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Right to food, right to mine? Competing human rights claims in Bangladesh

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ABSTRACT

The right to food is increasingly evoked by a range of actors, but there is not sufficient critical analysis of distinct interpretations of what this right means in practice. Through examination of a mineral extraction project with agricultural implications, this article explores diverse human rights narratives and illuminates associated corporate efforts to minimize recognition of food as a fundamental right. A British mining company proposes the Phulbari open pit coal mine in an agriculturally important region of Bangladesh. Highly contested by affected populations, clashes in 2006 between the police and protestors turned deadly in the area. In February 2012, a group of UN Special Rapporteurs cautioned the Government of Bangladesh regarding human rights violations associated with the planned mine. They warned that the project would displace hundreds of thousands of people, while destroying fertile agricultural land. In contrast, an ongoing publicity campaign by the corporation attempts to promote their intervention as a positive step, fully compliant with international human rights and corporate social responsibility standards. Taking this case as an exemplar, the article illuminates the pursuit of mining profit and the distinct use of human rights narratives by corporations and UN Special Rapporteurs. These diverse actors represent the layering of voices weighing in on mineral extraction and associated right to food concerns. Collectively, these layered narratives represent a new terrain for the promotion and contestation of mining and highlight the need to scrutinize mining practices in light of social responsibility and human rights claims being voluntary and self-regulated.

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Valuing coal versus agriculture

“Coal under the ground is worth more than growing rice on the surface”.

[– Gary Lye, Executive Director of GCM Resources ([Melik, 2006](#))]

Corporate plans to displace 50,000 to 220,000 people for the GCM Resources Phulbari coal mine in Bangladesh are premised on the above economic valuation concerning the mineral extraction of coal, or the harvesting of rice for food. The question here is valuable to whom? Are economic gains to be prioritized over the food rights of people in an agriculturally vulnerable region of Bangladesh, a country with persistent malnutrition ([Shahabuddin, 2010](#))? Similar economic arguments are commonly made to justify displacement and land alienation for lucrative mining projects ([Moody, 2007](#); [Bebbington, 2009](#); [Bedi, 2013a](#)). Others contend that the issue is more complex than economics suggest, and respond to the proposed mine in myriad ways, including critiques framed around food insecurity or the injustice of extracting coal for export. These distinct

narratives are dynamically influenced by one another, and create a contested and layered terrain to defend or oppose the mine. This paper predominantly highlights how United Nations (UN) Special Rapporteurs frame the issue in relation to human rights, with particular emphasis on the right to food.

Food sovereignty, food security and the right to food are increasingly the subjects of international debates, scholarship and media attention ([Dreze, 2013](#); [Monsalve Suarez, 2012](#); [Lappé, 2011](#); [Giménez and Shattuck, 2011](#); [Patel, 2009](#); [Rosset, 2008](#)). Despite the current interest in these issues, gaps remain in related literature. Missing from emerging scholarship are the complex ways that the human right to food is evoked or ignored in relation to corporate interventions. Through examination of a mineral extraction project with agricultural implications in Bangladesh, this research explores diverse interpretations of human rights and associated corporate efforts to ignore or down-play the importance of food as a fundamental right, while emphasizing corporate social responsibility (CSR). Analysis of the human rights implications of a large-scale mining project provides a lens to examine corporate projects and related development and food ramifications for affected populations. Highlighting the layering

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of distinct voices and interpretations of human rights by corporations, UN actors, diplomats and government business representatives, it is possible to reflect on how these narratives alter the terrains of corporate interventions. How the right to food is evoked by rapporteurs, but not by the corporation or diplomats alludes to broader tensions related to the implications of mining and corporate practice.

The right to food is outlined in various international binding and nonbinding human rights obligations (Mechlem, 2004: 637). The Committee on Economic, Social and Cultural Rights defines the right to food as “the right of everyone to have physical and economic access at all times to food in adequate quantity and quality and to means of its procurement” (CESCR, 1999: 54). The United Nations Declaration on Human Rights confirms that “everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing”. Increasingly, communities threatened by food and land alienation related to interventions by companies, foreign and domestic states and institutions, reference the UN Human Rights system (Monsalve Suarez, 2012: 5). They are not alone in articulating concerns from a rights perspective.

