

AIM-TRADED MINING COMPANIES AND HUMAN RIGHTS

April 2018

London Mining Network (LMN), <http://londonminingnetwork.org>, founded in 2007, is an alliance of 20 member and 12 observer organizations, and individuals, concerned about negative human rights and environmental impacts of UK-listed mining companies' operations.

EXECUTIVE SUMMARY

This paper sets out to assess and draw conclusions from eight brief case studies that illustrate human rights impacts and controversies – including in relation to environmental rights – arising from current and planned operations of mining companies with shares traded on the London Stock Exchange's secondary AIM market: Arc Minerals (Ortac Resources) in Eritrea, Berkeley Energia in Spain, Beowulf Mining in Sweden, Condor Gold in Nicaragua, Dalradian Resources in Northern Ireland, GCM Resources in Bangladesh, MC Mining (Coal of Africa) in South Africa and Metals Exploration in the Philippines. Seven of these cases involve primarily harms or threats to the lives and livelihoods of local communities living close to mining sites. The eighth (Arc/Ortac in Eritrea) relates chiefly to national-level forced labour practices.

Having identified the human rights harms and risks associated in each case, the paper provides an assessment of each company's public statements regarding the situation. This survey highlights the fact that none of the companies concerned adopt an explicit human rights perspective on their operations, and in some cases there is very little acknowledgement of any potentially negative impacts on local people. The paper continues by outlining current international standards and recent initiatives on business and human rights and steps taken by the UK government to promote responsible action on human rights by UK-incorporated and UK-listed companies. In light of the very considerable limitations of all these measures, the paper notes work at the intergovernmental level towards a binding treaty on business and human rights.

Concluding that AIM-traded mining companies appear to be insufficiently transparent about, or accountable for, their human rights-related and environmental impacts, the paper concludes with the moral, business and political arguments for these companies to perform much better and makes the following recommendations.

INTRODUCTION

The United Kingdom is a home jurisdiction and centre for investment of global importance for the international mining sector. Many of the world's largest mining companies are incorporated in the UK and/or have shares publicly traded on the London Stock Exchange (LSE) Main Market, and approximately 100 mining companies have shares traded on the LSE's secondary Alternative Investment Market (AIM).¹ Launched in 1995, AIM describes itself as 'the most successful growth market in the world', where 'the companies of tomorrow ... smaller and growing companies raise the capital they need for expansion'.²

Numerous concerns and controversies have arisen from the overseas operations of UK-incorporated and/or -listed mining companies, often relating to the way they affect or are perceived to threaten the human rights and livelihoods of indigenous and other local communities, including via environmental impacts. LMN has documented such issues in numerous reports, consultation submissions, website articles and other media,³ and brought them to shareholders' and company boards' attention at company annual general meetings.

1 LSE, 'Companies on London Stock Exchange', <http://www.londonstockexchange.com/statistics/companies-and-issuers/companies-defined-by-mifir-identifiers-list-on-lse.xlsx>. All web links and online sources cited in these notes were accessed between December 2017 and February 2018.

2 AIM, <http://www.londonstockexchange.com/companies-and-advisors/aim/aim/aim.htm>

3 See e.g. LMN, *UK-Listed Mining Companies and the Case for Stricter Oversight: Case Studies and Recommendations*, 2012, <http://londonminingnetwork.org/docs/lmn-the-case-for-stricter-oversight.pdf>; *Written evidence submitted by London Mining Network (LMN) to Department of Business Innovation and Skills Parliamentary Select Committee on the extractive industries*, March 2014, <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/6713>

Some progress has been achieved in the international discourse on business, human rights and environmental protection. Useful steps have been taken at intergovernmental level and by the UK government and other individual governments, international non-governmental bodies, institutional investors, industry associations and some mining companies. These are examined below. Yet LMN continues to receive regular communications about worrying company practice on the ground in relation to local communities' concerns and environmental protection, often in situations of major asymmetries of wealth and power between companies and poor and marginalized communities.

This paper focuses principally on the operations of mining companies with shares traded on AIM in London. The UK government considers itself a leading advocate of good corporate governance and is proud of AIM.⁴ However, although human-rights-related concerns and controversies associated with mining companies tend to be similar whatever the company's size and wherever its shares are traded, AIM-traded mining companies are as a matter of policy subject to a weaker regulatory regime than companies traded on the LSE Main Market.

AIM has come in for serious specific criticism for regulatory weakness. The UK NGO Rights and Accountability in Development (RAID) made a submission to the London Stock Exchange during a 2017 review of AIM's rules.⁵ That submission criticised the rules review itself, for not being radical enough, and calls a wholesale, independent review of AIM, terms of reference, including the option of whether AIM can or should be reformed at all, or if it should be closed down.

Citing numerous examples, including the case of CAMEC⁶, and referring to a number of high-profile scandals and failures RAID's submission lists a number of short-comings. These include, *inter alia*, limited due diligence on admission; a lack of scrutiny making ongoing due diligence extremely weak, including the abuse of anonymity by companies; the failure of AIM's privatised

4

Department for Business, Innovation & Skills and the Rt Hon Sajid Javid MP, 'Creating jobs and driving growth: 20 years of the Alternative Investment Market', Jun. 2015, <https://www.gov.uk/government/speeches/creating-jobs-and-driving-growth-20-years-of-the-alternative-investment-market>; Department for Business, Energy & Industrial Strategy, 'Corporate governance reform', Aug. 2017, <https://www.gov.uk/government/consultations/corporate-governance-reform>

5 Rights and Accountability in Development, Submission to the AIM Rules Review, September 2017, http://www.raid-uk.org/sites/default/files/raid_submission_to_aim_rule_review.pdf

6 Rights and Accountability in Development, Questions of Compliance, May 2011, <http://www.raid-uk.org/sites/default/files/aim-submission.pdf>

system of regulation whereby day-to-day regulation is passed to fee-paying companies (so-called Nomads); and the historical lack of disciplinary action with limited enforcement.

LMN seeks in this paper to: (1) illustrate with eight brief case studies a spectrum of human rights and environmental problems and risks arising from AIM-traded mining companies' international operations;⁷ (2) place these issues in the context of current initiatives on business and human rights; (3) propose recommendations to address recurring patterns of mining-related human rights harms and risks.

CASE STUDIES

Arc Minerals (Ortac Resources) – Eritrea⁸

British Virgin Islands-incorporated and AIM-traded Arc Minerals (trading until January 2018 as Ortac Resources) owns 18.5% of Andiamo Resources, a private company incorporated and headquartered in the UK with a licence to explore for copper and gold in the Haykota licence area of Eritrea. Arc executive chair Anthony Balme is a non-executive director of Andiamo. Eritrea is one of the world's most repressive states, with the United Nations reporting in 2015 'systematic, widespread and gross human rights violations ... committed ... under the authority of the Government. Some of these violations may constitute crimes against humanity.' Eritrea conscripts all citizens aged over 18 into national service, many of them indefinitely, during which 'most conscripts in the military and all conscripts in civil service are subject to forced labour'. Much of this forced labour is for private companies, including mining companies and

7

One case study concerns a company's operations in Northern Ireland (Dalradian).

8

Guardian, 'Western firms reduce Eritrean miners to "abject slavery", UK MPs say', Dec. 2014, <https://www.theguardian.com/global-development/2014/dec/19/western-firms-reduce-eritrean-miners-to-abject-slavery-uk-mps-say>; Human Rights Watch, 'Eritrea: events of 2015', <https://www.hrw.org/world-report/2016/country-chapters/eritrea>; United Nations, *Report of the Commission of Inquiry on Human Rights in Eritrea*, Jun. 2015, <http://www.ohchr.org/EN/HRBodies/HRC/ColEritrea/Pages/ReportColEritrea.aspx>, page 1 and para 63, and *Report of the Commission of Inquiry on Human Rights in Eritrea*, May 2016, <http://www.ohchr.org/EN/HRBodies/HRC/ColEritrea/Pages/2016ReportColEritrea.aspx>, para 29; CBC News, 'Allegations of conscripted labour in Canadian mine: the fifth estate', Feb. 2016, <http://www.cbc.ca/news/world/eritrea-fifth-estate-1.3444779>; War on Want, *Eritreans exploited: UK corporate complicity in human rights abuses*, Mar. 2017; Haywood Securities, quoted in Northern Miner, 'Nevsun halves Bisha mine life, revises Timok study plans', Aug. 2017, <http://www.northernminer.com/subscribe-login/?id=1003788736> (paywall), cited by Assenna.com, 'Nevsun cuts mine life in half at Bisha', <http://assenna.com/evsun-cuts-mine-life-in-half-at-bisha/>; Reuters, 'Nevsun appeals to Canada Supreme Court in Eritreans' forced labor lawsuit', Jan. 2018, <https://www.reuters.com/article/us-eritrea-mining-nevsun-resources/nevsun-appeals-to-canada-supreme-court-in-eritreans-forced-labor-lawsuit-idUSKBN1FF2M5>

state-affiliated mine construction companies. There is a strong risk of international mining companies' projects being built by forced labour in slave-like conditions.

