



ESCR-Net CAWG Corporate Capture Project – Scoping Report

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INTRODUCTION

Corporate Capture – the Root Cause of Corporate Human Rights Abuse

Article 21(3) of the Universal Declaration of Human Rights stipulates, “the will of the people shall be the basis of the authority of government.” Corporate capture is defined by the undue influence that corporations exert over national and international public institutions, manipulating them to act according to their priorities, at the expense of the public interest and the integrity of the systems required to respect, protect and fulfill human rights, and safeguard the environment. As such corporate capture operates as a significant ‘root cause’ of corporate human rights abuses.

How Corporate Capture Threatens Democracy and Human Rights

The ‘corporate lobby’ – organizations that represent the collective interests of corporations – exerts political influence over the legislative process, and the state regulators charged with enforcing laws, often weakening provisions in the law or their implementation. The behaviour of the corporate lobby in frustrating the implementation of the US Dodd-Frank Act (2010) was a good example of this. The US Dodd-Frank Act (2010) was an attempt to more closely regulate an area of the economy that had, due to a dearth of regulation, destabilized the significant portions of the ‘real’ economy (not just the financial sector), including the housing sector and then the credit markets, resulting in massive rise in worldwide unemployment and deep cuts in all regions to social programs that fulfill a range of social rights through government assistance. The human rights impacts of the destabilized economy originated with the rolling back of financial sector regulation at the behest of corporate lobbyists activities over the course of two decades.

Corporations also provide significant funding in support of election campaigns, ensuring elected officials promote the passage of laws that benefit corporations, and frustrate the passage of other laws that might impact on corporate profits as they improve protections for human rights and/or the environment. Extractive industry lobbyist support for deregulation of the hydraulic fracturing sector (known as ‘fracking’) began in the US, but has now spread to all parts of Europe, Africa and Asia. In the US alone the suspension of key decades-old environmental legalisation for the practice of fracking, on the back of extractive industry lobbying, has exposed all affected communities in the US to deterioration in adequate water supplies and serious threats to peoples’ right to adequate health and standard of living.

In the global south, corporate capture of the state is often characterized by cooption of the use of state security forces to protect the interests of investors. One common impact of this is the use of force by national army personnel to quell peaceful demonstrations by those who oppose agri-business and extractive investment projects that are predicted to threaten the human rights of affected people. Other examples of corporate capture common to many countries, particularly in the global south, involves attempts by corporations to influence the behaviour of the judiciary, sponsoring

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judiciary events in private venues and thereby influencing the outcome of legal proceedings; as well as the corporate practice during elections of trying to coerce their employees to vote for a certain political candidate that has an agenda more favourable to corporate interests.

These and other examples are examined in greater detail in this scoping report.

The Dearth of Human Rights Analysis or Coordinated Civil Society Response

There exists some detailed analysis of how corporations have managed to exert an undue influence on the democratic processes of parliaments and intergovernmental organizations, however, very little of this is being undertaken by the human rights community in way that analyzes the explicit links between corporate capture *and how it results in human rights abuses*. Utilization of the human rights framework can provide more comprehensive assessment of the situation, the potentially feasible solutions and unite and mobilize the involvement of a broader range of civil society.

As a result, at this stage, there is neither a comprehensive human rights analysis of the problems posed by corporate capture, or a unified and widely supported agenda to begin addressing it from this broader perspective.

The Corporate Capture Project of the ESCR-Net Corporate Accountability Working Group (CAWG)

At the 2013 ESCR-Net Peoples' Forum on Human Rights & Business ESCR-Net members and partners identified the impact on human rights resulting from cooption of democratic processes by corporations as a significant priority for the ESCR-Net CAWG. This scoping report is the first phase of the ESCR-Net CAWG Corporate Capture Project, which will:

- ✚ Examine the linkages between corporate corruption of democratic processes and the consequent human rights impacts at national and sub-national level;
- ✚ Analyse the range of available and feasible strategies for combating corporate capture, including national level policy and legislative reforms, and
- ✚ Within States that have not yet adopted feasible policy and legislative reforms to safeguard against corporate capture, facilitate civil society campaigns to advocate for adoption of reforms that would effectively address corporate capture and better safeguard human rights.

Contents of This Report

This report is an initial phase of the Corporate Capture Project. It contains case studies resulting from interviews with ESCR-Net members and partners which form the bases for case studies that are regionally diverse, detailing corporate influence of the governments of Sierra Leone, Colombia, the United Kingdom, Brazil, the Philippines, Canada and the United States. The report covers a broad array of industries including biofuel, agri-business, extractive, financial, and nutrition. These synopses of case

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studies illustrate the consequences of governments putting the interests of corporations before the interests of their people.

Addax Bioenergy in Sierra Leone

Addax Bioenergy, a biofuel company from Switzerland, has developed a sugarcane-to-ethanol project¹ which it leased 57,000 ha of land for in Sierra Leone over a 50 year period, in the process impacting 13,617 people living in the nearby area.

Deceptive Agreements

One way that Addax has gained and maintained influence among local communities is the provision of annual lease fees at an average of \$14,600 USD per year for the District Councils and Chiefdom Administrators. The payments create a strong incentive for local authorities to sign with the company although they are not affected by any impacts from the project, while local landowners deal with the challenges of these impacts.²



The operations of Addax Bioenergy in Sierra Leone

The influence Addax has over local authorities has established land lease agreements³ that undermine the rights of local communities to meaningfully participate in the activities that affect their lives. The terms of the agreement were never explained to the local landholders. Furthermore, since these landowners claim the project was presented to them as a 'project of the President', and they were informed that the chiefs and local councils supported the projects, the landowners felt they effectively had no choice but to agree with them.⁴ Furthermore, the dissemination of the agreements was incomplete and they were incorrectly translated, leading to misunderstandings about the details of the lease.⁵

¹ SiLNoRF, *Annual Monitoring Report on the Operations of Addax Bioenergy For the Period July 2013-July 2014*, page 10. Online: https://5d4594a8-a-62cb3a1a-s-sites.googlegroups.com/site/silnorf/news-1/monitoring-report-2014/Monitoring%20report%20SiLNoRF%202014_def.pdf?attachauth=ANoY7coCP1AI23Zdq_zU4SLEY4-JwN3u4v2A2LQhogvpy5K6mEgkTV661MPfctH0pwuYRDpLqoQE164G5AEJqXDXMealpScCUeW_Z7UE0FSIFU86rl25AMZzg6WKmsY8qLWewGkbjmuZ4D9Sm464tKqSx4EJPPI33INI409x4Ig5kYINLBNSHiG-WXAVP2WrV2fquWCVK_0u5kD7E2DqtUU7e5JqPVOgwUbj1rL6XqSIYbd82vx-NtlHwlMWD6CR--DxmLE45enHz2mh3OdBocAinplKVasJg%3D%3D&attredirects=1.

² Calculation of Bread for All. The District Councils and Chiefdom Councils will receive USD 1.44 per acre (40% of USD 3.6) (or USD 3.56 per hectare as one hectare is 2.47 acre). Addax stated it will use 24'600 hectare. The total land lease fees for the 3 Chiefdom Councils will be as follows: 24'600 hectare x USD 1.78 per hectare per annum = USD 43'800 per annum. This means that each Chiefdom Council receives an average of USD 14'600 per annum. (*supra* note 1 at 39-40).

