



Closing the Gap in Canada's Approach to Business and Human Rights in Developing Countries: The Ghana Example

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HISTORICAL PERSPECTIVES:

- ▶ CSR
- ▶ CSR Origins: Rooted in voluntarism-Philanthropy/Altruism- "Giving back"
 - ▶ Grew out of business academy and focuses on individual company decision-making
 - ▶ Corporation's social responsibility (Codes of Conduct)
 - ▶ What CSR is lacking is a consistent framework focused on business and their role with respect to human rights protection or promotion (Bauer)
- ▶ BHR
- ▶ Human Rights Origins: Rooted in moral and legal obligations, are universal, equal, inalienable and indivisible
 - ▶ Universal Declaration of Human Rights, Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights
 - ▶ State-centric system
 - ▶ State obligations under IHRL



DILEMMA OF CSR- BHR Convergence

- Minimalism breeds minimalist approach to:
- The right to life
- The right to a healthy environment
- The right to Food
- The right to water
- The right to Culture

- BHR Response to CSR Failure: Old wine in New Skin
- The Governance Gap
- *"The gap between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps, provide the permissive environment for wrongful acts by companies without adequate sanctioning or reparation. How to narrow and ultimately bridge such governance gaps in relation to human rights is the focus of my work" - John Ruggie*



INTERNATIONAL RESPONSES TO CSR-BHR CONVERGENCE DILEMMA

International Responses

- ▶ Voluntary/Self-Regulation- UN Global Compact, Voluntary Principles, ILO, OECD Guidelines
- ▶ Code of Conduct-1972
- ▶ Draft Norms on Responsibilities of Transnational Corporations- 2004
- ▶ *Protect, Respect, Remedy* Framework- 2008
- ▶ *Guiding Principles*- 2011
- ▶ New Treaty Attempt -2014

Regional responses

- ▶ 2012 African Resolution
 - ▶ Adopted pursuant to Rio+20 which called upon countries to recognize the interrelationship between sustainable development and human rights in the extractive industry
 - ▶ Calls upon states to adopt national action plans to:
 - ▶ Establish a human rights based approach to natural resource governance
 - ▶ Strengthen regional efforts on resource governance
 - ▶ Establish monitoring and accountability mechanisms
 - ▶ Develop a human rights impact assessment framework



Canada's CSR Strategy Response to BHR

Building the Canadian Advantage

- ▶ A CSR Strategy for Canadian International Extractive Industries
- ▶ Launched in 2009
- ▶ Failure of Bill C-300
- ▶ Encouraged extractive companies to adopt or sign on to certain intergovernmental and multistakeholder initiatives
- ▶ Established the CSR Counsellor-dispute settlement mechanism (failed to resolve a single dispute)

Doing Business the Canadian Way

- ▶ A Strategy to Advance CSR in Canada's Extractive Sector Abroad
- ▶ Launched in 2014
- ▶ References the United Nations Guiding Principles
- ▶ Articulates respect for human rights abroad
- ▶ Fails to require companies to conduct human rights due diligence
- ▶ No mention of access to remedies



Importance of Ghana's Mining sector

- ▶ Gold accounts for 95% of total mineral export and 90% of all mineral revenue – Ghana Minerals Commission.
- ▶ Large scale mining by foreign multinationals contributes to 45% of the country's foreign currency.
- ▶ Liberalisation in the 1980's caused Ghana to amend the mining code to the Mining and Minerals Act (Act 703) in 2006 to foster increase in large-scale mining by foreign multinationals.
 - ▶ Tax holidays, customs duties exemptions, rebates on royalties
 - ▶ Fewer foreign ownership restrictions
- ▶ Influx of foreign multinationals led to rise in human rights violations, environmental degradation and loss of traditional sources of livelihood



Canada's Participation in Ghana's mining sector

- ▶ Canadian mining companies in Ghana
 - ▶ Kinross Gold Corporation (World's fifth largest gold producing company-2015), Mindland Minerals, Moydow Mines, Pelangio Exploration Inc, Xtra Gold Resources Corp, African Gold Group, Asanko Gold, Asante, Ashanti, Birim Goldfields, Bucanner Gold Inc, Castle Peak Mining Ltd
- ▶ Over \$200million Investment
- ▶ Own partly/solely over 100 active mining concessions
- ▶ Involved in over 30% reported company-community mining conflicts



