



Human Rights and Extractive Industries

SOSC 3040

Corporate Social Responsibility

Extractive Industries: Controversy

- Canadian mining companies accused of violating human rights and environmental standards in Latin America, Africa and Papua
- Norway pension fund divests from Barrick Gold because of abuses at Pogera Mine, Papua

Review questions

- What does “divest” mean?
- What potential effects could divestment by a big investor (like Norway fund) have on a company (like Barrick)? What effect did it have?

Review questions

- What are the main perspectives on CSR introduced last term?
- What perspective is this passage from *Investing in Conflict* an example of?
- “Ethical investment” funds do their part by investing heavily in companies like Goldcorp, misleading their clients into believing that large-scale mining is environmentally and socially responsible....Meanwhile, NGOs like World Vision use mining company money to carry out projects in affected communities, and groups like the Canadian Foundation for the Americas (FOCAL) work to convince people in resistance that they should dialogue with the mining sector.”

Reviewing CSR and Development

- Distinguish issues involving:
- Corporations and agriculture
- Manufacturing (esp. labour-intensive)
- Extractive industries (e.g. mining, oil)

Differences

- Labour-intensive sectors—agriculture and (esp.) light manufacturing, “artisanal mining”
- CSR issues mainly relate to treatment of workers (wages, working conditions)
- Industrial extractive sector creates fewer (but possibly well-paid) jobs
- More negative impacts on non-employees → social conflict

Artisanal v industrial mining

- Artisanal
- Incl. “raiding”/ gleaning industrial mines
- Corporations as purchasers
- Labour intensive
- Dangerous, poorly paid, child labour, etc.
- Conflict minerals (e.g. “blood diamonds”)
- Industrial
- FDI, often Canadian
- Corporations as producers
- Capital intensive; relatively little local employment
- Environmental impacts, displacement
- Conflicts with security forces

Civil Regulation: Complications

- Efforts by civil society & CSR to control human rights abuses, child labour, environmental and health hazards etc. in artisanal mining-- “blood diamonds”, gold, coltan etc.
- can benefit big business at expense of poor?

Direct and indirect human rights issues re extractive industries

- 1) Expropriation of land, displacement
- 2) Destruction/impairment of livelihoods and property due to environmental impacts
- 3) Opposition, resistance, conflict between opponents and supporters, repression
- 4) Distribution of wealth generated

1) Land Acquisition/ Displacement

- Also relevant to plantation agriculture —e.g. oil palm in Ghana)
- Problems:
- Informal, traditional or feudal land tenure systems
- Community reliance on/ occupation of common or “public” lands

2. Environmental and other externalities

- Air, water and soil pollution, vibration
- Depletion of groundwater, drying up of streams
- Social disruption due to influx of outside workers, increased income inequalities

3. Conflict & Repression

- 3. Corporate collusion with or instigation of violent repression of project opponents and other community advocates
- Issues: to what extent are companies responsible for state or local non-state violence against company opponents?
- To what extent are companies responsible for “rogue” actions of security forces they employ? E.g. Barrick in PNG