³ *Supra* note 1 at 17.

⁴ *Id.*

⁵ *Id.* at 19.

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Conflicts of Interest

In several ways, it is claimed that Addax has generated conflicts of interest. For instance, Addax financially supports the legal services for the community, undermining their independence from the company.⁶ Addax also provides services to the Sierra Leone Police ("SLP"), lending them company vehicles and servicing police vehicles.⁷ The interdependence of Addax and the SLP has led to accusations that the SLP is operating in the interests of Addax, sometimes at the expense of local people.⁸ For example, in April 2011 Addax made an agreement with employees of the company in response to complaints over poor labour practices. Following neglect of the agreement to provide supplement pay for employees during holidays some employees demonstrated in May 2011. The SLP reacted to break up the demonstration, resulting in violent confrontations between them and the demonstrators.⁹

Overview of Human Rights Issues

There are reportedly a wide range of human rights impacts associated with Addax's project, including:

- Impact on land rights through land grabbing: Addax forced poor farmers off their fertile lands,¹⁰ notably forcibly displacing 50 people in February 2013¹¹,
- Aggravation of food insecurity¹² and hunger¹³ caused by forcing farmers off their land: the dispossession of fertile river banks which served as fertile land for cultivation has caused an inability to cultivate rice and vegetables¹⁴,
- Environmental degradation: devastation of traditional water sources through water pollution¹⁵ and the harm done by ethanol production: "the environmental impact of ethanol from sugarcane is bigger than the one of oil (between up to +200%)"¹⁶.

⁶ Id. at 17.

⁷ SiLNoRF, *Annual Monitoring Report on the Operations of Addax Bioenergy by SiLNoRF For the Period June 2011-June 2012*, page 21. Online: https://5d4594a8-a-62cb3a1a-s-sites.googlegroups.com/site/silnorf/news-1/monitoring-report-july-2012/Monitoring%20report%20SiLNoRF%2006082012.pdf?attachauth=ANoY7cp2LhjNGnDgPvzfUwZop_vMSCCG_DJYP4ArHD91fGHhSMvVfHPergWF1OXCUDJ0vLx02hQBSJevfdw5gjswmsHjHP0kEUOhKZjwOuGEc9TCZAYIUJIJz-iKYCv_rTFe0nTndFhMCRPdJoz7fyquKQAq-TQbzDiAXcozkGamKBBqGvGYCSdfsBeROalMBeNNtn9xW4FZ0TNoq4KKLxqRGutwLSRDxDwZqgdMr9xoUPVCV8P4yTVddtc_rfRvLPtmVfmOjlsFWyIFEzx2MyjLuC91bvADHWJ8Ttun7GZlkeyEmyF-ijE%3D&attredirects=1.

⁸ SiLNoRF, *Annual Monitoring Report on the Operations of Addax Bioenergy by SiLNoRF For the Period July 2012- July 2013*, page 28. Online:

<https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbXzaWxub3JmfGd4OjM2ODk0ODIINWE1NTFhOTU> (describing police violence when called to respond to Addax worker strikes; Addax fired workers then after charges dropped due to Addax's lack of evidence, Addax didn't re-engage them; Addax's failure to disclose its support for police).

⁹ *Supra* note 7 at 20.

¹⁰ SiLNoRF, et. al., *Independent Study Report of the Addax Bioenergy Sugarcane-to-Ethanol Project in the Makeni Region in Sierra Leone* 2011, page 38. Online: http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniques/Independent%20Study%20Report%20Addax%20Final.pdf.

¹¹ Id. at 10.; *Supra* note 8 at 17.

¹² *Supra* note 1 at 26.

¹³ *Supra* note 10 at 38.

¹⁴ Id. at 39.

¹⁵ Id. at 38-39.

¹⁶ Id. at 8.

Agribusiness in Colombia

In 1994, the Colombian Congress passed Act 160 governing the allocation of “baldíos” (vacant pieces of land) and providing subsidies to landless peasants. The purpose of this law was to provide access to portions of land to landless farming families that are sufficient for them to produce their own sustainable sources of food, thereby contributing to the alleviation of rural poverty.¹⁷ These parcels of land are known as UAFs (standing for Unidad Agrícola Familiar, or Agricultural Family Unit, which means “the amount of land for a peasant family to live with dignity”¹⁸). The programme has been undermined by corporations, through the use of legal loopholes that subvert its initial purpose by providing greater access to land for agribusinesses rather than rural poor families.

Corporate Infiltration into Government

In 2013, after spending 19 years at the head of Indupalma (a company which cultivates rubber and African palm trees for palm-oil production in southeastern Colombia, where the baldíos are) Rubén Darío Lizarralde was appointed Minister of Agriculture.¹⁹ Some, including Senator Jorge Robledo and Representatives Iván Cepeda and Wilson Arias, fear Lizarralde’s appointment creates a conflict of interest.²⁰

Starting in 2010, Indupalma reportedly began taking advantage of the baldío scheme by accepting gifts of land from 21 investors who bought the land through the system, which Indupalma documents on their website.²¹ Lizarralde has also failed to prevent the appropriation of baldíos by a similar company, Riopaila Castilla. Riopaila Castilla and other companies have acquired land through a loophole in the 1994 law which does not prevent legal persons from acquiring land through the system. Riopaila Castilla established 27 shell companies in order to obtain a UAF for each of them,²² thereby manipulating limitations of the law in favour of corporate acquisition of rural land, at the expense of access to land for rural poor families. Subsequently, former Minister of Justice Néstor Humberto Martínez, lawyer for the wealthiest man in Colombia who owns of a corporation that has bought large portions of baldío land, has drafted additional legal reforms to affirm this manipulative interpretation of the law.²³ The drafts “clearly show the Government’s intention to legalize the potentially irregular

¹⁷ Sánchez Duque, Luz María, Dejusticia, “Siervos sin tierra” (March 16, 2012). Online: <http://www.dejusticia.org/#!/actividad/1172> (in original Spanish).

¹⁸ Bermúdez Liévano, Andrés and Juanita León, “In the vacant lands, Santos will have to choose between tycoons and his peace discourse in Havana,” La Silla Vacía (August 3, 2013). Online: <http://es.scribd.com/doc/163839871/Vacant-Lands> (translated from Spanish. Original Version in Spanish: <http://lasillavacia.com/historia/en-los-baldios-santos-tendra-que-escoger-entre-los-cacaos-y-su-discurso-en-la-habana-45332>).

¹⁹ Bermúdez Liévano, Andrés, “El proyecto del nuevo MinAgricultura en Vichada no es del ‘modelo Riopaila,’” La Silla Vacía (September 10, 2013). Online: <http://lasillavacia.com/historia/el-proyecto-del-nuevo-minagricultura-en-vichada-no-es-del-modelo-riopaila-45598> (in original Spanish).

²⁰ Id.

²¹ Id.

²² Bermúdez Liévano, Andrés, “El negocio ‘baldío’ de Poligrow,” La Silla Vacía (July 18, 2013). Online: <http://lasillavacia.com/historia/el-negocio-baldio-de-poligrow-45234> (in original Spanish).

²³ *Supra* note 18. (Reforms to the 1994 law have been “drafted with help from former Minister of Justice Néstor Humberto Martínez – head lawyer for Luis Carlos Sarmiento Angulo, one of whose companies also bought [baldío land] in the Altillanura”).

