ, interview; Golden Star Resources, interview with the authors, January 27, 2012.

100. Center for Public Interest Law (CEPIL), interview with the authors, January 16, 2012; WACAM, interview with the authors, January 8, 2012.

National Coalition on Mining, a coordinating organization of NGOs active on mining issues in Ghana.¹⁰¹

Faced with this pattern of mining-related complaints and public pressure from NGOs, CHRAJ decided to conduct a pilot study of human rights issues involving the mining industry in the western region.¹⁰² Based on the evidence from this study and using funding from the UN Development Programme and other development agencies, CHRAJ undertook a multiyear study of human rights allegations against mining companies at several major mining operations. The study involved field interviews at affected communities as well as water quality sampling near mining operations. CHRAJ received assistance from civil society organizations in arranging interviews and research visits.¹⁰³ The report documented allegations of extensive environmental damage, abuses by security forces, and rights violations related to the resettlement of communities.¹⁰⁴ In addition to documenting these allegations and identifying patterns of human rights violations by mining companies, the report called for reforms to Ghana's 2006 Minerals and Mining Act to strengthen protections for inhabitants of mining regions as well as a broader assessment of the overall costs and benefits of the mining industry for Ghanaian society.¹⁰⁵

CHRAJ since 2008: Outcomes of the mining report

CHRAJ's 2008 report has yielded a number of outcomes including raising the profile of community grievances against mining companies throughout Ghana. In particular, it provided documentation and legitimacy for long-standing human rights and environmental allegations against mining companies and laid the groundwork for legal action by WACAM and other advocacy groups against mining companies.¹⁰⁶ But, in part because mining companies were not given the opportunity to respond to the report's findings, multiple companies identified in the report have characterized its research as one-sided and inadequately researched.¹⁰⁷ Companies praised CHRAJ's work as a complaint-handling body, but suggested that it should avoid large-scale investigations in the future.¹⁰⁸

101. National Coalition on Mining (NCOM), interview with the authors, January 9, 2012.

102. CHRAJ, interview.

103. NCOM, interview.

104. CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 23, 40, 97.

105. CHRAJ, *State of Human Rights in Mining Communities in Ghana*, 192–194.

106. WACAM, interview.

107. Senior-level extractive industries community affairs executive, interview; mining industry representatives in Ghana, interview with the authors, January 8–16, 2012.

108. Mining industry representatives, interview.

After the report's initial release, CHRAJ claimed that it stayed in contact with NGOs regarding mining issues, but multiple high-profile NGOs involved with mining issues could not recall specific outreach or follow-up work conducted by CHRAJ since 2008.¹⁰⁹ While a few of these NGOs noted that mining companies had become more cooperative with civil society organizations in recent years, neither advocates nor companies linked this change of tone to the report's release.¹¹⁰ The policy reforms recommended by CHRAJ in the report have not yet been implemented. However, CHRAJ noted that it was involved with a multi-agency committee that would release recommended legislative reforms related to mining later in 2012.¹¹¹ Finally, the status of the specific mining-related complaints that prompted CHRAJ's investigation have not been disclosed. Although CHRAJ noted that it produced the report in order to handle complaints in a systematic manner, it remains unclear whether many of the individual complainants have actually received redress or compensation as a result of the report.¹¹²

CHRAJ's work on mining industry-related issues will continue for the foreseeable future, and now, with the recent development of Ghana's offshore oil discoveries, CHRAJ may face a new set of social and environmental controversies related to oil and gas production. The country's Jubilee field off the coast of the western port of Takoradi was discovered in June 2007, and its recoverable reserves are estimated to be three billion barrels.¹¹³ The field started producing oil in December 2010.¹¹⁴ In interviews, NGOs raised concerns about the oil industry's impact on the fishing industry as well as its potential environmental impacts on marine life and air quality.¹¹⁵

Fishermen claim that they have been barred from coming within 500 meters of oil platforms, but as a consequence of the 24-hour lighting on oil rigs, fish have reportedly been lured into this prohibited zone, resulting in confrontations between oil companies and trespassing fishermen.¹¹⁶ NGOs have reported unprecedented whale beachings along the coastline near offshore oil rigs.¹¹⁷ They have also identified gas flaring at rigs in violation of the no-flaring pledge of

109. WACAM, interview with the authors, January 8, 2012; NCOM, interview with the authors, January 9, 2012.

110. NGOs in Ghana, interview.

111. CHRAJ, interview.

112. NGOs in Ghana, interview; CHRAJ, interview.

113. "Ghana Oil Begins Pumping for First Time," *BBC News*, December 15, 2010, <http://www.bbc.co.uk/news/world-africa-11996983>, accessed March 1, 2012.

114. "Ghana Oil Begins Pumping for First Time."

115. WACAM, interview.

116. NGOs in Ghana, interview.

117. WACAM, interview.

major oil operators.¹¹⁸ Finally, a planned onshore natural gas processing facility led to concerns that nearby villages would need to be relocated.¹¹⁹ CHRAJ noted that it was monitoring the oil and gas industry closely but had not conducted formal investigations owing in part to a lack of formal complaints filed on oil and gas issues. However, the commission planned to establish an oil and gas desk, which will likely focus on issues of corruption but may also address human rights or environmental complaints in the future.¹²⁰

...

As this case study of CHRAJ illustrates, the strengths and weaknesses of an NHRI in its work with extractive industry issues are the product not only of its formal mandate and policies, but also of the institutional and economic context in which it operates. For example, CHRAJ's overall reputation for independence has been shaped by the bold actions of its past commissioners on a range of controversial human rights and government accountability issues. But in the context of extractive industry-related human right issues, CHRAJ's reputation has been bolstered by comparative unresponsiveness of other government agencies and the judiciary to the grievances of communities affected by mining operations.

With these factors in mind, the following assessment of CHRAJ's strengths and weaknesses at handling extractive industry human rights issues evaluates CHRAJ's structure, mandate, and the broader context within which it operates. We then assess the strengths and weaknesses of CHRAJ and highlight lessons other countries can learn from its experience. We apply the evaluation framework to provide recommendations for CHRAJ to increase its effectiveness at addressing extractive industry human rights issues.

118. NGOs in Ghana, interview with the authors, January 8–16, 2012.

119. J. Ato Kobbie, "Western Chiefs Endorse Gas Project Amidst Jomoro Youth Protest," *Business Analyst* (Ghana), February 29, 2012, <http://www.modernghana.com/newstthread1/380889/7/>, accessed March 1, 2012.

120. CHRAJ, interview.

Evaluating the effectiveness of Ghana's CHRAJ

This section draws on details from the case study of Ghana's CHRAJ to evaluate the effectiveness of CHRAJ's work on extractive industry issues. Using the five evaluation criteria for assessing NHRIs, we assess the successes and shortcomings of CHRAJ's work to resolve human rights-related disputes involving extractive projects in Ghana. Based on this analysis, we identify both CHRAJ's key strengths and its ongoing weaknesses.

NHRIs face unique challenges in their work to resolve and prevent human rights-related disputes involving the extractive industries. Extractive projects can displace or impact entire communities. In addition, they frequently have a life span measured in decades, and are often backed by powerful political actors. Therefore, we determined that the following five factors were centrally important for NHRI effectiveness at handling extractive issues:

- Independence: Commitment to and reputation for objectivity and integrity
- Promotion: Influence on public awareness of human rights issues involved with extractive operations
- Empowerment: Support for other civil society or governmental organizations working to promote human rights norms for the extractive industries
- Remediation: Efficiency and perceived effectiveness of dispute-resolution capacity
- Power: Formal and informal influence with relevant actors

In its work on mining disputes in Ghana, CHRAJ has fulfilled all five of these criteria to varying degrees. Through an evaluation of each of the five, we highlight specific characteristics and actions of CHRAJ that could be emulated by similar NHRIs, and we also identify CHRAJ's shortcomings and ongoing challenges.

Independence

As detailed in the Table 2 that follows, CHRAJ enjoys a high degree of formal, functional, and perceived independence. Nevertheless, because CHRAJ's budget is set by the Ghanaian Parliament, it is not totally shielded from potential political pressure. Furthermore, CHRAJ's investigative mandate is limited; the

commission cannot conduct human rights investigations without first receiving a complaint.¹²¹

CHRAJ currently enjoys a high degree of public confidence, but it cannot indefinitely rely on the favorable perception of its activities by the Ghanaian public. It has worked hard over several years to build public trust, but it will need to consistently reaffirm its independence and vigorously guard against perceived or actual bias under its new commissioner in order to maintain the public's confidence. It could do so by fully exercising its investigatory and dispute-resolution mandates by, for example, taking on controversial and potentially politically charged issues such as human rights involved with offshore oil exploration.

121. NGOs in Ghana, interview.

Table 2. Independence

An NHRI's investigative and enforcement authority should be shielded from outside pressures. To be perceived as independent, NHRIs should actively strive to cultivate public confidence in their integrity and objectivity.		
Elements of independence	CHRAJ's strengths	CHRAJ's challenges
<p>Formal independence: The independence of an NHRI as set out in its mandate, including procedures for the appointment and removal of its leadership, and its financial independence.</p>	<ul style="list-style-type: none"> Commissioners and deputy commissioners of CHRAJ are appointed by the president, but they cannot be removed from office. This characteristic of appointments provides some protection against outside pressure on CHRAJ. 	<ul style="list-style-type: none"> CHRAJ's budget is controlled by Parliament, which may prevent the institution from taking on controversial issues that might affect the security of CHRAJ's budget. CHRAJ does not have unilateral investigatory authority, which means that the commission must wait until it receives complaints on an issue before it can investigate.
<p>Functional independence: The extent to which an NHRI demonstrates its independence and objectivity through the exercise of its investigative or enforcement authority. Functional independence could include taking on contentious or risky issues.</p>	<ul style="list-style-type: none"> The first commissioner of CHRAJ, Emile Short, and his successor, Anna Bossman, took on controversial human rights and corruption issues during their tenures.¹²² 	<ul style="list-style-type: none"> CHRAJ's new commissioner, Laretta Lamptey, was appointed in 2011. It remains to be seen whether she will maintain CHRAJ's focus on extractive industries.¹²³ Presidential appointment of Bossman as commissioner on an interim basis limited her independence.¹²⁴
<p>Perceived independence: The public perception of an NHRI's independence and integrity. Regardless of an institution's actions, if the public does not believe in its independence, the institution will not be seen as legitimate.</p>	<ul style="list-style-type: none"> There is a strong consensus within the public and among NGOs that CHRAJ is independent of politics and is unbiased in pursuing its mandate.¹²⁵ CHRAJ has taken steps to avoid public perception that it is biased toward mining companies, including turning down money from the mining industry to fund research.¹²⁶ 	<ul style="list-style-type: none"> Although there was a widespread trust in CHRAJ as an institution among NGO interviewees, few knew about the work CHRAJ has done to address mining issues.

Promotion

CHRAJ has made commendable efforts to spread awareness about human rights through active outreach to both urban and rural communities. As part of its mandate, the commission conducts training and education to raise awareness about a range of human rights issues. To date, the commission has prioritized educating local communities, but it could enhance human rights protections in Ghana by reaching out to a broader range of audiences in Ghana and around the world. CHRAJ publishes annual overviews of its enforcement activity, but through additional transparency and the use of new media, it may be able to raise awareness with more people at lower cost. CHRAJ's human rights

122. Asibuo, "Role of the Commission," 18.

123. NGOs in Ghana, interview. (Note that all the NGO interviewees said that they were not aware of Lamptey's plans for CHRAJ); CHRAJ, interview. (The spokesperson at the commission noted that CHRAJ is unlikely to take on major initiatives during the 2012 election year.)