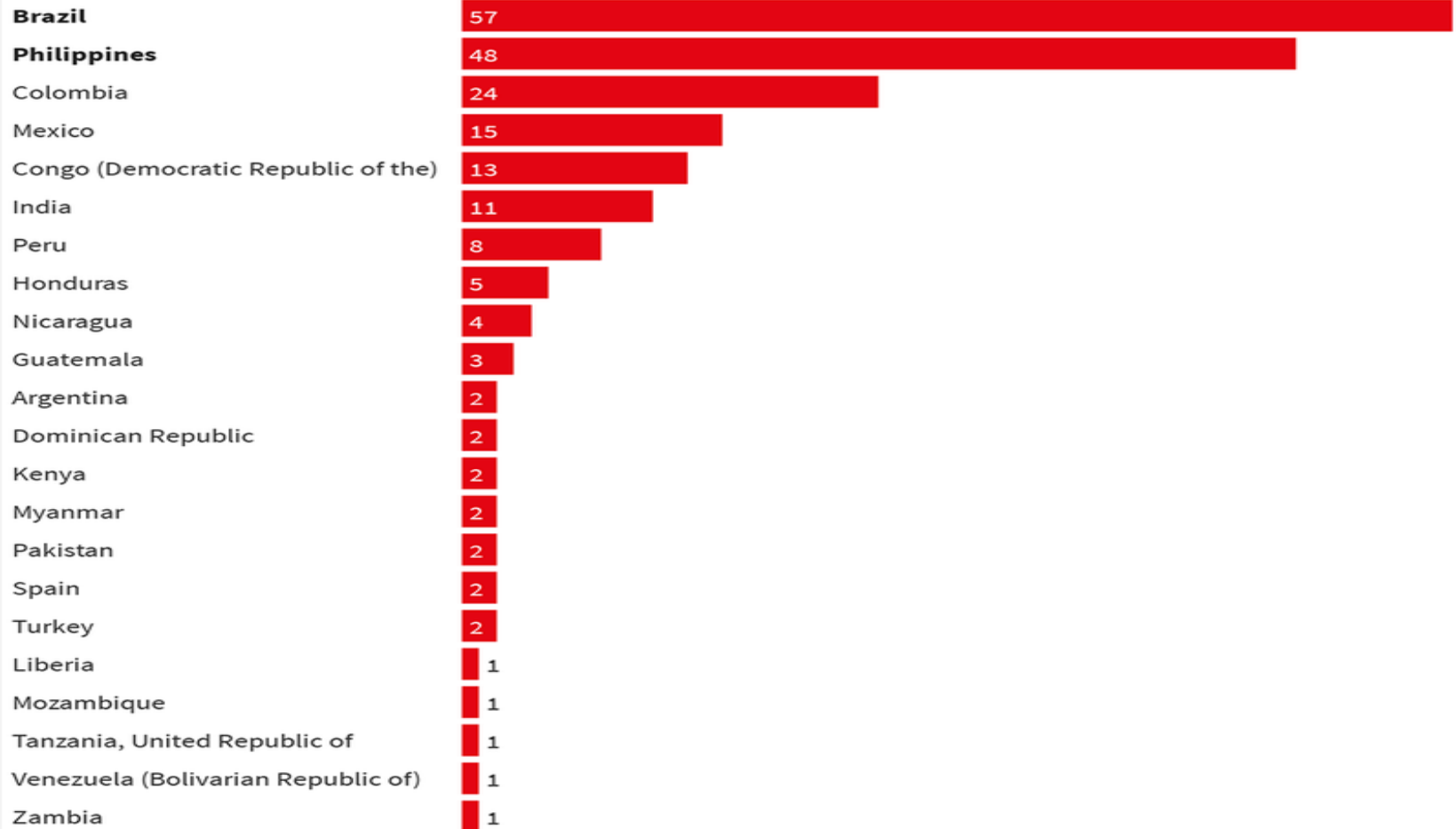
“The world is deadlier than ever for land and environmental defenders, with agribusiness the industry most linked to killings”

--Global Witness [2018 Report](#)

- 207 environmental activists murdered world wide in 2017:
- 46 killed resisting big agriculture
 - Eg. palm oil, coffee, tropical fruit and sugar cane plantations, cattle ranching
- 40 killed resisting mining
- 23 killed resisting logging
- 23 killed resisting poaching

Killings of environmental activists

KILLINGS BY COUNTRY 2017



Source: [Global Witness](#)

4) Distribution of wealth

- Giving back to the community: positive responsibilities to assist development; Impact-Benefit Agreements (IBAs)
- How much of wealth extracted ought to go back to community in infrastructure, services, clinics, libraries etc.?
- How should this be decided and carried out?

Extractive Industries: Negative and Positive Responsibilities

- Negative duty = duty not to do something
 - Eg. “do no harm”
- Positive duty = duty to do something
 - E.g. philanthropy
- Complaints that corporations harm communities and that they fail to return wealth from resources “owned” by community often go hand in hand, but raise distinct issues.