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purchases of many powerful businessmen, many of whom have also financed [President] Santos's campaign, are his friends or were advised legally by his friends."²⁴

In 2011, Congress adopted the National Development Plan. It has been criticized for creating exceptions such as that which has permitted baldíos land to be awarded to corporations for the development of "agricultural or forestry special projects," even if those investors would, through property consolidation, exceed the maximum permissible acquisition of land per UAF applicant.²⁵

Civil society organisations in Colombia, including Dejusticia, have participated in the public debate on this issue and published op-eds and reports explaining why Riopaila and others' actions were illegal. In a Constitutional Court case, supported by civil society groups, indigenous and peasant organizations parts of the National Development Plan were challenged.²⁶ The Court concluded that the state must adopt a different agricultural model because because the current plan modified the definition of UAF allowing for further concentration of land and therefore "generates a reversal of the duties of State to promote the progressive access to land by farm workers".²⁷ The decision echoed the proposals of these domestic civil society groups.²⁸

Overview of Human Rights Issues

This capture has resulted in the structural violation of access to land and systematic reproduction of unequal land tenure, which agricultural workers and rural poor families.²⁹

²⁴ Id.

²⁵ *Supra* note 17.

²⁶ Rangel Garzón, Paula, Dejusticia, "Una sentencia poco sofisticada" (March 16, 2012). Online: <http://www.dejusticia.org/#!/actividad/1548> (in original Spanish).

²⁷ Dejusticia, "Intervención frente a artículos reformativos de la Unidad Agrícola Familiar en el Plan Nacional de Desar" (March 9, 2012). Online: <http://www.dejusticia.org/#!/actividad/1854> (in original Spanish).

²⁸ Id.

²⁹ *Supra* note 17.

Rio Tinto & Shell in the UK

In 2012, the US Supreme Court ruled in *Kiobel v. Royal Dutch Petroleum* that Shell could not be sued in US courts under the Alien Tort Statute ("ATS") for its alleged complicity in torture and executions in Nigeria.³⁰ In 2013, the Ninth U.S. Circuit Court of Appeals dismissed the case of *Sarei v. Rio Tinto*, another ATS case in which the Anglo-Australian mining company was accused of complicity in human rights abuses in Papua New Guinea.³¹ These two decisions have severely limited the ATS as a mechanism for foreign victims of human rights abuses to seek remedy, especially against corporations, in U.S. courts.

Rio Tinto and Shell Asked UK Government to Support Corporate Positions in US Legal Cases

Freedom of information requests released in March 2014 reveal that Rio Tinto and Shell have established close relationships with UK government departments.³² Rio Tinto and Shell emailed the Foreign and Commonwealth Office ("FCO") and other ministries in London to seek UK Government support for their positions in U.S. court cases. The emails contained language such as, "Issue for Ministerial Attention: 1. How to respond to a request by the Rio Tinto group that HMG [Her Majesty's Government] submit an amicus curiae brief..."³³ and "the key issues that Ministers will wish to consider are: ... The risk that intervening may, however be perceived to be inconsistent with our position on the UN Guiding Principles- the so-called 'Ruggie Principles'".³⁴ This passage illustrates the understanding that support for the corporate positions in US courts would potentially conflict with international human rights standards. The correspondence partly indicates the willingness of the government to remain in connection with Rio Tinto: "...it is important that we remain closely engaged with Rio Tinto on this case as it develops."³⁵ Another FCO email revealed that Shell requested UK support: "[Shell's] Counsel in the US has approached the Counsel who drafted our *Rio Tinto* amicus brief asking for UK support."³⁶

The UK did submit amicus curiae briefs in both cases, referencing in the first case how extraterritorial jurisdiction would be damaging to British business interests.³⁷ The UK Government acknowledged also in an email that a favorable decision for Rio Tinto

³⁰ Stohr, Greg. "Companies Shielded as U.S. Court Cuts Human-Rights Suits," Bloomberg (April 7, 2013). Online: <http://www.bloomberg.com/news/2013-04-17/companies-get-shield-as-top-u-s-court-curbs-human-rights-suits.html>.

³¹ Stempel, Jonathan. "Rio Tinto wins end to human rights abuse lawsuit in U.S.," Reuters (June 28, 2013). Online: <http://www.reuters.com/article/2013/06/28/riotinto-abuse-lawsuit-idUSL2N0F41AD20130628>.

³² Bowcott, Owen. "Documents reveal extent of Shell and Rio Tinto lobbying in human rights case," The Guardian (April 6, 2014). <http://www.theguardian.com/business/2014/apr/06/shell-rio-tinto-human-rights-nigeria-kiobel>.

³³ "FS50487115," the full Freedom of Information documents. Page 57. Online:

http://www.amnesty.org.uk/sites/default/files/fs50487115_croser_kiobel_-_full_documents_following_ico_decision.pdf.

³⁴ Id.

³⁵ Id. at 59.

³⁶ Id. at 54. (The email continues, "CEDD have also discussed the case with Shell in London and were asked if HMG would submit an amicus brief").

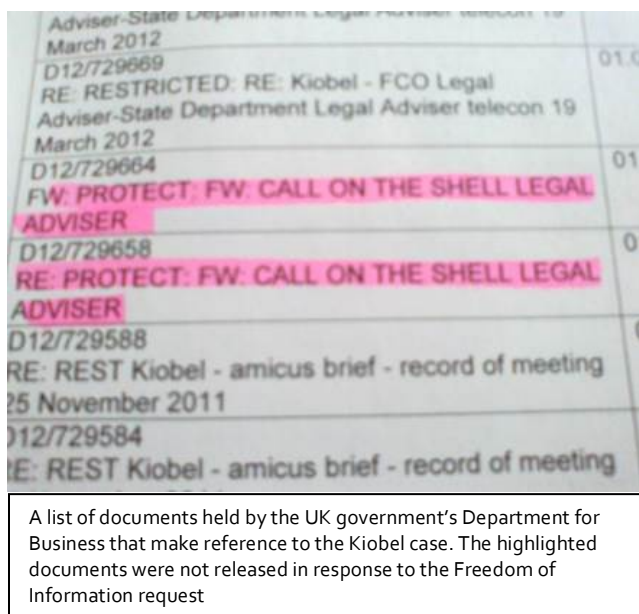
³⁷ *Supra* note 32.

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would be "...an important opportunity to set a useful precedent for British businesses."³⁸

After submitting a second brief in the Shell case that was more neutral than the first, an email reveals that the FCO "... received a call from [redacted] (No. 10 PS/PM) about the Shell Amicus Curiae brief and submission on Nigeria/Shell. ...Andy Browne (Executive Vice President Shell) had been lobbying No10 to find out why the Government had moved to a more neutral stance."³⁹

The rulings in the legal cases restricted the extraterritorial reach of the ATS, which will impact opportunities for other affected people around the world seeking remedy and accountability for corporate related human rights abuses.



The U.K. government's interventions in support of Rio Tinto and Shell, made at the urgings of the corporations, and the ability of Shell's Executive Vice President to have direct access and influence within the office of the Prime Minister, illustrate the closeness of corporate-government relationships, which award them undue sway over the official political positions of states.

³⁸ *Supra* note 33 at 58.

³⁹ *Id.* at 18.