Mining Conflicts in Ghana: The Canada connection

- ▶ Canadian mining investment in Africa increased from \$6 billion to \$23 billion in five years. (2005 /2010 - Natural Resources Canada)
- ▶ In 2011, Canadian mining investment in Africa stood at \$31.6 billion (Major investments in the Democratic Republic of Congo, Madagascar, Zambia, South Africa, Mauritania and Ghana).
- ▶ 1999 to 2009 (a ten year span) Canadian mining companies were involved in 171 incidents of human rights abuses in a developing country
- ▶ Wassa area
 - ▶ Reports of arbitrary arrests, forceful displacements, inadequate compensation and demolition of villages.
 - ▶ 60 percent of local water sources have been contaminated.
 - ▶ Tarkwa mines-Asuman River contamination
 - ▶ Tarkwa district hosts half of Ghana's large mines.
 - ▶ Spill at Teberebie Goldfields sent 36 million litres of cyanide solution into the Angonaben stream, a tributary of the Bonsa River. Cocoa crops and fish ponds were destroyed and local people complained of rashes.
 - ▶ The affected farmers sued the company for compensation in 1997 and still waiting for justice



Kinross Gold Corporation: Chirano Mines

- ▶ Chirano is owned 90% by Kinross Gold Corporation, a Canadian mining company.
- ▶ Kinross 2016 CSR report states that:
 - ▶ *"For Kinross, responsible mining is at the core of our strategy and day-to-day activities. We will continue to engage with our stakeholders and peers to collectively understand and identify how responsible mining can contribute to generating value for our shareholders, our employees and the communities where we operate."*
 - ▶ Reported Grievances in 2015 included 45 from Chirano operations regarding compensation from exploration work.
- ▶ Till date landowners and farmers displaced in Chirano Gold Mines' concession are yet to be compensated despite an intervention by Ghana's Minister of Lands and Natural Resources that found in favor of the landowners and farmers.
- ▶ While Chirano has continued to defy the compensation agreement, they attempted to douse the tension by donating two motorcycles to the Sefwi Wiawso Farmer's Day celebration to promote their CSR standards.
- ▶ In 2016 Kinross reported a 49% improvement in water management and efficiency in its Tasiast mine in Mauritania, but there is no indication of the level of water management achievement in the Chirano mines.
- ▶ In 2016 Kinross's shares suffered a huge blow from a union strike where Mauritanian miners complained that there is a major gap between their salaries and expats working for Kinross.



Arguments for legal action by Canada

- ▶ According to a global study commissioned by an industry association but never made public, Canadian mining companies are the worst offenders in environmental, human rights and other abuses around the world.
- ▶ Legal responsibility for complicity in providing funds to offending companies
- ▶ To stem influx of lawsuits being brought against extractive companies.
- ▶ Moral and ethical arguments
 - ▶ Canadian mining companies account for over 42 billion dollars of Canada's GDP
 - ▶ As at 2007, Canadian mining companies had over 60 billion dollars investments in developing countries generating taxable income for Canada.
 - ▶ In addition, Canada is home to the headquarters of over 75% of the world's mining companies.
- ▶ Global Reputation
- ▶ Global Leadership



Does Canada CSR Strategy Advance Corporate Respect and Remedy for Human Rights or Not?

- ▶ From Building the Canadian Advantage to Doing Business the Canadian Way
 - ▶ Advances the Canadian companies competitive Advantage and the Canadian Brand over the human rights of the host countries and communities
 - ▶ “companies that incorporate CSR into their planning and business activities are better positioned to succeed in the long term.”
 - ▶ Corporate human rights obligations still couched in voluntary terms
 - ▶ While majority of rights violating companies like Kinross had some form of CSR initiative, there was no independent monitoring or auditing of their CSR activities
 - ▶ Encourages Canadian extractive companies to adopt an economic approach(as a business case) rather than a human rights based approach in their operations by focusing on the global reputation of Canadian Extractive Companies abroad and using “economic diplomacy and on-the-ground support to ensure the success of Canadian extractive activities abroad
 - ▶ Does not align with UN Guiding Principles:
 - ▶ *“The state duty to protect requires that home states set out clearly the expectation that all business enterprises domiciled within their territory/or jurisdiction respect human rights throughout their operations. The business responsibility to respect is defined in the GPs as responsibility to respect internationally recognised human rights”*
 - ▶ Creates more gaps than bridges.
- ▶ Emerging trend: France, Switzerland examples
 - ▶ France: French Parliament adopted law establishing a duty of vigilance obligation for parent and subcontracting companies
 - ▶ Switzerland considering similar legislation



Recommendations

- ▶ Review of Canada's Enhanced CSR strategy to align with the Guiding Principles
- ▶ Adopt a National Action Plan (NAP) to implement the Guiding Principles
- ▶ Require companies to adopt Corporate Actions Plans (CAP) to implement the UN Guiding Principles
 - ▶ Example of Total Oil Producing company in adopting a Human Rights Due Diligence Guide
- ▶ CAPs should set out the parameters of Corporate Responsibility to Respect Human Rights clearly including Human Rights Due Diligence Procedures through Human Rights Impact Assessments
 - ▶ Example of Total Oil Producing company in adopting a Human Rights Due Diligence Guide
- ▶ CAPs should set out Operational Grievance Mechanisms to remediate human rights violations
 - ▶ Including Transparent and Confidence Building Measures in Operational Grievance Mechanisms to encourage victims use.