In fact, the UN system designated the first rapporteur on the right to food in 2000. Under the Special Procedures of the Human Rights Council, UN Special Rapporteurs or working groups are appointed for particular mandates, including the monitoring and publicizing of thematically categorized human rights violations at a global scale or country-specific violations.¹ To illustrate an intervention in the right to food debate, this article analyzes a proposed mining project in Bangladesh and the diverse ways that the corporate proposer and rapporteurs reflect on the human rights aspects of the mine. This study precedes imminent fieldwork that will investigate these dynamics on the ground. Acknowledging the complicated history of food in Bangladesh, future research will examine local narratives of resistance and the politics of food.² The material presented is based on interviews with activists and academics, and document analysis of Bangladesh media resources and reports by the UN, Governments, civil society and the mining corporation. I draw from rapporteur and corporate statements as “forms of claim-making...which frame the world in a particular way, propagating various messages and moralities while editing out others” (Gardner, 2012: 6). This research engages with the public language used by the mining company to promote the mine, including CSR and human rights narratives. Their interpretation of human rights allows for the promotion of their commercial mining interests. In contrast, the rapporteurs frame the proposed project as a threat to food security and human rights. These distinct interpretations of mining demonstrate how CSR may be used as a tool to assert the language of rights, and to justify a project which may be detrimental to vulnerable populations and places.

I begin with a review of the interplay between corporations, development, extraction and the state, in particular in relation to critiques of corporate social responsibility. Next, I detail the human rights approaches adopted by the UN, incorporating the mandate of the rapporteurs. I examine how the rapporteurs critiqued the proposed mine using a human rights framework. In contrast, the mine proposer questions the rapporteurs’ conclusions and

counters that their practices adhere to voluntary human rights standards. This difference reveals tensions in how human rights and CSR are theorized and applied by diverse actors with varying levels of power to enact change or harm. Through this review of the micro-politics of a corporate proposal (Dolan and Rajak, 2011), the project promoter appears to prioritize the economic bottom line over the protection of fundamental rights. This contrast provides the opportunity to review broader global mining practices and project justifications shrouded in CSR language. The generic application of corporate responsibility standards across diverse places and people does not account for distinct contextual factors which may deem the most well intended CSR approach inappropriate or irrelevant. I propose this review as an opportunity to move beyond the application of legitimizing CSR narratives for any extraction project to a broader questioning of where mining is incompatible with the protection of human rights.

Actors and development justifications: corporate social responsibility and extraction

As corporations adopt a language of social responsibility as part of their ‘license to operate’, market-based approaches to development goals gain prominence. The concept of corporate social responsibility centers on corporate led initiatives to emphasize dialogue and voluntary action beyond the regulatory mechanisms of the state (Utting, 2008). CSR narratives have become a mainstream aspect of contemporary corporate “social” considerations, distinguished from CSR practices. The CSR movement has successfully framed itself as a solution in the face of social resistance and environmental conflict related to global corporate practice (Dolan and Rajak, 2011: 3). A gap, however, remains in scholarly work regarding the meaning, practices and contestations of these corporate engagements. In particular, the agency of transnational corporations should be problematized beyond simplistic ideas of globalization (Kearns, 2008), and the human rights implications of their interventions detailed.

The promotion of corporate-led development and economic models changes the role of the state, and how the state is experienced everyday by citizens. For example, in liberalizing India the state is central in acquiring agricultural land for corporate use (Sud, 2009). The Indian state is viewed by some as a proxy for corporate land interests, and is described by some activists as a linked corporate-state nexus (Bedi, 2013b). Similarly, to make lands available for a shrimp Special Economic Zone the Bangladesh state “used its prerogative of *eminent domain* to acquire these peasant holdings against their wishes, making such lands available in the first place to private interest groups” (Adnan, 2013: 117). Associated disenfranchisement across landscapes derives from the reality that other state or society aspirations may be bypassed through the promotion of a stable corporate climate. Related dispossession of people displaced or denied services are justified as a cost of progress. The associated inequities are not without contestation, witnessed by resistance against capital fuelled modernization (Harvey, 2006: 72).

The capacity of corporations to fulfill demands generally attributed to nation-states, including governance requirements or meeting the livelihood, food and employment needs of the poor remains underdeveloped. Despite this, there has been a growing case made since the early 2000s for perceiving corporations as well positioned to address the needs of the poor as laborers, traders and consumers (Prahald, 2006). Paradoxically, however, while states have the theoretical obligation to protect against human rights abuses by other entities, including corporations, in practice, the responsibility for safeguards falls on corporations with limited third party oversight. The enabling roles of nation-states in these debates need to be interrogated, particularly in relation to corporate involvement.