Banks & the Brazilian Judiciary

A fundamental goal of the Brazilian Republic is “to eradicate poverty, marginalization and social inequality.”⁴⁰ The judiciary though has been subject to manipulation by corporate entities seeking to entice favourable judicial rulings through the provision of luxury gifts and other incentives.

Luxury Lobbying of Members of the Judiciary

State banks and other enterprises (including Febraban⁴¹, Petrobras⁴², the National Union of Distributors Fuel and Lubricants, Souza Cruz, Electrobras, and Etco⁴³) have gained and maintained influence in the Brazilian judiciary by sponsoring luxury resort vacation stays for judges under the guise of professional conferences. For example, São Paulo state judges reportedly received gifts such as cars, cruises, international travel, and accommodation in resorts from private companies socializing at parties.⁴⁴

Such sponsorship has been characterized as a form of indirect financial investment for large companies aimed at obtaining favourable judicial decisions.⁴⁵ For example, the companies sponsoring an event organized by the Association of Magistrates of Bahia reportedly had hundreds of actions before the Bahia Court, with at least four awaiting decision at the time of the event.⁴⁶ At these events, it is reported that companies present their views to judicial officials, without representation of opposing positions, allowing unfettered private access, and therefore opportunities to unduly influence, the decisions of judicial officials presiding over legal claims these companies are party to.⁴⁷

With pressure from Brazilian civil society groups a resolution was adopted by the National Council of Justice in February 2013 which “regulates the participation of judges in conferences, seminars and cultural events” so that a magistrate may not have the

⁴⁰ Terra de Direitos, “Carta Aberta à Associação dos Magistrados Brasileiros: Por uma cultura judiciária democrática e cidadã” (November 25, 2009). Online: <http://terradedireitos.org.br/2009/11/25/carta-aberta-a-associacao-dos-magistrados-brasileiros-por-uma-cultura-judiciaria-democratica-e-cidada/> (in original Portuguese).

⁴¹ Cavalcanti, Enock, “Bancos bancam a modormia de juizes e advogados em resort cinco estrelas” Pagina do Enock (May 17, 2009). Online: <http://paginadoenock.com.br/bancos-bancam-a-modormia-de-juizes-e-advogados-em-resort-cinco-estrelas/> (in original Portuguese).

⁴² Sinpro Campinas, “Empresários pagam encontro de juizes em resort na Paraíba” (December 6, 2011). Online: <http://www.sinprocampinas.org.br/index.php/galeria/noticias-da-educacao/item/20615-empresarios-pagam-encontro-de-juizes-em-resort-na-paraiba> (in original Portuguese).

⁴³ Vasconcelos, Frederico, “Bancos estatais patrocinam evento de juizes em resort,” Folha de S. Paulo (November 8, 2010). Online: <http://www1.folha.uol.com.br/fsp/poder/po0811201002.htm> (in original Portuguese).

⁴⁴ Vasconcelos, Frederico, “Juizes de SP recebem prêmios de empresas,” Folha de S. Paulo (December 10, 2012). Online: <http://blogdofred.blogfolha.uol.com.br/2012/12/10/juizes-de-sp-recebem-premios-de-empresas/> (in original Portuguese).

⁴⁵ Terra de Direitos, “Entrevista: Patrocínios privados a eventos ameaça independência do Poder Judiciário” (March 18, 2013). Online: <http://terradedireitos.org.br/2013/03/18/entrevistas-patrocínios-privados-a-eventos-ameaca-independencia-do-poder-judiciario/> (in original Portuguese).

⁴⁶ “EXCLUSIVO: Patrocinadores de final de semana para juizes em resort têm centenas de ações na Justiça baiana,” Política Livre (April 30, 2009). Online: <http://www.politicalivre.com.br/2009/04/patrocinadores-de-final-de-semana-para-juizes-em-resort-tem-centenas-de-aco-es-na-justica-baiana/> (in original Portuguese).

⁴⁷ *Supra* note 40.

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costs of hosting and traveling to an event paid for by private enterprises and prohibits judges from receiving awards, grants or contributions from individuals or public or private entities.⁴⁸

⁴⁸ CNJ, “CNJ limita participação de magistrados em eventos patrocinados” (September 9, 2013). Online: <http://www.cnj.jus.br/noticias/cnj/23626-cnj-limita-participacao-de-magistrados-em-eventos-patrocinados> (in original Portuguese).

Financial Sector in the US

Revolving Door

The interests of corporations in the United States are served by the presence of the “revolving door,” a phenomenon where people cycle from private sector employment into government agencies, and vice versa. A good example is the phenomenon of the professional career development of US Treasury Secretary Jack Lew. When he was appointed Treasury Secretary in 2013 it was revealed that a 2006 employment agreement he had with his then employer, Citigroup, “described certain emoluments Lew could receive if he left the company to accept a ‘full-time high level position with the United States government or regulatory body’” including “a pro-rated incentive and retention award” and “outstanding stock that would ordinarily vest over time.”⁴⁹ Morgan Stanley, the Blackstone Group, JP Morgan Chase, and “other major corporations make it financially advantageous for their executives to take government jobs.”⁵⁰

This cycle increases the likelihood that policies formed within government are sympathetic to the desires of the corporate sector, and also permit the formation of close corporate-government relationships that may further increase corporate influence within government.⁵¹ The revolving door and lobbying practices which together lead to the financial deregulation that triggered the global financial crisis illustrate the grave impacts that can flow when undue corporate influence weakens regulatory safeguards which are designed to shield the broader economy from high-risk financial activities.

Deregulation and the Financial Crisis

Deregulation of the financial sector, which facilitated the permissive environment for high-frequency trading and other financial market activity, contributed significantly to the recent global financial and later sovereign debt crisis. For example, the revocation of the Glass-Steagall Act, which created a firewall between commercial banks and investment banks, led to the formation of enormous banks, such as Citigroup. Such banks bought and sold mortgage-backed securities, credit-default swaps, and other financial derivatives that triggered the sector-wide instability in the financial markets, exposing all areas of banking and finance to problems generated by these high-risk financial market activities.⁵² In 2009, the UN concluded that the financial crisis was in large part caused by “regulatory failures, compounded by over-reliance on market self-

⁴⁹ Smallberg, Michael. “Big Businesses Offer Revolving Door Rewards,” Project on Government Oversight (March 21, 2013). <http://www.pogo.org/our-work/reports/2013/big-businesses-offer-revolving-door-rewards.html>.

⁵⁰ Id.

⁵¹ Mayer, Lindsay Renick, *A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government- And What to Do About It*, Revolving Door Working Group (October 2005). Page 7. Online: <http://www.cleanupwashington.org/documents/RevovDoor.pdf>.

⁵² Sanati, Cyrus. “10 Years Later, Looking at Repeal of Glass-Steagall.” The New York Times (November 12, 2009). Online: <http://dealbook.nytimes.com/2009/11/12/10-years-later-looking-at-repeal-of-glass-steagall/>.