Extractive Industries: Negative and Positive Responsibilities

- Jenkins: CSR framed in terms of merely negative responsibilities [do no harm] may not address poverty
- Idemudia: positive action [e.g. funding community development projects] may be poor compensation for failures re negative responsibilities

Criticisms of industry CSR approach

- Doesn't address "resource curse" –macro economic weakness of resource-based development
- Doesn't adequately address local negative impacts of resource development that outlast temporary economic boom of mine
- Local sourcing would do more for local economy than CSR spending

Week 10



SOME CONFLICTS INVOLVING CANADIAN MINING COMPANIES

Barrick Gold—North Mara

- Open pit gold mine in NW Tanzania—
extremely poor area
- Mine site closely ringed by villages
 - Displaced local farmers and artisanal gold miners;
 - people attracted from elsewhere
- “Intruders” from local villages invade mine site to glean waste ore → process to extract gold

North Mara--Issues

- Environmental impacts similar to previous cases
- Economic benefits e.g. electrification BUT benefits fall short of what was promised by mine developer (before bought by Barrick)
- Violence between intruders and mine staff, security, police
 - 5 intruders killed by police in 2011
 - Frequent injuries on both sides

Progera, Barrick Gold, PNG

- Assaults and rapes of gleaners and locals by security
- Eventually Barrick offers compensation (\$, training)
- Some accept, others sue
- Suits settled for 10x amount offered



Fenix Project time-line

- Proposed open-pit nickel mine, Guatemala
- 2006-7: Skye Resources (Canadian firm), via hired armed Fenix security, military and police, evict Mayan villagers from mine site
- 2008: Skye acquired by HudBay (another Canadian mining firm)
- 2009: village leader killed in confrontation at mine site
- March 2011: HudBay sued (in Toronto) by villagers: *Choc v HudBay*
- Sept 2011: HudBay sells Fenix to Russian company
- 2013 HudBay accepts jurisdiction of Canadian court, case to proceed

Choc: suit HudBay position

- We were granted rights to land—plaintiffs were there illegally
- Security forces acting in self-defense when attacked by Mayans; rape claims false
- Mine was developed by subsidiary, not us
- Violence was not reasonably foreseeable, so we had no duty to try to supervise subsidiary
- Sue subsidiary in Guatemalan court, not us in Canadian court

Choc: Plaintiff position

- Mining rights granted by military dictatorship, Mayans reclaiming
 - Mayan claim upheld by Guatemalan court in 2011
- HudBay controlled subsidiary *and* directly controlled security forces
- HudBay should have known that violence likely, given Guatemalan context
- HudBay's own CSR PR indicated close involvement, care for local stakeholders

Araya v Nevsun Resources

- Re Bisha copper & zinc mine, Eritrea
- BC based firm Nevsun main investor in mine
- Claim: Nevsun in collusion with military dictatorship uses slave labour in mining
- Workers sue Nevsun in BC courts
- Nevsun motion: throw out case—
Canadian courts don't have jurisdiction
- BC courts reject motion, issue of whether lawsuit can proceed in Canada to be decided by Supreme Court of Canada

El Dorado project, El Salvador

- Project proposed by Vancouver-based Pacific Rim Mining
- Mine opposed by locals because of threat to water etc
- 2008: El Salvador government refuses to grant environmental approvals
- Company: approvals denied only because we didn't pay bribes
- Pacific Rim sues El Salvador for \$77M under CAFTA investor-state provision

El Dorado, continued

- 2010-2011: four opponents of El Dorado project murdered after getting death threats re: anti-mine activism
- 2012: International investment disputes settlement tribunal rejects Pacific Rim suit on jurisdiction grounds (not really a US company) but agrees to hear case under El Salvador law

Context: Civil War

- Civil wars in Guatemala (1978-96), El Salvador (1980-92)
- Right-wing authoritarian governments & wealthy vs leftist rebels
- Assassination, torture, rapes and massacres commonly used by govt. forces against suspected rebel sympathizers (esp. in Guatemala, indigenous people)
- War over but problems of violence and legal impunity remain pervasive

Review/discussion questions

- Why is gold mining in particular so controversial?
- Why has mining given rise to violence? Who are some of the parties?
- Under what circumstances are Canadian mining companies responsible for violence linked to their projects? Why?