¹ Currently, there are 36 thematic and 12 country rapporteurs (Office of the High Commissioner for Human Rights, 2012a,b). While unpaid, the rapporteurs receive logistical and personnel support from the Office of the High Commissioner for Human Rights. Typically, the rapporteurs receive reports of human rights violations and seek information from governments regarding the detailed abuses. The UN reports that in 2011 their human rights mandates sent 605 such communications to 131 Governments, with almost three-quarters of the statements jointly authored by multiple rapporteurs (Office of the High Commissioner for Human Rights, 2012a,b).

² It is beyond the scope of this study to analyze the historical usage of ideas of food security in Bangladesh.

While not monolithic, arms of the UN play distinct roles in efforts to encourage or contest corporate social responsibility.

A cornerstone of Kofi Annan's tenure as UN Secretary-General, the UN Global Compact outlines ten human rights, labor, environment and anti-corruption principles that corporations should adhere to. Rather than corporate regulation, the Compact relies upon a 'learning networks' approach to encourage CSR. Critics have balked that the Compact is 'bluewash' which allows a corporation to adopt a "do no harm" stance while it "drape(s) itself in the UN flag without really mending its ways" (Ruggie, 2002: 4,28). The 'voluntary' nature of the principles is further contradictory, as it incorporates human rights principles that are legally obligatory (Stephens, 2002: 80).

The ability of corporations to undertake a no harm approach is contested, as in practice corporate 'amorality' and lack of personal accountability enable these entities to engage in harmful practices without moral misgivings. Further, CSR engagements respond to and inform politics and power relations in particular geographical contexts (Haalboom, 2012: 969). The principle of profit maximization is legally central to corporations bound to their shareholders, which undertake a morally neutral pursuit of this profit (Stephens, 2002). Corporations have an ambiguous, amoral status. They are legally defined as persons, but not ascribed moral agency, and expected to maximize shareholder profit. This allows for a lack of accountability or personal responsibility, as the diversity of actors from shareholders to board of directors enables individuals to shed their responsibility for the human rights implications of their corporate interventions. CSR conceptually and in practice attempts to marry opposing goals:

The discourse and practice of CSR attempts to standardize, categorize, measure, and routinize different forms of value (economic, ethical, legal) in supposedly "win-win" marriage of social and commercial objectives that works for all parties involved, even those with apparently conflicting interests.

[Dolan and Rajak, 2011: 6]

Although homogenizing CSR across distinct places, corporations wield global clout, power and influence policy. CSR as a tool to justify projects at odds with the human rights of those impacted is not a new phenomenon. Contemporarily noteworthy is the range of actors either encouraging or contesting CSR justifications in relation to human rights and related reconfigurations of the state. Multiple layers of mediation by non-state actors and others, from civil society organizations to corporations, muddle state-centric visions of world affairs and practices of extraction. Select actors intentionally draw from a rights framework to forewarn possible or current violations associated with food loss and displacement in particular cases, including recently in Bangladesh. Resistance articulated by these individuals, groups and movements provide a new form and level of pressure and accountability for both corporations and governments promoting large-scale projects with land and food implications, albeit with limitations.

These actors alter the landscape for practices of extraction, prominently with mining in developing countries. This terrain dynamically evolves in contexts shaped by economic and development models which can lead to new positioning of the state in relation to corporations. This activism represents the growing importance of actors beyond the nation-state globally, particularly in relation to corporate claims of social responsibility that are frequently voluntary principles outside of the purview of national regulation and subsequently self-reported, as will be examined.

The CSR framework can serve as a hook for affected communities, social movements and/or transnational networks to stake their claims for rights accountable corporate practice, with or without state human rights recognition (Haalboom, 2012: 969).

Through this perspective, it is possible to tease apart the "progressive possibilities of the present, [where] non-state and non-violence play a significant role in shaping the modern world order" (Kearns, 2008: 1601). However, the narratives of contestation or legitimization used by diverse actors, from activists to rapporteurs to communities to corporations, are disparate and allude to different visions of rights and responsibilities.

The range of mining companies adopting CSR language demonstrates the endurance and spread of these concepts, while underlying the place specific issues and actors which ultimately shape how the corporate narratives are received, responded to and potentially altered. Attributed to liberalizing economies and resource depletion in developed countries, mining companies increasingly look to developing countries for extraction opportunities (Kapelus, 2002: 277). This shift has been accompanied by enhanced scrutiny of mining companies operating in developing countries, and their subsequent adaptation of northern CSR strategies to continue or expand extraction (Jenkins, 2004). The desire of mining companies and their Public Relations managers to aggressively promote CSR policies and programs leads Kapelus (2002: 279) to conclude that the CSR global agenda has become a "business in its own right".