124. Integrated Social Development Centre (ISODEC), interview with the authors, January 12, 2012.

125. NGOs in Ghana, interview.

126. CHRAJ, interview.

education efforts could also benefit from a greater focus on extractive industry-related human rights issues.

Table 3. Promotion

NHRIs should communicate with local, national, and international stakeholders to increase understanding and awareness of human rights and obligations involved with extractive projects. These human rights education efforts should acknowledge broader trends in human rights, and, to the extent possible, inform stakeholders about options for remedying grievances. In particular, NHRIs should seek to reach the following key stakeholders through their communication efforts.		
Key stakeholders	CHRAJ's strengths	CHRAJ's challenges
<p>Local communities: Effective education of communities affected by extractive projects may require a physical presence in the communities, use of local media, and public outreach efforts.</p>	<ul style="list-style-type: none"> • CHRAJ has offices in nearly every region and district in Ghana. • CHRAJ conducts public education throughout the country.¹²⁷ • CHRAJ states that it uses local FM radio stations to enhance the reach of its public education activities.¹²⁸ 	<ul style="list-style-type: none"> • Although CHRAJ has offices in every district, these offices still may be very far from mining villages. In addition, many CHRAJ offices do not have vehicles to reach remote areas.¹²⁹ • Public education efforts have not focused specifically on extractive industry human rights issues (informational pamphlets distributed by CHRAJ do not address issues related to environmental contamination, resettlement, or the use of security forces).¹³⁰ • Many stakeholders were not aware of CHRAJ's use of FM radio, suggesting that this practice is not widespread.¹³¹ • CHRAJ has not yet begun to conduct public education in communities affected by offshore oil drilling. • Long, annual human rights reports that are only published in English are not accessible to most extractive community members.
<p>National audience: Increasing awareness of human rights issues among the general public may require the appropriate use of national media outlets and coordination with both government agencies and civil society organizations.</p>	<ul style="list-style-type: none"> • CHRAJ publishes and submits an annual <i>State of Human Rights In Ghana</i> report to Parliament. • CHRAJ reports the total number of complaints it has received each year. • The 2011 <i>State of Human Rights in Ghana</i> report specifically focused on economic, social, and cultural rights. 	<ul style="list-style-type: none"> • The <i>State of Human Rights in Ghana</i> report is not easily accessible (although it is available on request from CHRAJ). • CHRAJ does not report on how many complaints it has received and resolved related to extractive issues. • It is difficult for civil society groups to know the outcome of specific CHRAJ cases, as they are not publicly disclosed. • CHRAJ's web site (chrajghana.org) was not functional from October 2011 through at least March 2012. • Although CHRAJ has engaged with a multi-agency committee that is following up on the 2008 report, few national stakeholders are aware of this process.¹³²
<p>International audience: NHRIs should draw on international human rights norms and rights language both to enhance their education efforts within their own country and to align their education efforts with those of other NHRIs, international NGOs, and other institutions.</p>	<ul style="list-style-type: none"> • CHRAJ's 2011 <i>State of Human Rights in Ghana</i> report focused on economic, social, cultural rights. 	<ul style="list-style-type: none"> • CHRAJ's public materials do not communicate in a language that is aligned with concepts used by international human rights audiences (e.g., "right to water," "business and human rights," and so on).

127. Asibuo, "Role of the Commission," 8, 15.

128. CHRAJ, interview.

129. AngloGold Ashanti, interview.

130. Commission on Human Rights and Administrative Justice, "Human Rights Mandate" (pamphlet).

131. NGOs in Ghana, interview.

132. NGOs in Ghana, interview.

Empowerment

CHRAJ has coordinated its activities with several stakeholders, including NGOs, companies, and Ghanaian government agencies. The commission's 2008 report on human rights and mining bolstered NGO advocacy and litigation efforts.

CHRAJ has also established an NGO Forum, although this body is not as inclusive and transparent as it could be.¹³³ Currently, there is no publicly available information on the members or activities of this forum. As it increases its coordination with various stakeholders, CHRAJ should strike a balance between working with relevant stakeholders and maintaining both the reality and appearance of its independence.

CHRAJ has the most room for improvement in its coordination with multilateral human rights institutions and peer NHRIs. While CHRAJ cannot unilaterally increase communication and coordination between NHRIs at an international level, it can be a more active participant in coordination processes that are currently under way.¹³⁴

133. CHRAJ stated it had an NGO Forum, yet none NGOs interviewed did not appear to be aware of it. CHRAJ, interview.

134. For example, the Network of African National Human Rights Institutions is an emerging forum for NHRI collaboration in Africa. The ICC has also served as a long-standing network connecting NHRIs around the world.

Table 4. Empowerment

NHRIs, where appropriate, should collaborate with and support the work of stakeholders such as local and national civil society organizations, companies, and government agencies to increase the capacity of all organizations working to address the human rights impacts of extractive projects. Internationally, it may be beneficial for an NHRI to coordinate with multilateral human rights institutions or other NHRIs facing similar extractive industry-related human rights issues.		
Key stakeholders	CHRAJ's strengths	CHRAJ's challenges
Civil society	<ul style="list-style-type: none"> • CHRAJ engaged extensively with Ghanaian NGOs in preparation for its 2008 mining report, which has been praised by civil society groups as validating their long-standing concerns. • CHRAJ coordinates with an NGO Forum. 	<ul style="list-style-type: none"> • Some NGOs have claimed that CHRAJ has prioritized coordination with certain NGOs (e.g., WACAM) over others.¹³⁵ • Many NGO stakeholders were not aware of the NGO Forum. • There is no evidence of a long-term strategy for coordinating with domestic NGOs working on extractive industry issues.
Companies	<ul style="list-style-type: none"> • CHRAJ engaged with the Chamber of Mines, an industry association, in preparation for its 2008 mining report.¹³⁶ 	<ul style="list-style-type: none"> • CHRAJ did not systematically engage with mining companies while researching its 2008 mining report, nor did it follow up with them extensively after the report was published.¹³⁷
Government agencies	<ul style="list-style-type: none"> • CHRAJ worked with the Ghanaian Environmental Protection Agency in preparation for its 2008 mining report, particularly in the collection and analysis of water quality samples. 	<ul style="list-style-type: none"> • CHRAJ does not have a formal process for coordinating its activities with the EPA, Minerals Commission, or Energy Commission.
Multilateral human rights institutions	<ul style="list-style-type: none"> • CHRAJ has received funding from UNDP, the UK Department for International Development (DFID), and DANIDA for various research and advocacy projects 	<ul style="list-style-type: none"> • CHRAJ does not have a formal strategy for seeking funding from or working with international human rights and development groups.
Peer NHRIs	<ul style="list-style-type: none"> • CHRAJ has been a participant in meetings of the Network of African NHRIs. The next biennial conference of this network will be hosted in Ghana in 2013.¹³⁸ 	<ul style="list-style-type: none"> • CHRAJ did not work with peer NHRIs in developing its strategy for extractive human rights issues, nor has it proactively shared its lessons learned with other NHRIs that may be interested in doing similar work.

Remediation

CHRAJ has responded to a number of disputes involving the mining industry, and both NGO and private sector stakeholders have found the commission's handling of complaints to be generally fair and effective.¹³⁹ However, because CHRAJ does not disclose detailed information about the nature and outcome of complaints it receives, the overall efficiency and effectiveness of its complaint-handling process remains unclear.

As CHRAJ noted in its 2008 report on mining, it is important to address the root causes of human rights problems, rather than merely handling complaints that result from human rights violations or other company-community disputes.¹⁴⁰

135. NCOM, interview, January 8, 2012.

136. CHRAJ, interview; Ghana Chamber of Mines, interview.

137. AngloGold Ashanti, interview; senior-level extractive industries community affairs executive, interview; Ghana Chamber of Mines, interview.

138. Eighth Conference of African National Human Rights Institutions, Cape Town Declaration, October 21, 2011, http://www.nanhri.org/index.php?option=com_content&task=view&id=233, accessed March 1, 2012.

139. AngloGold Ashanti, interview; Golden Star Resources, interview; NGOs in Ghana, interview.

140. CHRAJ, *State of Human Rights in Mining Communities in Ghana*.

This conviction was expressed through CHRAJ’s work on the 2008 report on human rights in the mining industry. CHRAJ should strive to follow up on the outstanding complaints highlighted in this report and to monitor extractive industry projects in order to detect potential emerging human rights issues.

Table 5. Remediation

NHRIs that have the power to hear human rights complaints should respond to human rights grievances associated with extractive projects in a manner that is accessible, efficient, and perceived as legitimate by the parties involved. For some extractive-related human rights issues, NHRIs should also proactively identify potential human rights abuses and conduct systematic investigations into their root causes.		
Elements of effective remediation	CHRAJ’s strengths	CHRAJ’s challenges
Efficiency and accessibility	<ul style="list-style-type: none"> • CHRAJ is seen as a much faster option than the court system for resolving individual grievances against mining companies.¹⁴¹ • With its numerous offices around the country and mandate to assist people with the process of filing complaints, CHRAJ is moderately accessible to rural communities near extractive operations. 	<ul style="list-style-type: none"> • CHRAJ did not publish its mining report until 2008, nearly 10 years after it began to receive complaints from mining communities. • Lack of disclosure of outcomes of mining-related complaints handled by CHRAJ makes it difficult to objectively assess its efficiency. • Even with CHRAJ’s geographically dispersed offices, underfunding and distance from affected communities limits the commission’s accessibility to Ghanaians affected by mining.
Robustness	<ul style="list-style-type: none"> • CHRAJ reported that it has allocated funding to establish an oil and gas unit to deal with emerging issues associated with the recent offshore oil development.¹⁴² • CHRAJ’s mandate allows for it to suggest a range of potential actions to settle disputes. 	<ul style="list-style-type: none"> • It is unclear whether CHRAJ’s planned oil and gas unit will deal with human rights issues, or whether it will focus on corruption issues. • Although CHRAJ is aware of potential human rights abuses associated with oil and gas development, it has not yet received complaints so it has not begun work in this area.
Legitimacy	<ul style="list-style-type: none"> • CHRAJ’s rulings on extractive industry disputes have been generally acceptable to both civil society groups and mining companies.¹⁴³ 	<ul style="list-style-type: none"> • Mining companies have criticized CHRAJ’s analysis of water quality at mine sites, noting that CHRAJ did not have the expertise needed to analyze environmental data.¹⁴⁴

Power

Like many other NHRIs, CHRAJ does not have the authority to directly enforce its decisions. This inability limits its capacity both to deter rights violations and to resolve them after the fact. Although CHRAJ can refer its decisions to the courts for enforcement, it can only do so if parties do not comply with its decisions after a period of three months.¹⁴⁵ This lack of direct enforcement power constrains CHRAJ’s ability to directly compel action by extractive companies or enforce penalties on parties involved with disputes. Some civil society stakeholders have called for CHRAJ’s mandate to be revised to grant the commission the power to

141. CEPIL, interview.

142. CHRAJ, interview.

143. AngloGold Ashanti, interview; Golden Star Resources, interview.

144. AngloGold Ashanti, interview; senior-level extractive industries community affairs executive, interview.

145. Asibuo, “Role of the Commission,” 16.

enforce its decisions directly.¹⁴⁶

However, even without robust enforcement power, CHRAJ exerts significant influence on companies, communities, and other regulatory agencies. Companies and civil society groups concurred that when CHRAJ investigated complaints against companies in mining areas and ruled that companies owed compensation to community members, company compliance with CHRAJ's decisions was very high.¹⁴⁷ Although CHRAJ lacks formal policy-making authority, it exerts significant informal influence within the government. Following the publication of its 2008 report on human rights and mining, CHRAJ has worked with other government ministries on draft legislation to address concerns raised by the report. However, as of January 2012, this reform process was still incomplete, suggesting that CHRAJ's capacity to shape legislation and influence other regulators within the government remains limited.¹⁴⁸

Table 6. Power

An NHRI's formal authority and informal influence should be broad and robust enough to investigate, remedy, and deter human rights violations.		
Types of power	CHRAJ's strengths	CHRAJ's challenges
Formal authority: An NHRI's official powers to investigate and enforce its judgments.	<ul style="list-style-type: none"> • Although CHRAJ does not have the ability to directly enforce its findings, it has the ability to bring issues to court for enforcement. • CHRAJ has a formal mandate to address human rights abuses by private enterprises. This mandate gives the commission legitimacy in undertaking investigations into extractive operations. 	<ul style="list-style-type: none"> • CHRAJ must wait three months to refer its decisions to the judicial system for enforcement if its decisions are not followed. • CHRAJ does not have any formal authority to engage with the mineral license-granting process and cannot help to mitigate potential human rights risks associated with extractive projects.
Informal Influence: An NHRI's indirect and informal influence on companies, communities, and other government agencies.	<ul style="list-style-type: none"> • CHRAJ utilized the full extent of its investigatory powers to research its 2008 report, <i>The State of Human Rights in Mining Communities in Ghana</i>. • CHRAJ convened a group of government agencies to draft reforms to address problems identified in 2008 report. 	<ul style="list-style-type: none"> • CHRAJ did not systematically engage with mining companies during its research for its 2008 mining report. • Reforms based on recommendations from the CHRAJ report have yet to be formally proposed or implemented.