THE MARLIN MINE CASE

E.g.: Marlin Mine, Guatemala

- 5 square km gold & silver mine in Guatemalan highlands
- 2005-2017; possible expansion/ extension
- Lowest cost, most profitable mine operated by Goldcorp (Canadian firm)
- Largest single taxpayer in Guatemala
- Local Mayan people: 80% in “absolute poverty” —subsistence agriculture & remittances from relatives in US

Goldcorp Marlin Mine, Guatemala



Marlin Mine: Short-Medium Term Environmental Concerns

- Removal of farmland and forests
- Dumping of waste rock and tailings consumes more land
- Blasting → vibration damage, stress to people and animals, clouds of choking dust
- Ore treated with vast amounts of water → drying up wells and streams
- Ore also treated with cyanide → if escapes can poison people, fish and livestock
- Air pollution from smelting
- “Tailings — vast quantities of finely crushed and processed ore rock — must be disposed of safely once they have been exposed to cyanide”;
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Marlin Mine: Long-term Environmental Concerns

- “Acid mine drainage (AMD) results from the exposure of sulfide-rich crushed rock (tailings and waste rock) to rainfall. AMD can contaminate local waters with heavy metals such as aluminum, arsenic, cadmium, lead, nickel and zinc that would otherwise remain buried in intact rock.”
 - Unlike short-term cyanide and dust hazards, can persist long after mine closed

Marlin Mine—Issues re options

- Mine had 11 year lifespan
- Unless major investment in rehabilitation of land, local communities will be left worse off despite modest economic benefits in short term
- Local communities get about 5% of mine revenues via wages and investment in local infrastructure, CSR
- Guatemalan government gets 6% of mine revenues via taxes and royalties
- Most of economic benefit to Guatemala via procurement of supplies and equipment (mostly not local)

Social impacts

- Provided ~ 1000 well paid jobs for locals
- "The legacy of that will remain after the mine is closed. Our values had been ones of empathy, solidarity, sharing and love of nature. But today, the mine has become a value in this community. Money is now a value. We have never had money before and it is tearing us apart." – local opponent

What Should Goldcorp Do?

- 2005 referendum of 2400 local people: 94% vote “no” to mining
- Goldcorp share value increased by 1400% over 10 years—Marlin mine its best earner
- 2010: International Labor Organization and Inter-American Commission on Human Rights call for suspension of operations pending investigation of impact on health and water supplies of local communities.
- What should Goldcorp do?

Shareholder Activism

- 2008: Activist shareholders circulate proposal for human rights assessment
- Assessment prepared by consultants, published in 2010
- Calls for better monitoring of security, more stakeholder consultation
- Controversy re terms of reference: not sufficiently arms-length from Goldcorp; assumes mine should continue to operate

Week 11



CANADIAN LEGISLATION CONTROVERSY

Canadian controversy

- Increasingly negative reputation of Canadian mining companies (hence Canada) abroad
- 2005 Parliamentary Standing Committee on Foreign Affairs and International Development (SCFAID) report on the issue recommends:
 - "establish clear legal norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies."
 - → CSR Roundtables 2007

Bill C-300

- 2008 private members bill sponsored by John McKay, Toronto Liberal MP
- See handout on Bill C-300 posted on Moodle for materials on the bill and the controversy around it

What Bill C-300 would have done

- If a complaint made that Canadian firm is violating international (voluntary) environmental and human rights agreements, Minister would investigate
- If complaints found to be valid, firm would become ineligible for support from Export Development Canada and for investment from Canada Pension Plan

Standards Applied

- (a) the IFC's *Policy on Social & Environmental Sustainability, Performance Standards on Social & Environmental Sustainability, Guidance Notes* to those standards, and *Environmental, Health and Safety General Guidelines*;
- [IFC = International Finance Corporation, part of the World Bank.
- (b) the *Voluntary Principles on Security and Human Rights*; [developed by US, UK, Dutch & Norwegian governments, ~16 extractive TNCs, and several NGOs incl. Amnesty International, Human Rights Watch, Oxfam].
- (c) human rights provisions that ensure corporations operate in a manner that is consistent with international human rights standards; and
- (d) any other standard consistent with international human rights standards.

