Natural resource exploitation and children’s rights

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1. Introduction

One of the greatest challenges for many countries today, mainly but not exclusively in the Global South, concerns the exploitation of their natural resources. The last decades have witnessed an increased pressure on, particularly non-renewable, resources worldwide, invigorated by the continued rise of raw material prices in a globalized world. In the rush for short-term profits, human rights and environmental considerations are often swept under the carpet or only paid lip service to. This chapter explores the relevance of children’s rights (law) in the context of natural resource exploitation, with focus on Latin America.

In contrast to “classical” children’s rights themes such as juvenile justice or alternative care, an established research tradition on “children’s rights and natural resource exploitation” does not – yet – seem to exist. This may be explained by the relative novelty of (attention to) the issue, triggered by the resource rush as well as growing environmental awareness and concerns. At both the normative and scholarly level, the relationship between children’s rights and natural resource exploitation has been commonly approached from a particular point of view instead of from a holistic perspective. However, as will become evident throughout this contribution, natural resource exploitation is a transversal phenomenon, cutting across many traditional foci of children’s rights analysis, among which child labour, health and education.

The chapter will also show that resource exploitation is an area that highlights the ambivalence of a separate “domain” of children’s rights, and in which the current legal conceptualization of children’s and human rights runs up against its limits. It is moreover argued that children’s rights need to be understood in a holistic, intercultural and context-specific way, in order to adequately address extraction-related challenges.

The relationship between children and young people and natural resource exploitation is multidimensional and variable because of at least three factors: the wide range of resource

1 Global use of natural resource materials increased by over 40 percent between 1992 and 2005. By 2008 world trade in natural resources was equivalent to 24 percent of the total value of world trade (UNEP, 2012).
exploitation activities; the different roles of children and young people therein; and the diversity among children and young people.

For a start, there is a large variety of resource exploitation activities, differentiated in function of, among other things: the natural resource exploited (e.g., coffee, sugarcane, timber, oil, gas, mineral resources); the objectives of the exploitation (subsistence or profit-making); the executive agent (a business enterprise, a collectivity or an individual); the scale (small- or large-scale); and the impact on the population and the natural environment. Although “natural resource exploitation” in principle covers all these dimensions, the term is often used to refer to resource extraction with a profit-making objective by business actors. Within business enterprises, a distinction is commonly made between transnational companies (TNCs) and small and medium enterprises (SMEs). Research has mostly focused on the human and children’s rights treatment by TNCs, paying – inappropriately – less attention to the role of SMEs and the informal economy (ICJ and OHCHR, 2011, p. 9; Mena et al., 2010, p. 183).

Second, children and young people may be involved in or impacted by natural resource exploitation in several ways. These different “roles” can be grossly divided into three categories: children may be participants, beneficiaries or victims of resource exploitation. As participants, children may be extracting fruits from the forests or working on coffee plantations. As beneficiaries, they may profit from hunting and agricultural activities undertaken by adult relatives, or from the revenues earned by their parents through timber extraction. As victims, children may suffer from pollution caused by oil company activities or from conflicts that the latter trigger with their communities. These various roles will often converge in one child, and boundaries between these are thus not clear-cut. Identifying the role of children in resource exploitation may also be ambiguous, as is illustrated with the issue of child labour (see in general Hanson, Volonakis and Al-Rozzi, Chapter 18 in this Handbook): depending on the context and working conditions, but also on their employer’s, parents’ and society’s attitude and perceptions, children may feel “victims” (of exploitative labour) or “participants” (as “working children”) in resource exploitation. Others (parents, employers) will also perceive children as taking up one of these roles – whereby their views will not necessarily coincide with those of children. The identification of the different roles that children can play in the context of resource exploitation may thus interplay with the construction of child images and the protection–agency dichotomy (see introduction). More concretely, interaction seems particularly plausible between the role of “victim” and the child image of a vulnerable child, and between the role of “participant” and the child image of an autonomous child.

Third, the relationship between resource exploitation and children and young people also varies because of the latter’s internal diversity. Children and young people are not a homogeneous group, but differ with respect to, among other things, age, gender, class, ethnicity, socio-economic status and geographical location. Indigenous children, for instance, face particular challenges. Indigenous peoples generally live in resource-rich regions and have a profound, albeit dynamic (Desmet, 2011), relationship with their lands, territories and natural resources. They are among the groups most severely affected by the activities of the extractive and agro-industrial sectors (UN General Assembly 2013, §1).

These three factors characterizing the relationship between children and young people and natural resource exploitation will interplay in determining the impact of resource exploitation on the rights and well-being of children and young people. This impact greatly varies. Resource exploitation may contribute to the improvement of children’s living standards and to the realization of their rights, for instance, when it concerns small-scale sustainable exploitation, or when states invest revenues in education and health care systems in a transparent and effective way. On the other hand, resource exploitation activities may also negatively impact on
children’s well-being and infringe their rights in multiple ways. It has been demonstrated that countries that rely on oil and mineral exports suffer from higher rates of mortality for children under the age of five than other states at the same income level. In addition, oil dependence is linked to higher rates of child malnutrition and lower results in the fields of education and health care, whereas mineral dependence is associated with higher levels of income inequality (Ross, 2001; Save the Children, 2003). This disconnect between natural resource wealth, on the one hand, and economic growth and development outcomes, on the other, has become commonly known as the “resource curse” (Auty, 1993).

The way (the impact of) resource exploitation is perceived and dealt with, will moreover vary with how children and young people are conceptualized. As elaborated in this Handbook’s introduction, various child images can be distinguished, underpinning different policies and practices. If children are constructed as fragile and incompetent, protective and paternalistic policies will get the upper hand. If, on the other hand, children are conceptualized as active social agents, capable of expressing their views and contributing to their own development, policies and practices will take more account of this input of children and young people (Tranter and Sharpe, 2007). It will be demonstrated that in resource exploitation, the image of a vulnerable child seems predominant, leading to a “protective reflex” of (human rights) actors involved. Indications of recognition of children’s and young people’s agency are nonetheless increasingly emerging.

To contextualize and concretize the challenges faced by children and young people in relation to natural resource exploitation, the chapter zooms in on the Latin American continent. After an introduction on resource exploitation policies, the experiences of children and young people with regard to natural resource industries in Latin America are discussed on the basis of various case studies. Thereinafter, relevant legal standards are reviewed, with particular attention for business-related standards, the Inter-American human rights jurisprudence and the approach of the UN Committee on the Rights of the Child (hereinafter also CRC Committee). The chapter then discusses two fields of tension, on child-specificity and on incorporating insights from other disciplines, to round up with some future-oriented reflections.

2. Natural resource exploitation in Latin America: Policies and trends

The case of Latin America is interesting to analyse here due to the high dependency of its economy on natural resource exploitation, and the adverse implications this has had on human rights, including children’s rights, in particular of indigenous peoples and local rural communities (RRI, 2012; Bass, 2008; Ensing, 2008). Although since colonial times mining and agriculture have been central activities in the region’s economy, the dependency on natural resource exploitation has steadily grown in recent decades as a consequence of neoliberal policies adopted by most of its states (UNEP, 2012; CEPAL, 2012a). In accordance with these policies, which have been promoted by multilateral financial institutions such as the World Bank and the Inter-American Development Bank, many states in Latin America have abandoned previous policies of industrialization and import substitution, and opened their economies to foreign investment, mainly in natural resource exploitation (Leiva, 2011).