As explained above, CHRAJ has taken a number of noteworthy steps to address human rights disputes involving the extractive industry. Its comprehensive study on mining impacts, its numerous offices around the country, and its decision to open an oil and gas unit to monitor Ghana's emerging offshore oil industry have each contributed to the commission's effectiveness.

Nevertheless, several factors – such as CHRAJ's funding constraints, the uncertain impacts of its 2008 report, and its limited transparency – have

146. NGOs in Ghana, interview.

147. AngloGold Ashanti, interview; Golden Star Resources, interview; NGOs in Ghana, interview.

148. CHRAJ, interview.

undermined CHRAJ's success at addressing mining-related human rights disputes.

Recommendations and implementation options for Ghana's CHRAJ

This section proposes recommendations for Ghana's CHRAJ to improve its work on extractive industry human rights issues. Following the steps for evaluating recommendations for NHRIs, we use our evaluation framework to analyze and rank a range of potential recommendations in comparison to the status quo. For each category of recommendation, we assess options for implementation in light of CHRAJ's short-term and long-term challenges. We conclude by synthesizing these specific recommendations into broader strategic options for CHRAJ.

Evaluating potential recommendations

As explained previously, actions that NHRIs can take to improve their work on extractive industry human rights issues fall into the following broad categories:

- Accessibility
- Communication
- Coordination
- Mandate
- Resources

NHRIs can consider a range of potential actions that fall within each of these categories. To rank these potential options for CHRAJ, we used an evaluation framework (Appendix II), which assesses each potential recommendation according to its impacts on an NHRI's effectiveness at resolving extractive industry human rights conflicts in a particular country context. In our completed matrix for CHRAJ, found at the end of this section, we ranked each potential recommendation according to whether it is likely to increase or decrease an NHRI's effectiveness according to each of the five key effectiveness criteria (independence, power, promotion, empowerment, and remediation).

Using a -2 through +2 scale, we assigned recommendations a score of +2 or +1 if they are likely to have a strongly positive or a moderately positive impact on a particular effectiveness factor. We assigned a score of 0 if recommendation is

unlikely to have a significant impact on a component of NHRI's effectiveness. Although we did not assign many negative scores for the potential recommendations for CHRAJ, a -1 or -2 score would indicate that a particular recommendation has a moderately or strongly negative impact on a particular effectiveness factor. After assigning these scores to the five effectiveness factors for each recommendation, we added up the five scores to yield a total score for a recommendation on a -10 to +10 scale. Based on these total scores, we ranked recommendations to identify which ones scored the highest. We then used this ranking to identify the high-priority and lower-priority recommendations for CHRAJ that are explained in the following sections.

Before proceeding to the evaluation of the Ghana case study, it is important to insert the following caveats to our evaluation framework:

- The scoring is inevitably somewhat subjective, but it represents the authors' best judgments. Therefore, there is some uncertainty about the appropriate scoring for some of the categories. In order to minimize this uncertainty, each of the co-authors scored each option independently, and then discussed any discrepancies. There is often only a small difference between the highest-scored options and the lower ones. To account for the uncertainty that this presents, we note both "principal recommendations" and "other recommendations."
- We chose to use an additive scoring system; that is, each of the five categories was scored from -2 to +2, so when added up, the range of possible scores was -10 to +10. Alternatively, we could have used a multiplicative scoring system. In an additive scoring system, high scores in one category can make up for negative scores in another. In a multiplicative scoring system, high scores in one category can be cancelled out by a zero in another category.
- We treated benefits in each of evaluation criteria as independent. However, there are likely interactions among these criteria. For example, an intervention that promotes both communication and coordination is likely to have benefits that exceed the sum of its parts. Our quantitative evaluation framework does not take this into account, but our discussion of recommendations below includes analysis of this fact.

Communication

Compared with other recommendations, improvements to CHRAJ's communication practices are likely to yield the greatest potential improvements to the commission's effectiveness at addressing extractive industry human rights issues. Broadening human rights awareness in Ghana and increasing the

visibility of CHRAJ's role in protecting rights are foundationally important for the institution and impact all five of our effectiveness criteria. Our highest-scoring recommendations for CHRAJ therefore involve revamping and expanding its communication with communities affected by extractive projects as well as other domestic and international stakeholders.

Intensive communication, whether through publications, educational events, media programming, or online resources, can amplify the impacts of CHRAJ's investigative and dispute-resolution work at reasonable cost. Currently, CHRAJ publishes an annual report, conducts human rights education programs, and conducts interviews with media. However, these existing efforts could further help to resolve and prevent human rights abuses related to extractive operations if CHRAJ were to integrate them into a broader communications strategy.

Principal recommendation

CHRAJ should develop a systematic strategy for communicating with communities affected by oil, gas, and mining operations. This recommendation involves first identifying the key human rights risks faced by specific communities near extractive projects. CHRAJ would then tailor its communications to reach as many at-risk community members as possible as early as possible during the development of an extractive project. Communication efforts should be conducted in local languages, and should be sensitive to the needs of illiterate members of the population. Communications should also use a mix of radio segments, online information, written brochures, or outreach sessions depending on the community. Information provided by CHRAJ should ideally provide community members with a clear understanding of their rights, how extractive projects may violate them, and how to seek remedy if these rights are violated. CHRAJ should also clearly communicate its ongoing and past actions on these issues. While CHRAJ already conducts general human rights outreach efforts that use some of these media, an integrated strategy targeted to communities near extractive projects would have a far greater impact. The complex impacts of extractive projects are difficult for community members to anticipate or respond to, particularly when they involve politically charged issues such as resettlement or technical issues such as water pollution from mine runoff. Therefore, if CHRAJ can inform and empower community members to self-advocate more effectively, it would help the commission to fulfill both its educational and enforcement mandates.

Other recommendations

CHRAJ should develop a national communication strategy on extractive industry human rights issues. NGO interviews suggested that CHRAJ has earned a reputation as an effective forum for resolving disputes. However, beneath this reputation and broad generalizations about CHRAJ's effectiveness, most of the details of CHRAJ's actual day-to-day work remain unreported and unknown. One interviewee noted that CHRAJ used to publish a newsletter in which it reported on key cases and recommendations, but this newsletter is no longer published.¹⁴⁹ Were CHRAJ to take steps such as relaunching its web site, publishing its annual reports online, and developing reports for the general public on extractive industry issues, it would increase its credibility and influence with other government agencies, mining companies, and the Ghanaian public.

CHRAJ should identify, investigate, and report on the most controversial and complex human rights challenges involving the extractive industries. Although CHRAJ's 2008 report prompted criticism from the mining industry, its publication shifted the public debate on mining's impacts in Ghana and empowered communities and NGO advocates.¹⁵⁰ Although CHRAJ may not have the resources to publish a full-length report on emerging extractive industry controversies such as the impacts of offshore oil and gas exploration on coastal communities, it could nevertheless publish shorter, focused reports. If researched and distributed in a timely manner, these reports could raise awareness about potential human rights risks among communities and civil society groups, and could also enable regulators and companies to identify and mitigate emerging problems before they become acute or cause irreversible damage.

CHRAJ should create a publicly available database to track and report outcomes of complaints. Tracking and publicizing CHRAJ's complaint-handling and enforcement activity (after taking reasonable steps to ensure the confidentiality of parties to a complaint) would enhance the institution's credibility and influence by making CHRAJ's enforcement process as transparent as possible.¹⁵¹ Free online database tools such as Google Fusion Tables allow for online storage and publication of data, and can even allow users to link data to a map or analyze it on a chart. The Government of Kenya has begun to use Fusion Tables for some of its database needs, and this or a similar service could enhance

149. CEPIL, interview.

150. Ghana Chamber of Mines, interview.

151. Ghana Chamber of Mines, interview; IBIS Ghana, interview with the authors, January 11, 2012.

CHRAJ's internal data management practices while bolstering its communication efforts.¹⁵²

Implementation strategy

Relaunching CHRAJ's web site and publishing its annual reports could be accomplished quickly and at low cost. However, owing to its resource and time constraints, CHRAJ may not be able to implement the rest of these recommendations in the near term. Instead, it could pilot test several of these recommendations in its work on the emerging human rights and environmental risks associated with offshore oil exploration. For a few coastal communities near Takoradi, CHRAJ could use a combination of radio broadcasts, outreach to community leaders, and educational events to raise awareness about potential human rights impacts. Radio segments may be provided by stations for free or for a nominal cost, so CHRAJ should seek to maximize its use of this form of communication.¹⁵³ CHRAJ could also research one or more short reports on these impacts, and could track human rights complaints received in coastal communities through a pilot online database. If some or all of these pilot tests prove successful, CHRAJ could eventually roll them out nationwide.

Coordination

In its work on extractive industry issues, CHRAJ has engaged with civil society organizations, other regulatory agencies, and mining companies. While NHRIs must be careful to safeguard their independence and objectivity, collaboration with other organizations could enable CHRAJ to bolster its credibility, share information, and overcome resource constraints. Using our evaluation criteria, we identified multiple opportunities to improve CHRAJ's effectiveness by deepening the commission's relationships with other organizations in Ghana and around the world:

Principal recommendation

CHRAJ should coordinate its education and research with Ghanaian civil society organizations. CHRAJ collaborated with NGOs during the process of researching its 2008 report on human rights and mining. The commission continues to meet with civil society organizations through its NGO Forum, although the current membership of this forum remains unclear and does not include some key NGOs

152. "Google Public Policy" event, Harvard Kennedy School, January 26, 2012. (At the event, a former Google employee noted that Google.org employees had introduced Google fusion tables to the government of Kenya, which had begun to integrate the tables into its data management practices.)

153. ISODEC, interview; IBIS Ghana, interview.

working on mining issues.¹⁵⁴ Were CHRAJ to reach out to a broader range of NGOs through this forum, it could potentially bolster its efforts to reach out and educate communities affected by extractive operations by integrating CHRAJ's educational priorities into existing NGO outreach activities in target communities. For example, WACAM and the National Coalition on Mining are both active in several communities affected by mining and could potentially distribute CHRAJ's educational materials or train community members on how to file complaints. CHRAJ can also build relationships with NGOs such as these to serve as an early-warning network for identifying potential conflicts or disputes related to extractive projects that might merit further investigation by CHRAJ. Over the long term, collaboration with civil society on mining issues can advance CHRAJ's mission by empowering a broader community of NGO human rights advocates to research and engage in advocacy on extractive industry human rights issues.