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regulation, overall lack of transparency, financial integrity and irresponsible behaviour".⁵³

Financial Industry Incentives to Spin the Revolving Door in Return for Deregulation

Banks and other financial institutions are able to influence U.S. policy through lobbying and campaign contributions to policymakers, and due to the revolving door, these lobbyists are often former policymakers and regulators, and vice versa.⁵⁴ In the financial sector, lobbying has had a substantial effect on deregulation of the market. A 2009 IMF report suggests, "lobbying may be linked to lenders expecting special treatments from policymakers, allowing them to engage in riskier lending behavior".⁵⁵ Another study by the Capco Institute "suggests that spending on lobbying by the financial industry and network connections between lobbyists and the legislators were positively linked to the probability of a legislator changing positions in favor of deregulation". Additionally, lobbying lenders had a higher bailout probability.⁵⁶ These empirical studies suggest that lobbying by financial institutions leads to deregulation of the financial sector and bailouts for the lenders who lobby the most.

The financial sector influence in the US Federal Government flowing from relationships that investment firms have built with US federal representatives like Eric Cantor is a good illustration of the impact of these practices. On September 2, 2014, former House Majority Leader, Eric Cantor (R-VA) "joined Moelis & Company, a small investment bank, as vice chairman and managing director with a pay package worth \$3.4 million over the next two years."⁵⁷ The position was reward for Cantor's unfettered support for the financial industry while serving in public office.

According to the Center for Responsive Politics, as House Majority Leader, Eric Cantor, accepted donations of over \$800,000 from the securities and investment industry.⁵⁸ Cantor returned the favor by acting as "the most persuasive advocate" of the finance sector and other investment sectors of the economy.⁵⁹ For example, during the formation by the US Congress of the 'Dodd-Frank Wall Street Reform and Consumer Protection Act' ('Dodd-Frank') – the 2009 legislative response by the Federal Government to the financial sector's significant contribution to the financial crisis – Cantor "aggressively made the case for Republicans to oppose [Dodd-Frank], and in the

⁵³ General Assembly resolution 63/303, *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*, A/RES/63/303 (9 July 2009) available from http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/63/303&Lang=E.

⁵⁴ "'Round and 'Round They Go: Lawmakers Leave Congress for Lobbying Posts," Center for Responsive Politics (October, 29, 2009). Online: <http://www.opensecrets.org/news/2009/10/round-and-round-they-go-lawmak/>.

⁵⁵ *A Fistful of Dollars: Lobbying and the Financial Crisis*, IMF (October 14, 2009). Online: <http://www.imf.org/external/np/res/seminars/2009/arc/pdf/igan.pdf>.

⁵⁶ Igan, Deniz and Prachi Mishra. "The Power of K: Politically-Targeted Activities, Connections and the Financial System," The Capco Institute Journal of Financial Transformation, Journal 35 (2012). Online: https://capco.com/sites/all/files/restricted/journal-35_article-13.pdf.

⁵⁷ Weisman, Jonathan, "After Eric Cantor's Exit, House Turns Sympathetic Ear From Big Business to Oil and Gas," The New York Times (September 2, 2014). Online: <http://www.nytimes.com/2014/09/03/us/politics/eric-cantor-takes-job-with-wall-street-investment-firm.html>.

⁵⁸ "Rep. Eric Cantor: Summary Data," Center for Responsive Politics. Online: <https://www.opensecrets.org/politicians/summary.php?cid=N00013131&cycle=2014>.

⁵⁹ *Supra* note 57.

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end all of them did”.⁶⁰ Senator Scott Brown (R-MA), also reportedly accepted “\$140,000 from banks and their executives” during the weeks that the bill was being negotiated, leading effort in the Senate to rid the act of some key protections.⁶¹ Despite the post-crisis analysis illustrating the causal connections between weak financial regulation and the financial crisis which caused such devastating impact to people’s lives around the world, the efforts by finance corporations to undermine the Dodd-Frank’s contribution to safeguarding the broader economy from high-risk financial practices were successful.

Human Rights Impacts of the Financial Crisis

In addition to the millions of Americans who lost their homes and jobs, the financial crisis has had a devastating effect on the global economy. The UN Special Rapporteur on Slavery explained that the crisis negatively impacted groups including “children in slavery, working in slave conditions, forced laborers, women and men migrant workers, [and] domestic workers in different parts of the world.”⁶² In 2010, the World Bank estimated that “the crisis will leave an additional 64 million people in extreme poverty by the end of 2010.”⁶³ Furthermore, between 2007 and 2009, suicide rates increased in almost all European countries for which data was available in those years, with larger increases measured in those countries hardest hit.⁶⁴ In Greece, suicide rates spiked by 40% from 2010 to 2011.⁶⁵

⁶⁰ McGrane, Victoria, “House approves financial reform bill,” Politico (November 12, 2009). Online: <http://www.politico.com/news/stories/1209/30497.html>.

⁶¹ Slack, Donovan. “Donations poured in as Brown’s role grew”, Boston Globe. Dec. 12, 2010. Online: http://www.boston.com/news/nation/articles/2010/12/12/banks_donations_soared_as_brown_negotiated/.

⁶² Shahinian, Gulnara, “Statement by UN Special Rapporteur on Slavery at the Human Rights and the Financial Crisis in Focus: an expert meeting on promoting a rights-based approach to financial regulation and economic recovery.” Vienna (July 1, 2013). Online: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13606&LangID=E>.

⁶³ “World Bank Statement Delivered by Otaviano Canuto, Vice President and Head of Poverty Reduction and Economic Management Network.” High-Level Dialogue of the General Assembly on Financing for Development on 23-24 March 2010. Online: http://www.un.org/esa/ffd/hld/HLD2010/Stmt_Canuto.pdf

⁶⁴ Karanikolos, Marina, et. al. “Financial crisis, austerity, and health in Europe,” European Observatory on Health Systems and Policies, et. al. (March 27, 2013). Page 5. Online: <http://images.derstandard.at/2013/03/27/lancetfinancialcrisiseurope.pdf>.

⁶⁵ Id.

Breastmilk Substitute Industry in the Philippines

In 1986, the Philippines adopted the National Code of Marketing of Breastmilk Substitute, Breastmilk Supplements and Related Products ("Milk Code") to protect and promote breastfeeding by regulating marketing and distribution of breastmilk substitutes.⁶⁶ The Infant & Pediatric Nutrition Association of the Philippines (IPNAP), an interest group with members including Nestle, Abbott Laboratories, Fonterra Brands, Mead-Johnson Nutrition, and Wyeth, has lobbied to amend the Milk Code to lower restrictions on its marketing and distribution of breastmilk substitutes.⁶⁷ By classifying IPNAP as an NGO, these companies from New Zealand, Switzerland, and the United States have been able to hide behind the organization in order to advance their interests within the Philippines government.

Influence in the Legislature

By establishing close relationships with public health bodies, and sending funds to representatives' districts, IPNAP seeks support for its amendments to weaken the Milk Code. One such amendment is the Breastfeeding and Milk Regulation Act,⁶⁸ also known as the "Monster Bill." This bill would have removed paid lactation breaks for

working mothers, allowed health and nutritional claims from advertisements for milk supplements (such as claims that supplements increase children's IQs), and allowed donations of milk substitutes to be distributed during times of emergency.⁶⁹

Pursuant to the Milk Code, "[m]ilk companies, and



Displayed on IPNAP's website with the caption: "House Health Committee Vice-Chair Representative Anthony Golez MD (Bacolod City) meets with Paul Richards."