Keenly aware of the tendency for the mining company to be portrayed as an entity that "lurks monolithically and often menacingly in the background of many anthropological accounts of communities affected by mining operations" (Ballard and Banks, 2003: 290), it is instructive to review messier interpretations of corporate interventions. Focused on mining in Papua New Guinea, Banks (2006) details how communities and miners interface with sustainability discourses espoused by companies, and cautions against extremes in characterizing the social implications of extraction. Betwixt the binaries of "corporate imperialism" and corporations oblivious to human rights violations associated with their operations, lies a space that is dynamic where mining corporations influence, but also adapt in response to the social circumstances on the ground (Banks, 2006: 271).

These ideas will be reviewed and explored through the example of the Phulbari mine in Bangladesh, introduced in the following section. Through analysis of the various statements of condemnation and justification for the mine, there is an opportunity to understand corporate projects, mining and food in Bangladesh and beyond. The complex role of UN rapporteurs and inflecting relations between nation-states and corporations and implications for people's access to food are analyzed. The mine remains in proposal stage, and analysis of the narratives of mining justification reveal the tools and terms used to persuade and prod investors, the host country, the general public and potentially affected communities to proceed with the extraction of coal. While not novel, the fissure between corporate and government energy claims and ground agricultural realities is immense. Before moving on to discuss rapporteurs and human rights, the extent of the Phulbari mine will be reviewed.

Voices of contestation and justification

Unprecedented impacts are projected for the \$1.1 billion Phulbari proposal to extract 16 million tons of coal from northwest Bangladesh. Phulbari represents the only project for the British company, Global Coal Management Resources plc (GCM) (formerly Asia Energy). As a result, GCM lacks experience in undertaking an intricate, long-term mining operation (Moody, 2008). To assume a company with no demonstrated track record in implementing complex mineral extraction projects will proceed without challenges is naive. Delayed for several years following agitations, 80% of the 6000 hectares required for the open-pit mine is

agricultural land, occupied by 40,000 people (Jansen, 2009: 3). The UN rapporteurs estimate the mine's impacts to be more extensive, including the immediate displacement of 50,000 to 130,000 people, and the further displacement of 220,000 as irrigation channels and wells dry up. The rapporteurs further that extraction of coal will ruin 12,000 hectares of fertile agricultural land, while disrupting the clean water supply of 220,000 people (Office of the High Commissioner for Human Rights, 2012a,b).

The scale of the project and associated food, water and livelihood implications for a large number of people drive local, national and international opposition to the Phulbari mine. During resistance to the coal project in August 2006, Bangladesh defense forces fired on and killed three protestors, and wounded over three hundred people out of a crowd of 70,000 people. A Phulbari leader describes, "three young lives were sacrificed for the sake of our whole community's right to live on our lands" (Luthfa, 2011: 10). The mine came to a halt during emergency rule in early 2007.

The mine proposal comes at a time when the contemporary political economy of Bangladesh is in flux and characterized by violence (Feldman and Geisler, 2012: 971). With high population density, high agricultural employment dependence and shrinking arable land, Bangladesh provides an important contribution to the land and food debates (Feldman and Geisler, 2012: 973). Despite land reforms in the 1970s and 1980s, poor peasants predominantly do not enjoy the benefits of formal rights to state lands (Adnan, 2013: 101–102). This may be attributed to uneven access to and ownership of agricultural lands. Although 50 percent of rural households are landless, land reforms and improvements in agricultural productivity in Bangladesh are hindered by the "distribution of power between factions engaged in primitive accumulation" (Khan, 2004: 77).

Related dispossession exacerbates food challenges for the nation's poor. While the constitution of Bangladesh guarantees that the state is responsible for ensuring that citizens have access to basic necessities, including access to food, major obstacles make affordable and accessible food unattainable for much of the population (Shahabuddin, 2010). Persistent poverty and malnutrition are enduring issues for the nation, where half of the population cannot afford adequate food for basic nourishment (Shahabuddin, 2010: 117). Beyond agriculture, the Phulbari project poses further challenges in Bangladesh, a country with a limited regulatory environment and a bad environmental track record (Moody, 2008: 4).