Such investment has been facilitated by free trade and bilateral investment agreements. These agreements generally contain provisions that protect investors against political risks and promote the enjoyment of financial benefits (RRI, 2012; Aylwin, 2010). Moreover, several of them contain “stabilization” clauses that can either insulate investors from new environmental and social laws or entitle them to seek compensation for compliance, restricting the ability of states to implement their international human rights obligations (Ruggie, 2010; Pahis, 2011).
As a result of these policies and agreements, Latin America is currently the main international destination of foreign direct investment in mining and oil. As exploration and exploitation increase, so do conflicts triggered by these activities. This is due to their significant environmental and social impact, in particular on local and indigenous communities (CEPAL, 2012a; RRI, 2012). Agriculture has equally experienced a significant growth in the region in recent years, leading to a considerable expansion of irrigated lands and areas destined for cultivation. Land grabbing processes associated with these activities have seriously threatened collective land rights of indigenous peoples and rural communities. Such activities have also undermined their food security based on local agricultural production. Environmental impacts include deforestation, land degradation and erosion, biodiversity loss and contribution to greenhouse gases. In the last two decades, Latin America has contributed one third of the world’s deforestation (CEPAL, 2012a). In addition, South America in particular has emerged as a main destination of investments in forest plantations, largely monocultures, mostly oriented to the production of paper pulp (CEPAL, 2012a). The implications of these plantations for land rights and food security are similar to or even worse than those of agricultural activities, as illustrated below. Opportunities, such as employment, services and taxation, which are generally promoted as benefits of resource exploitation, in particular of mining, are unevenly distributed in Latin America. This unequal distribution helps to explain social conflicts that emerge in many areas where resource exploitation is undertaken (Bebbington, 2011).

3. Children’s rights and natural resource exploitation: Cases from Latin America

Adverse impacts of resource exploitation on children and their rights are common to most countries in Latin America. One of the elements contributing to the internal diversity of children and young people is their geographical location, i.e. whether they are living in rural or urban areas. In rural areas, where access to social services and state presence are limited, child poverty is higher than in urban environments. It is also in rural areas that resource exploitation often takes place, and consequently, that children are more exposed to its direct impacts. Indigenous children, due to their intersected identity of being indigenous and a child, are generally even more exposed to negative consequences of resource exploitation. A total of 63 percent of Latin American children are poor; a percentage that increases to 88 percent in the case of indigenous children (Del Popolo, 2012).

For instance, indigenous (Aymara and Quechua) children in the Andes are actively engaged in small-scale and artisanal mining. In Peru, the International Labour Organization (ILO) estimates that 50,000 children are involved in mining. A study undertaken in two mining villages in Ayacucho and the Puno region shows that children working in this activity lack running water and a sewage system, as well as adequate health care and access to education. In the Puno region, they live in extreme climate conditions at high elevations (5,400 meters) and are at risk due to violence and alcoholism, practices widespread in the area. In both cases, mines lack advanced technology, subjecting children to health and security risks because of exposure to mercury, dust and toxic gases (Ensing, 2008).

Although large-scale mining generally does not employ children, it has severely impacted on children too. Serious environmental problems, which endanger children’s health, are prevalent across the region, and have led to some cases before the Inter-American human rights system, as discussed below.

Agribusiness and forest plantations have also had serious impacts on indigenous children’s
rights. Such is the case of soybean and sugarcane plantations in Mato Grosso do Sul (MS), Brazil, in the ancestral territory of the Guarani Kaiowa people. Land acquisition by large corporations triggered by the 2007 biofuel agreement between Brazil and the US, has resulted in deforestation, the eviction of the Guarani Kaiowa from their natural habitats, and their inability to plant food, fish and hunt for a living (Aylwin, 2009; Miranda, 2012). By 2008, almost 8,000 indigenous persons, mainly Guarani, including children, were working in deplorable conditions on sugarcane plantations and alcohol distilleries in MS (Aylwin, 2009; Cultural Survival, n.d.). Soybean farms have also expanded into lands claimed by the Guarani. Homicides among them have increased from 19 in 2004 to 53 in 2007, being a result of internal and external tensions directly or indirectly related to the land struggle (Anaya, 2009). Infant mortality rate among Guarani children in 2007 was 49.23 per 1,000 live births compared to 21.2 per 1,000 live births in Brazil in general. Malnutrition among Guarani children caused 65 deaths in 2006 and 2007 (Aylwin, 2009).

In South Chile, forest monocultures for the production of timber and cellulose for the US and Chinese market, have severely impacted on Mapuche children and young people. Land dispossession as well as environmental and social impacts, among which biodiversity loss, diminished water supply, poverty and migration, have triggered Mapuche social protest (CEPAL–Alianza Territorial Mapuche, 2012b). Such protest – largely peaceful – has been contested by the state with police repression, resulting in many cases of torture and cruel, inhuman and degrading treatment affecting community members, including hundreds of children and young people between 9 months and 17 years old as well as elderly people. In 2002, police agents were responsible for the homicide of a child involved in acts of protest against forest companies. Even in Mapuche homes and schools, the police frequently uses rubber bullets and tear gas bombs, injuring many children. Numerous cases of arbitrary detention and illegal interrogation of Mapuche children have also been reported (ANIDE, 2012). Such practices continue to take place, notwithstanding the fact that the Supreme Court of Chile has ordered the police on several occasions to establish a special protocol for their action on Mapuche communities, taking particular care of Mapuche children and women (INDH, 2013).2 Moreover, the Anti-terrorist law (No. 18,314) has been used to prosecute indigenous children. Notwithstanding a 2010 legal reform prohibiting prosecution of minors, Mapuche children continue to be prosecuted under charges of having committed terrorist crimes. Several children have spent long periods in preventive prison while anti-terrorist trials were taking place (ANIDE, 2012).

Not only in Chile have children and young people been expressing their concern about the impact of natural resource exploitation on the environment and on their rights. In a declaration to the 2005 Ibero-American Summit Meeting, for instance, boys and girls from 34 indigenous peoples called on their governments to “eradicate the illegal use of our traditional crops and support the development of other productive crops”. In May 2014, hundreds of Kukama children of the Marañón river in Peru sent letters and drawings to President Humala, demanding his support to tackle the serious contamination of their environment, caused by more than four decades of oil exploitation (PUINAMUDT, 2014). Although the initiative was taken by local indigenous organizations, the parish and local schools, and can be considered a somewhat “superficial” form of participation, it at least provided children an opportunity to express their concerns directly to the highest person in charge in their country, giving them a voice in Peru and – via the world wide web – across the globe. To move beyond tokenistic

2 Supreme Court of Chile, decisions of 5 January 2012, 26 September 2012, 9 December 2012.
participation, inspiration can be drawn from experiences with child coffee-plantation workers in Nicaragua, where the approach implied supporting “children’s gradual ‘bottom-up’ processes of learning, sharing, organising and mobilizing, so that when children demand a voice in the big decisions that affect their lives, they arrive at the table as a force to be reckoned with” (Shier, 2009, p. 226).

In urban environments, the consequences of increased resource exploitation may manifest themselves quite differently than among rural and indigenous communities. For instance, the availability of cheap oil has induced parents to drive their children to school and to rush them from one extracurricular activity to the next, in order to counter perceived risks of traffic and stranger danger – a protective impulse. This transport mode has had adverse effects, depriving children and young people from physical exercise and independent mobility, as well as from play opportunities and their street culture (Tranter and Sharpe, 2007). Consequently, a decline in oil availability and a rise of its price may give children more time and free play, albeit within more limited spaces of the local neighbourhood. This may then increase children’s sense of connection to their local communities (Tranter and Sharpe, 2007, p. 192).