A 2014 House of Commons early day motion, signed by 41 MPs, noted 'the collusion between the government of Eritrea and the international mining companies from the UK, Canada and Australia, which is using the forced labour of Eritreans for work in extractive industries in conditions which have been described as abject slavery'. Human Rights Watch states online that 'there are concerns that new mining projects [in Eritrea] will be compelled to use government-owned construction firms for infrastructure development and thereby indirectly use conscript labour'. According to a 2016 UN report: 'Eritreans continue to be subjected to indefinite national service, arbitrary detention, torture, enforced disappearances, reprisals for the alleged conduct of family members, discrimination on religious and ethnic grounds, sexual and gender-based violence, and killings.'

In 2014 three Eritreans filed a lawsuit in a Canadian court against Nevsun, a Canadian mining company operating in Eritrea, alleging that they had been used as forced labour by one of the company's subcontractors, which is owned by Eritrea's ruling party, with effects including 'malaria ... diarrhoea and numerous other illnesses as a result of our weakened state and the extremely difficult conditions in which we worked'. Fifty-nine more plaintiffs were alleging forced labour, which Nevsun denies, by early January 2018. Canadian investment managers Haywood Securities stated in 2017: 'We rate Eritrea as one of the most socio-politically sensitive countries in the world for a mining company to operate in. ... [T]he Eritrean government's human rights record is considered among the worst in the world.'

Human rights abused or at risk

Right to life, liberty and security of person⁹

Right to health¹⁰

9

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 3.

10

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 12.

What the company says¹¹

Arc/Ortac's *Annual Report and Financial Statements* to March 2017 state blandly that 'Andiamo remains an interesting prospect for Ortac and we look forward to updating shareholders on developments in due course.' It makes no mention of forced labour or human rights issues in Eritrea. Andiamo's online presentations also say nothing about any such concerns or risks. UK Modern Slavery Act 2015 requirements include that all commercial organizations operating in the UK with an annual turnover of more than £36 million report annually on the steps they have taken to ensure that no slavery or human trafficking take place in their supply chains or any part of their business. Ortac/Arc – which holds its AGM and has offices in the UK, although all its projects are overseas and it prepares financial statements under British Virgin Islands rules – reports an operating loss for the year to 2017 and evidently sees no need to comply with the UK Act despite the high level of risk associated with Eritrea.

Berkeley Energia – Spain¹²

Since early 2017 the mayor of Villavieja de Yeltes municipality in Salamanca, north-west Spain, has been instrumental in calling Australian-incorporated and AIM-traded Berkeley Energia (formerly Berkeley Resources) to account and in calling local residents to monthly rallies against

11

Andiamo Exploration, 'Gold and copper exploration in Eritrea', Feb. 2015, http://andiamoexploration.co.uk/ESW/Files/Andiamo_Exploration_Presentation_-_Feb_2015.pdf, page 2, and 'Gold and copper in Eritrea', Feb. 2017, http://andiamoexploration.co.uk/ESW/Files/170203_Andiamo_presentation_Feb_17.pdf, page 2; Arc Minerals, *Annual Report and Financial Statements to March 2017*, http://arcminerals.com/ul/599ab76b3c701_Final_Results_to_31_March_2017_and_AGM_Notice.pdf, page 3.

12

EJOLT, *Uranium mining: Unveiling the impacts of the nuclear industry*, report no. 15, 2014, http://www.ejolt.org/wordpress/wp-content/uploads/2014/11/141115_U-mining.pdf; European Parliament parliamentary questions, 'Commissioner Cañete's approval of a proposed uranium mine', Dec. 2015, <https://goo.gl/o9sYkK>, and 'Retortillo uranium mine – breach of Community law', Apr. 2017, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2017-003016+0+DOC+XML+V0//EN&language=en>; Mining.com, 'Spaniards to protest against Berkeley's Retortillo-Santidad uranium mine', Oct. 2016, <http://www.mining.com/spaniards-to-protest-against-berkeleys-retortillo-santidad-mine>, and 'Mayor organizes massive protest against Berkeley's uranium mine in Spain', Nov. 2017, <http://www.mining.com/mayor-organizes-massive-protest-berkeleys-uranium-mine-spain>; WWF, 'WWF denuncia ante la Comisión Europea la mayor mina de uranio en Europa en el corazón de un espacio protegido' ('WWF denounces to the European Commission the largest uranium mine in Europe in the heart of a protected area'), Feb. 2017, <https://www.wwf.es/?42760/WWF-denuncia-ante-la-Comisin-Europea-la-mayor-mina-de-uranio-en-Europa-en-el-corazn-de-un-espacio-protegido>; World Nuclear News, 'European approval for Salamanca offtake agreement', Mar. 2017, <http://www.world-nuclear-news.org/UF-European-approval-for-Salamanca-offtake-agreement-2103174.html>; Ecologistas en acción, 'Crece el apoyo internacional contra la minería de uranio en Salamanca' ('International support against uranium mining in Salamanca grows'), Sept. 2017, <https://www.ecologistasenaccion.org/article35005.html>

the company's proposed Retortillo project. Retortillo is planned as an open-cast uranium mine, heap leaching and processing or 'milling' plant. Production is estimated to start in late 2018, but it still lacks the necessary permitting and faces four public interest litigation suits from the municipality and from national non-governmental organizations.

The project has sparked a wave of opposition arising from concerns about potential impacts on the environment and local people. These risks include its location very near a school area, possible effects on a protected ecological zone and its permit to discharge wastewater five kilometres upstream of established drinking water abstraction for Villavieja de Yeltes, in apparent disregard for a European Commission-funded regional five-river biodiversity project.¹³ Close to 40 municipalities are said to be against the company's plan to develop the project, which has potential impacts on the existing economy, including spa tourism facilities.

Berkeley has renamed itself, changed much of its personnel, reduced its website information, changed its AIM nominated adviser, and negotiated a potential 'take-off' contract with a commodity trader, which has liquidated and been replaced. This has allowed Berkeley to raise capital, and it has obtained the support of Euratom for its development of the European Union's only open-cast uranium mine. European Commission involvement may not help secure sufficient environmental information in a timely manner to assist public participation in decision-making.¹⁴ With the need for more transparency, the continued involvement of former Spanish state officials may create unfavourable impressions. However, the Commission, in its 2012 verification report on existing former uranium mining sites - some of which are under reclamation - has been informative about applicable costs, methods and requirements on treating toxic waste.¹⁵ Potential radiation impacts are being identified by the growing social movement.

13

Proyecto cipriber, *Diagnóstico de la Situación Inicial*, Mar. 2015, <https://cipriber.eu/documentos/A1.pdf>

14

The relationship between the Parliament, Commission and Euratom is constitutionally uncertain.

15

European Commission DG Energy, *Southern and western Spain – former uranium installations and national monitoring*, technical report, https://ec.europa.eu/energy/sites/ener/files/documents/tech_report_spain_2012_en.pdf, 4.4.1.3, 4.4.1.5, 4.4.3 et al

Human rights abused or at risk

Right to information¹⁶

Right to health¹⁷

Right to livelihood/adequate standard of living¹⁸

Right to a safe and healthy natural environment¹⁹

What the company says²⁰

Berkeley Energia claims on its website to have developed ‘a good neighbour and business partner relationship with the local community’ and to have local and regional support as well as major community investment and environmental rehabilitation plans for the project area. The website makes no mention of community opposition, health risks from uranium or other potentially negative social or environmental impacts, apart from initial felling of trees.

The *2017 Annual Report* cites ‘highly supportive’ local municipalities and sizeable community investments to date, and commits Berkeley to improve the ecological and agricultural value of the area through a reforestation programme. There is no mention of environmental risks from,

16

UN General Assembly, ‘Calling of an International Conference on Freedom of Information’, Resolution 59, 1946, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>; International Covenant on Civil and Political Rights, 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Art. 19; UN Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 1998, <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

17

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 12.

18

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11.

19

An emerging human right: UN Environment, ‘Human rights and the environment’, n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, ‘Human rights, health and environmental protection: Linkages in law and practice’, background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

20

Berkeley Energia, company website, including <https://www.berkeleyenergia.com/salamanca-project-overview>, and *2017 Annual Report*, https://www.berkeleyenergia.com/wp-content/uploads/2017/09/Berkeley-Annual-Report-2017_Merged.pdf; Mining.com, ‘Spaniards to protest against Berkeley’s Retortillo-Santidad uranium mine’, Oct. 2016, <http://www.mining.com/spaniards-to-protest-against-berkeleys-retortillo-santidad-mine>

or public concerns about, uranium. The *Annual Report* notes in passing that ‘various appeals’ against the necessary licences have been unsuccessful. The company is quoted on Mining.com as emphasizing the mine’s job creation potential, adherence to ‘the highest EU environmental and safety standards’ and ‘overwhelming support’ from local and regional communities.

It is reported that Berkeley has signed an agreement that ‘will provide construction capital’ with the Oman Sovereign Wealth Fund, an institution that has been evaluated as having a transparency rating of 4 out of 10.²¹ Berkeley has published a ‘definitive feasibility study’ on its website. The International Atomic Energy Agency (IAEA) has advised that the best methodology is to evaluate the costs of ‘economic and social viability’.²² It is unclear that Berkeley has done this. As the IAEA states, it is necessary to approach separately and internalise: the direct costs of mining, transporting and processing the uranium ore; costs of associated environmental and waste management during and after mining; costs of maintaining non-operating production units, where applicable; in the case of ongoing projects, non-amortized capital costs; capital cost of providing new production units, where applicable, including the cost of financing; indirect costs such as office overheads, taxes and royalties, where applicable; and future exploration and development costs wherever required for further ore delineation to the stage where it is ready to be mined.²³

Beowulf Mining – Sweden²⁴

21

Telegraph, ‘Uranium miner Berkeley Energia wins £93m backing from Oman’, Aug. 2017, <http://www.telegraph.co.uk/business/2017/08/30/uranium-miner-berkeley-energia-wins-93m-backing-oman/>; Linaburg-Maduell Transparency Index, <https://www.swfinstitute.org/statistics-research/linaburg-maduell-transparency-index/>

22

IAEA, *In Situ Leach Uranium Mining: An Overview of Operations*, 2016, http://www-pub.iaea.org/MTCD/Publications/PDF/P1741_web.pdf; United Nations Economic Commission for Europe, *United Nations Framework Classification for Fossil Energy and Mineral Reserves and Resources*, 2009, https://www.unece.org/energy/se/unfc_2009.html

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Ibid.