Rights Action criticism

- Action discretionary on part of government
- **Not** enforced by courts
- Would **not** create basis for either:
 - Civil lawsuit (for compensation) or
 - Criminal or regulatory prosecution (resulting in fine or other sentence)
- Prefer Peter Julian (NDP MP) private members bill that would provide civil liability for human rights violations outside Canada

Industry/ Conservative Govt criticism

- EDC already uses IFC Performance Standards, Equator Principles etc. for screening therefore redundant
- Bill would create a “political” process
- Bill would be “punitive” → relocation of mining company HQs to other jurisdictions
- Canadian firms would hesitate to invest in socially risky projects → investment by firms from countries with lower standards

Debating regulatory approach

- Critics of C-300, regulatory approach:
- Canadian companies will avoid conflict zones, leaving resources to be developed by companies from countries with no CSR policies e.g. China
- Reply by critics of CSR (Laplante & Nolin):
- “absurd” implication of above “is that it is better to let Canadian companies off the hook for complicity in genocide, rather than having other multinationals commit crimes in their place and reap the

Debating regulatory approach: questions

- What general perspective do Laplante & Nolin represent?
- Why do they think the implication of the industry argument is “absurd”? Do you agree? Why/why not?

Bill C-300 Defeated

- Bill opposed by minority Harper government, supported by all opposition parties
- Passed 2d Reading with opposition support
- October 2010 bill narrowly defeated on 3d Reading because many opposition MPs absent for vote

Industry Alternative

- Industry opposed 2005 SCFAID report and C-300
- 2007 meets with large mainstream NGOs → Devonshire Initiative
- CSR approach: partnership with NGOs to secure “social license to operate” (i.e., no opposition) via investments in training and infrastructure etc. in local host communities

Government Comes on Board

- 2009 “Building the Canadian Advantage”
- Fall 2011: CIDA funds 3 partnerships:
- Ghana: World University Service of Canada + Rio Tinto Alcan [later sold to Chinese firm]
- Burkina Faso: Plan Canada + IAMGOLD
- Peru: World Vision Canada + Barrick Gold
- Projects co-funded by CIDA (>50%) and companies

Controversy Re CIDA CSR funding

- MiningWatch interpretation: Harper government via CIDA using tax money to subsidize CSR aimed at forestalling opposition to mining by Canadian firms
- Canadian Mining Association interpretation: Mining firms CSR helping to subsidize CIDA-funded NGO development projects near mines

Problems with CIDA partnerships

- **Ghana:** mine sold, aid projects abandoned
- **Peru:** Infrastructure, aid projects help locals, but creates conflict with those harmed, not helped
- Inadequate steady employment created
- **Burkina Faso:** provides needed job skills training, but not enough to help all displaced artisanal miners
- New houses for displaced locals unoccupied, left to find work

New Liberal government initiative

- Independent ombudsperson position to be created
- Will investigate human rights complaints re Canadian mining companies abroad and make recommendations
- In serious cases or if company fails to heed report, government can withdraw EDC and other support (as per bill C-300)

Review: Civil Regulation

- Note different civil society approaches:
- CSR partnerships (e.g. CIDA program partners)
- Shareholder activism (e.g. re Goldcorp Marlin mine Human Rights Assessment)
- Consumer based: “No Dirty Gold” ethical sourcing initiative (Earthworks, Oxfam)
- Protest support, litigation and law reform (e.g. MiningWatch, Rights Action, Amnesty International)

Review questions

- What were the 3 positions on Bill C-300?
- Who took each position?