4. Legal standards

The cases mentioned above illustrate that virtually every human right of children and young people may be threatened or violated in the context of natural resource exploitation – confirming the interdependence and indivisibility of human rights. Whereas social, economic and cultural rights (e.g., right to health, right to protection from economic exploitation, right to an adequate standard of living, right to education, right to play) may be more immediately linked to or impacted by resource extraction, the Mapuche case especially demonstrates that also civil and political rights (e.g., right to life, prohibition of torture or other cruel, inhuman or degrading treatment, right to a fair trial) may be at stake. For indigenous children, the right to their lands, territories and natural resources and the right to enjoy their culture are particularly relevant. Moreover, states have an obligation to consult indigenous peoples in order to obtain their free, prior and informed consent before the adoption of legislation or administrative measures that may affect them (art. 19 UN Declaration on the Rights of Indigenous Peoples (UNDRIP); art. 6 ILO Convention 169), as well as when undertaking projects that affect their land, territory and resources, including mining and utilization or exploitation of other resources (art. 32 UNDRIP; art. 15(2) ILO Convention 169). In some circumstances, such as relocation, there is an obligation to obtain the consent of the indigenous peoples concerned, beyond the general obligation of consultation (arts. 10 and 29 UNDRIP; art. 16(2) ILO Convention 169). In the case Saramaka People v. Suriname, the Inter-American Court of Human Rights (IACtHR) also identified two criteria to establish the duty of the State to obtain free, prior and informed consent, namely when it concerns “large-scale” development or investment projects that would have a “major impact” within the people’s territory (IACtHR, 2007, §134). Natural resource exploitation activities will often comply with these two conditions.

The Convention on the Rights of the Child (CRC) does not mention natural resource exploitation as such. The impact of environmental degradation is explicitly referred to in the context of the right to health. Article 24(2)(c) provides that States Parties, when pursuing the full implementation of the child’s right to the enjoyment of the highest attainable standard of health, shall take measures “[t]o combat disease and malnutrition, … taking into consideration the dangers and risks of environmental pollution”. As illustrated above, almost any provision of the CRC may however come into play in a resource exploitation context. Since this complicates a comprehensive review of all possibly relevant standards, a threefold, necessarily
limited, approach is adopted. Given the importance of business actors in resource extraction and the recent normative developments in this domain, the first subsection focuses on business-related standards in human rights and children’s rights law. Thereinafter, it is analysed how natural resource exploitation in Latin America has been dealt with by presumably the most relevant human rights organs in this respect, namely the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights (IACHR) and the UN Committee on the Rights of the Child – bearing in mind their different goals, the first ones charged with monitoring compliance with human rights in general, the Committee focusing on children’s rights.

4.1. Business-related standards

Whereas business-related standards will often play a central role in the context of natural resource exploitation, both issues should not be identified with each other. Business actors may engage in resource extraction, but also in a wide array of other activities. On the other hand, although resource exploitation admittedly in many (and often the most impactful) cases belongs to the realm of corporate actors, exploitation may also be carried out by individuals, informal groups, non-profit associations or government actors themselves.

Current international (human rights) law considers states as the primary duty bearers. The growing impact of business actors in a globalized world, accompanied by a decreasing power of national states, have induced a vigorous debate on the relationship between human rights and business. Within the confines of this chapter, it is impossible to do justice to the breadth and depth of this debate (but see, e.g., Clapham, 2006; De Schutter, 2006; Deva and Bilchitz 2013; Mares, 2012). Hereinafter, both human and children’s rights standards are analysed, to avoid their further growing apart, pointed to in this Handbook’s introduction.

4.1.1. Human rights and business

Since the 1970s, the relationship between human rights and business has been increasingly addressed via voluntary and multi-stakeholder initiatives. As of today, no international legally binding instrument on human rights and business exists. The Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) were adopted in 1976 and updated for the fifth time in 2011 (OECD, 2011). The Guidelines contain recommendations that the adhering governments promote among their enterprises, wherever they operate. A system of National Contact Points (NCPs) supports the implementation of the Guidelines, among others through assisting corporate actors in taking appropriate measures and by providing a mediation and reconciliation platform. The potential contribution of the Guidelines and the NCP system to the realization of children’s rights is hampered by various shortcomings. The only children’s rights issue explicitly included in the Guidelines is child labour, as a consequence of which the complaints received by the NCPs have mostly concerned this topic (Sheahan, 2011, p. 29). In addition, the Guidelines have far from
worldwide coverage, the capacity of NCPs to investigate and mediate is weak, and the compliance level of companies with recommendations issued by the NCPs low (Sheahan, 2011, p. 30).

In 2000, the UN Global Compact was established, consisting of Ten Principles regarding human rights, labour standards, the environment and anti-corruption. Pursuant to Principle Five, businesses should “uphold the effective abolition of child labour”. Companies are invited, on a voluntary basis, to sign up to these principles and align their strategies and activities with them. The lack of an effective monitoring mechanism impedes, however, a substantial impact.

The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises (TNC Norms), proposed by the UN Sub-Commission on the Promotion and Protection of Human Rights (2003), caused a lot of controversy. Whereas states bore the primary responsibility concerning human rights, it was proposed to apply the same typology of obligations – “to promote, secure the fulfilment of, respect, ensure respect of and protect human rights” – to transnational corporations, albeit limited to “their respective spheres of activity and influence”. Given the resistance this proposal evoked especially within the business sector, the Human Rights Commission desisted from adopting the TNC Norms.

In 2005, John Ruggie was appointed as Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG). He engaged in broad consultations with a wide range of stakeholders, on the basis of a “principled pragmatism” approach. His work resulted in the “Protect, Respect and Remedy” Framework, which consists of three pillars: (i) the duty of the state to protect against human rights violations by third parties, including business enterprises; (ii) the responsibility of business enterprises to respect human rights, which implies acting with due diligence to avoid infringing on the rights of others as well as addressing adverse human rights impacts with which they are involved; and (iii) more effective access by victims to remedies, both judicial and non-judicial (UN Human Rights Council, 2008). In 2011, the Guiding Principles on Business and Human Rights (Guiding Principles) were issued to facilitate the implementation of the Framework (UN Human Rights Council, 2011a). In its 2011 resolution endorsing the Guiding Principles, the Human Rights Council (2011b) established an expert Working Group (WG) on the issue of human rights and transnational corporations and business enterprises, with a 3-year mandate to implement and disseminate the Guiding Principles. In a 2013 report, the WG addressed the implementation of the Guiding Principles in relation to indigenous peoples, providing recommendations to enhance the Principles’ effective operationalization (UN General Assembly, 2013). The report reaffirms the duty of states to protect human rights, which implies that states must take measures to prevent or end infringement upon the enjoyment of a given human right caused by third parties, recognizing that in the context of the rights of indigenous peoples, such third parties are often business enterprises. Among others, the WG highlights the relevance of customary laws and practices as a form of non-judicial grievance mechanisms (UN General Assembly, 2013, §§ 45–47).