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Mines and Communities, ‘Sweden: British Beowulf caught drilling illegally’, Dec. 2011, <http://www.minesandcommunities.org/article.php?a=11377>; LMN, ‘Saami communities attend Beowulf’s AGM in London’, Jul. 2013, <http://londonminingnetwork.org/2013/07/saami-communities-attend-beowulfs-agm-in-london>; BBC News, ‘The reindeer herders battling an iron ore mine in Sweden’, Jul. 2014, <http://www.bbc.co.uk/news/business-28547314>; Cultural Survival, ‘A new era of exploitation? Mining Sami lands in Sweden’, Dec. 2015, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/new-era-exploitation-mining-sami-lands-sweden>; Mines and Communities, ‘Beowulf wants dialogue with Sami but won’t

UK-incorporated and AIM-traded Beowulf Mining's subsidiary Jokkmokk Iron Mines is seeking Swedish government approval for a 25-year concession to develop the Kallak iron ore deposit in Norrbotten County, northern Sweden. While the company claims that the mine would create jobs, assist the local economy and has support from the local mayor, indigenous Saami reindeer herders and environmentalists oppose the plan and have demonstrated against it. In 2011 the company was reported as having undertaken exploration drilling without a valid work plan, in breach of the Swedish Minerals Act.

In 2014 the Saami Parliament called for a moratorium on all mineral exploitation in the region. Local Saami dispute the company's assertion that mining and traditional reindeer herding can coexist in the same area and consider that the proposed mine threatens the UNESCO World Heritage status of Laponia (Swedish Lapland). As both a project-affected community and an indigenous people, the Saami are entitled by international law to give or withhold their free, prior and informed consent before the mine can go ahead.

Community contacts report that Norrbotten County municipality stated in November 2017 that a concession permit should not be granted to Beowulf in Kallak, on the grounds that the mine would not be socio-economically viable and because of potential impacts on reindeer herders. A senior member of the Saami Council has informed LMN that another reindeer herding community is preparing arguments in a similar case to present to the UN Committee on the Elimination of Racial Discrimination (CERD), arguing that construction of a mining complex on its territory would violate its right to property under the Convention, and that CERD has previously held invalid all the government's arguments to have the complaint dismissed.

Human rights abused or at risk

Right to property²⁵

Right to livelihood/adequate standard of living²⁶

take no for an answer!', Feb. 2016, <http://www.minesandcommunities.org/article.php?a=13254>; Norrbottens Kurirern, 'Kallak: County Administrative Board says no' (Google translation from Swedish), Nov. 2017, <https://goo.gl/GVYMTf>; Prof. Mattias Åhrén (member of the Saami Council), email communication, Jan. 2018.

25

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art.

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26

Right to a safe and healthy natural environment²⁷

Right to participate in cultural life²⁸

Indigenous peoples' right to free, prior and informed consent²⁹

What the company says³⁰

Beowulf's web page on the Kallak project mentions only that the company is 'engaging' with 'local stakeholders'. In a 2016 online reply to the Saami village chairmen, Beowulf repeats the assertion from its website that the mine will bring jobs and prosperity and states that it 'wants to involve all local stakeholders', 'to cooperate with all concerned' including reindeer herders and offers to meet with the chairmen.

The *Annual Report 2016* states disappointment that approval has been delayed and disagrees with official decisions to review the project again. It argues that mining at Kallak will not adversely impact Lapland's World Heritage status; notes that it eliminated one transport route from its plans in response to concerns about impacts on reindeer herding; refers to preventive, precautionary and compensatory measures that could be developed in consultation with the communities; and maintains that its studies support the case that mining and reindeer herding

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11.

27

An emerging human right: UN Environment, 'Human rights and the environment', n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, 'Human rights, health and environmental protection: Linkages in law and practice', background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

28

Ibid., Art. 27.

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UN General Assembly, Declaration on the Rights of Indigenous Peoples, 2007, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Art. 10; International Labour Organization, Indigenous and Tribal Peoples Convention, No. 169, 1989, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

30

Beowulf Mining: company website, including <http://beowulfmining.com/projects/sweden/kallak>; 'Open letter to the Chairmen of Jåhkågasska and Sirges Sami villages', Feb. 2016, <http://beowulfmining.com/news/open-letter-to-the-chairmen-of-jahkagasska-and-sirges-sami-villages/>; 'Kallak North exploitation concession update', no. 20, Nov. 2017, <http://beowulfmining.com/news/kallak-north-exploitation-concession-update-20>, and no. 22, Dec. 2017, <http://beowulfmining.com/news/kallak-north-exploitation-concession-update-22>; *Annual Report 2016*, http://beowulfmining.com/wp-content/uploads/2017/05/Beowulf_Mining_Plc_2016_Annual_Report.pdf; and 'Unaudited Interim financial results and management update for the period ended 30 September 2017', <http://beowulfmining.com/wp-content/uploads/2017/11/BEM-Q3-2017-Financials.pdf>, page 2.

can prosper side by side. Company news updates refer to potential conflict between reindeer herding and mining and to the World Heritage issue. An interim unaudited company report in November 2017 recognizes that ‘the claim by Sametinget [the Saami Parliament] for a national interest for reindeer herding at Kallak ... is relevant and needs to be considered’.

Condor Gold – Nicaragua³¹

La India Gold SA, a subsidiary of UK-incorporated and AIM-traded Condor Gold, is seeking to open a gold mine in Santa Cruz de la India, Leon region, Nicaragua, They are hoping to start construction by end 2019 subject to final approvals. Community members have opposed the plans since 2011, concerned that more than 300 families will be displaced if the project proceeds. Opposition intensified when residents blamed the company for spreading false information about the benefits of mining, working in complicity with local authorities to deny access to public services to those who oppose the mine, and promoting the criminalization of public protest.

International civil society published an open letter in 2017 decrying the company’s bringing of criminal charges against seven community leaders for allegedly destroying company property during a protest. Community members claimed that at the time of the alleged incident, which in any case was minor, company employees were trespassing on community land that had been illegally granted for exploration. The company subsequently withdrew its allegations and offered talks with local protestors. A UK investors’ website stated in 2017 that Condor Gold had not so far informed its shareholders of these developments.

Human rights abused or at risk

Right to property³²

31

Christliche Initiative Romero (Christian Initiative Romero), ‘Tell Condor Gold to stop harassing families who don’t want industrial mining in Mina la India, Nicaragua’, Jun. 2017, http://www.ci-romero.de/fileadmin/media/mitmachen/Rohstoffe/Offener_Brief_Nicaragua.pdf; City Investors Circle, ‘Condor Gold quiet on protests at La India, in Leon, Nicaragua’, Jun. 2017, <http://www.city-investors-circle.com/companies-news/condor-gold-quiet-on-protests-at-la-india-in-leon-nicaragua>, and ‘Condor Gold offers talks to protesters at La India, Nicaragua’, Aug. 2017, Mining.com, Condor Gold to start building mine in Nicaragua , Aug 2018, <http://www.city-investors-circle.com/companies-news/condor-gold-offers-talks-to-protesters-at-la-india-nicaragua>; SumOfUs, ‘An entire Nicaraguan community is standing up to mining giant Condor Gold’, 2017, <https://actions.sumofus.org/a/stop-condor-gold>; LMN, ‘Update on Condor Gold and community protest in Nicaragua’, Jul. 2017, <http://londonminingnetwork.org/2017/07/update-on-condor-gold-and-community-protest-in-nicaragua>

Right to adequate housing³³

Right to social security³⁴

Right to freedom of expression, peaceful assembly and association³⁵

What the company says³⁶

Condor's main web page on the project does not mention community concerns or protests. Its interim 2017 'Environmental, social, health & safety, human resources, resettlement and land acquisition' report describes in some detail meetings with local stakeholder and refers briefly to the land acquisition process and proposed resettlement of some households, without mentioning the existence of opposition. A short section of the report covers a grievance mechanism without citing community concerns about displacement or hostility to the project. The legal process against seven protestors for allegedly causing damage, subsequently dropped, is briefly mentioned.

The *Report and Accounts* for 2016 refer to company relocation plans for 300 dwellings and land purchase offers for a two-year period of which 30 per cent have been accepted. Condor personnel 'participate in cultural awareness programmes and have forged close ties with landholders and maintain a constructive dialogue with ... local community representatives', and the company says it sponsors 'many community development and aid programs'. There is again

32

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 17

33

International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11; Office of the UN High Commissioner for Human Rights and UN Habitat, *The Right to Adequate Housing*, fact sheet No. 21, 2009, http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

34

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 22.