⁶⁶ Executive Order No. 51 October 20, 1986: Adopting A National Code of Marketing of Breastmilk Substitutes, Breastmilk Supplements and Related Products, Penalizing Violations Thereof, and For Other Purposes." Philippine Law and Jurisprudence Databank. Online: http://www.lawphil.net/executive/execord/eo1986/eo_51_1986.html

⁶⁷ "Pressure in Philippines to end ban on formula milk aid," IRIN News (April 30, 2013).

<http://www.irinnews.org/report/97943/pressure-in-philippines-to-end-ban-on-formula-milk-aid>

⁶⁸ Working Draft Document as of May 9, 2012. "An Act Promoting a Comprehensive Program on Breastfeeding Practices and Regulating the Trade, Marketing and Promotions of Certain Foods for Infants and Children." Short Title: "Breastfeeding and Milk Regulation Act." Introduced by Reps: M. Gunigundo, J. Lacson-Noel, R. Rodriguez, A. Bondoc, L. Mercado-Revilla and L. Torres. <https://docs.google.com/file/d/0BxSdlPvu96IKOGI4U2x2X3czNDg/edit?pli=1>

⁶⁹ "Decoding the Monster Bill – Part 1," Chronicles of a Nursing Mom (June 21, 2012). Online: <http://www.chroniclesofanursingmom.com/2012/06/decoding-monster-bill-part-1.html>.

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their representatives, should not form part of any policymaking body or entity in relation to the advancement of breastfeeding.”⁷⁰ However, during negotiation of the ‘Monster Bill’ IPNAP joined the Joint Technical Working Group meetings, sitting at a table designated for Representatives and Congress Staff only.⁷¹ The Philippines Department of Health, UNICEF, and WHO said of the Monster Bill: “The draft House Bill... aims to support multinational companies while damaging the Filipino society: families, the mothers and children.”⁷²

Sponsorship of Research

IPNAP has influenced government policy by partnering with the Food and Nutrition Research Institute (FNRI), the principal research arm of the government in food and nutrition,⁷³ in producing a training manual educating local government units “about proper nutrition and maternal health.”⁷⁴ In return for this partnership and support for its programs, FNRI has distributed information favorable to the infant formula industry. In 2011, IPNAP hosted a press conference where FNRI recommended that, when a child reaches 6 months old, mothers must complement breast milk with other sources of food.⁷⁵ FNRI also released a study sponsored by IPNAP that stated exclusive breastfeeding had risen significantly, while other sources found much less favorable results.⁷⁶

Human Rights Issues

The Department of Health has determined that “the Philippines have a very weak breastfeeding culture” which has lead “to under nutrition which is the underlying cause in 53% of the deaths of children under five (5) years of age.”⁷⁷ Medical studies have also linked formula donations to increased diarrhea during crises, and have found that such substitutes also increase the risk of some illnesses due to unsafe water used to mix formula and lack of fuel to sterilize products.⁷⁸ They attribute the Philippines’ “weak breastfeeding culture to the manufacturers and distributors of infant formula and other breastmilk substitutes who have taken *undue advantage* of the loopholes and gaps of

⁷⁰ “Notes from the Milk Monster Bill Hearing.” Chronicles of a Nursing Mom (September 12, 2012). Online: <https://chroniclesofanursingmom.wordpress.com/2012/09/12/notes-from-the-milk-monster-bill-hearing/>. (Section 4(i) – Declaration of Principles, Milk Code).

⁷¹ Id.

⁷² “WHO expresses alarm over bill on breastfeeding in the Philippines.” World Health Organization: Western Pacific Region (September 1, 2012). Online: <http://www.wpro.who.int/mediacentre/releases/2012/20120912/en/>.

⁷³ Food and Nutrition Research Institute website, “About FNRI.” http://www.fnri.dost.gov.ph/index.php?option=com_content&task=view&id=13&Itemid=26

⁷⁴ “FNRI-IPNAP Partnership,” IPNAP Website (September 23, 2011). Online: <http://ipnap.org.ph/?q=node/21>.

⁷⁵ Uy, Jocelyn R, “Next generation of Filipinos will be shorter, says study,” Philippine Daily Inquirer (July 21, 2012). Online: <http://business.inquirer.net/72469/next-generation-of-filipinos-will-be-shorter-says-study>.

⁷⁶ Id.; Reyes, Fat. “Breastfeeding rates in PH up but gains unsustainable,” Philippine Daily Inquirer (August 1, 2012). Online: <http://newsinfo.inquirer.net/240965/breastfeeding-rates-in-ph-up-but-gains-unsustainable>. (FNRI study “showed that exclusive breastfeeding rates have risen from 36 percent in 2008 to 47 percent in 2011.” Alternatively, “data from the recent Family Health Survey (FHS) in 2011 showed that exclusive breastfeeding rates in some areas of the country were as low as 27 percent.”).

⁷⁷ Department of Justice Letter to Department of Health (May 11, 2012). (Answer to Department of Health request for opinion on whether or not the Department of Health can prohibit milk companies from using their intellectual property-registered trademarks. The Department of Justice answered in the affirmative.)

⁷⁸ *Supra* note 67.

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our laws, rules and regulations relative to breastfeeding and infant and young child feeding” (emphasis added).⁷⁹

⁷⁹ Id.

Extractive Industry in Canadian Legislature & Embassies

Canadian mining companies lobby fiercely on Parliament Hill to keep their overseas activities unregulated. The influence of the extractive sector in the Canadian government can be seen in the failure of a bill that would have promoted accountability for Canadian extractive companies that receive political and financial support. Additionally, overseas Canadian ambassadors publicly promote and defend the activities of Canadian mining companies associated with human rights violations.⁸⁰

Lobbyists Succeed in Defeating Human Rights Legislation

In 2010, the House of Commons voted on Bill C-300, a bill that would have helped Canada to realize its duty to protect human rights against third parties, such as corporations, violating the human rights of people living in foreign countries (known as 'extraterritorial obligations'). This bill would have conditioned some government support to the mining industry on the companies' protection of certain international human rights and environmental standards.⁸¹ According to two Canadian law professors and corporate human rights accountability experts, "the proposed law would have created a credible objective forum to promote dispute resolution and help companies avoid and resolve conflict."⁸²

However, the bill was narrowly defeated by six votes.⁸³ According to the Globe and Mail, "the lobbyist registry reveals the mining industry heavily lobbied Parliament Hill in the days and weeks leading up to the late October vote. Lobbyists for mining companies and industry groups reported dozens of 'communications' with MPs, senators, political staff and senior bureaucrats in September and October."⁸⁴ Liberal MP John McKay "[recalled] that Parliament Hill was crawling with mining lobbyists ahead of the vote," and said he thought mining companies put pressure on MPs with mining interests in their constituencies.⁸⁵ Additionally, reports suggest extractive companies threatened to pull out of Canada if the legislation passed.⁸⁶

⁸⁰ See also: 12 instances of Canadian Embassies protecting the interests of Canadian mining companies despite allegations of egregious human rights and environmental abuses: <http://www.miningwatch.ca/article/backgrounder-dozen-examples-canadian-mining-diplomacy>.

⁸¹ Moore, Jen. "Canadian Development Aid No Longer Tied- Just Shackled to Corporate Mining Interests," MiningWatch (March 27, 2014). Online: <http://www.miningwatch.ca/article/canadian-development-aid-no-longer-tied-just-shackled-corporate-mining-interests>.