The Framework and Guiding Principles have generally been well received by states and corporate actors. Many civil society actors and scholars on the other hand, have criticized the texts for being too minimalist, missing “the opportunity to push states and business actors out of their comfort zone” (Simons, 2012, p. 41, see also Vandenhole, 2012a). After the failure of the TNC Norms, the SRSG aimed to achieve consensus and maintain all stakeholders on board (Bilchitz, 2010). Therefore, from the outset, the SRSG emphasized the state as the only legal duty-bearer, refraining from formulating direct legal obligations for enterprises. This is clear from the wording in the 2008 Framework, where states have an obligation to protect human rights, against the corporate responsibility to respect (Jägers, 2011, pp. 161–162).
An additional limit of current business-related standards concerns the lack of domestic and international mechanisms to address human rights violations committed by multinational enterprises outside the states in which they are registered (IFHR, 2012). Many resource exploitation companies operate abroad, however. The UN Committee on the Elimination of Racial Discrimination (UN CERD) has noted this reality and issued recommendations on this matter to several industrialized countries, including Australia (UN CERD, 2010), Norway (UN CERD, 2011a), the United Kingdom (UN CERD, 2011b) and Canada (UN CERD, 2012), with particular reference to indigenous peoples. Norway for instance was recommended to “take appropriate legislative or administrative measures to ensure that the activities of transnational corporations domiciled in the territory and/or under the jurisdiction of Norway do not have a negative impact on the enjoyment of rights of indigenous peoples and other ethnic groups, in territories outside Norway” (UN CERD, 2011a, §17). The WG has also recognized the need for states to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction, and affirms that “States should take into account the specificities of indigenous peoples and ensure that any barriers to their access to [grievance] mechanisms are addressed and removed” (UN General Assembly, 2013, §37).

Another attempt to address this limitation are the “Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights”, which were adopted at a meeting convened in late 2011 at the University of Maastricht (the Netherlands). This document, while lacking endorsement by the UN Human Rights Council, has been supported by a large number of present and past UN mandate holders, members and former members of UN treaty bodies as well as members of academia and many civil society organizations. As regards the scope of jurisdiction, the Maastricht Principles hold that “a State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following: a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law” (e.g. when a state-controlled enterprise is engaged in resource exploitation abroad); “b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory” (e.g. when lack of state control on environmental behaviour of resource extraction companies leads to adverse health impacts on the population); “c) situations in which the State … is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law” (e.g. state omission to take measures to respect cultural rights in relation to resource exploitation) (§9). Applying these (non-binding) principles would considerably increase the accountability of states for violations of (children’s) human rights in relation to resource exploitation.

In June 2014, the UN Human Rights Council (2014) adopted a resolution with the support of 20 member states, to “elaborate a binding instrument to regulate the activities of transnational corporations and other business enterprises”. This decision may be an important step in the process of protecting against corporate-related human rights violations, and in clarifying extraterritorial obligations to regulate TNCs overseas.

In all these general human rights documents, children are only occasionally and briefly referred to, mostly in relation to child labour (cf. OECD Guidelines and UN Global Compact). Moreover, children seem to be predominantly conceptualized as “vulnerable”, which limits an appropriate recognition of their agency. For instance, pursuant to the Commentary on Principle 3 of the Guiding Principles, state guidance to enterprises on respecting human rights should include advice on how to consider “vulnerability and/or marginalization, recognizing
the specific challenges that may be faced by … children”. The WG is requested to “give special attention to persons living in vulnerable situations, in particular children” (UN Human Rights Council 2011b, §6(f)), and has identified indigenous children as a group at risk of multiple discrimination in relation to business activities (UN General Assembly, 2013, §2).

4.1.2. Children’s rights and business

The UN Committee on the Rights of the Child has been paying increased attention to the relationship between the rights of children and business. In 2002, the Committee discussed the role of the private sector as service provider during a General Day of Discussion. More recently, a new paragraph on “child rights and business” has been included in the section “General measures of implementation” of many concluding observations (see also below). In April 2013, the Committee (UN Committee CRC, 2013a) adopted General Comment No. 16 “On State obligations regarding the impact of the business sector on children’s rights” (GC 16), after a broad consultation process with many stakeholders, including children (see Save the Children, 2012). GC 16 can be considered innovative in various ways. First, in contrast to the traditional approach of General Comments of discussing the interpretation of a particular article of the CRC, a broader – and more challenging – approach is adopted, involving the Convention as a whole. Moreover, the CRC Committee is the first UN treaty body to address the relationship between human rights and business in a General Comment (Martin-Ortega and Wallace, 2013, p. 121). Finally, submissions received during the consultation process that accompanied the drafting of GC 16 were published online, which contributed to the transparency of the process (Gerber et al., 2013, p. 13). Somewhat remarkably, Gerber et al. (2013) pay no particular attention in their discussion of the drafting process to (the degree and impact of) the participation of children and young people.

GC 16 aims to clarify the obligations of states regarding the impact of the business sector on children’s rights, which arise from the CRC and its Optional Protocols. Like the Guiding Principles, GC 16 adopts a state-centred focus. Only very briefly, it mentions that private actors and business enterprises have “duties and responsibilities” to respect children’s rights (UN Committee CRC, 2013a, §8). This can be considered a missed opportunity to address business actors directly.

The General Comment consists of four main parts. A first part analyses the four general principles of the CRC in relation to business activities. Regarding the impact of business activities on children’s rights to life, survival and development, the Committee states:

The activities and operations of business enterprises can impact on the realization of article 6 in different ways. For example, environmental degradation and contamination arising from business activities can compromise children’s rights to health, food security and access to safe drinking water and sanitation. Selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context.

(UN Committee CRC, 2013a, §19)

These considerations are especially relevant in the case of businesses engaged in natural resource exploitation. Second, the Committee spells out the nature and scope of state obligations in

4 See also Commentary on Principle 12.
States also have “an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises” (UN Committee CRC, 2013a, §30). Third, the General Comment identifies specific contexts that require additional attention. Regarding the issue of businesses operating globally, GC 16 interestingly goes further than the Guiding Principles. Whereas the Guiding Principles did not include mandatory language in this respect, GC 16 clearly states that “[h]ome States also have obligations … to respect, protect and fulfil children’s rights in the context of businesses’ extraterritorial activities and operations” (UN Committee CRC, 2013a, §43). This approach is more reflective of the current status of international law (Gerber et al., 2013, p. 34). Finally, GC 16 provides a framework for implementation, distinguishing between five types of measures: legislative, regulatory and enforcement measures; remedial measures; policy measures; coordination and monitoring measures, including child rights impact assessments; and collaborative and awareness-raising measures.

Another standard-setting initiative addresses the business sector itself: in March 2012, UNICEF, Save the Children and the UN Global Compact (2012) presented the “Children’s Rights and Business Principles” (CRB Principles), which aim to elaborate the role of the business sector in respecting and supporting children’s rights in the community, marketplace and workplace. On the basis of a Child Participation Strategy, more than 400 children and young people in nine countries were consulted. The conceptualization of children’s rights seems somewhat ambiguous, and in this way illustrates the tensions noted in this Handbook’s introduction regarding children’s rights and/as human rights. Whereas it is first more restrictively mentioned that “[c]hildren’s rights are outlined by the Convention on the Rights of the Child, and [ILO Conventions 138 and 182]” (UNICEF, Save the Children and the UN Global Compact, 2012, p. 5), it is subsequently more broadly stated that “[i]n this document, the phrase ‘children’s rights’ is synonymous with the ‘human rights of children’” (UNICEF, Save the Children and the UN Global Compact, 2012).