35

International Covenant on Civil and Political Rights, 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Arts. 19, 21, 22

36

Condor Gold: 'La India project', <http://www.condorgold.com/project/la-india-project>; 'Environmental, social, health & safety, human resources, resettlement and land acquisition 6 month report', 2017, <https://goo.gl/4b8nNe>; *Report and Accounts Year Ended 31 December 2016*, <https://goo.gl/nheQsu>, page 22; and *Interim Report and Accounts*, 2017, <https://goo.gl/eH8p9x>, pages 4, 5; Mining.com, 'Condor Gold hopes to soon kick off construction at Nicaragua project', Jan. 2018, <http://www.mining.com/condor-gold-hopes-kick-off-construction-nicaragua-project-year/>

no mention of community opposition. Interim *Report and Accounts* in 2017 describe the resettlement and permitting issue and strengthening of the company team working on reaching agreement with affected households, including the need to ‘mitigate adverse impacts on displaced persons and host communities’. Protests are mentioned, leading to recruitment of a ‘top resettlement expert consultancy’, further hirings and continuing efforts to ‘improve social engagement’ with local people. The company, which recently listed on the Toronto Stock Exchange, states that it hopes to begin mine construction in 2018.

Dalradian Resources – Northern Ireland³⁷

Several hundred residents have expressed opposition to proposals of Canadian-incorporated and AIM-traded Dalradian to use cyanide at its planned gold mine and processing plant at Curraghinalt, outside Greencastle village in the Sperrin Mountains, County Tyrone, Northern Ireland, which is within an Area of Outstanding Natural Beauty. Local opinion is said to be divided, but the project has prompted grassroots groups, such as Greencastle Community Voices and Save Our Sperrins, to form in opposition. Besides concerns that cyanide, used to separate gold from ore, can enter waterways and damage wildlife, local people also mention worries about the potential impact of dust and noise and are concerned about the company’s publicly stated plans for extensive gold mining in the area. The company began underground exploration at Curraghinalt in 2014 and is said to have mineral rights to more than 120,000 hectares of land in Northern Ireland.

Residents allege that the company’s community engagement has been non-transparent and conflictive. In 2017 Greencastle Community Voices complained of being excluded from a meeting co-organized by Dalradian and local authorities. In January 2018 Save Our Sperrins claimed the company had blocked the entrances of a car park used by people visiting a statue of the Blessed Mary and meeting for prayer. Save Our Sperrins has launched a legal challenge to

37

Financial Times, ‘Dalradian pursues dream of gold rush in Northern Ireland’, Jul. 2015, <https://www.ft.com/content/310befa8-265a-11e5-9c4e-a775d2b173ca>; Irish News, ‘Tyrone residents voice fears over cyanide gold mine plan’, Feb. 2016, <http://www.irishnews.com/news/2016/02/05/news/tyrone-residents-voice-fears-over-cyanide-gold-mine-plan-407011>; BBC News, ‘Gold mining dispute between PSNI and Dalradian escalates’, Oct. 2016, <http://www.bbc.co.uk/news/uk-northern-ireland-37824240>; Mining.com, ‘Canadian miner’s plan incite protest in Irish town’, Sep. 2017, <http://www.mining.com/canadian-miners-plan-incite-protest-irish-town>; Northern Miner, ‘Dalradian on path to production at Curraghinalt’, Nov. 2017, <http://www.northernminer.com/news/dalradian-path-production-curraghinalt/1003790127>; Save Our Sperrins, <https://www.facebook.com/SaveOurSperrins/>, and <https://twitter.com/SaveOurSperrins>, Jan. 2018.

Dalradian's water discharge licence. The group also alleges that the company is continuing to work despite several of its local prospecting licences having expired and that its planning permission for an exploratory mine at Curraghinalt has also expired.

Human rights abused or at risk

Right to health³⁸

Right to a safe and healthy natural environment³⁹

Right to freedom of expression and to information⁴⁰

What the company says⁴¹ The project pages on Dalradian's website omit mention of community concerns or opposition. However, as part of the company's 'investor briefcase', a one-page 'advertorial' explains how it proposes to deal with mining waste, dust and noise, while another – 'We're listening' – goes into more detail about community concerns, referring to 'multiple engagements and public consultations we have held with the communities in Greencastle, Rouskey, Gortin and beyond over the past two years. These engagements were held not only to give you a broad overview of our project and the chance to ask questions, but to tell us what

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Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 12.

39

An emerging human right: UN Environment, 'Human rights and the environment', n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, 'Human rights, health and environmental protection: Linkages in law and practice', background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

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UN General Assembly, 'Calling of an International Conference on Freedom of Information', Resolution 59, 1946, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>; International Covenant on Civil and Political Rights, 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Art. 19.

41

Dalradian Resources: 'Curraghinalt gold deposit', <http://www.dalradian.com/curraghinalt-project/curraghinalt-deposit/default.aspx>; 'Investor briefcase', <http://www.dalradian.com/investor-centre/investor-briefcase/default.aspx>; 'Innovative approaches for protecting the environment', http://s1.q4cdn.com/162468244/files/doc_downloads/Advertorials/Stack_Tailings.pdf; 'We're listening: add your voice to the planning process', http://s1.q4cdn.com/162468244/files/doc_downloads/Advertorials/10_Advtorial_Planning-Timeline_AW.pdf; Annual Report 2016, http://s1.q4cdn.com/162468244/files/doc_downloads/2017_AGM/2016-Annual-Report.pdf, page 23; and 'Management's discussion and analysis', Nov. 2017, http://s1.q4cdn.com/162468244/files/doc_financials/2017/MDA-Q3-2017-SEDAR-version.pdf; JDS Energy & Mining, NI 43-101 Feasibility Study: Technical Report on the Curraghinalt Gold Project, Northern Ireland, report for the Canadian Securities Regulatory Authorities, Jan. 2017, <https://goo.gl/PN3iSN>

you like and don't like about our plans. Your opinions helped shape our final planning application.'

The 'We're listening' one-pager offers 'tunnel and site tours and face-to-face meetings with local residents, businesses and members of the wider public' intended 'to further promote understanding of the project and transparency with respect to our operations'. Citing the likelihood of a public inquiry, the document says that Dalradian will be 'pleased to participate so that a careful examination of all aspects of the project can take place to inform the decision' and concludes: 'Dalradian welcomes further engagement, which will continue throughout the life of the project.'

The *Annual Report 2016* refers to community consultations including that 26% of 189 individual responses via a feedback form were against their plans. 'Dalradian will continue to seek constructive dialogue and provide clarity and reassurance to local residents and the wider public.' A 2017 technical report filed by Dalradian with the Canadian securities authorities covers the above in greater detail.

GCM Resources – Bangladesh⁴²

42

The Blood-Soaked Banner of Phulbari, 2006, parts 1 and 2, https://www.youtube.com/watch?time_continue=9&v=PnpEJAZiwf0 and https://www.youtube.com/watch?time_continue=2&v=MhdO9gmuAuk; *Report of the Expert Committee (REC) to Evaluate Feasibility Study Report and Scheme of Development of the Phulbari Coal Project*, submitted by Messieurs Asia Energy Corporation (Bangladesh) Pvt. Ltd., Sept. 2006, summary at <http://www.bankinformationcenter.org/proxy/Document.10817.pdf>; UN News Centre, 'Open-pit coal mine project in Bangladesh threatens human rights – UN experts', Feb. 2012, <http://www.un.org/apps/news/story.asp?NewsID=41398#.WkTKtN9I9Nd>; Mines and Communities, 'Bangladesh open-pit coal mine threatens fundamental rights, warn UN experts', Mar. 2012, <http://www.minesandcommunities.org/article.php?a=11531>; Phulbari Solidarity Blog: 'Deal with Asia Energy on Phulbari Coalmine invalid', Jan. 2013, <https://phulbarisolidaritygroup.wordpress.com/2013/01/27/deal-with-asia-energy-on-phulbari-coalmine-invalid/>; 'Meet demands or face blockade programme on 7 February 2015: Declaration of Phulbari Grand Rally', Dec. 2014, <https://phulbarisolidaritygroup.wordpress.com/2014/12/31/meet-demands-or-face-blockade-programme-on-7-february-2015/>; and 'Protesters call to de-list Global Coal Management PLC from London Stock Exchange', Aug. 2016, <https://phulbarisolidaritygroup.wordpress.com/2016/08/27/potesters-call-to-de-list-global-coal-management-plc/>; UK National Contact Point for the OECD Guidelines for Multinational Enterprises, *Final Statement: Complaint from International Accountability Project and World Development Movement against GCM Resources plc*, Nov. 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376127/bis-14-1217-uk-ncp-final-statement-international-accountability-project-world-development-movement-and-gcm-resources-findings-and-recommendations.pdf, pages 3, 8, 19, 20, and *Follow up Statement after recommendations in complaint from IAP/WDM against GCM Resources*, Sep. 2015,

Previously cited in LMN's 2012 report,⁴³ an open-pit coal mine proposed by UK-incorporated and AIM-traded GCM Resources (formerly called Asia Energy) at Phulbari, north-west Bangladesh, was in 2012 identified by seven UN Special Rapporteurs as a threat to human rights through 'displac[ing] vulnerable farming communities, and threaten[ing] the livelihoods of thousands more by doing irreversible damage to water sources and ecosystems in the region'. In 2006 three unarmed protestors against the mine were shot dead and others were injured by paramilitary officers. Following the shooting, the Bangladeshi government has to date declined to renew the company's licence to operate in Phulbari. Estimates indicate that well over 100,000 land-based people could be displaced by the mine, that more than 14,660 hectares of fertile land that produce three food crops annually would be destroyed – in a country where close to 17% of the population and a third of children are undernourished – and that the UNESCO World Heritage Sundarbans mangrove forests would also be endangered.