Other recommendations

CHRAJ should engage with regulatory agencies that oversee the extractive industries, ideally during the review phase of planned extractive projects. Prospective oil, gas, and mining licenses in Ghana are currently subject to an environmental impact assessment, but not a social impact assessment. CHRAJ should advocate for Parliament or regulatory agencies such as the Minerals Commission or EPA to grant it an informal or formal advisory role to review the potential social and human rights impacts of extractive projects before licenses were granted. Were CHRAJ to be included in such a social impact assessment process even in an informal and nonbinding manner, it could identify potential human rights risks of a project and ensure that companies take steps to address them.¹⁵⁵

CHRAJ should coordinate with oil, gas, and mining companies in Ghana. Creating a line of communication between CHRAJ and community relations staff at extractive companies would be mutually beneficial for both parties. Although major oil, gas, and mining companies with mature projects in Ghana have well-developed community relations practices, many smaller exploration companies do not have the experience or capacity to handle human rights issues effectively.¹⁵⁶ By sharing information with these companies about emerging patterns of complaints from communities or best practices for handling human

154. CEPIL, interview.

155. Revenue Watch Institute, interview with the authors, January 13, 2012.

156. For example, both AngloGold Ashanti (<http://www.anglogold.co.za/Sustainability>) and Newmont Ghana (<http://www.newmont.com/africa/ahafo-ghana/public-disclosure-documents>) disclose significant information about their social impacts and community relations practices. In contrast, smaller firms such as Endeavour Mining (<http://www.endeavourmining.com/s/CorpResponsibility.asp>) and Signature Metals (<http://www.signaturemetals.com.au/index.html>) provide very little information—or no information, in the case of Signature Metals—on community relations or environmental management policies and systems.

rights risks, CHRAJ could help companies avoid violating rights and triggering social conflict. In addition, as CHRAJ fulfills our primary recommendation of increasing coordination with Ghanaian NGOs, it must avoid the appearance that it is biased toward these groups. By also enhancing its coordination with companies, it can safeguard its reputation for independence and objectivity.¹⁵⁷

CHRAJ should collaborate with peer NHRIs. Engaging with NHRIs from other countries could enable CHRAJ to learn from the experiences of peer institutions with handling extractive industry human rights issues. In addition, CHRAJ has not included references to international human rights law in its education or enforcement practices to date.¹⁵⁸ Ghana has ratified several human rights treaties, including the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, which recognize key rights, including the rights to life, to the highest attainable standard of health, and to adequate housing – all of which have potentially been violated by extractive industry operations in the country. CHRAJ could work with regional and global networks of NHRIs such as the Network of African NHRIs (NANHRI) and the International Coordinating Committee of National Human Rights Institutions (ICC) to interpret international human rights law and its implications for NHRI enforcement and advocacy. CHRAJ could also work with other NHRIs to coordinate actions with the newly established working group in the African Commission on Human and Peoples Rights (ACHPR) on extractive industries, environment, and human rights violations in Africa.¹⁵⁹ By aligning its domestic education and enforcement efforts with these institutions, CHRAJ could bolster both its credibility and influence. This cooperative work could be facilitated by online tools for collaboration on business and human rights issues. For example, both the ICC’s online communications portal and BASESwiki (baseswiki.org), a web site developed by the Harvard Kennedy School’s Corporate Social Responsibility Initiative, have served as sites for sharing best practices on business and human rights issues.

Implementation strategy

Although building relationships with these stakeholder groups would enhance CHRAJ’s effectiveness at addressing extractive industry issues, the commission must avoid any appearance of compromising its impartiality or integrity. However, by focusing relationships on information sharing and implementing

157. Ghana Chamber of Mines, interview.

158. CHRAJ, interview.

159. African Commission on Human and Peoples’ Rights, “Resolution on the Establishment of a Working Group on Extractive Industries, Environment, and Human Rights Violations in Africa,” November 25, 2009, <http://www.achpr.org/sessions/46th/resolutions/148/>, accessed March 1, 2012.

CHRAJ's educational mandate, it can minimize this risk. With civil society organizations, CHRAJ should begin by publicizing and expanding its NGO Forum in order to build an active network of organizations with which the commission could explore opportunities to collaborate. With regulators, CHRAJ will need to be attuned to bureaucratic politics and should therefore initially seek a nonbinding advisory role in approving extractive project licenses. Finally, although collaboration with companies and NHRI groups could both yield significant benefits over the long term, such collaborations may take significant time to yield benefits for CHRAJ and other parties – and should therefore be secondary priorities.

Accessibility

In light of CHRAJ's numerous offices around the country and its mandate to assist individuals with the process of filing and investigating complaints, the commission has proven to be reasonably accessible to communities affected by extractive projects. However, we identified three secondary recommendations that could further improve CHRAJ's accessibility to individuals and communities affected by extractive projects:

Recommendations

Maintain a physical office in or near extractive operations. CHRAJ is able to receive complaints filed on the phone, in an email, a letter, a fax, or in person.¹⁶⁰ However, without a physical presence in mining communities, community members might not be aware of their options. To facilitate the receipt of complaints from individuals in communities affected by extractive operations, CHRAJ should site permanent or temporary offices in or near these communities. In the event that a lack of resources would make the establishment of an office impossible, CHRAJ could instead explore options such as scheduling and publicizing regular visits to communities by CHRAJ field staff.

Aid with public education efforts by local civil society groups. As explained in the previous section's recommendations, civil society organizations and CHRAJ can work together to educate communities about their rights and options for resolving grievances.¹⁶¹

Advocate for more personnel training on international human rights norms. The previous section on coordination recommended that CHRAJ collaborate with

160. Ghana Commission on Human Rights and Administrative Justice (CHRAJ), "Human Rights Mandate" (pamphlet).

161. ISODEC, interview.

other NHRIs to align its enforcement and education practices with international human rights norms. This high-level collaboration should be paired with training of CHRAJ personnel at all levels on human rights norms. By informing CHRAJ staff about long-standing norms and emerging business and human rights frameworks such as the protect, respect, and remedy principles for business and human rights, staff members will be able to draw on these principles in their educational and dispute-resolution work. CHRAJ should continue to seek out opportunities to utilize the experience of international networks of business and human rights practitioners. For example, CHRAJ attended a workshop in January 2012 organized by The Institute for Human Rights and Business (IHRB) in cooperation with the UN Office of High Commissioner for Human Rights (OHCHR) and the Uganda Human Rights Commission. The goal of this workshop was to support the empowerment of NHRIs to deliver on their mandate of business and human rights.¹⁶²

Implementation strategy

Collaboration with civil society organizations could be undertaken on a pilot-test basis in the near future, and would ideally grow and evolve over the long term. It would be prohibitively time consuming to design and implement training programs for CHRAJ staff on all aspects of international human rights law. However, the commission could begin by testing training sessions on international law and specific extractive industry human rights issues such as resettlement or water pollution. CHRAJ could then ask for feedback from staff and gradually build up a catalog of training materials on key human rights issues. Finally, opportunities to build or relocate CHRAJ offices may be rare, so the commission should focus on alternative means for facilitating the filing of complaints, such as site visits by CHRAJ staff.

Mandate

CHRAJ's mandate covers a wide range of human rights and governance issues, but its investigatory and dispute resolution powers can only be exercised in response to specific complaints. We therefore found that expanding CHRAJ's mandate to address this issue would yield significant benefits.

162. Institute for Human Rights and Business et al., "Capacity Building for NHRIs from East Africa, Malawi and Ghana" (summary report of a workshop for NHRIs from East Africa, Malawi, Ghana, and South Sudan, Kampala, Uganda, January 26, 2012), http://www.ihrb.org/pdf/Uganda-Workshop-Final_Summary_Report.pdf, accessed March 1, 2012.

Recommendation

*CHRAJ should advocate for an expansion of its mandate to allow for the commission to launch investigations unilaterally.*¹⁶³ Currently, CHRAJ must wait until it receives complaints at its offices to address potential human rights issues. But, as we noted in previous sections, by the time complaints about extractive industry impacts such as water pollution or resettlement reach CHRAJ, serious or irreversible damage has often already taken place. Therefore, stakeholders should push for a formal revision to CHRAJ's mandate as part of the ongoing constitutional review process. This change will give CHRAJ the power to launch investigations on its own and could thus investigate and publicize emerging human rights risks before they become acute.

Implementation strategy

The process for advocating for a change to CHRAJ's official mandate will likely be long and time-consuming. Therefore, in the short term, CHRAJ could use alternative means to launch investigations such as encouraging and assisting individuals affected by emerging human rights issues in need of further investigation to file complaints with CHRAJ. These "test cases" could then justify a CHRAJ investigation without violating its current mandate.

Resources

CHRAJ faces ongoing financial and operational constraints owing to inadequate funding, staffing, and equipment. Many of the recommendations proposed in this section are resource-intensive, thus CHRAJ will need additional support from the government or nongovernmental actors to improve its capacity to address extractive industry disputes. However, as we found after assessing options for increasing CHRAJ's resources by using our evaluation criteria, advocacy for increased financial resources should be a lower priority than other recommendations identified earlier in this section.

Recommendations

CHRAJ should advocate for increased funding from the government. CHRAJ has been chronically underfunded and understaffed for decades, and should advocate for an expanded budget allocation. Simply asking for more money is unlikely to yield results, but if CHRAJ adopts some of the low-cost recommendations mentioned earlier on a pilot basis and finds that they are successful, it could point to specific programs that merit additional funding. Furthermore, CHRAJ

163. CEPIL, interview; IBIS Ghana, interview; STAR Ghana, interview with the authors, January 12, 2012.

could justify additional funding by demonstrating that its engagement with regulators, companies, and civil society organizations can benefit operators of extractive projects by resolving potential social conflicts and reducing risks for project operators.

CHRAJ should advocate for increased funding from international donors. CHRAJ's 2008 report was funded in part by the UNDP, and CHRAJ has also received funding from the UK's Department for International Development (DFID), and the Danish International Development Agency (DANIDA).¹⁶⁴ However, for CHRAJ to win future grant money, it will need to prove the effectiveness of specific programs to be funded and engage with donors to identify where their funding priorities might match with CHRAJ's capacity gaps.

Implementation strategy

The limiting factor for most of the recommendations in this section is a lack of resources, both in terms of budget and personnel. Although CHRAJ will never fully overcome its resource limitations, it can nevertheless find innovative and creative ways to maximize its effectiveness given its limited funds. If it can successfully implement the short-term recommendations, it will be in a much better position to advocate for more resources both from the national budget and from international donors.¹⁶⁵ However, CHRAJ must be careful not to chase funding by focusing on programs and initiatives that may be popular with funders but ineffective at advancing CHRAJ's mission.