The ten Principles do not create new international legal obligations, but are derived from the internationally recognized human rights of children (UNICEF, Save the Children and the UN Global Compact, 2012, p. 12). They are structured along two main types of actions: next to the “corporate responsibility to respect” (constructed in a similar way as in the UN “Protect, Respect and Remedy” Framework), stands the “corporate commitment to support”, which refers to voluntary actions seeking to advance human and children’s rights. By introducing another type of engagement (“commitment”), the CRB Principles contribute to a further conceptual distinction between the expectations from corporate actors (“responsibilities” and “commitments”) and states (“obligations”) (Martin-Ortega and Wallace, 2013, p. 117).

Principle 7, according to which all business should “respect and support children’s rights in relation to the environment and to land acquisition and use”, appears very pertinent for our analysis, and has been characterized as “particularly innovative” (Martin-Ortega and Wallace, 2013, p. 119). The corporate responsibility to respect the environment implies ensuring “that business operations do not adversely affect children’s rights, including through damage to the environment or reducing access to natural resources” and that “the rights of children, their families and communities are addressed in contingency plans and remediation for environmental and health damage from business operations, including accidents”. The responsibility to respect children’s rights in relation to land acquisition and use requires avoiding or minimizing displacement of communities, seeking the free, prior and informed consent of indigenous peoples for any project that affects their communities, as well as respecting children’s rights in
cases of resettlement. The corporate commitment to support children’s rights in relation to the environment includes taking measures to reduce gas emissions, promoting sustainable resource use, and supporting communities to adapt to the consequences of climate change. It is however remarkable that Principle 7 does not include a reference to child-sensitive consultation processes, in contrast to elsewhere in the document (Martin-Ortega and Wallace, 2013, p. 120).

Summing up, both GC 16 and the CRB Principles recognize children as bearers of rights, “rather than the recipients of [state or] corporate kindness” (Martin-Ortega and Wallace, 2013, p. 117; p. 126). Both instruments also pay explicit attention to the impact of business activities that affect children’s natural environment (Martin-Ortega and Wallace, 2013, p. 127). Although they don’t create new human rights obligations, and they could have been more progressive in interpreting existing human rights law, both GC 16 and the CRB Principles may be useful instruments to guide and inspire “willing” states and enterprises. As a General Comment, GC 16 constitutes an authoritative source to interpret the CRC in relation to business activities. As a voluntary instrument, the CRB principles suffer from the same lack of enforcement possibilities as the general human rights initiatives discussed above, depending for their impact on the goodwill of enterprises.

4.1.3. The Inter-American human rights system

Article 19 of the 1969 American Convention on Human Rights (ACHR) guarantees the right of every child “to the measures of protection required by his condition as a minor on the part of his family, society, and the State” (emphasis added). This protective focus is reflective of the spirit of that age (20 years before the adoption of the CRC), and is also manifested in the Inter-American case-law, which has mainly dealt with issues relating to the protection of, among others, children living on the streets, children deprived of their liberty by the state, and children in the context of (internal) armed conflict (see Feria Tinta, 2008).

Human rights conventions are living instruments and should be interpreted in the light of evolving circumstances. In relation to children’s rights, the Court considered in the Street Children case that “[b]oth the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in article 19 of the American Convention” (IACtHR, 1999, §194). This does not imply, however, “that any given provision of the CRC automatically amounts to a ‘measure of protection required’” by Art. 19 ACHR (Neuman, 2008, p. 114, n. 68). In light of the current interpretation of children’s rights at the international level, it could be expected from the Court, however, to also give effect to the provision and participation rights of children.

Various cases have been brought before the Inter-American human rights system, in which natural resource exploitation by corporations played a role, by leading to or aggravating human rights violations – especially in relation to indigenous peoples. In Case 12.010 – Children and

5 The Court’s comprehensive understanding of the right to life in the Street Children case, including not only the right not to be arbitrarily deprived of one’s life, but also the right to access conditions guaranteeing a dignified existence (IACtHR, 1999, §144) may be relevant for resource exploitation cases.

6 At the African level, the most important case on natural resource exploitation is the Ogoni case. In 2001, the African Commission on Human and Peoples’ Rights held that the Nigerian government, by participating in environmentally destructive oil production within Ogoniland, had violated the collective rights of the Ogoni people, among which their right to a general satisfactory environment (ACHPR, 2001). Children were not mentioned in the decision.
Youth of the Paynemil Community of the Mapuche People, Neuquén, Argentina, hydrocarbon exploitation had exposed Mapuche children and youth to mercury and lead contamination. A national court decision ordering the Argentinean state to provide drinking water, carry out health and environmental studies and provide medical assistance had not been adequately complied with. Therefore, the Official Defender of Minors of the Neuquén Province filed a complaint with the Inter-American Commission in 1999, alleging violations of, among others, children’s right to receive protection measures as required by their status as minors, as well as their right to health and a healthy environment (Falaschi and Osés, 2012). Although the case was discussed in various hearings and the Inter-American Commission visited the country, no full implementation has yet been achieved (ESCR-Net, n.d.). In contrast to the cases discussed hereinafter, where children and young people have been implicitly or explicitly included in a broader group of victims, here children and young people were interestingly the main focus of analysis.

In the landmark case on indigenous land rights, Mayagna (Sumo) Awas Tingni Community v. Nicaragua of 2001, the Inter-American Court found that Nicaragua had violated the right to property by awarding a logging concession to a Korean corporation on the lands of the Awas Tingni community without their consent (IACtHR, 2001). Although it can be supposed that this judgment will also benefit the children of the Awas Tingni community, children were not explicitly mentioned as stakeholders, neither by the petitioners nor by the Court. The latter grounded its interpretation of the right to property in a way that reflected the collective, multidimensional relationship of indigenous peoples to their territories, on, among other things, testimonies of various anthropologists.

Sawhoyamaxa Indigenous Community v. Paraguay was the first case where a violation of Art. 19 ACHR in relation to indigenous children was found (IACtHR, 2006). The Court considered the death of 18 children of the Sawhoyamaxa community attributable to the Paraguayan state because the latter had not adopted the necessary positive measures to prevent the loss of their lives, constituting a violation of the right to life (Art. 4 ACHR) as regards to Art. 1(1) ACHR, and additionally of the rights of the child (Art. 19 ACHR). Among other things, the case presented a conflict between the territorial claims of an indigenous people and the livestock industry. The Sawhoyamaxa community had been dispossessed of their ancestral territories, which had been partly deforested by cattle farmers – the present owners – as pasture land for grazing.

In the past decade, two cases against the Peruvian state were declared admissible by the Inter-American Commission, in which, among others, a violation of the rights of children as a consequence of extractive activities by business actors is alleged. In the case of Community of San Mateo de Huanchor and its Members, the petitioners claimed that the Peruvian state is responsible for violating the human rights of the community concerned, because of the effects suffered by its members from the environmental pollution caused by toxic waste of a mining company (IACHR, 2004b, §5). According to the petitioners, “those who are most severely affected are the children, who show high indices of lead, arsenic, and mercury in their organism, which if not treated will have severe consequences for their integral development” (IACHR, 2004b, §26). Most of the about 5,600 inhabitants of the Community of San Mateo de Huanchor identify themselves as indigenous (IACHR, 2004b, §§15–16). On 17 August 2004, the Commission adopted precautionary measures, requesting the Peruvian government, among others, to establish a “health assistance and care program for the population of San Mateo de Huanchor, especially its children”, to draw up an environmental impact assessment study required for removing the toxic waste sludge, and, after completion of and in accordance with the said study, to start with the transfer of the sludge to a safe site (IACHR, 2004b, §12). On 15 October 2004, the Commission declared the petition admissible.
In the second case, Community La Oroya, a smelter located in the Peruvian Andes owned by US capital has for a long time affected children living in the area. According to a 1999 survey of the Peruvian Ministry of Health, 99.1 percent of the children had blood lead levels that considerably exceeded acceptable limits. A study of Saint-Louis University, requested by the Archdiocese of the region, confirmed these high blood lead levels and moreover found elevated levels of arsenic, cadmium and other toxic metals in the residents of La Oroya, which were associated with the mining and smelting activities and which led to health problems (Serrano, 2005; Fraser, 2009). This scientific study was used in the case filed before the Inter-American Commission, where the petitioners emphasized the particularly harmful effects of the contamination on children: “[B]ecause children are undergoing physical and cognitive development, they are more sensitive than adults to the adverse neurological effects of lead poisoning” (IACHR, 2009, n. 6). In 2009, the Commission declared the case admissible, finding, among other things, that the illnesses and deaths allegedly resulting from the severe pollution produced by the smelter constitute a potential violation of the rights to life and integrity, including the rights of children (IACHR, 2009, §77). If the Inter-American Court will find a violation, “[t]he case would be the first time that the Court has assessed the responsibility of a state for the violation of human rights of a non-indigenous community caused by contamination of the environment” (Spieler, 2010, p. 19, emphasis added).