⁸² Simons, Penelope and Audrey Macklin, "Defeat of responsible mining bill is missed opportunity," The Globe and Mail (November 3, 2010). Online: <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/defeat-of-responsible-mining-bill-is-missed-opportunity/article4348527/>.

⁸³ Rennie, Steve, "Mining industry lobbied nine of 24 MPs who helped kill ethics bill," The Globe and Mail (November 11, 2010). Online: <http://www.theglobeandmail.com/news/politics/mining-industry-lobbied-nine-of-24-mps-who-helped-kill-ethics-bill/article1241708/>.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Keenan, Karyn, *Desperately Seeking Sanction: Canadian Extractive Companies and their Public Partners*, presented at Simon Fraser University, "Global Capital, Global Rights Workshop" (May 3-4, 2012). Online: <http://www.halifaxinitiative.org/sites/halifaxinitiative.org/files/SFU%20presentation%20-%20Keenan.pdf>

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Foreign Diplomacy Protecting Corporate Interests At All Costs

The stated goal of the Canadian government's international activities is to pursue "economic diplomacy" by being "more aggressive" in ensuring that "all diplomatic assets of the Government of Canada will be marshaled on behalf of the private sector in order to achieve the stated objectives within key foreign markets."⁸⁷ Canada's embassies act as liaisons for Canadian companies in dealing with local governments, and thus prioritize support for the private sector over the interests of the Canadian people and diplomatic relations with their host countries.

With over 230 Canadian mining companies active in Mexico,⁸⁸ the Canadian embassy's response to a scandal at a small Calgary-based company's mine in Chiapas, Southern Mexico, served as a compelling example of the lengths the government would go to in order to support the interests of the Canadian extractive industry.⁸⁹

From the start, Blackfire's activities in Chiapas received significant support from the Canadian Embassy to overcome resistance from local opposition to their barite mine. In a September 2008 email, a Blackfire representative told a counselor at the Canadian Embassy in Mexico, "all of us at Blackfire really appreciate all that the Embassy has done to help pressure the state government to get things going for us".⁹⁰

On November 27, 2008, Mariano Abarca Robledo, a leader of local opposition to the mine in Chiapas, was murdered in a drive-by shooting outside his home.⁹¹ The activist publicly opposed the mine, saying that it damaged the environment and contaminated a nearby river.⁹² All three people charged in relation to the murder had close links to Blackfire.⁹³ According to the State Attorney for Chiapas' official press release on the assassination: one was the head of personnel and security for Blackfire and worked as a driver and translator for a Blackfire executive; one worked as a driver for Blackfire; and one owned and drove a truck that was rented out to Blackfire as part of its fleet.⁹⁴

⁸⁷ "Global Markets Action Plan: A Blueprint for Creating Jobs and Opportunities for Canadians Through Trade," Minister of International Trade (November 13, 2013). Online: <http://www.international.gc.ca/global-markets-marches-mondiaux/assets/pdfs/plan-eng.pdf>.

⁸⁸ Hoffman, Andy and Campbell Clark, "Canadian mining firm at centre of Mexican murder probe," The Globe and Mail (December 7, 2009). Online: <http://www.theglobeandmail.com/news/national/canadian-mining-firm-at-centre-of-mexican-murder-probe/article4295141/>.

⁸⁹ *Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy*, MiningWatch Canada, et. al. (May 2013). Online: http://www.commonfrontiers.ca/Single_Page_Docs/PDF_Docs/May05_13_Blackfire_Embassy_Report_2013-05-02_ENG%20%20final.pdf. Page 1.

⁹⁰ Id. at 7. (Citing: Access to information request A-2010-00758/RF1, page 000185.)

⁹¹ *Supra* note 88.

⁹² Id.

⁹³ *Supra* note 89 at 19. (Citing: Access to information request A-2010-00758/RF1, page 000338.)

⁹⁴ *Report from the March 20-27, 2010 fact-finding delegation to Chiapas, Mexico to investigate the assassination of Mariano Abarca Roblero and the activities of Blackfire Exploration Ltd*, United Steelworkers, Common Frontiers, and MiningWatch Canada (April 21, 2010) at 12. Online: http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=5073:report-from-the-march-20-27-2010-fact-finding-delegation-to-chiapas-mexico-to-investigate-the-assassination-of-mariano-abarca-roblero-and-the-activities-of-blackfire-exploration-ltd&catid=60:central-american-and-caribbean-indigenous-peoples&Itemid=82. (Citing: "Procuraduría General de Justicia del Estado de Chiapas: Esclarece Procuraduría de Chiapas homicidio de Mariano Abarca Roblero," press release issued December 8, 2009.)

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Access to information requests reportedly revealed that the Canadian Embassy was aware of these connections.⁹⁵

Following the murder of Abarca, a Canadian government report stated that, “according to the civil society representatives consulted, the situation surrounding Blackfire, which is considered corrupt and responsible for the murder of the activist, has tarnished Canada’s image among the population of Chiapas and could affect the development of future mining projects.” Despite this the Canadian officials



Credit: Tamara Herman. Mariano Abarca speaking to a Canadian Embassy official in July 2009, a few months before his murder

reportedly did not undertake their own investigation nor call upon the Mexican government to undertake a full and impartial investigation.⁹⁶ Further, even after this report was distributed, the Trade Commissioner wrote to Canadian public servants on Blackfire’s behalf seeking information on how to file an international lawsuit against the state of Chiapas for closing its mine for violating environmental regulations.⁹⁷ This shows the willingness of the Canadian government to involve itself in foreign affairs in support of private industry, but its refusal to do so in support of human rights.

⁹⁵ *Supra* note 89 at 19. (Citing: *Supra* note 94; Access to information request A-2010-00758/RF1, page 000313.)

⁹⁶ *Supra* note 89 at 29.

⁹⁷ *Id.* (Citing: Access to information request A-2010-00758/RF1, page 000576-577.)

BHP Writes Its Own Rules in Papua New Guinea

Since the 1980s the Ok Tedi mine has been extracting copper and gold from the Star Mountains of western Papua New Guinea, an island in the South Pacific, close to Indonesia. The mine is a major contributor to the PNG economy, which is one of the poorest countries in the world.⁹⁸

For almost 30 years the mine has had no system to manage mine waste and instead of treating the effluent the mining operators have dumped the waste (known as 'tailings') into the headwaters of the Ok Tedi river, a tributary of the Fly River. The amount of waste is at least 80,000 tonnes per day since 1984.⁹⁹ Around 250 indigenous communities live along the Ok Tedi and Fly rivers, relying on it and the nearby land and forest areas for food, water, transportation and overall subsistence.¹⁰⁰

In 1987, the Australian mining company BHP, one of the largest mining companies in the world, became the operator of the mine and in 1993 it increased shareholding in the mine from 30 to 60 per cent. BHP withdrew from the mine in 2002, transferring their interest to PNG Sustainable Development Program Limited.¹⁰¹

With the help of Australian lawyers 30,000 indigenous Ok Tedi and Fly river villagers pursued legal action in 1994 against BHP in Australia, their home country, and in PNG on the grounds of intentional and unlawful damage, negligence and private and public nuisance. The claims in Australia sought several actions to remediate the situation in PNG including \$4 billion Australian dollars for the destruction of the villagers way of life, the construction of a dam to prevent further pollution and a court order to prevent further dumping into the rivers.