164. CHRAJ, interview; NCOM, interview, January 8, 2012.

165. Revenue Watch Institute, interview with the authors, January 13, 2012.

Table 7. Evaluation criteria and scoring rationale

Category	Recommendations	Evaluation criteria						Total	Scoring rationale
		Independence	Power	Promotion	Empowerment	Remediation			
Accessibility	Maintain physical office in or near extractive communities	1	1	1	1	2	6	Locating offices near extractive sites would significantly increase the accessibility of CHRAJ to individuals who are negatively affected by extractive projects. It would also moderately improve CHRAJ's capacity to engage in educational efforts, conduct independent assessments, influence extractive companies, and support local NGOs.	
Accessibility	Aid with public education efforts being conducted by local civil society groups in extractive communities	1	0	2	2	1	6	Supporting educational efforts by local NGOs in communities near extractive sites would increase public understanding of human rights issues and remedies for communities affected by resource extraction. Deepening ties to local communities would also yield incremental improvements to CHRAJ's credibility with these communities and its dispute-resolution capacity.	
Accessibility	Advocate for more personnel training on human rights norms	1	1	2	1	1	6	Additional training of CHRAJ staff on human rights norms relevant to the extractive industries would aid with CHRAJ's human rights education initiatives, and would have a secondary impact on staff effectiveness at influencing extractive companies, supporting NGOs, and resolving complaints.	
Accessibility	Training of extractive company managers and employees about business and human rights issues	0	1	2	1	1	5	Providing training sessions for extractive industry staff will enhance corporate understanding of business and human rights norms. It may also have beneficial secondary impacts on CHRAJ's influence with these companies, its capacity to resolve conflicts (by broadening understanding of the basis for its enforcement actions), and the influence of NGOs on extractive issues.	
Accessibility	Monitor human rights issues on the ground	1	1	0	1	2	5	Proactive monitoring of human rights issues at extractive sites will enable CHRAJ to resolve potential disputes with greater efficiency. It will also allow the commission to make more objective assessments of potential disputes and increase its credibility with companies, government agencies, and NGOs as an authoritative source of information.	
Accessibility	Facilitate remote education for communities by producing written and multimedia education materials	0	0	2	2	1	5	Providing additional materials on human rights for communities affected by mining projects would bolster CHRAJ's education efforts and facilitate organizing and advocacy efforts by NGOs. It may have a secondary effect on CHRAJ's capacity to resolve complaints.	
Accessibility	Expand public education efforts	1	0	2	1	1	5	Broadening CHRAJ's public education efforts would broaden public understanding of human rights issues involved with the extractive industries. These efforts would have secondary effects on CHRAJ's perceived credibility, the capacity of NGOs working on mining issues, and CHRAJ's dispute-resolution effectiveness.	
Accessibility	Advocate for more personnel training on mediation and conflict resolution	1	0	0	0	2	3	Additional staff training on mediation and conflict resolution would boost CHRAJ's capacity to resolve extractive industry human rights abuses effectively and efficiently. It could also enhance CHRAJ's reputation as an impartial adjudicator of human rights disputes.	

Communication	Develop systematic communication strategy reports for local/community audience	2	2	2	2	2	10	Developing a systematic communication strategy for a community audience (<i>our highest-scoring recommendation for CHRAJ</i>) would have strongly positive impacts on all affected parties. Consistent public communication about CHRAJ's work on extractive industry issues would both enhance public understanding of human rights issues in communities affected by extractive projects and reinforce CHRAJ's reputation for independence and objectivity. Over the long term, communication and its corresponding impacts on public perception of the institution would enhance CHRAJ's influence with other government agencies and mining companies. Broadening the disclosure of CHRAJ's enforcement data and research would also benefit NGOs focused on raising human rights awareness in communities affected by oil, gas, and mining and it would yield more consistent and mutually acceptable dispute-resolution outcomes.
Communication	Develop systematic communication strategy reports for national audience	1	2	2	2	1	8	Developing a systematic communication strategy for a national audience would yield benefits similar to a communication strategy for a local audience (listed above). However, it would not have as great of an effect on CHRAJ's reputation for independence, as it would not involve targeted communication to communities affected by extractive operations. Similarly, this option would also have less impact on CHRAJ's capacity to prevent and resolve human rights disputes in communities near extractive sites.
Communication	Emphasize controversial human rights issues	2	2	1	2	1	8	Focusing CHRAJ's investigations and communications efforts on emerging and potentially controversial issues such as the community impacts of Ghana's offshore oil and gas industry would have a range of benefits. It would demonstrate CHRAJ's independence and potentially raise awareness about urgent human rights risks. In addition, these investigations may uncover problems with projects before they become acute or lead to serious social impacts, making it easier to remediate or prevent disputes. Finally, information from research would improve CHRAJ's capacity to influence the practices of extractive companies and could facilitate advocacy by NGOs on human rights.
Communication	Create database to track and report on individual cases	2	1	1	1	2	7	Developing a database for logging and disclosing the status and outcomes of disputes filed through CHRAJ on extractive issues would improve the transparency of CHRAJ's enforcement process, bolstering the institution's reputation for objectivity and the perceived fairness of its decisions. It would also raise the visibility of its enforcement actions, thereby moderately increasing public awareness, NGO capacity, and CHRAJ's influence with government and company stakeholders.
Communication	Report on broad human rights issues and trends	1	1	2	1	0	5	Increased reporting by CHRAJ on broader human rights issues and trends related to the extractive industries would help to raise public awareness of the human rights risks and impacts associated with resource exploration. It may also facilitate advocacy efforts by CHRAJ or civil society organizations targeted at regulators or extractive companies.
Communication	Utilize and adapt international business and human rights literature to local context	0	1	2	1	0	4	Were CHRAJ to draw on international business and human rights norms in its work on extractive industries in Ghana, it would broaden public understanding of the human rights obligations of companies and the responsibilities of government agencies to protect communities near extractive sites from human rights impacts. Drawing on the authority of international human rights norms would also add credibility to NGO advocacy efforts and bolster CHRAJ's capacity to influence government and company stakeholders.

Communication	Develop systematic communication strategy - reports for international audience	0	1	0	1	0	2	Reporting on CHRAJ's activities for international NGOs, development agencies, and networks would have moderate benefits for CHRAJ's capacity to influence domestic stakeholders, such as mining companies and government agencies, by building its international credibility and support. Broadcasting CHRAJ's work internationally might also raise the profile of domestic human rights NGOs.
Coordination	Coordinate with domestic civil society	1	1	2	2	2	8	Coordinating with domestic civil society organizations active on human rights issues would have a number of benefits for CHRAJ. It would facilitate human rights education by allowing CHRAJ to broaden the reach of its communication efforts with the help of NGOs and their associated networks throughout the country. Collaboration could also empower NGOs, who could draw on the authority of CHRAJ in their advocacy efforts and better utilize CHRAJ's complaint-handling function. By activating and communicating with civil society, CHRAJ may be able to intervene to resolve disputes more efficiently and effectively. This coordination would also have secondary benefits for CHRAJ's perceived independence and its influence on extractive companies.
Coordination	Coordinate with agencies in government (EPA, Minerals Commission, etc.)	0	2	2	2	1	7	Coordinating with other regulatory agencies in Ghana would enable CHRAJ to play a stronger role on extractive industry oversight and would enhance CHRAJ's capacity to influence the structure and enforcement of environmental and social impact regulations on companies. It would also strengthen CHRAJ's public education efforts by enabling CHRAJ staff to spread awareness about human rights risks related to the extractive industries to key government executives and regulators. Collaboration with other agencies would also empower civil society stakeholders, who may seek to advocate or influence this interagency regulatory cooperation process. Finally, were this collaboration to enable agencies to successfully mitigate human rights risks associated with extractive projects, CHRAJ may have fewer human rights disputes to mediate.
Coordination	Coordinate with companies operating in country	1	1	2	0	2	6	Building a working relationship with oil, gas, and mining companies would have several benefits for CHRAJ. It could enable CHRAJ to educate community relations executives—particularly at smaller mining companies—about human rights standards and best practices for managing human rights risks. This outreach could also help CHRAJ to resolve disputes by sensitizing companies to their obligations and helping them proactively avoid human rights violations. Finally, were CHRAJ to reach out to NGOs, it should also reach out to companies—to avoid any perceptions of bias or unfairness.
Coordination	Collaborate with peer NHRIs dealing with extractive industries	0	2	1	2	1	6	Working with other NHRIs that face extractive industry human rights issues would build CHRAJ's influence with domestic stakeholders by enabling it to draw on the expertise and opinions of CHRAJ's peer institutions to influence domestic policy and human rights practices. This international collaboration could also bolster the credibility of domestic human rights NGOs, which also draw on the power of international human rights standards and norms in their advocacy. Finally, over the long term, these international partnerships may facilitate CHRAJ's human rights education efforts and its capacity to identify and pre-emptively resolve potential human rights disputes by grounding its education and dispute-resolution work in international norms.
Coordination	Coordinate with international NGOs	0	1	1	2	0	4	Coordinating with international NGOs would have similar benefits to coordinating with international NHRIs, but will likely yield fewer improvements to CHRAJ's capacity to influence domestic stakeholders and resolve disputes, because the persuasive authority of international NGOs will likely be less powerful than that of other NHRIs, which are likely seen as more impartial and authoritative on issues of human rights by domestic actors in Ghana.

Coordination	Work more closely with the International Coordinating Committee of NHRIs	0	1	0	1	0	2	Collaborating with the ICC could potentially improve CHRAJ's credibility and leverage with domestic actors and institutions, while deepening ties between Ghanaian civil society organizations and the international human rights community.
Coordination	Coordinate with the executive	-1	1	1	0	0	1	Working more closely with the Presidency would increase CHRAJ's informal influence within some parts of Ghana's executive branch, and may also deepen the government's awareness of extractive industry human rights issues, but it could hurt the institution's independence.
Coordination	Coordinate with the legislature	-1	1	1	0	1	2	Working with the legislature would likely have similar effects to working with the executive branch, but could also improve the oversight capacity of the legislature, which could indirectly improve human rights dispute outcomes.
Mandate	Expand mandate to include unilateral investigatory powers	2	1	1	1	2	7	Expanding CHRAJ's mandate to enable it to investigate human rights issues without first receiving complaints would enable it to launch investigations on an independent basis and potentially resolve human rights disputes before serious or irreversible harm takes place. This independent investigative authority would also enable CHRAJ to report on human rights issues related to the extractive industries more frequently, yielding secondary benefits for human rights awareness and the NGO community.
Mandate	Change mandate for more personnel independence (tenure)	2	2	0	0	1	5	Providing tenure for CHRAJ staff would bolster the institution's credibility and independence, particularly with regard to controversial extractive industry human rights issues. Tenure might also improve the outcomes of CHRAJ's investigation by protecting staff from the potential fallout from contentious enforcement decisions.
Mandate	Change mandate to explicitly indicate human rights by corporations	0	1	1	2	0	4	CHRAJ's mandate already gives it jurisdiction over private actors, but explicitly extending its mandate to corporations could strengthen its position.
Mandate	Change mandate to have more enforcement power	-1	2	0	0	2	3	Increasing CHRAJ's enforcement power by strengthening its power to directly compel compliance with its decisions would dramatically increase the commission's influence with companies involved in disputes, potentially yielding more robust dispute outcomes. However, direct enforcement power could potentially diminish CHRAJ's reputation for independence and objectivity by removing external checks on its decisions.
Mandate	Change mandate to give broader jurisdiction	0	1	0	1	1	3	CHRAJ already has jurisdiction over a range of human rights and government accountability issues. Nevertheless, broadening this mandate may enable CHRAJ to resolve complaints involving extractive industry issues outside of its current jurisdiction that may yield marginal improvements to CHRAJ's influence, its impacts on the civil society capacity, and its dispute-resolution effectiveness.
Mandate	Change mandate to be more financially independent	2	1	0	0	0	3	Were CHRAJ's budget to be freed from oversight by other government agencies, it would significantly increase the commission's independence and capacity to take on controversial issues. It would also bolster CHRAJ's influence with other government agencies as a consequence of its invulnerability to outside pressure.
Mandate	Expand mandate to include complaint-handling capacity	0	0	0	0	0	0	CHRAJ already has the authority to handle complaints, so this recommendation would not change its effectiveness.
Mandate	Expand mandate with human rights education, information, and awareness-raising campaigns	0	0	0	0	0	0	CHRAJ's mandate already includes human rights education, so this recommendation would not change its effectiveness.