In the case of the Kichwa Indigenous People of Sarayaku v. Ecuador, the state had allowed a private oil company to operate in the ancestral territory of the Kichwa people of Sarayaku, without prior consultation. Whereas both the claim of the petitioners and the admissibility decision of the Inter-American Commission explicitly mentioned article 19 ACHR on the rights of the child (IACHR, 2004a, §§2 and 74), the article was not included anymore in the application submitted by the Commission to the Court (IACHR, 2010). In June 2012, the Court found that the state of Ecuador was responsible for violating the rights to consultation, indigenous communal property and cultural identity, the right to life and to personal integrity, and the right to judicial guarantees and judicial protection (IACtHR, 2012). This judgment should also benefit the children and young people of the Sarayaku community. Here, it is interesting that for the first time a delegation of judges visited the site of the events and that during this visit, the delegation heard various statements from members of the Sarayaku people, “including young people … and children from the community” (IACtHR, 2012, §21).

Recapitulating, the relationship between children’s rights and natural resource exploitation has entered the Inter-American jurisprudence in various, albeit still relatively modest, ways. In the Sawhoyamaxa case, the impact of resource exploitation by third parties on the state’s human rights violations was rather indirect. In the two cases declared admissible by the Inter-American Commission, San Mateo de Huanchor and La Oroya, on the other hand, the alleged responsibility of the state for violations of children’s rights is directly connected with resource exploitation activities by third parties. These cases have not been decided on the merits though. From a procedural perspective, a positive evolution in the Sarayaku case is that children and young people were listened to during a field visit by a Court’s delegation. The attention on children may be on the rise, at least indirectly, because the Inter-American Court is increasingly dealing with rights of entire groups through petitions filed on behalf of various victims, in which the rights of children are then also included (Feria Tinta, 2008, p. 11).

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7 On 31 August 2007, precautionary measures had been granted in favour of 65 residents of La Oroya, including children.
4.2. The UN Committee on the Rights of the Child on natural resource exploitation in Latin America

Assessing the CRC Committee’s approach to natural resource exploitation in Latin America is not straightforward, since “resource exploitation” is not a distinct unit of analysis of the Committee. Reviewing its latest concluding observations (March 2003 (Haiti) until June 2013 (Guyana)) on all Latin American countries shows that in various cases, natural resource exploitation activities are explicitly mentioned. They pop up in different sections, mostly those on “economic exploitation, including child labour” and “environmental health”. More recently, resource exploitation is often also addressed under the new heading “child rights and business”, which appeared regarding Latin America for the first time in the concluding observations on Bolivia (UN Committee CRC, 2009b).

In other instances, natural resource exploitation activities are not named as such, but problems are identified that may be connected to or caused by such exploitation, for instance in the section “indigenous children”. In the case of Chile, the Committee expressed its concern over “reports that indigenous youth have been victims of police brutality” and recommended the Chilean state to “take both preventive and corrective action when abuse is suspected” (UN Committee CRC, 2007c, §73; §74). There is sufficient evidence that police brutality in the case here referred to by the Committee is closely linked to natural resource exploitation, namely the forest companies against which Mapuche youth have been protesting, as discussed above (Aylwin, 2010).

Other cases where resource exploitation may be one of the underlying root causes, include, among others, the “pollution of soils and water traditionally used by the indigenous communities” (UN Committee CRC, 2009b, §85) and the “very high number of working children among indigenous children” (UN Committee CRC, 2010b, §79). To be able to link these children’s rights issues to natural resource exploitation requires a study of the country’s situation (including its periodic and alternative reports), since such a connection cannot be derived from the concluding observations – the latter document being however the most widely disseminated. Although one can submit that a country’s nationals will probably “know” whether resource exploitation lies behind a certain children’s rights issue, it can still be identified as a shortcoming that the Committee does not always seem to pin-point this. In this way, the Committee risks obscuring the seriousness and vastness of challenges related to resource exploitation.

The remainder of the analysis concentrates on those instances where the concluding observations explicitly refer to natural resource exploitation activities, reviewing the types of resource exploitation most commonly cited, the effects on children’s rights identified, and the recommendations made by the Committee. The objective is to give an overall impression of how the Committee approaches resource exploitation, not to present an exhaustive overview.

Mining is the most frequently mentioned activity, occurring in about 45 percent of the concluding observations reviewed. Attention is extended towards the oil sector in Peru (UN Committee CRC, 2006b, §50) and Ecuador (UN Committee CRC, 2010a, §30). The Committee also considers more country-specific exploitation activities, such as the coca plantations in Colombia (UN Committee CRC, 2006a, §72; §82), deep-sea fishing in Honduras (UN Committee CRC, 2007a, §72), the forest, soya, sugarcane and brazil nut sectors in Bolivia (UN Committee CRC, 2009b, §17; §74), banana plantations in Ecuador (UN Committee CRC, 2010a, §70), and tobacco, “mate” herb and soya plantations in Argentina (UN Committee CRC, 2010c, §29; §73).

The children’s rights issues most recurrently linked with resource exploitation are economic exploitation and child labour, especially dangerous and/or degrading work in
mines, and (negative impacts on) the right to health, for instance because of the use of toxic substances. Other effects explicitly related to resource exploitation include sexual exploitation, such as the rape of indigenous girls in mining and forestry regions in Suriname (UN Committee CRC, 2007b, §67), lack of school attendance (e.g., UN Committee CRC, 2010a, §70), and negative impact on property rights and family life (UN Committee CRC, 2011a, §25).

An evolution can be observed in the Committee’s recommendations. State Parties have been suggested to carry out rights-based environmental and social impact assessments in relation to resource exploitation activities (e.g., UN Committee CRC, 2006a, §73; UN Committee CRC, 2006b, §51). More recently, recommendations have included enacting an appropriate regulatory framework for the business sector to protect and respect children’s rights (e.g., UN Committee CRC, 2010a, §31; UN Committee CRC, 2010c, §30), considering experiences from abroad in applying the UN “Protect, Respect and Remedy” Framework (UN Committee CRC, 2011a, §26; UN Committee CRC, 2011b, §30), and complying with the Guiding Principles (UN Committee CRC, 2013b, §23(c)). The impact of the norm-setting on human rights and business is thus clearly noticeable, leading to a greater emphasis on the State’s duty to protect. With the adoption of GC 16, the Committee should be able in future concluding observations to formulate more precise recommendations as to, among others, what an “appropriate regulatory framework for the business sector” entails.