The UK government's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises concluded in its 2014 assessment of the project that GCM had 'partly breached [companies'] obligations [to] develop self-regulatory practices and management systems that foster confidence and trust in the societies they operate in'. The UK NCP urged the company to 'pursue' its promised human rights impact assessment, to develop communications plans 'on the basis of a full assessment of risks, including the risks of limiting local engagement', to find 'appropriate ways to re-engage with affected communities, increase the information available to them, and take account of their views', and to 'consider the 2007 UN Declaration on Rights of Indigenous Peoples, which include[s] the right to Free, Prior and Informed Consent (FPIC)'. The NCP's 2015 follow-up statement reminded GCM of its obligation to continue

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458545/BIS-15-521-follow-up-statement-after-recommendations-in-complaint-from-IAP-WDM-against-GCM-resources.pdf, page 7; Global Justice Now, 'UK urges GCM Resources to assess human rights impact of Bangladesh coal mine', Nov. 2014, <http://www.globaljustice.org.uk/news/2014/dec/8/uk-urges-gcm-resources-assess-human-rights-impact-bangladesh-coal-mine>, and 'UK government highlights opposition to GCM Resources plan for Bangladesh coal mine', Sept. 2015, <http://www.globaljustice.org.uk/news/2015/sep/10/uk-government-highlights-opposition-gcm-resources-plan-bangladesh-coal-mine#.VfLPfX8sAPo.twitter>; New Age, 'Govt mulls stopping Asia Energy's activities in country', Dec. 2014, <http://newagebd.net/74878/govt-mulls-stopping-asia-energys-activities-in-country/#sthash.mWNPG6Xu.EWe2PgF3.dpbs>, and 'Govt says "no" to open-pit mine', Aug. 2015, <http://newagebd.net/150774/govt-says-no-to-open-pit-mine/#sthash.3l1YnBcw.YOZ4l4bt.dpbs>; International Accountability Project, 'The Phulbari coal project', n.d., [https://www.culturalsurvival.org/sites/default/files/Phulbari Coal Project Fact Sheet LowRes.pdf](https://www.culturalsurvival.org/sites/default/files/Phulbari%20Coal%20Project%20Fact%20Sheet%20LowRes.pdf)

43

LMN, *UK-Listed Mining Companies and the Case for Stricter Oversight: Case Studies and Recommendations*, 2012, <http://londonminingnetwork.org/docs/lmn-the-case-for-stricter-oversight.pdf>

addressing environmental and social issues and engaging with community stakeholders, and regretted that the company had still not completed an updated environmental, social and human rights impact assessment.

Bangladeshi government officials were reported in 2014 and 2015 as denying that the company had a valid mining licence and stating that the government had decided not to extract coal in the area. In early 2018 the government had still not decided on the project's future. GCM has filed charges against local farmers and others who oppose the mine, while local campaigners and their supporters demand the company's complete withdrawal from the project and have called for its delisting from the LSE.

Human rights abused or at risk

Right to life, liberty and security of person⁴⁴

Right to property⁴⁵

Right to adequate housing⁴⁶

Right to livelihood/adequate standard of living⁴⁷

Right to social security⁴⁸

Right to water⁴⁹

Right to food⁵⁰

44 Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 3.

45 Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 17.

46 International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11; Office of the UN High Commissioner for Human Rights and UN Habitat, *The Right to Adequate Housing*, fact sheet No. 21, 2009, http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

47 Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11.

48 Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 22

49 UN General Assembly, 'The human right to water and sanitation', Resolution 64/292, 2010, <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

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Right to land⁵¹

Right to a safe and healthy natural environment⁵²

Right to freedom of expression, peaceful assembly and association and to information⁵³

Indigenous peoples' right to free, prior and informed consent⁵⁴

What the company says⁵⁵

GCM's website provides a relatively detailed account of issues such as environmental and social impacts, resettlement, water management and agriculture, although very much from its own perspective. It quotes a low figure of 40,000 for the numbers potentially displaced and acknowledges the special status of indigenous peoples, although not their distinct internationally recognized human rights. It commits the company to develop Phulbari responsibly and sustainably, to make nobody worse off and to provide fair and full compensation. The website gives no indication of the existence, reasons for, nature or extent of community opposition and claims that the project will have 'no direct impact' on the Sundarbans World Heritage site.

The *Annual Report & Accounts* claim that 'the majority [of people in the project area] want to see development and appreciate the job opportunities and other benefits that will be available' and mention continuing community engagement with a focus on enhancing GCM's 'social

Ibid.

51

Office of the UN High Commissioner for Human Rights, 'Land and human rights', n.d., <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>

52

An emerging human right: UN Environment, 'Human rights and the environment', n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, 'Human rights, health and environmental protection: Linkages in law and practice', background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

53

International Covenant on Civil and Political Rights, 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Arts. 19, 21, 22

54

UN General Assembly, Declaration on the Rights of Indigenous Peoples, 2007, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Art. 10; International Labour Organization, Indigenous and Tribal Peoples Convention, No. 169, 1989, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

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GCM Resources, 'Phulbari Coal and Power Project overview', <http://www.gcmplc.com/phulbari-coal-project/overview>, and other pages; *Annual Report & Accounts*, 2017, <http://www.gcmplc.com/sites/default/files/2017-11/2017-annual-report.pdf>, pages 3, 4.

licence’ and having detailed plans in place for community benefits. GCM names several well-known international corporate responsibility and multilateral development bank standards that it seeks to meet. i.e. is purely aspirational. There is no reference to community resistance. With regard to environmental issues the document is confident that ‘As part of GCM’s water management and agriculture improvement plans, farms are expected to have year-round access to irrigation which combined with improved inputs and training is expected to increase agricultural output in the region.’ Human rights appear only in the context of the need for a human rights impact assessment for a proposed new joint venture with China Gezhouba Group to construct a mine-mouth power plant.

MC Mining (Coal of Africa) – South Africa⁵⁶

Local communities have since 2009 opposed the extraction of coal by Australian-incorporated and AIM-traded MC Mining (previously called Coal of Africa) in Venda, Vhembe district, Limpopo province, South Africa, as part of the company’s Makhado project.⁵⁷ The Limpopo valley is an ecologically sensitive, water-stressed area. Local people are concerned about potentially damaging impacts on the ecosystem and on farm-based livelihoods, especially through the depletion of underground water on which communities depend, as well as the company’s reported failure to secure an adequate water supply for the mine. Its water use licence for Makhado is currently suspended following appeals by local farmers, who have been reported by Bench Marks Foundation⁵⁸ as massively opposing Makhado and the company’s nearby Vele open-cast coal mine.

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Gaia Foundation, ‘Coal out of Africa!’, 2011, <http://www.gaiafoundation.org/coal-out-of-africa>, ‘Opposition to coal mining in Limpopo, South Africa is mounting’, 2012, <http://www.gaiafoundation.org/opposition-to-coal-mining-in-limpopo-south-africa-is-mounting>, and ‘Open letter to the Coal of Africa AGM – coal mining must stop’, 2012, <http://www.gaiafoundation.org/open-letter-to-the-coal-of-africa-agm-coal-mining-must-stop>; Bench Marks Foundation, *Vitol and coal trading: Challenges of human rights due diligence in the supply chain*, 2015, http://www.bench-marks.org.za/press/CoAL/research_vitol_and_human_rights.pdf, page 35; Business & Human Rights Resource Centre, ‘Report by Swiss NGOs & Bench Marks Foundation criticises Vitol’s human rights due diligence regarding Coal of Africa mines’, Aug. 2015, <https://business-humanrights.org/en/report-by-swiss-ngos-bench-marks-foundation-criticises-vitols-human-rights-due-diligence-regarding-coal-of-africa-mines>; Mines and Communities, ‘South African government disregards impacts of coal mining’, Aug. 2015, <http://www.minesandcommunities.org/article.php?a=13087>

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Boabab Mining, the company’s South African subsidiary, has been project operator since 2016: Coal of Africa, *Annual Report 2016*, <http://www.coalofafrica.com/component/jdownloads/send/37-2016/1-coal-of-africa-annual-report-2016>

58 Benchmarks Foundation is an independent South African organisation monitoring corporate performance in the field of corporate social responsibility

Concerns of residents and civil society groups also arise from perceived threats from mining at Vele to the Mapungubwea World Heritage site and potential impacts on two nearby rivers, ancestral homes, graves and sacred sites; threats to the right to health and to food; the company's submission of an incomplete environmental impact assessment and environmental management plan; inadequate consultations with affected communities ('more [like] "public relations exercises"' reported Bench Marks Foundation); a lack of company resources to undertake post-closure rehabilitation; and the company's lack of an explicit human rights policy. In 2010 Coal of Africa was fined for non-compliance with environmental regulations and reportedly censured by the Department of Water Affairs for unauthorized water use. The company suspended mining operations at Vele in 2013 but subsequently applied to significantly increase its total project area.