Mandate	Expand mandate for broader investigative powers including access to information and to issue subpoenas and summon witnesses	0	0	0	0	0	0	CHRAJ already has full powers to investigate potential human rights abuses, so this recommendation would not change its effectiveness.
Resources	Advocate for more financial resources domestically	0	2	1	1	1	5	Advocating for more resources from the government—though not likely to be successful at the moment—would enhance CHRAJ's capacity to influence government and private sector actors. It would also increase CHRAJ's capacity to fulfill its educational mandate, support the work of NGOs, and resolve disputes related to the extractive industries.
Resources	Advocate for more financial resources from international donors	0	2	1	1	1	5	Advocating for more resources from international donors would have a low likelihood of succeeding over the short term, but could have similar benefits to advocating for resources from the government.

Strategic challenges and opportunities for CHRAJ

We recommend short-term opportunities for CHRAJ and actions that the commission may want to implement over the long term. Although we have presented numerous options in this section, we found that many share a common strategy of using short-term actions to work toward long-term changes. Owing to CHRAJ's constraints and challenges, it simply cannot fulfill all aspects of its mandate given the resources it currently controls. We therefore suggest that an entrepreneurial strategy would help bridge this resource gap. By taking small steps to test recommendations for improving its work on extractive industry issues, CHRAJ would be in a stronger position to attract the funding needed to implement the full set of recommendations.

Finally, although CHRAJ faces pressing challenges related to the investigation of human rights violations involving the extractive industries, we argue that over the long term, CHRAJ's best strategy is to focus on prevention rather than remediation. Through public education, company engagement, and greater involvement in reviewing project licenses, CHRAJ could identify and prevent the potential human rights impacts of projects before they occur.

Conclusion

In this policy analysis, we proposed a framework for prioritizing potential actions that national human rights institutions should take in order to improve their effectiveness protecting and promoting human rights in the extractive industries. We developed this framework after drawing from both secondary literature and a case study of Ghana's Commission on Human Rights and Administrative Justice. We then demonstrated how to apply the framework in the case of Ghana. Although the framework synthesizes our current knowledge of NHRIs and the extractive industries, it should be considered a preliminary conclusion rather than a final answer because of the single-country scope of our case study. Applying the framework to cases of NHRIs in other countries will likely yield additional insights and corresponding revisions to our framework.

Despite this important caveat, the framework provides a starting point for human rights advocacy organizations to engage with NHRIs on extractive industry issues. NHRIs have been internationally recognized human rights actors since 1993, and most of them address a broad spectrum of human rights issues. However, recent developments in the field of business and human rights have highlighted both the significant human rights impacts of the private sector and the important role of NHRIs in promoting human rights awareness, protecting populations from human rights abuses, and remediating such abuses if they do occur. Key documents such as the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" and the Edinburgh Declaration provide a starting point for conceptualizing business and human rights norms and the role NHRIs could play in implementing them. However, putting these business and human rights principles into practice at NHRIs remains a daunting and largely unexplored challenge. Therefore, research and proactive engagement with NHRIs by civil society organizations over the next few years could make a significant contribution to realizing business and human rights principles on the ground.

The diverse mandates and institutional forms of NHRIs have complicated attempts to understand why these institutions succeed or fail at protecting human rights. Different types of human rights institutions have evolved in various countries, reflecting differing historical, political, social, and economic contexts. Perhaps more importantly, this diversity suggests that no international consensus exists regarding the ideal form and function of these institutions. Given the absence of such a consensus—and the fact that one is unlikely be

reached for the foreseeable future – developing a universal set of “best practices” for NHRIs would be a fruitless task. Thus, this policy analysis does not prescribe a single model for NHRI effectiveness at handling human rights issues in the extractive industries. Instead, our evaluation framework acknowledges the various national contexts in which NHRIs operate; it is intended to yield context-specific recommendations for particular NHRIs. As our case study and worked example of Ghana’s CHRAJ demonstrates, our approach helps to identify and prioritize actions that can make NHRIs more effective at protecting human rights.

Appendices

Appendix I: Methodology

Literature review

We conducted a review of the literature on the following topics (see the bibliography for a complete list of sources):

- Human rights in the extractive industries
- National human rights institutions and ombudsman offices
- Corporate social responsibility and company grievance mechanisms
- Business and human rights

We also conducted phone and in-person interviews with experts in many of these fields. These interviews were semistructured. We started with a general interview framework that touched on all of the themes discussed in our research. We added and deleted questions depending the level of expertise the interviewee had on a given topic.

- Rocio Avila, November 10, 2011
 - Oxfam America – Peru, extractive industries program officer for South America
- Linda Reif, October 28, 2011
 - Professor of public international law, international business transactions, international human rights law, and comparative and European Union law at the University of Alberta and author of *The Ombudsman, Good Governance, and the International Human Rights System*
- Thomas Pegram, October 31, 2011
 - Assistant professor in political science and international relations at Trinity College Dublin and editor of *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*
- Liz Umlas, November 6, 2011
 - International human rights consultant – UNICEF (United Nations Children’s Fund), International Labor Organization, UNHCR (United Nations Refugee Agency)
- Caroline Rees, November 11, 2011

- Senior fellow at the Harvard Kennedy School Corporate Social Responsibility Initiative and president of Shift, an independent, nonprofit center for business and human rights practice
- John Ruggie, December 6, 2011
 - UN secretary-general’s special representative for business and human rights and Berthold Beitz Professor in Human Rights and International Affairs at Harvard Kennedy School
- Senior-level extractive industries consultant, December 6, 2011
- Senior-level extractive industries community affairs executive, December 8, 2011
- Scott Jerbi, December 13, 2011
 - Communications director at the Institute of Human Rights and Business
- Tagbo Agbazue, December 20, 2011
 - Associate at Synergy Global Consulting
- Claire Methven O’Brien, February 12, 2012
 - Researcher on national human rights institutions on business and human rights at the Danish Institute for Human Rights

Ghana case study

We conducted a review of the secondary literature on Ghana’s Commission on Human Rights and Administrative Justice. We then traveled to Ghana and conducted interviews. These interviews were semistructured. We started with a general interview framework that touched upon all of the themes discussed in our research. We added and deleted questions depending on the role of the interviewee (for example, civil society member, representative from the private sector, and government official):

- Civil Society
 - Oxfam America –Ghana, January 8, 2012
 - Richard Hato-Kuevor, extractive industries advocacy officer
 - Wassa Association of Communities Affected by Mining (WACAM), January 8, 2012
 - Daniel Owusu-Koranteng, executive director
 - Hannah Owusu-Koranteng, deputy executive director
 - IBIS Ghana (Danish nongovernmental organization), January 11, 2012
 - Mohammed Amin Adam, coordinator, Africa Against Poverty

- National Coalition on Mining, January 9, 2012
 - Abdulai Darimani, program officer – environment
- Star Ghana, January 12, 2012
 - Lawrencia Adams, program manager/ team leader
 - Amidu Ibrahim Tanko, technical support group and deputy program manager
- Revenue Watch Institute, January 13, 2012
 - Emmanuel Kuyole, Africa regional coordinator
- ISODEC (Integrated Social Development Center), January 12, 2012
 - Steven Manteau, communication director
- Center for Social Impact Studies Takoradi, January 12, 2012
 - Richard Ellimah, national coordinator
- Center for Public Interest Law, January 16, 2012
 - Augustine Nibor, executive director
- Private Sector
 - AngloGold Ashanti, January 10, 2012
 - Aboagye Ohene Adu, executive manager, sustainability
 - Golden Star Resources, January 27, 2012
 - Mark Thorpe, vice president, sustainability
 - Ghana Chamber of Mines, January 16, 2012
 - Ahmed D. Nantogmah, director, public affairs and environment
- Government
 - CHRAJ, January 13, 2012
 - Richard Quayson, deputy commissioner
 - Joseph Whittal, director, legal and investigations
 - Kwame Bosompem, head of public relations
 - Parliament of Ghana, July 10, 2012 (Skype call)
 - Camillo Pwamang, clerk, Committee on Mines and Energy
 - Minerals Commission (MinCom) and the Ministry of Lands and Natural Resources (ML&NR), June 22, 2012 (email response to questions)
 - B.R. Yakubu, former technical director for mines

In addition, we sought to contact the following Ghanaian government officials for comment. Despite repeated attempts, we were not successful at soliciting their responses to our questions:

- Ministry of Energy
 - Paul Frimpong, director for petroleum

- Environmental Protection Agency (EPA)
 - Felix Addo-Okyireh, principal program officer
- Minerals Commission
 - Richard Afenu, projects coordinator

Targeted extractive NHRI selection

We compiled a list of 27 countries with which to compare our Ghana case study. We used the following process to attain this targeted list of countries:

1. The country must be an Extractive Industries Transparency Initiative Compliant or Candidate Country¹⁶⁶ OR the country must be on International Monetary Fund Hydrocarbon or Minerals list.¹⁶⁷
2. The country must have an ICC-accredited NHRI.¹⁶⁸
3. The country must be in Latin America, Africa, or Southeast Asia, where the Oxfam America extractive industries program operates.
4. Ensure that all Oxfam America extractive industries program countries are included (add back in El Salvador, Honduras, Senegal).¹⁶⁹

166. "EITI Countries," Extractive Industries Transparency Initiative web site, <http://eiti.org/countries>.

167. International Monetary Fund, "Guide on Resource Revenue Transparency" (2007): 62–63.

168. ICC, "Chart of the Status of National Institutions."

169. "Oxfam America: Global Reach" web site, <http://www.oxfamamerica.org/regions>, accessed March 1, 2012.

Appendix II: Evaluation framework and scoring key

Table A1. Scoring key

2	Significant positive impact on reputation of NHRI	Significantly improves NHRI's power and influence	Significantly advances public understanding of rights	Significantly empowers human rights community	Significant advancement of dispute-resolution processes
1	Some positive impact on reputation of NHRI	Some improvement in NHRI's power and influence	Some improvement in public understanding of rights	Some empowerment of human rights community	Some advancement of dispute-resolution processes
0	No impact on reputation	No impact on power and influence	No impact on public understanding of rights	No impact on empowerment of human rights community	No impact on advancement of dispute-resolution processes
-1	Some negative impact on reputation of NHRI	Some reduction in NHRI's power and influence	Some reduction in public understanding of rights	Some reduction in empowerment of human rights community	Some weakening of dispute-resolution processes
-2	Significant negative impact on reputation of NHRI	Significantly reduces NHRI's power and influence	Significant reduction in public understanding of rights	Significant reduction in empowerment of human rights community	Significant weakening of dispute-resolution processes