The impact of free trade and investment agreements on children’s enjoyment of their human rights, documented above, has also been addressed by the Committee, which has recommended studying the adoption of children’s rights clauses when negotiating investment agreements with multinational corporations and foreign governments (UN Committee CRC, 2010c, §31) as well as conducting “human rights assessments, including on child rights” prior to negotiating and concluding free trade agreements and adopting “measures to prevent and prosecute violations, including by ensuring appropriate remedies” (UN Committee CRC, 2013b, §23(b)).

The predominant child image emerging from these analyses and recommendations seems to be one of a vulnerable child, which above all must be protected in the context of natural resource exploitation. Some concluding observations on economic exploitation confirm this “protective reflex” of the Committee and moreover show its limited openness towards the diversity of realities existing on the ground – going against the context-specific approach argued for in this Handbook. The Committee has recommended the states of Argentina and Ecuador “to respect the right of the child to be heard” in policy debates on child labour (UN Committee CRC, 2010a, §71(d); UN Committee CRC, 2010c, §73(d)). While laudable at first sight, the potential to really listen and give due weight to children’s opinions is seriously undermined by the addition that this right to be heard concerns the development and application of measures “to eliminate child labour in all its forms” (UN Committee CRC, 2010c). The Committee’s alignment with the ILO’s abolitionist approach towards child labour does not correspond to the reality of working children who claim a right to work in dignity (see Hanson, Volonakis and Al-Rozzi, Chapter 18 in this Handbook; Saadi, 2012).

In conclusion, natural resource exploitation issues are not addressed by the Committee in a systematic way: at worst, they are not mentioned whereas they are at least sometimes presumably a root cause of children’s rights topics that are explicitly discussed; at best, they are taken up in various and changing places throughout the concluding observations. Although not necessarily problematic, one could nonetheless argue that such a scattered approach downplays the extent of problems caused by resource extraction and does not adequately account for the intercon-
Connections between different rights issues, as was illustrated by the case studies. Moreover, the Committee seems to focus mostly on protection (against economic exploitation, against negative health impacts), considering children thus primordially to be “in danger” in the context of resource exploitation. Only exceptionally, the Committee makes allusion to the resilience and agency of children in a resource extraction context, such as in the case of Chile (where however the link with resource exploitation is not explicitly made by the Committee, see above).

5. Fields of tension

This section discusses two fields of tension emerging from the analysis of children’s rights in the context of natural resource exploitation: the child-specificity of issues and rights, and the integration of insights from other disciplines in legal analyses and proceedings.

5.1. Child-specificity of needs and norms

The first bundle of reflections concerns the relationship between children and young people, specific children’s rights standards and general human rights standards. An initial question here is whether particular consideration of children and young people is actually required or desirable, when undertaking a human rights analysis in the context of natural resource exploitation. This question implies taking a step back, to critically review the raison d’être of this chapter.

Two types of arguments justify a specific focus on (the rights of) children and young people in relation to exploitation-related challenges. First, due to their physiology, children and young people are more sensitive than adults to environmental degradation and pollution caused by natural resource industries, leading to more serious health hazards. Children and young people may also be more susceptible to suffering (more seriously) from other problems than adults, ranging from economic exploitation to lack of access to quality education. On the basis of these and similar considerations, it can be argued that children and young people need more protection than adults in resource extraction contexts. Whereas it is thus recognized that children are often more sensitive to negative health, environmental and social impacts of resource exploitation, this recognition should not lead to a conceptualization of children as inherently and exclusively vulnerable. This goes against seeing children as independent bearers of rights and reduces their agency (see also Vandenhoeck and Ryngaert 2013, pp. 70–73).

Second, children may easily be overlooked in consultation and participation processes in relation to natural resource exploitation. From an intergenerational equity perspective, it is however submitted that precisely they should be privileged conversation partners. As Liebel (2012, p. 103) has noted: “One example [of generational discrimination] is the lack of consideration for children as a social group in political decisions, which have negative consequences on the later lives of children and even for following generations, such as … the impact of fossil energy production on the environment and the climate”. From both a protection and a participation perspective, one can thus adduce arguments in support of a “privileged” consideration of (the rights of) children and young people in exploitation-related matters.

On the other hand, many of the challenges that arise in relation to resource exploitation are not unique to children, but relevant for all human beings involved in or impacted by the

8 The argument that natural resource exploitation is a recent phenomenon and therefore has not received a separate heading within the concluding observations, is not valid given the explicit inclusion of other new themes such as “child rights and business” – the latter one not to be equated with resource exploitation (see above).
exploitation concerned – and should thus be tackled at a general level. This is illustrated by a 2003 report of Save the Children, entitled “Extractive industry, children and governance”. Whereas the title indicates a focus on children, children are actually explicitly mentioned very little throughout the text. The recommended measures, such as enhanced revenue transparency and good resource management, are not child-specific, but will benefit citizens in general, and – consequently – also children. This shows the close interconnectedness between the interests of adults and children in the context of resource exploitation, also observed when reviewing the Inter-American human rights jurisprudence.

The potential for tensions between (the rights of) children and adults thus seems less high in the context of natural resource exploitation, than in other domains of life (such as alternative care, as mentioned in this Handbook’s introduction). On the contrary, guaranteeing the rights of parents may be a prerequisite for guaranteeing the rights of their children in a resource exploitation context. In relation to the DRC, for example, it has been argued that keeping children out of mining activities implies “ensuring that conditions for adult artisanal miners significantly improve so that they receive proper remuneration for their labour and that the mine sites operate according to the highest possible safety standards” (Feeney, 2013, p. 92, emphasis added). Exclusively or predominantly focusing on the rights of children and young people, without appropriately considering the rights of their parents and other adults (such as extended family members or other caretakers), may thus actually turn out detrimental for them. Hence, even from a children’s rights perspective, arguments can be advanced for considering the rights of children and young people together with the rights of other human beings. From an integrated human rights perspective, this would naturally be the case, as this requires “taking into account the human rights of all rights holders whose rights are affected by a particular situation” (Brems, 2014).

Reflecting upon the child-specificity of interests and needs in relation to resource exploitation thus leads to a nuanced assessment. A second question concerns the relevance of the children’s rights framework and its relationship with the human rights framework. Regarding business-related standards, it was noted that in general human rights initiatives, children were overlooked or only mentioned in relation to child labour. This gave rise to specific norm-setting initiatives on children’s rights and business (GC 16 and the CRB Principles). Moreover, in the general human rights documents, the predominant child image was one of a vulnerable child, whereas in the children’s rights instruments, the child image of the autonomous child was more present, recognizing children as rights-bearers. In this sense, there is an added value in the specific children’s rights instruments, compared to the general human rights documents. In the Committee’s concluding observations on Latin America, however, the prevalence of a protective approach was noted. Another illustration of a contribution of the children’s rights framework concerns the recognition of the right of the child to be heard and his views to be given due weight (Art. 12 CRC), and the guidelines that have been developed in this respect (see, e.g., UN Committee CRC, 2009a). Also in the context of natural resource exploitation, children and young people have gradually become more involved in normative developments: they were consulted during the drafting processes of both GC 16 and the CRB Principles, and were listened to during a field visit in the Sarayaku case. The actual impact of these contributions remains sometimes difficult to assess, however.