The issue of energy security is a critical component of the state promotion of coal extraction. The government is preoccupied with efforts to secure energy, including electricity to meet individual and commercial needs. While 41% of the country has electricity, 95.7 million people remain without access (International Energy Agency, 2011). New spaces and forms of energy extraction in Bangladesh alter national energy debates, and provide a new landscape for CSR intersections. CSR is a common tool transnationally, but related narratives and "community engagements" are new to the extractive industry in Bangladesh (Gardner, 2012). As a result, there may be a range of ways that impacted people perceive and experience proposed and actual development benefits associated with extraction. Aspirations of economic and social transformation among communities living in poverty are exemplified in Northeast Bangladesh. Gardner (2012: 3) notes how one resident living close to a proposed natural gas field expressed that, "under our fields is gold". Diverse expectations and experiences with extraction exemplify the complexity associated with development and mining.

An expert committee reviewed the feasibility of coal extraction in Bangladesh in 2012, and recommended open-pit extraction at Phulbari to meet national energy demand. Government statements emphasize the importance of extraction, but do not explicitly state the role of the corporate promoter in the process. Rather,

government statements demonstrate determination to move forward with nationally led coal extraction. Dr. Tawfiq-e-Elawi Chowdhury, the Prime Minister's Power and Energy Advisor, highlighted the importance of generating in-country studies and approaches on coal mining as, "national interests cannot be ensured by a foreign company" (Jahangir, 2012). In place of incomplete assessments from the company, the "Institute of Water Modelling will conduct the survey first and then the government would determine the coal-extraction method" (Jahangir, 2012). The country held national elections in January 2014, marked by low turnout and violence. The shifting political context may also alter the government's approach to the Phulbari project.

The dynamic political landscape and recent government statements generate ambiguity about the status of the project. When GCM reinvigorated government interest in the mine following Bangladesh elections in late 2008, a number of competing voices entered the scene. In an unexpected turn, WikiLeaks cables documented that the former United States (US) Ambassador to Bangladesh, James Moriarty, urged the nation's chief energy advisor, Dr. Chowdhury, to approve the project as "open-pit mining seemed the best way forward" (Karim, 2010). Citing US financial links to the mining company, Moriarty noted that "Asia Energy, the company behind the Phulbari project, has sixty percent US investment" (Karim, 2010). This diplomatic intervention, unwittingly revealed to the public, provides insight to the range of pressures for the government to pursue or stop the project.

On August 26, 2012, thousands gathered with the main opposition movement to call on the government to cancel the Phulbari mining project. The day annually serves to commemorate those killed in the 2006 agitation, and is referred to as 'Phulbari Day' by those opposing the mine. The rally leaders threatened a more intensive protests if the government did not ban the method of open coal mining proposed for Phulbari (Daily Star, 2012). Anti-mining activists call for "a moratorium on foreign companies, the method of open-cast mining and the export of coal (*bide-shi na, unmuhto na, raptani na*)" (Chowdhury, 2012: 23). Continued political uncertainty and agitation makes it unclear whether the mine will proceed, despite strong diplomatic connections of the corporate promoter.

Further government interventions on behalf of the corporation came to light during Parliamentary questions in the United Kingdom (UK). The Minister for International Development and Minister for Business, Gareth Thomas, detailed how the British High commission in Bangladesh advocated on behalf of the corporation's proposed mine:

We have provided support to Global Coal Management Resources PLC, through the British high commission in Dhaka. They have lobbied to ensure that the Government of Bangladesh take the company's interests into consideration and do not prohibit opencast mining. The British high commission will continue to remain in touch with the company and will represent their interests as appropriate. The Bangladeshi Caretaker Government's new draft coal policy leaves the way open for opencast mining in Bangladesh in the future.

[House of Lords. House of Commons, 2009]

The above revelations expose the range of voices seeking to influence the Bangladesh government to support the mine. Further voices complicate the portrayal of the mine as a positive step, and broaden the terrain for understanding the layers of corporate interventions and contestations. Nationally, the narrative of protest highlights the injustices associated with the energy justifications of the project. The organization responsible for much of the nation-wide protests against Phulbari, the National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports, highlights

that 80% of the energy from the project will be exported to India, rather than used domestically. While one of the regions, Birampur, where the mine is proposed shares a border with India, the National Committee details that the coal would be transported via the ecologically sensitive UNESCO world heritage Sundarbans region, and ultimately transferred to the Indian state of Odisha by sea (Interview, January 2014). Their resistance directly critiques the energy justifications for coal extraction furthered by government officials.