Bending the Rules By Criminalising the Legal Action

In 1995, responding to the legal action brought against them, the mine operators and the PNG Government began constructing legislation in PNG that would have blocked the ability of the villagers to pursue their claims in court. The legislation was drafted to codify in law an agreement between the mine operators and the PNG Government that if claimants did not pursue legal action they would receive compensation. As part of the legislation any attempt to continue or initiate legal action against the mine operators would be a criminal offense.

⁹⁸ In 2013 the World Bank estimated that 37.5% of the population lives below the national poverty line. Available at: data.worldbank.org/country/papua-new-guinea. See also United Nations Development Programme, *MDG Coordination and Implementation Programme, project Fact Sheet, 2011*. Available at: www.undp.org.pg/docs/projects/PROJECT_BRIEF_MDG.

⁹⁹ See: Ok Tedi mine's website, under 'Impacts of Mining' at: www.oktedi.com/index.php?option=com_content&view=article&id=79&Itemid=88

¹⁰⁰ See: Amnesty International, *'Injustice Incorporated: Corporate Abuses and the Human Right to Remedy'*, 2014, pp. 81-95.

¹⁰¹ See: Ok Tedi mine's website, under 'Key Historical Dates' at: www.oktedi.com/index.php?option=com_content&view=article&id=52&Itemid=61

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Lawyers acting for the villagers received a faxed copy of the draft of the bill which contained explicit references by BHP's lawyers,¹⁰² and on the basis of which they filed a claim of contempt of court in Australia for the actions of BHP in PNG. In the Supreme Court of Victoria, in Australia, Justice Cummins presiding over the case found that BHP, *"has sought to block the actions of these plaintiffs presently before this court...the conduct of [BHP] is to interfere with the due administration of justice by impeding the lawful right of the plaintiffs to law"*.¹⁰³

Despite later being over turned on a technicality of how contempt of court is applied in Australia, the revealing of BHP's interference with the administration of justice clearly illustrates how they attempted to block access to remedy for the affected villagers who have been suffering from the willful pollution by BHP for three decades.

The final amendments made to the law in PNG effectively brought immunity for BHP from any foreign or domestic legal action.¹⁰⁴

Denial of effective legal representation

Approximately a year after files were claimed by the affected villagers in Australia two lawyers representing them were denied entry into PNG. One of these lawyers, John Gordon, reportedly recounts how upon arrival in PNG authorities summarily cancelled his visa at the airport and held him in custody, preventing him from contacting lawyers or consular officials before being deported. Due to administration delays in providing visas the local PNG lawyer for the affected people was also unable to represent his clients at court hearings in Australia.¹⁰⁵

Human Rights Issues

The pollution from the mine operation has brought significant human rights impacts for affected people, including violations to their rights to health, adequate standard of living, food and water, as well their right to a healthy environment.¹⁰⁶ The human rights impacts resulting from BHP's corporate capture though relate to a denial of the rights of affected people to seek effective remedy for these human rights impacts. Furthermore, the manipulation of the legislative development process arguably undermines the rights of Papua New Guineans to ensure their will is the basis of their government's actions, and not the interests of corporations.

¹⁰² See: Amnesty International, *'Injustice Incorporated: Corporate Abuses and the Human Right to Remedy'*, 2014, p. 85, fn 523.

¹⁰³ See full ruling at: vsc.sirsidynix.net.au/Judgments/Civil/1990+/492814.pdf

¹⁰⁴ See a full history of the legislative reforms at p. 86 of Amnesty International, *'Injustice Incorporated: Corporate Abuses and the Human Right to Remedy'*, 2014.

¹⁰⁵ See: Amnesty International, *'Injustice Incorporated: Corporate Abuses and the Human Right to Remedy'*, 2014, p. 87, fn 540 & 541.

¹⁰⁶ See: Amnesty International, *'Injustice Incorporated: Corporate Abuses and the Human Right to Remedy'*, 2014, p. 82, fn 502.

Strategies Identified to Address Corporate Capture

- **Court Cases**
Dejusticia has successfully challenged the manipulation of Colombia's development policies by agri-business through support for legal cases in the Constitutional Court. **ProDESC** (Mexico) represents communities through strategic litigation, such as a current lawsuit in agrarian courts against Excellon Resources.
- **Exposing Corporate Power**
PODER Mexico, maintains a database – *Quién es Quién Wiki* ('Who's Who Wiki') – revealing the corporate links that Mexico's wealthy have. The Wiki also contains a secure digital dropbox for whistleblowers to report corporate malpractice.
- **Community Support**
ProDESC (Mexico) and **SiLNoRF** (Sierra Leone) help communities negotiate with corporations to resolve more equitable lease agreements.
- **Transparency Legislation**
Terra de Direitos has successfully pressured legislators to restrict corporate support for judicial events, and prohibit the provision of gifts and other incentives to members of the judiciary. **Frank Bold**, a public interest law firm in the Czech Republic, battles corruption by supporting transparency legislation.
- **Commit Politicians to Reforms**
Frank Bold places pressure on legislators to take a stand against corruption by asking them to commit and sign an anti-corruption pledge containing proposed legal reforms, as well as provide the public with access to their voting records.
- **Monitoring corporate practice, lobbying registers and freedom of information requests**
SiLNoRF (Sierra Leone), **Dejusticia** (Colombia), **CORE** (UK), **Terra de Direitos** (Brazil), **Halifax Initiative** (Canada), **MiningWatch Canada** and **Amnesty International** all monitor and report on corporate-government relationships to promote accountability and transparency.

The **Center for Responsive Politics** (US) maintains a lobbying registry to track corporate lobbying efforts in Washington D.C. In Europe **Corporate Europe Observatory** advocates for mandatory registration of corporate lobbying activities, which is also called for by **Open Knowledge Foundation** and the **Alliance for Lobbying Transparency** in the UK. **CORE** have also used Freedom of Information requests as a powerful way to compel Government agencies to

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reveal their communications with corporations, thereby illustrating the nature of UK Government-corporate relationships. **IBFAN** and **UNICEF** have had success in advocating for the maintenance of laws regulating the breastmilk supplement industry and monitoring the activities of corporations attempting to weaken these laws in the Philippines.

- ***Executive action to prohibit the 'revolving door' phenomenon***
Public Citizen (US) has tried to manage the conflict of interest that arises from such examples of the revolving door by supporting the 2009 Executive Order from US President Obama on ethics and lobbying reforms.¹⁰⁷ Public Citizen and other groups hope to transform the content of Obama's Executive Order into law before the President Obama leaves office in 2016.

¹⁰⁷ "A Report Card from Reform Groups on the Obama Administration's Executive Branch Lobbying, Ethics and Transparency Reforms in 2009." January 11, 2010. Online: <http://www.democracy21.org/archives/whats-new/a-report-card-from-reform-groups-on-the-obama-administrations-executive-branch-lobbying-ethics-and-transparency-reforms-in-2009/>. (One of these reforms, the "Reverse Revolving Door Restrictions" prohibits individuals who served as lobbyists during the two-year period prior to joining the Obama Administration from being appointed to any agency or department that they lobbied for two years after they lobbied for two years after they join the Administration. Additionally, the "Revolving Door Lobbying Ban" prohibits former Obama Administration appointees from lobbying any covered official in the entire Executive branch for as long as President Obama is in office).