Other challenges appear common to the children’s and broader human rights framework. An example constitutes the current state-centred focus of international human rights law, whereas the most adverse consequences of resource exploitation have been observed in the context of investments and activities by corporate actors. Re-thinking and extending the notion of duty-bearers thus emerges as an urgent task for children’s and human rights scholarship alike (see Vandenhole et al., 2014).
The attention for “children’s rights and business” followed upon a shift in general human rights law towards considering its relation with business. Looking to the future, there seems potential for children’s rights to take the lead and play an avant-garde role, as was illustrated by the inclusion of mandatory language in GC 16 regarding the obligations of home states in the context of businesses’ extraterritorial operations. It may be politically more feasible to achieve considerable breakthroughs on the legal obligations of business actors in the realm of children’s rights first. This could then pave the way for similar developments in the general human rights framework.

5.2. The (dis)empowering effect of incorporating insights from other disciplines in legal approaches

This chapter analysed the interaction between children’s rights and natural resource exploitation from a predominantly legal perspective. Some insights were drawn from other disciplines such as political economy (on trade agreements) and (legal) anthropology (on indigenous peoples’ relationship with their lands, territories and resources). It was also observed that in cases before the Inter-American Court of Human Rights, findings from other disciplines have been invoked by the applicants and/or built on by the judges, both from the social sciences (e.g. anthropologists’ testimonies in the Awas Tingui case) and the exact sciences (e.g. the public health study in the La Oroya case).

Natural resource exploitation seems indeed an area where the contribution of other disciplines may be pertinent for an appropriate legal approach to children’s rights. The way knowledge is used, and the power relations in which this use is embedded, will however determine its empowering or disempowering impact on persons affected by resource exploitation in general and children and young people in particular (cf. Foucault). Exact sciences could for example substantiate with “hard” data that certain rights (e.g., to health) are threatened or violated, and in this way give disadvantaged groups, including children and young people, more leverage to claim respect for their rights (e.g., La Oroya). Findings from exact sciences can also be “misused”, however, for instance when they are opaquely presented in rights-based environmental and social impact assessments, in a way incomprehensible for lay people, so disguising the impact of envisaged exploitation and thus limiting potential reactions.

Similarly, insights provided by anthropological scholarship on the meaning and use of natural resources for and by certain (indigenous) groups, could be used to sustain resistance to natural resource exploitation with the objective of safeguarding the rights of (indigenous) children and young people. A disturbing trend though is the fact that anthropologists are increasingly being recruited by oil and mining companies, or are working for them as consultants, to gather knowledge about the way of living and resource management practices of local, particularly indigenous, populations and to foster community relations, for instance in Peru (Mujica Bermúdez and Piccoli, 2014) and Ecuador (IACtHR 2012, §75). This knowledge could then be (ab)used by companies when trying to acquire lands or to obtain the communities’ consent to exploitation or relocation. This evolution entails an inappropriate diversion and instrumentalization of anthropological methods and knowledge, given that one of the original objectives of the anthropological discipline is to disentangle unequal power relationships (Mujica Bermúdez and Piccoli, 2014). Integrating insights from other disciplines in legal assessments and judicial proceedings may thus be both empowering and disempowering, and sufficient caution must be displayed in and towards such endeavours. Given the huge financial interests permeating resource exploitation, the potential for abusing knowledge seems higher here than in other domains impacting on children’s rights.

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6. Some concluding and future-oriented reflections

This chapter has analysed the relevance of children’s rights in the context of natural resource exploitation. Legal instruments and research addressing this matter as a whole and in its complexity appear to be in their early development. Both the attention for children’s rights in resource exploitation cases (as exemplified by the case law of the Inter-American human rights system) and the attention for resource exploitation in children’s rights (as evident from the concluding observations of the CRC Committee) have been limited at best, non-existent at worst. Looking at natural resource exploitation also raises questions on child-specificity and on the relationship between children’s rights and human rights law. This final section discusses three overarching and/or future-oriented themes: (i) the need for effective remedies and change at the domestic level, (ii) the importance of an intercultural and context-specific approach, and (iii) the proposal to shift focus in future research.

First, although natural resource exploitation does not necessarily have negative implications for children and young people, there are many instances in which it has affected them adversely. When actual violations occur, “businesses and States are failing children who in reality have very limited options to obtain remedy for corporate violations of their rights” (Sheahan, 2011, p. 33). Accessible and effective paths for children to obtain remedy should be further developed. Lambooy et al. (2013, p. 377) suggest that in the case of oil companies, effective remedies not only include compensation for the past, but also “safer plans for future operations”. Although the authors do not focus on children, such a future-oriented approach appears particularly relevant for them. In Latin America, children and young people seem to have played quite a limited role in judicial proceedings, at least before the Inter-American human rights system. Moreover, even when a case reaches the regional or international level, states far from always comply with decisions and recommendations of these organs. This points to the importance of change at the domestic (legal and policy) level, in addition to and beyond the international level.9

Second, this chapter supports an intercultural and localized (De Feyter, 2007, 2011; Vandenhole, 2012b) approach to (children’s) human rights. Case studies of Latin America made the human rights intricacies for children and young people in a resource exploitation context tangible, and showed the need for a tailored approach. That human rights concerns are triggered by resource exploitation seems to be a reality shared by most Latin American states, including those who promote a neoliberal extractivist model, as well as those who have started questioning neoliberal paradigms and are promoting social transformation based on resource extraction, such as Bolivia and Ecuador. As a way to confront these extractivist models, indigenous peoples in the region have called for alternative models of development to be considered, based for instance on the notion of “buen vivir” or good living. According to Gudynas (2011, p. 442), the concept of buen vivir comes from the Kichwa wording sumak kawsay, which is used to refer to “a fullness life in a community, together with other persons and Nature”. Such notion has been acknowledged in recent years in the Constitutions of Ecuador (2008) and Bolivia (2009), and has inspired alternative development policies and initiatives throughout the region. Notwithstanding its potential, the notion of buen vivir is quite vague and open. Ideas on

9 Here, inspiration could be drawn from other regions. In the Philippines, for instance, several children, represented by their parents, succeeded in filing a class action to obtain the annulment and non-issuance of timber license agreements, alleging a violation of their right to a balanced and healthful ecology. The Supreme Court of the Philippines moreover accepted that the minors represented both others of their generations and future generations (Supreme Court of the Philippines, 1993).
how to effectively realize such a way of living may diverge or clash, depending on the vantage point one takes (compare with the openness of the umbrella concept of “the best interests of the child”). Moreover, in the relevant literature on *buen vivir*, children and their rights are not often explicitly considered – indicating potential for future development.

Finally, this article focused on natural resource *exploitation* as the problem calling most urgently for our attention. In line with a holistic perspective, it is suggested that research and policy move towards a more inclusive approach on how we engage with our natural resources, i.e. not (only) by exploiting them, but (most importantly) by conserving and sustainably using them. In this way, a shift in future research towards “natural resources and children’s rights” is proposed.

**Questions for debate and discussion**

- How could the responsibility of corporations involved in resource extraction for children’s rights violations be enforced? Which steps should be taken by states and by the international community to ensure the extraterritorial responsibility of corporations for children’s rights violations?
- How would you address children’s rights in a case of natural resource exploitation, as a member of (i) the Inter-American Court of Human Rights, (ii) the UN Committee on the Rights of the Child?
- In what ways can disciplines such as law, anthropology or political economy facilitate a better understanding of the connections between children’s rights and resource extraction?
- How could the normative processes taking place in international fora concerning children’s rights and resource exploitation be localized in contexts where resource extraction takes place, and how could experiences of children and young people be considered in future normative developments?

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