Human rights abused or at risk

Right to water⁵⁹

Right to health⁶⁰

Right to property⁶¹

Right to livelihood/adequate standard of living⁶²

Right to a safe and healthy natural environment⁶³

Right to food⁶⁴

59

UN General Assembly, 'The human right to water and sanitation', Resolution 64/292, 2010, <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

60

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 12.

61

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 17

62

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11.

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An emerging human right: UN Environment, 'Human rights and the environment', n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, 'Human rights, health and environmental protection: Linkages in law and practice', background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

Right to social security⁶⁵

Right to participate in cultural life⁶⁶

Right to freedom of expression and to information⁶⁷

What the company says⁶⁸

Documents on MC Mining's website describe its 'community-centred integrated' and 'development' approach, including a model for 'socio-economic contributions' to the community and a 'broad based Black Economic Empowerment strategy'. The company states that it recognizes 'both the traditional leadership and the voice of the community'. Amid much detail about its approach to sustainability and corporate responsibility, it states that 'water stewardship, responsible resource consumption, proactive forward-planning for sustainable mine closure, biodiversity and heritage management' all receive attention, and reports on 'social and labour plans' as 'a key driver of socio-economic transformation' and a bursary fund for local people.

MC Mining's/Coal of Africa's *Integrated Report 2016* goes into similar detail, enough to satisfy the Bench Marks Foundation that the company's non-financial reporting is relatively painstaking and transparent,⁶⁹ including measures taken in health, safety and the environment. However, the *Integrated Report 2016* is very limited on human rights, referring only to issues of

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Ibid.

65

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 22

66

Ibid., Art. 27.

67

UN General Assembly, 'Calling of an International Conference on Freedom of Information', Resolution 59, 1946, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>; International Covenant on Civil and Political Rights, 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Art. 19.

68

MC Mining: 'Makhado project', <http://www.mcmining.co.za/our-business/projects/makhado>; 'Makhado fact sheet', 2015, <http://www.mcmining.co.za/downloads/send/31-2016/1278-makhado-project>, pages 3, 4, 5; 'Makhado profile', 2016, <http://www.mcmining.co.za/downloads/send/31-2016/197-makhado-profile-21-november-2016>, pages 7, 11; 'Environment', <http://www.mcmining.co.za/sustainability/environment>; 'Corporate social responsibility', <http://www.mcmining.co.za/sustainability/csr-led>; and *Integrated Report 2016*, <http://www.mcmining.co.za/component/jdownloads/send/37-2016/1-coal-of-africa-annual-report-2016>

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Bench Marks Foundation, *Vitol and coal trading: Challenges of human rights due diligence in the supply chain*, 2015, http://www.bench-marks.org.za/press/CoAL/research_vitol_and_human_rights.pdf

discrimination in employment, child labour and labour rights and saying nothing about the rights of local farmers and communities to livelihoods, health or water.

Metals Exploration – Philippines⁷⁰

FCF Minerals, a subsidiary of UK-incorporated and AIM-traded Metals Exploration, is extracting gold and molybdenum at Runruno, Nueva Viscaya province in the Philippines. Local people have voiced concerns going back to exploration, when they believed the company's activities created a risk of landslides. Flash floods previously experienced in Runruno, and attributed to mining exploration, reportedly killed seven people. Residents also fear contamination from drilling chemicals and have complained about mining-related pollution making a local river unsuitable for fishing and water abstraction. Philippine civil society groups report evidence of 'massive biodiversity loss, water pollution, and human rights violations [among] indigenous peoples and peasant communities' affected by mining in the area, including 'destruction of rice fields, citrus plantations and other cultivated lands', and they hold FCF Minerals partly responsible.

In 2013 the Philippines House Deputy Speaker sought government legal action against FCF Minerals and two other mining companies for human rights violations including the bulldozing of homes and farm lots causing injury to local people. Runruno residents have complained about FCF's security and local police demolishing homes without warning or fair compensation. Independent scientists visiting the area in 2014 found FCF's activities had left local rivers 'brimming' with toxic levels of arsenic, lead and copper and reported that the company was associated with 'violence, harassment and deception' towards local people. FCF's proposed mine is also said to breach the official declaration of the Magat river forest as Permanent Forest

70

GMA News, 'Another mining town in Vizcaya cries for help', Jan. 2009, <http://www.gmanetwork.com/news/news/regions/143987/another-mining-town-in-vizcaya-cries-for-help/story>; Business & Human Rights Resource Centre, 'Philippines: Community claims mining operations by Metals Exploration "endangers lives"', Jan./Feb. 2009, <https://business-humanrights.org/en/philippines-community-claims-mining-operations-by-metals-exploration-endangers-lives>; Philippine Star, 'Report: Mining harms Nueva Vizcaya's resources', Sep. 2013, <http://www.philstar.com/nation/2013/09/23/1237254/report-mining-harms-nueva-vizcayas-resources>; Mines and Communities, 'Philippines: Realities of mining in Nueva Vizcaya laid bare', Oct. 2013, <http://www.minesandcommunities.org/article.php?a=12453>; Bulatlat.com, 'Investigating mining pollution and plunder in Nueva Vizcaya', Oct. 2014, <http://bulatlat.com/main/2014/10/05/investigating-mining-pollution-and-plunder-in-nueva-vizcaya>; Inquirer.net, 'MGB suspends mine project after storm', Oct. 2015, <http://newsinfo.inquirer.net/735445/mgb-suspends-mine-project-after-storm>; Manila Times, 'Vizcaya stops entry of mining firms', Apr. 2016, <http://www.manilatimes.net/vizcaya-stops-entry-of-mining-firms/253501>

Reserve. In 2015 after the site had been damaged by Typhoon Lando, the Philippines Mines and Geosciences Bureau ordered the company to suspend mine development and to present a rehabilitation plan. In 2016 the provincial governor of Nueva Vizcaya vowed to prevent more large-scale mining development in the province and committed to work to have the province declared a mining free zone.

Human rights abused or at risk

Right to property⁷¹

Right to a safe and healthy natural environment⁷²

Right to health⁷³

Right to water⁷⁴

Right to food⁷⁵

Right to livelihood/adequate standard of living⁷⁶

Right to social security⁷⁷

Right to adequate housing⁷⁸

71

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 17

72

An emerging human right: UN Environment, 'Human rights and the environment', n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, 'Human rights, health and environmental protection: Linkages in law and practice', background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

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Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 12.

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UN General Assembly, 'The human right to water and sanitation', Resolution 64/292, 2010, <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

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Ibid.

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Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11.

77

Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 22

78

International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11; Office of the UN High Commissioner

What the company says⁷⁹

Metals Exploration's website refers to the Runruno project's 'very strong community development component with a continuing commitment to behave ethically and contribute to local economic development, while improving the quality of life of its stakeholders'. The company has established a community development foundation to build 'a strong and lasting relationship with local stakeholders'. The website quotes the then Mines and Geosciences Bureau regional director as saying in 2007 praising Metals Exploration 'for its outstanding community development and information programme'. The company reports winning a community development award in 2009 and numerous national and international environment accolades between 2007 and 2012.

The *Report and Accounts* for 2016 state that the Runruno mine 'has been built to the highest standard', including planting over 1.7 million saplings in place of 700 trees that the company has felled. The document refers to 'social and community commitment ... undertaken with passion and conviction', listing a number of 'sustainable development' community programmes. It is claimed that the company is 'a leader in the Philippine mining industry in environmental and ... rehabilitation practices'. The only mention of water-related damage attributes this to Typhoon Lando. There is no mention of pollution or human rights.

Assessment

The eight case studies above illustrate a range of mining-associated threats to, impacts on and local concerns regarding human rights and environmental impacts – some so far yet unrealized, others now irreversible. Death at the hands of security forces (GCM Mining), and association with forced labour and enslavement (Arc/Ortac), appear to be the gravest. Pollution and depletion of waterways and groundwater on which communities' health and survival depend,

for Human Rights and UN Habitat, *The Right to Adequate Housing*, fact sheet No. 21, 2009, http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

79

Metals Exploration: 'Runruno', <http://www.metalsexploration.com/runruno.html>; 'Corporate responsibility', <http://www.metalsexploration.com/corporate-responsibility.html>; 'The RLF', <http://www.metalsexploration.com/the-rlf.html>; 'Awards won by FCF Minerals Corporation', <http://www.metalsexploration.com/awards.html>; and *Report and Accounts 2016*, <http://www.metalsexploration.com/pdf/198310-Metals%20Exploration%20AR%20text%20v2.pdf>, pages 3, 12, 13. FCF Minerals' website at <http://www.fcfminerals.com/> is under construction.

and forced displacement, are perhaps only slightly less serious. Threats to livelihoods, natural resources and biodiversity, and cultural heritage, together with violence and intimidation, equally so.

Several of the companies surveyed appear to perform better than others, in terms of CSR policies and reporting. Most assert their willingness to engage with local communities, and some have developed social programmes intended to benefit project-affected stakeholders. Yet their engagement strategies and corporate responsibility measures, as well as promises of job creation and boosts to the local economy, often appear inadequate to compensate for the actual and potential harms caused. Considerable distrust – sometimes referred to as lack of a ‘social licence to operate’ – remains, often for very good reason. While claims about the extent of support for, versus opposition to, specific mining projects are not easy to verify, company publications are often highly selective in what they disclose. Most strikingly, while virtually all the community concerns outlined above involve the violation of, or threats to, internationally recognized human rights, none of the companies appear willing to adopt a human rights perspective on their social and environmental impacts. Is this the result of ignorance or of deliberate corporate policy?

