



Opinion by
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Mining, Security and Human Rights

Australia could be doing more to regulate the activities of Australian companies operating abroad. In the past decade a handful of troubling cases have been reported connecting Australian mining companies to serious human rights abuses overseas. Anvil Mining and Oceana Gold were two prominent examples where Australian mining interests had come under the spotlight for alleged human rights abuses connected in some way to those companies' overseas operations.

As recently as December last year Arc Exploration Limited (ARX) made headlines when two protesters were shot dead and others were injured by Indonesian police while protesting against the company's mining exploration licence in Sumbawa, Indonesia. Protesters have opposed potential mining in the area due to concerns as to environmental and economic impacts. The company initially halted its operations following the violence. Indonesian authorities have since revoked the company's licence entirely citing civil disturbance and security issues as the basis for its decision.

While there is no suggestion that ARX was involved in the violence in this case, questions were raised as to the relationship between the company and the police in question. This is quite rightly information that should be on the public record.

Relationships between mining companies and security forces are an issue of legitimate public interest and concern. According to the UN Special Representative for Business and Human Rights, of the worst cases of corporate-related human rights abuses in recent years the extractive industries utterly dominate the field. Typically this is for conduct by security forces seeking to secure company assets and property.

The risks associated with security and mining operations is a subject that has received increasing attention in recent years. Coined by Craig Forcese, 'militarized commerce' is the increasing phenomenon of companies acquiring services from military or para-military forces as security for firm operations. Risks emanating from such arrangements are most acute where mining takes place in conflict or post conflict areas or in states with weak governance unwilling or unable to mitigate the adverse impacts of mining.

In the Arc Exploration Limited case, a spokesperson for ARX has indicated that no benefits or other payments have been made by the Company to the Indonesian police. But the case does give us reason to pause and consider the vexed issue of security, mining and human rights.

One international mechanism developed in order to address the specific risks arising from mining and security is the Voluntary Principles on Security and Human Rights. By joining these Principles, signatory companies, of which there are currently 19, agree to undertake risk assessments to identify security risks arising from their operations. The assessment must consider whether a company's actions may heighten particular risks, the human rights records of security partners, and patterns of violence in the region.

Whilst the Principles have enabled an important ongoing dialogue between participating parties and have achieved success

particularly where companies internalise the principles endorsed, they are ultimately aspirational being neither legally binding nor incorporating any form of grievance mechanism where they are not met. These are limitations common to the voluntary and self regulatory mechanisms that dominate the regulatory landscape in the field of business and human rights internationally.

Some individual states are taking steps towards strengthening regulation. Seeking to go beyond voluntary initiatives and the current status quo of an ostensibly 'sanction-free environment', John McKay MP introduced Bill C-300 to the Canadian Parliament in 2009. A relatively modest proposition, the Bill would have enabled Canadian government authorities to investigate complaints against Canadian resource companies operating abroad and to withhold public funds from companies found to have breached certain environmental and human rights standards. The Bill was motivated by reports of serious human rights violations related to Canadian resource operations abroad and the impact these were having upon the reputation of Canada internationally. The Bill was narrowly defeated by 140 to 134 following a significant campaign opposing the Bill undertaken by the mining lobby.

An issue at the heart of the Bill was the use of Canadian taxpayer monies to fund and support extraterritorial Canadian resource operations, even where credible evidence exists that such operations may be linked to environmental or human rights damage. The same issue is important here in Australia. Jubilee Australia for example is one organisation seeking to put the spotlight on the Australian government's export credit agency, the Export Finance and Insurance Corporation, and on a troubling lack of transparency and human rights considerations in its decision making.

In this respect, one avenue that might be considered is requiring public funding to be conditional upon the kinds of risk assessments endorsed by the Voluntary Principles being undertaken by Australian companies seeking government support.

In Australia, the public debate regarding the regulation of our mining companies abroad has been largely silent since the failed attempt in 2000 by the Australian Democrats to introduce the Corporate Code of Conduct Bill (Cth). That Bill sought to impose and enforce human rights standards on the overseas conduct of Australian corporations. Exceptions to this silence are those laws that have recently come into operation with extraterritorial dimensions that attach to corporations largely as an incidence of their application to natural persons. Examples include prohibitions on bribery, sex tourism and international crimes (e.g. war crimes, crimes against humanity, genocide).

The recent experience in Canada shows the polarisation of views likely to be encountered with any proposal to directly regulate Australian mining operations abroad. But as recent events remind us, it is an issue that cannot be ignored.