Table A2. Categories of evaluation criteria

Category	Recommendations	Evaluation criteria					Total
		Independence	Power	Promotion	Empowerment	Remediation	
Accessibility	Maintain physical office in or near extractive communities						0
Accessibility	Aid with public education efforts being conducted by local civil society groups in extractive communities						0
Accessibility	Advocate for more personnel training on human rights norms						0
Accessibility	Training of extractive company managers and employees about business and human rights issues						0
Accessibility	Monitor human rights issues on the ground						0
Accessibility	Facilitate remote education for communities by producing written and multimedia education materials						0
Accessibility	Expand public education efforts						0
Accessibility	Advocate for more personnel training on mediation and conflict resolution						0
Communication	Develop systematic communication strategy—reports for local/community audience						0
Communication	Develop systematic communication strategy—reports for national audience						0
Communication	Emphasize controversial human rights issues						0
Communication	Create database to track and report on individual cases						0
Communication	Report on broad human rights issues and trends						0
Communication	Utilize and adapt international business and human rights literature to local context						0
Communication	Develop systematic communication strategy—reports for international audience						0
Coordination	Coordinate with domestic civil society						0
Coordination	Coordinate with agencies in government (EPA, Minerals Commission, etc.)						0
Coordination	Coordinate with companies operating in country						0
Coordination	Collaborate with peer NHRIs in extractive industries						0
Coordination	Coordinate with international NGOs						0
Coordination	Work more closely with the International Coordinating Committee of NHRIs						0
Coordination	Coordinate with the executive						0
Coordination	Coordinate with the legislature						0
Mandate	Expand mandate to include unilateral investigatory powers						0
Mandate	Change mandate for more personnel independence (tenure)						0
Mandate	Change mandate to explicitly indicate human rights by corporations						0
Mandate	Change mandate to have more enforcement power						0
Mandate	Change mandate to give broader jurisdiction						0
Mandate	Change mandate to be more financially independent						0
Mandate	Expand mandate to include complaint-handling capacity						0
Mandate	Expand mandate with human rights education, information, and awareness-raising campaigns						0
Mandate	Expand mandate for broader investigative powers including access to information and to issue subpoenas and summon witnesses						0
Resources	Advocate for more financial resources domestically						0
Resources	Advocate for more financial resources from international donors						0

Appendix III: International Coordinating Committee– accredited NHRI list

Table A3. List of NHRIs accredited by the International Coordinating Committee of National Human Rights Institutions (and the Office of the United Nations High Commissioner for Human Rights)

A = Compliance with Paris Principles; B = Not fully in compliance with Paris Principles; C = Noncompliance with Paris Principles

Country		Country		Country	
Afghanistan	A	Great Britain	A	Panama	A
Albania	A	Greece	A	Paraguay	A
Algeria	B	Guatemala	A	Peru	A
Angola	C	Honduras	B	Philippines	A
Antigua and Barbuda	C	Hong Kong	C	Poland	A
Argentina	A	Hungary	B	Portugal	A
Armenia	A	India	A	Qatar	A
Australia	A	Indonesia	A	Romania	C
Austria	B	Iran	C	Russia	A
Azerbaijan	A	Ireland	A	Rwanda	A
Bangladesh	B	Jordan	A	Scotland	A
Barbados	C	Kenya	A	Senegal	A
Belgium	B	Luxembourg	A	Serbia	A
Benin	C	Macedonia (FYROM)	B	Sierra Leone	A
Bolivia	A	Madagascar	C	Slovakia	B
Bosnia and Herzegovina	A	Malawi	A	Slovenia	B
Bulgaria	B	Malaysia	A	South Africa	A
Burkina Faso	B	Maldives	B	South Korea	A
Cameroon	A	Mauritania	A	Spain	A
Canada	A	Mauritius	A	Sri Lanka	B
Chad	B	Mexico	A	Sweden	B
Colombia	A	Moldova	B	Switzerland	C
Costa Rica	A	Mongolia	A	Tanzania	A
Croatia	A	Morocco	A	Thailand	A
Democratic Republic of Congo	B	Namibia	A	Timor-Leste	A
Denmark	A	Nepal	A	Togo	A
Ecuador	A	Netherlands	B	Tunisia	B
Egypt	A	New Zealand	A	Uganda	A
El Salvador	A	Nicaragua	A	Ukraine	A
France	A	Nigeria	A	Venezuela	A
Georgia	A	Northern Ireland	A	Zambia	A
Germany	A	Norway	A		
Ghana	A	Occupied Palestine Territory	A		

Note: Several prominent countries do not have an NHRI, including the United States and Israel.

Appendix IV: Targeted NHRI list and descriptions

Table A4. Criteria for selecting NHRIs for targeted country analysis

		Extractive country*	Oxfam America	Africa	Southeast Asia	Latin America	Accreditation by the International Coordinating Committee of National Human Rights Institutions
1	Algeria	x		x			B
2	Bolivia	x	x			x	A
3	Burkina Faso	x		x			B
4	Cameroon	x		x			A
5	Chad	x		x			B
6	Colombia	x				x	A
7	Congo	x		x			B
8	Ecuador	x	x			x	A
9	El Salvador		x			x	A
10	Ghana	x	x	x			A
11	Guatemala	x	x			x	A
12	Honduras		x			x	B
13	Indonesia	x			x		A
14	Madagascar	x		x			C
15	Mauritania	x		x			A
16	Mexico	x				x	A
17	Namibia	x		x			A
18	Nigeria	x		x			A
19	Peru	x	x			x	A
20	Senegal		x	x			A
21	Sierra Leone	x		x			A
22	South Africa	x		x			A
23	Tanzania	x		x			A
24	Timor-Leste	x			x		A
25	Togo	x		x			A
26	Venezuela	x				x	A
27	Zambia	x		x			A

* We have classified countries as an “extractive country” if they are an Extractive Industries Transparency Initiative Compliant or Candidate country or if they are on the International Monetary Fund’s hydrocarbon or minerals list.

Table A5. NHRI Descriptions

Country	Name of NHRI	Name abbreviation	NHRI web site	Brief description
1 Algeria	Commission Nationale des Droits de l'Homme	CNCPPDH	http://www.cncppdh.org (not functional)	<ul style="list-style-type: none"> Established by presidential decree in 2001 and supplemented by an ordinance in 2009.¹⁷⁰
2 Bolivia	Defensoría del Pueblo	Defensoria	http://www.defensoria.gob.bo/	<ul style="list-style-type: none"> Has “formal independence” but this has been put into question with a recent scandal involving the secretary-general of the institution allegedly paying a bribe. Has power to investigate with or without a complaint. Does not have power to impose punishment, only to make recommendations to authorities.¹⁷¹ Can lead dialogue, mediation, and other dispute resolution processes. Complaints mechanisms available with regard to any right but only rights impacted by certain kinds of companies. In practice, the majority of complaints have related to companies providing the basic services of telecommunications, drinking water and sewage, electricity, and public transport. In the mining or oil/gas sector, typical complaints involve rights to a healthy environment, private property, and prior consultation.¹⁷²

170. International Coordinating Committee of National Human Rights Institutions, “Report from the Visit of the International Coordinating Committee of National Human Rights Institutions to Algeria,” September 13–17, 2011, <http://aehrd.info/file/92.doc>, accessed March 1, 2012.

171. Global Integrity, *Global Integrity Report: Bolivia—2010*, “Scorecard Category V-1 National Ombudsman,” <http://www.globalintegrity.org/report/Bolivia/2010/scorecard>, accessed March 1, 2012.

172. OHCHR, “Survey on National Human Rights Institutions.”

3	Burkina Faso	Commission Nationale des Droits de l'Homme	CNDH	No web site found	<ul style="list-style-type: none"> • Established by decree of the Constitutional Council in 2001. • Consists of 36 members from civil society organizations, religious and traditional communities, the university community, public institutions, and the government. • Reformed in 2009 to give it more independence, management autonomy, and resources.¹⁷³
4	Cameroon	National Commission on Human Rights and Freedoms	NCHRF	http://www.cndhl.cm/	<ul style="list-style-type: none"> • Established by presidential decree in 1990. A 2004 law repealed the presidential decree and established the commission in conformity with the Paris Principles. • Commissioners appointed by the president for five-year terms. • Has a working group on economic, social, and cultural rights, as well as a working group on rights of vulnerable populations. • Handles complaints, conducts investigations, proposes remediation, and conducts human rights education.¹⁷⁴ • Handles a large number of complaints against private entities. • Does not work with human rights NGOs located in the country.¹⁷⁵
5	Chad	Commission Nationale des Droits de l'Homme	CNDHL	No web site found	<ul style="list-style-type: none"> • Established in 1994 through a law passed by the National Assembly. • Situated within the office of the prime minister and therefore lacks formal independence. • Has powers to freely investigate and obligation to publish results of investigations. • Composed of 21 members from government ministries, nongovernmental human rights associations, labor unions, and individual experts in human rights. • Not supported by the rest of government, so after 1997 stopped taking on controversial human rights issues, and therefore is not trusted by national NGOs.¹⁷⁶

173. African Commission on Human and Peoples' Rights. "Periodic Report of Burkina Faso to the African Commission on Human and Peoples' Rights Relative to the African Charter on Human and Peoples' Rights Covering the Period 2003–2009," <http://reliefweb.int/report/burkina-faso/periodic-report-burkina-faso-african-commission-human-and-peoples%E2%80%99-rights>. Accessed March 24, 2013.

174. Commission Nationale des Droits de l'Homme et des Libertés web site," <http://www.cndhl.cm/>, accessed March 1, 2012.

175. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Cameroon* (2012), <http://www.hrw.org/legacy/reports/2001/africa/cameroon/cameroon.html>, accessed March 1, 2012.

176. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Chad* (2012), <http://www.hrw.org/legacy/reports/2001/africa/chad/chad.html>, accessed March 1, 2012.

6	Colombia	Defensoría del Pueblo	Defensoría	http://www.defensoria.org.co/red/	<ul style="list-style-type: none"> • Constitutional responsibility to protect and promote. • On the web page of the Defensoría del Pueblo, citizens can access a list a popular actions taken to protect human rights.¹⁷⁷
7	Republic of the Congo	National Human Rights Commission	HRC	No web site found	<ul style="list-style-type: none"> • Established by law in 2003. • Commissioners appointed by presidential decree. • Members include human rights NGOs, women's rights NGOs, child rights NGOs, youth organizations, judges, bar association, medical association, universities, trade unions, private media, public media, religious communities, disabled persons' organizations, economists, and cultural organizations.¹⁷⁸
8	Ecuador	Defensor del Pueblo	DPE	http://www.dpe.gob.ec/	<ul style="list-style-type: none"> • Established in the constitution in 1998. • Can handle complaints, but they must be filed in person orally or in writing. Conducts investigations, mediates conflicts between parties, can hear complaints on issues related to environmental protection. • Has established La Coordinación Nacional de Derechos Económicos, Sociales y Culturales to coordinate work on economic, social, and cultural human rights issues. • Has established La Coordinación Nacional de Promoción y Educación to lead public education and communication efforts.¹⁷⁹

177. Global Integrity, *Colombia—2009*.

178. Ulrik Spliid, Danish Institute for Human Rights, "The Compliance of the Constituent Documents of West African and Central African National Human Rights Institutions with the Paris Principles: A Descriptive Analysis," 2009, http://www.nanhri.org/index2.php?option=com_docman&task=doc_view&gid=35&Itemid=28, accessed March 1, 2012.