INITIATIVES ON BUSINESS AND HUMAN RIGHTS

International level

The most recognised international standard on companies’ human rights impacts on communities is the UN Guiding Principles on Business and Human Rights (UNGPs), adopted by the UN Human Rights Council in 2011.⁸⁰ Endorsed internationally by governments and business, trade unions and – with major reservations, outlined below – civil society, the UNGPs were the result of a three-year mandate of consultation and research by the UN Secretary-General’s Special Representative on human rights and transnational corporations and other business enterprises, John Ruggie.⁸¹ The UNGPs’ foundational principles are that ‘States must protect

80

Office of the UN High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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Business & Human Rights Resource Centre, ‘UN Secretary-General’s Special Representative on business & human rights’, n.d., <https://business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights>

against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises', and that 'States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.'⁸²

In addition to States' duty to protect and companies' responsibility to respect human rights, access to remedy for people whose human rights are harmed by business is the UNGPs' third core principle.⁸³ The UNGPs note the link between human rights and environmental protection ('existing laws that directly or indirectly regulate business respect for human rights ... [include] environmental ... laws') and advise that 'Business enterprises need to *know and show* that they respect human rights.' [author's emphasis]⁸⁴

Many other international standards and initiatives have been developed to help prevent, mitigate and/or remedy human rights harms caused by companies. These include the OECD Guidelines for Multinational Enterprises (1976; revised in 2011 with addition of a human rights chapter intended to be coherent with the UNGPs),⁸⁵ the Global Reporting Initiative (1997),⁸⁶ the UN Global Compact (2000),⁸⁷ the Equator Principles (2003),⁸⁸ the UN Principles for Responsible Investment (2006),⁸⁹ the Sustainability Accounting Standards Board (2011),⁹⁰ the World Bank Group International Finance Corporation Performance Standards on Environmental and Social

82

Ibid., page 3.

83

Ibid., chapters I, II, III.

84

Ibid., page 17, emphasis added, and page 5.

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OECD, Guidelines for Multinational Enterprises, 2011, <http://www.oecd.org/corporate/mne>

86

Global Reporting Initiative, <https://www.globalreporting.org>

87

UN Global Compact, <https://www.unglobalcompact.org>

88

Equator Principles, <http://www.equator-principles.com>

89

UN Principles for Responsible Investment, <https://www.unpri.org>

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Sustainability Accounting Standards Board, <https://www.sasb.org>

Sustainability (2012),⁹¹ the European Union Non-Financial Reporting Directive (2014),⁹² the UN Guiding Principles Reporting Framework (2015)⁹³ and the Corporate Human Rights Benchmark (2017).⁹⁴ Country-specific measures have also been introduced by individual governments.⁹⁵

There has been much debate over the effectiveness or otherwise of the UNGPs and other international efforts. LMN is among the many civil society organizations around the world that consider current voluntary measures insufficient and that a binding international treaty on business and human rights is necessary (further discussed below).

With regard to indigenous peoples, international law already provides that they have a right to give or withhold their free, prior and informed consent (FPIC) regarding mining and other activities likely to affect them.⁹⁶ Many questions have been raised regarding how successfully this right is implemented by governments and respected by companies in practice, including during the lifetime of mining operations,⁹⁷ and about the extension of the principle of FPIC to non-indigenous land-based communities.

91

International Finance Corporation, Performance Standards on Environmental and Social Sustainability, 2012, https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

92

European Parliament and European Council, Directive 2014/95/EU, 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

93

UN Guiding Principles Reporting Framework, <https://www.ungpreporting.org>

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Corporate Human Rights Benchmark, <https://www.corporatebenchmark.org/>

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Most recently creation of a Canadian Ombudsperson for Responsible Enterprise to investigate allegations of human rights abuses linked to Canadian mining and other companies abroad: Government of Canada, 'The Government of Canada brings leadership to responsible business conduct abroad', Jan. 2018, https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringingleadershiptoresponsiblebusinesscond.html

96

International Labour Organization, Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169), 1989, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169, Art. 16; UN Declaration on the Rights of Indigenous Peoples, 2007, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Art. 10.

97

See e.g. UN OHCHR, 'UN human rights chief urges Papua New Guinea to combat corruption and strengthen rule of law', Feb. 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22644&LangID=E>

UK government action

The UK government was early in committing to implement the UN Guiding Principles, publishing in 2013 a National Action Plan on business and human rights, since updated.⁹⁸ Here the UK states that ‘promotion of business and respect for human rights should go hand in hand ... Responsible action by the private sector on human rights is good for business and communities; it helps create jobs, customers and a sense of fairness; it contributes to a market’s sustainability and therefore its potential to generate long-term growth.’⁹⁹

Under the UK’s 2006 Companies Act directors must ‘have regard’ to ‘the impact of the company's operations on the community’.¹⁰⁰ Section 414C of the Act requires UK-incorporated and LSE Main Market-traded companies to provide a strategic report covering environmental, social, community and human rights issues. The more recent Section 414CA implements the Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016, which in turn implement the 2014 EU Non-Financial Reporting Directive,¹⁰¹ and applies to certain categories of large UK-incorporated and LSE Main Market-traded companies, including miners. Although neither section of the Act applies to AIM-traded mining companies, the non-financial reporting requirements in theory require those companies covered to report on how they respect human rights and how they manage human rights risks.¹⁰²

Limitations of current initiatives and work towards a binding treaty

Civil society has welcomed international progress on business and human rights but has been generally critical of its limitations, as have some governments and intergovernmental actors. The major weakness of the UNGPs and their ‘Protect, Respect and Remedy’ framework is the

98

HM Government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights updated May 2016*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf

99

Ibid., page 2.

100

HM Government, 2006, <https://www.legislation.gov.uk/ukpga/2006/46/section/172>

101

HM Government, 2016, <http://www.legislation.gov.uk/uksi/2016/1245/contents/made>; European Commission, ‘Non-financial reporting’, <https://goo.gl/pUqBPw>

102

HM Government, 2016, http://www.legislation.gov.uk/uksi/2016/1245/pdfs/uksi_20161245_en.pdf, section 414CB (Contents of non-financial information statement).

lack of legal enforceability and scarcity of effective routes to remedy for affected individuals and communities.¹⁰³ As a consequence, an Open-Ended Intergovernmental Working Group (OEIWG) on transnational corporations and other business enterprises with respect to human rights was formed in 2014 under the auspices of the UN Human Rights Council to develop a human rights treaty to regulate business activity.¹⁰⁴

More than 100 governments, as well as the EU, now take part in OEIWG discussions, although the EU, the United States and other industrialized countries' governments have to date opposed a binding treaty. Both global civil society and the business sector are actively involved. At its third session, in October 2017, OEIWG's chair-rapporteur presented draft elements for a treaty, including suggestions on state obligations, prevention, effective remedy, jurisdiction, international co-operation and enforcement. These elements are currently undergoing informal consultation.¹⁰⁵

In the UK, despite the government's commitment to 'ensure that the UK provides access to judicial and non-judicial remedies to victims of human rights harms linked to business activity',¹⁰⁶ the National Action Plan (NAP) suffers from the same weaknesses as the UNGPs in

103

European Union Agency for Fundamental Rights, 'Improving access to remedy in the area of business and human rights at the EU level', Apr. 2014, <http://fra.europa.eu/en/opinion/2017/business-human-rights>; Institute for Human Rights and Business, 'Fulfilling the forgotten pillar: ensuring access to remedy for business and human rights abuses', Dec. 2015, <https://www.ihrb.org/other/remedy/fulfilling-the-forgotten-pillar-ensuring-access-to-remedy-for-business-and>; Prof. Katerina Yiannibas, 'The removal of barriers to access to remedy for corporate related human rights abuses in the European Union', n.d., <https://business-humanrights.org/en/the-removal-of-barriers-to-access-to-remedy-for-corporate-related-human-rights-abuses-in-the-european-union>; D. Blackburn (International Centre for Trade Union Rights), *Removing Barriers to Justice: How a treaty on business and human rights could improve access to remedy for victims* (report for ActionAid Netherlands, Brot für die Welt, SOMO, CIDSE, Friends of the Earth Europe, ITUC, ITF, Norwegian Forum for Development & Environment), Stichting Onderzoek Multinationale Ondernemingen (SOMO; Centre for Research on Multinational Corporations), 2017, <http://www.cidse.org/publications/business-and-human-rights/business-and-human-rights-frameworks/removing-barriers-to-justice.html>

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Business & Human Rights Resource Centre, 'UN Intergovt. Working Group on proposed treaty', n.d., <https://business-humanrights.org/en/un-intergovt-working-group-on-proposed-treaty>; Treaty Alliance (Global Movement for a Binding Treaty), <http://www.treatymovement.com/>

105

Global Policy Forum Europe and Rosa Luxemburg Stiftung, *One step further towards global regulation of business: Report of the third session of the UN working group on a binding instrument on transnational corporations and other business enterprises with respect to human rights ('treaty')*, Jan. 2018, https://www.globalpolicy.org/images/pdfs/GPF-Briefing_One_step_further_Report_of_the_3rd_session_on_the_Treaty.pdf

106

terms of practical enforceability and remedy. CORE, the UK civil society coalition on corporate accountability, has commented: ‘The biggest gap in the [UK NAP] is on remedy ... The plan offers very little to people who have been denied justice after being harmed by UK companies.’¹⁰⁷ Among available remedies in the UK and other countries, the OECD Guidelines for Multinational Enterprises’ system of NCPs, for example, is widely considered unsatisfactory as a source of remedy for claimants (see GCM Resources case study).¹⁰⁸

As for environmental, social, community and human rights reporting by UK-incorporated and LSE Main Market-traded companies under the UK Companies Act, ‘fundamental weaknesses’ have been observed in the pre-2016 framework,¹⁰⁹ and there is little evidence that matters have improved since. The Financial Reporting Council recognizes that current provisions are ‘fragmented’, and enforcement ‘is not fully effective at present’.¹¹⁰ CORE finds also that information disclosure to shareholders provides very little leverage for change: ‘[T]he current framework of enlightened shareholder value, combined with a voluntary Corporate Governance Code and an emphasis on “culture”, has failed to address egregious corporate malpractice and to provide collective and individual accountability for management failures. ... [P]ublic trust in business remains historically low.’¹¹¹

As the case studies above demonstrate, information and statements provided by AIM mining companies omit mention of human rights when it comes to relations with local communities

HM Government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights updated May 2016*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf, page 22.

107

CORE, ‘UK publishes updated Business and Human Rights Action Plan’, May 2016, <http://corporate-responsibility.org/uk-publishes-updated-business-and-human-rights-action-plan/>

108

OECD Watch, ‘Remedy campaign’, <https://www.oecdwatch.org/remedy-campaign>

109

ClientEarth, *Digging deeper: Environmental and social transparency under the Companies Act 2006*, 2010, page ii.

110

Financial Reporting Council, ‘Response to the Department for Business, Energy and Industrial Strategy corporate governance reform green paper’, Feb. 2017, <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/FRC-Response-to-BEIS-Green-Paper-consultation-on-C.pdf>, page 8.

111

CORE, ‘Response to corporate governance reform green paper’, Feb. 2017, http://corporate-responsibility.org/wp-content/uploads/2017/02/170217_CORE-response-to-corporate-governance-green-paper_FINAL.pdf, page 1.

and environmental impacts, even where they acknowledge community concerns. In this respect these companies comprehensively fail the UN Guiding Principles' test for businesses 'to know and show that they respect human rights'.¹¹²

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

LMN, and its member groups, work in solidarity with mines-affected communities, taking our primary positions from them. Informed by this, LMN has serious concerns about the systemic failings of the AIM market, which on current practice is operating as a way to circumvent proper scrutiny.

As the preceding case studies show, there is persuasive evidence that AIM-traded mining companies are insufficiently transparent about, or accountable for, their human rights-related and environmental impacts. There is also a clear business case for these companies to perform better and to report far more carefully:

- Research by the Harvard Kennedy School, the Shift project and the University of Queensland found that 'temporary shutdowns or delay' associated with human rights issues may cost a major mining project US \$20 million per week in delayed production and lost sales.¹¹³
- International auditors EY list social licence to operate as one of the leading risks that mining companies face, adding: 'There needs to be a shift from a reactive and compensation model of social investment to one that is far more strategic and collaborative.'¹¹⁴
- Leading institutional investors and fund managers support this view,¹¹⁵ and responsible

112

Office of the UN High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, page 16.

113

R. Davis and D. Franks, *Costs of Company-Community Conflict in the Extractive Sector*, CSR Initiative at the Harvard Kennedy School, 2014, https://sites.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf

114

EY, 'Business risks facing mining and metals 2017-2018', <http://www.ey.com/gl/en/industries/mining---metals/business-risks-in-mining-and-metals>

115

investors may be increasingly reluctant to fund companies that play down their human rights responsibilities.

- Well-governed mineral-rich countries may be unwilling to offer future concessions to UK-listed or associated companies.

There are also potential reputational consequences for the UK and long-term geopolitical effects. The UK's reputation for sound financial markets and corporate governance may be at risk if AIM-traded companies show insufficient regard for their social and environmental impacts. Sticking to 'business as usual', AIM-listed companies' presence in poorly governed countries is likely to exacerbate instability and threats to the global order, such as from violent conflict, terrorism and refugee flows. And where UK-listed companies disregard business and human rights standards, it will be harder for the UK government to influence other states regarding their human rights and environmental duties.

Recommendations

UK government

1. Ensure a wholesale, independent review of AIM and its terms of reference, considering the systemic failures and leaving all options open
2. Given how material human rights and environmental concerns are, the scope of the Companies Act should be extended to include environmental, social, community and human rights disclosure obligations to AIM-traded oil, gas and mining companies.¹¹⁶
3. Appoint human rights and environmental specialists to the Financial Reporting Council's (FRC) Corporate Reporting Council, the Conduct Committee and the Financial Reporting Review Panel.¹¹⁷

Principles for Responsible Investment, *Human Rights and the Extractive Industry*, n.d., https://www.unpri.org/download_report/8530

116

The LSE has recognized the need for special provision for these companies: AIM, *Note for Mining, Oil and Gas Companies*, Jun. 2009, <http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf>

117

FRC, Corporate Reporting Council, <https://www.frc.org.uk/about-the-frc/structure-of-the-frc/corporate-reporting-council> and Financial Reporting Review Panel (FRRP), [https://www.frc.org.uk/about-the-frc/structure-of-the-frc/financial-reporting-review-panel-\(frrp\)](https://www.frc.org.uk/about-the-frc/structure-of-the-frc/financial-reporting-review-panel-(frrp))

4. Review the criteria that the FRC's Conduct Committee uses to select company reports for review, to enable better monitoring of UK-listed companies' non-financial reports under the 2016 regulations and to raise with companies any *prima facie* indications of a failure of human rights and environmental due diligence.¹¹⁸
5. Implement the FRC's recommendation to introduce under the Companies Act 2006 an explicit provision for third parties such as NGOs, charities or statutory bodies to bring complaints against companies where significant human rights or environmental harm is suspected.¹¹⁹
6. Introduce under the Companies Act 2006 a statutory right for stakeholders affected by company operations, or their representatives, and a statutory requirement for companies to provide an opportunity for them, to attend the annual company AGM to raise concerns, and ideally to facilitate such attendance.¹²⁰
7. Amend the Companies Act 2006 so that directors of companies that cause serious harm to stakeholders are liable to disqualification.¹²¹
8. Introduce a duty on all companies to prevent human rights abuses and an offence of failure to prevent human rights abuses for all companies, including parent companies, similar to relevant provisions of the Bribery Act 2010.¹²²
9. Consider introducing an equivalent to Canada's new Ombudsperson for Responsible Enterprise¹²³ to investigate allegations of human rights abuses linked to UK-incorporated

118

FRC, The Conduct Committee: Operating procedures for reviewing corporate reporting, Apr. 2017, <https://www.frc.org.uk/getattachment/fb5437a7-641b-4c18-b9f8-8baa7f36c7a5/Conduct-Committee-Operating-Procedures-April-2017.pdf>

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FRC, *Response to the Department for Business, Energy and Industrial Strategy Corporate Governance Reform Green Paper*, Feb. 2017, <https://frc.org.uk/getattachment/1f9d9fd7-7768-4fc3-b7de-50e57937c7d9/170217-FRC-response-to-Green-Paper-on-Corporate-Governance-Reform.pdf>

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Recommended in ClientEarth, *Digging deeper: Environmental and social transparency under the Companies Act 2006*, 2010.

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Recommended in CORE, 'Response to corporate governance reform green paper', Feb. 2017, http://corporate-responsibility.org/wp-content/uploads/2017/02/170217_CORE-response-to-corporate-governance-green-paper_FINAL.pdf

122

Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability, Sixth Report of Session 2016–17*, <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2015/inquiry/>, para 193.

123

and UK-listed mining and other companies abroad.

10. Consider creating an independent fund for unbiased research and access to redress for communities overseas whose rights are potentially affected by UK mining companies
11. Actively support the OEIWG's work towards a meaningful international legally binding treaty on business and human rights

AIM-traded mining companies and their investors

1. In the absence of any legal obligation, AIM-traded mining companies should voluntarily comply with the Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016, as 'permitted' under the regulations, and include in their annual report an explicit account of their human rights due diligence and operational impacts on communities and the environment.
2. AIM-listed mining companies should provide an opportunity at each AGM for human rights related issues on their annual report and facilitate people who have been negatively affected by company activities, or their representatives, to bring human rights matters of concern to the AGM.
3. Investors should actively engage with investee AIM-traded mining companies to persuade them to voluntarily implement the two recommendations above, and should create a dialogue plan that leads to divestment from companies that refuse to take these steps.

ACKNOWLEDGEMENTS

This paper was mainly authored by Miles Litvinoff. The case studies draw extensively on research undertaken and communications received by LMN and its members. LMN is grateful to Habte Hagos for the case study on Arc/Ortac in Eritrea, to Richard Harkinson for the case study on Berkeley in Spain, to Joel Thompson for research into mining company publications and statements, and to others who commented on, and/or guided development of, the paper: Mattias Åhrén, Keval Bharadia, David Cooke, Marilyn Croser, Peter Frankental, Alice Garton, Rumana Hashem, Hannibal Rhoades, Richard Solly, Jonas Vannar and Andy Whitmore.

Government of Canada, 'The Government of Canada brings leadership to responsible business conduct abroad', Jan. 2018, https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringingleadershiptoresponsiblebusinesscond.html

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