179. Defensoría del Pueblo de Ecuador web site, <http://www.dpe.gob.ec/>, accessed March 1, 2012.

9	El Salvador	Procurador para la Defensa de los Derechos Humanos	PDDH	http://www.pddh.gob.sv/	<ul style="list-style-type: none"> • Established as part of a peace process following El Salvador's civil war, and was included in the final 1992 Chapultepec Peace Accords through a constitutional amendment. • Commissioner is elected by the legislature. • Has a hybrid human rights ombudsman. • Has powers to ensure respect for human rights, investigate (with complaint or on own motion) cases of violation of human rights, and formulate conclusions, recommendations, and public criticisms if recommendations are not implemented by government, promote judicial and administrative actions for protection of rights, propose reforms for state organs on progress of human rights, present proposals for new human rights laws, issue opinions on draft laws affecting human rights, promote human rights treaties, propose measures to prevent violations of rights, issue reports, and develop human rights education programs. • Includes civil, political, economic, social, cultural, and third-generation rights in constitution, laws, and treaties. • Can take complaints against actors in both the public and private sectors.¹⁸⁰
10	Ghana	Commission on Human Rights and Administrative Justice	CHRAJ	http://www.chrajghana.com/	<ul style="list-style-type: none"> • <i>See case study in this report.</i>
11	Guatemala	Procuraduría de los Derechos Humanos de Guatemala	PDH	http://www.pdh.org.gt	<ul style="list-style-type: none"> • Established in 1985 constitution. • Commissioner is elected by and responsible to legislature to defend constitutional and international human rights. • Authority to investigate and criticize administrative behavior, make recommendations, issue public censures, bring judicial or administrative actions or appeals, report annually to legislature, and provide human rights education.¹⁸¹

180. Reif, *Ombudsman*, 260–265.

181. Reif, *Ombudsman*, 192–196.

12	Honduras	Comisionado Nacional de los Derechos Humanos de Honduras	CONADEH	http://www.conadeh.hn/	<ul style="list-style-type: none"> Established by constitution in 1982. Has powers to handle complaints and conduct investigations. Has conducted a report on environmental policy and forest fires that have had a negative impact on the country's economy and communities' livelihoods.¹⁸²
13	Indonesia	National Human Rights Commission of Indonesia	Komnas HAM	http://www.asiapacificforum.net/members/full-members/indonesia	<ul style="list-style-type: none"> A multimember institution whose mandate includes investigation of complaints, education, and review of potential legislation.¹⁸³
14	Madagascar	Commission Nationale des Droits de l'Homme de Madagascar	CNDH	No web site found	<ul style="list-style-type: none"> Originally established by executive decree, but re-established in accordance with the Paris Principles in 2008.¹⁸⁴
15	Mauritania	Commission Nationale des Droits de l'Homme	CDHLCPI	http://www.cdhlcpi.mr/ not functional	<ul style="list-style-type: none"> Established in 1998 by a decree of the prime minister. Mandate requires it to coordinate with other government agencies. The commissioner has the rank of a government minister. Commissioner appointed by decree of the prime minister. Has developed a multiyear strategy for human rights education and promotion, but no evidence that the commission has undertaken human rights protection activities.¹⁸⁵

182. Comisionado Nacional de los Derechos Humanos web site, <http://www.conadeh.hn/>, accessed March 1, 2012.

183. Carver, *Performance & Legitimacy*, 4.

184. Human Rights Committee (CCPR), "Madagascar: Follow-up: State Reporting, Action by Treaty Bodies," http://www.bayefsky.com/pdf/madagascar_ccpr_follow_report.pdf, accessed March 1, 2012.

185. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Mauritania* (2012), <http://www.hrw.org/legacy/reports/2001/africa/mauritania/mauritania.html>, accessed March 1, 2012.

16	Mexico	Comisión Nacional de los Derechos Humanos	CNDH	http://www.cndh.org.mx/ <ul style="list-style-type: none"> • Established in 1990.¹⁸⁶ • Has powers to hear complaints and make nonbinding public recommendations • Mandate was amended through constitutional amendment to transfer nomination of commissioner from the president to the senate.¹⁸⁷ • Education efforts include television announcements on human rights issues.¹⁸⁸ • In 2007, budget was \$73 million, and the organization had more than 1,000 employees.¹⁸⁹
17	Namibia	Office of the Ombudsman	Ombudsman	http://www.ombudsman.org.na/ <ul style="list-style-type: none"> • Established in 1990 constitution. • Ombudsman appointed by president on recommendation of Judicial Service Commission, with formal guarantee of independence in constitution. • Hybrid institution with ombudsman, human rights protection, anti-corruption, and environmental protection mandates. • Has powers to investigate complaints of human rights infringements, complaints against private persons/entities, regarding overutilization of natural resources, irrational exploitation of nonrenewable resources, degradation and destruction of ecosystems, and failure to protect the beauty and character of Namibia. • Responsibilities include civil, political, economic, social, and cultural rights of constitution; include implementation of human rights treaties. • Ability to refer matters to the prosecutor-general and the auditor-general, bring court proceedings to a halt, or alter offending actions or prohibit their enforcement by challenging the validity of laws. • Constitution gives it discretionary power to provide legal assistance and advice to persons engaging in litigation to uphold their constitutional human rights.¹⁹⁰

186. Carver, *Performance & Legitimacy*, 37.

187. Carver, *Performance & Legitimacy*, 37–39.

188. Carver, *Performance & Legitimacy*, 95–96.

189. Human Rights Watch, *Mexico's National Human Rights Commission*, 1.

190. Reif, *Ombudsman*, 234–236.

18	Nigeria	National Human Rights Commission of Nigeria	NHRC	http://www.nigeriarights.gov.ng <ul style="list-style-type: none"> • Established in 1996. • Has worked closely with human rights NGOs in the country.¹⁹¹ • Complaints mechanism available with regard to any kind of company and all rights. • Investigatory powers include on-site visits. Remedial activities include mediation and conciliation. Can make recommendations for redress, but cannot enforce recommendations.¹⁹²
19	Peru	Defensoría del Pueblo	Defensoría	http://www.defensoria.gob.pe/ <ul style="list-style-type: none"> • Commissioner is elected by Congress. • Has dual authority to protect human rights and oversee government administration. • Has authority to initiate investigation or begin investigation in response to a complaint. Can give advice, warnings, recommendations, reminders of legal obligations, or suggestions for the adoption of new policies. Decisions not binding. Can represent a person or group of persons for the defense of constitutional and fundamental rights. • Jurisdiction includes national, regional, and local administration, armed forces, national police, and the administrative activities of judicial branch. Jurisdiction also includes nonstate entities providing public services.¹⁹³ • It cannot handle complaints directly against companies, but can seek information from the state about a company and the state's actions in rectifying any inappropriate or illegal act by the company. • The ombudsman presented a report to Congress in 2007, "Socio-Environmental Conflicts Due to Extractive Activities in Peru," which includes recommendations to extractive companies and to civil society on improving relations and avoiding escalating violence around conflicts.¹⁹⁴ • Can ask state authorities to monitor environmental quality in areas near companies about which it has received complaints.¹⁹⁵

191. Carver, *Performance & Legitimacy*, 97.

192. OHCHR, "Survey on National Human Rights Institutions."

193. Reif, *Ombudsman*, 200–204.

194. Defensoría del Pueblo, "Conflictos socioambientales."

195. OHCHR, "Survey on National Human Rights Institutions."

20	Senegal	Comité Sénégalais des Droits de l'Homme	NCHR	http://www.csdh.sn/	<ul style="list-style-type: none"> • Established by executive decree in 1970.¹⁹⁶ • A law passed in 1997 re-established the commission consistent with the Paris Principles. • Has powers to conduct human rights promotion and education, and can investigate cases and issue recommendations. • Has worked as an intermediary between civil society and government on human rights issues.¹⁹⁷
21	Sierra Leone	Human Rights Commission	HRC-SL	http://www.humanrightssl.org/ (not functional)	<ul style="list-style-type: none"> • Established in 1996, but has had difficulty operating owing to civil conflict.¹⁹⁸ • The 1999 Lomé Peace Accord called for the creation of an "autonomous quasi-judicial national Human Rights Commission" within 90 days.¹⁹⁹

196. Comité Sénégalais des Droits de l'Homme web site, <http://www.csdh.sn/>, accessed March 1, 2012.

197. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Senegal* (2012), <http://www.hrw.org/legacy/reports/2001/africa/senegal/senegal.html>, accessed March 1, 2012.

198. Reif, *Ombudsman*, 259.

199. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Sierra Leone* (2012), <http://www.hrw.org/legacy/reports/2001/africa/sierraleone/sierraleone.html>, accessed March 1, 2012.

22	South Africa	South African Human Rights Commission	SAHRC	http://www.sahrc.org.za/home /	<ul style="list-style-type: none"> • Established in 1996 constitution. • Commissioner is appointed by the president on the recommendation of the National Assembly, reports to National Assembly (criticized for not being independent enough from executive branch). • A hybrid institution with mandates comprising the classical ombudsman function, anti-corruption work, and investigating and reporting on alleged violations of the codes of ethics by members of the executive branch and Parliament. • Cannot investigate judicial functions of courts or the private sector.²⁰⁰ • Provision in the constitution for the involvement of civil society in the recommendation process.²⁰¹ • Public education efforts through newspaper advertisements, radio plays, commercial sponsorships.²⁰² • Offices located in Johannesburg and provincial capitals.²⁰³
23	Tanzania	Commission for Human Rights and Good Governance	CHRAGG	http://www.cncppdh.org/ (not functional)	<ul style="list-style-type: none"> • Established in 2000 by amendments to constitution and by legislative act in 2001. • Commissioners appointed by president on recommendations of an appointments committee. • Hybrid commission with ombudsman, human rights protection, and good governance mandates. • Powers to promote human rights protection, investigate complaints about human rights violations, investigate complaints (including against private institutions), and conduct research on human rights. • Modeled after Ghana's Commission on Human Rights and Administrative Justice.²⁰⁴
24	Timor-Leste	Provedor for Human Rights and Justice	Provedor	No web site found	<ul style="list-style-type: none"> • Established by law following a 2002 constitutional provision for an ombudsman. • Law gives it powers to monitor, investigate cases, provide advice on human rights, and conduct human rights education.²⁰⁵

200. Reif, *Ombudsman*, 237–240.

201. Carver, *Performance & Legitimacy*, 77.

202. Carver, *Performance & Legitimacy*, 80–81, 95.

203. Carver, *Performance & Legitimacy*, 85.

204. Reif, *Ombudsman*, 230–231.

205. Guteriano Nicolau, "Ombudsman for Human Rights: The Case of Timor-Leste," Asia-Pacific Human Rights Information Center, *Focus* 47 (March 2007), <http://www.hurights.or.jp/archives/focus/section2/2007/03/ombudsman-for-human-rights-the-case-of-timor-leste.html>, accessed March 1, 2012.

25	Togo	National Commission for Human Rights	CNDH	No web site found	<ul style="list-style-type: none"> • Established by law in 1987, and led by two lawyers with close ties to President Eyadema.²⁰⁶ • Complaints mechanisms include ability to hear complaints with regard to violations by state-owned or state-controlled companies. • Investigations include site visits, interviews, and subpoena of files. Can lead conciliation or mediation processes. Can require monetary compensation for victims. • Has conducted research and prepared reports on human rights situation with regard to companies operating in the country.²⁰⁷
26	Venezuela	Defensoría del Pueblo	Defensoría	http://www.defensoria.gob.ve/dp/	<ul style="list-style-type: none"> • Established in the constitution in 1999 as one of the citizen power organs of government.²⁰⁸ • Appointed by the National Assembly. • NGOs have claimed that the office is not transparent or independent. Closely connected to the Chavez party.²⁰⁹
27	Zambia	Zambian Human Rights Commission	HRC	No web site found	<ul style="list-style-type: none"> • Established permanently through a constitutional amendment in 1996. • Emphasizes communication efforts targeted at international donors, as opposed to local human rights activists. • Has powers to conduct investigations and issue findings. • Has an economic, social, and cultural rights committee.²¹⁰ • No complaints mechanisms with regard to companies.²¹¹

206. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Togo* (2012), <http://www.hrw.org/legacy/reports/2001/africa/togo/togo.html>, accessed March 1, 2012.

207. OHCHR, "Survey on National Human Rights Institutions."

208. Defensoría del Pueblo (Venezuela) web site, <http://www.defensoria.gob.ve>, accessed March 1, 2012.

209. US Department of State, "2010 Country Reports on Human Rights Practices: Venezuela," 2010, <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154523.htm>, accessed March 1, 2012.

210. Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa: Zambia* (2012), <http://www.hrw.org/legacy/reports/2001/africa/zambia/zambia.html>, accessed March 1, 2012.

211. OHCHR, "Survey on National Human Rights Institutions."

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America

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Boston, MA 02114-2206
(800) 77-OXFAM

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1100 15th Street, NW, Suite 600
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