Dr. Samina Luthfa, an activist scholar at Dhaka University describes how protest narratives in the proposed mine area include agriculture, land, livelihoods and culture themes. Potentially affected and displaced peoples do not frame agriculture in relation to human rights. Rather, potentially project affected persons emphasize the high agricultural productivity in the region. In defending the area against the project, local people described how they are the granary of Bangladesh, providing most of the country's rice, explains Luthfa. They explain how there is 200% crop intensity in the area, with three crops grown per year. While these concerns have clear linkages to the right to food agenda, the human rights terms are not evoked locally.

In addition to local and national actors disputing the mine, international non-governmental organizations act to halt the mine. A recent submission by the World Development Movement to the UK Parliament regarding the Phulbari mine reflects the contradictions associated with the work of the British High Commission. "A British company is pursuing a project overseas with large human rights implications and no scrutiny by authorities in the UK. Moreover, the UK government has been lobbying in Bangladesh for the mine to go ahead, even though it has not investigated the implications of the mine for local people" (House of Lords. House of Commons, 2009: EV 136).

Civil society allegations of human rights inconsistencies were recently elevated through a formal dispute process of the Organization for Economic Co-operation and Development (OECD, 2013). The OECD, which is comprised of 34 nations, promotes "policies that will improve the economic and social well-being of people around the world" and helps these nations consider the "environmental implications of social and economic development" (OECD, 2013). The organization provides evidence-based reviews of corporate behavior in relation to the OECD Guidelines for Multinational Enterprises through a formal complaint process. In 2011, the guidelines were revised to include a new chapter on human rights. This addition provides a hook for advocacy organizations demanding human rights accountability from corporations based in OECD member countries. The OECD does not accept all complaints for investigation, with only about half formally registered as complaints (Interview, December 2013). Following research and conversations with the involved company and accuser, in certain cases the OECD makes a formal statement on the issue.

In June 2013, the UK National Contact Point for the OECD formally accepted a complaint on GCM's Phulbari mine project submitted by two non-governmental organizations, the International Accountability Project and the World Development Movement. Currently, the OECD is investigating the complainants' assertions that the:

open cast mine planned by GCM will necessarily adversely affect human rights by displacing large numbers of people, including indigenous communities, destroying the basis of their subsistence and livelihoods, and having widespread, severe and lasting impacts on the local environment, food security and water supply for the population in a large area surrounding the mine.

[Murdoch et al., 2013: 3]

The review does not presume that "the NCP considers the company has acted inconsistently with the Guidelines" (Murdoch et al., 2013: 3). It does acknowledge that guideline violations may have happened, and as a result caught the attention of GCM shareholders and investors. A financial news organization noted that the "acceptance of the complaints by OECD for investigation into the alleged human rights violations at Phulbari coalmine site dealt a serious blow to GCM" (Ahmed, 2013). Following these recent setbacks, the company began the process of scaling down their operations in Bangladesh (Ahmed, 2013).

The above narratives affirming or questioning mining do not form in silos, but instead are informed by one another and the broader national and international contexts for human rights. The landscape for the mine changed when a set of UN actors amplified concerns over the project, demonstrating the growing use of human rights as a tool of contention. In the following section, the UN human rights system, including the role of the rapporteurs, is reviewed and problematized. The rapporteurs selectively critique corporate or state activities with human rights implications. A brief background to the rapporteurs will be followed by analysis of their statement on Phulbari.

Mandate of UN special rapporteurs

"The Government of Bangladesh must ensure that any policy concerning open-pit coal mining includes robust safeguards to protect human rights. In the interim, the Phulbari coal mine should not be allowed to proceed because of the massive disruptions it is expected to cause".

[Office of the High Commissioner for Human Rights, 2012a]

In 2012, a group of UN Human Rights Special Rapporteurs issued a stern statement regarding potential human rights violations associated with the Phulbari coal mine, including the above statement. Through this act, they became the latest actors to enter the land, food and energy debate. Their contribution is quite unique, as they are not brokering or encouraging the deal. Instead, they are questioning it using a human rights framework. The rapporteurs represent one aspect of a broader UN system dedicated to human rights, however in practice their impact is unclear.

Although the UN made early advances in defining and spreading notions of human rights, it has proved unable to meaningfully advance the struggle for the universal protection of rights (Dudai, 2007: 1261). Despite a plethora of human rights conventions, treaties, rapporteurs and official statements or declarations of condemnation, global abuses of fundamental rights endure. The same fate plagues the rapporteurs and broader Office of the High Commissioner for Human Rights who assist, "but their potential to achieve policy changes in the monitored countries is limited; when a political window of opportunity is opened, the UN human rights machinery can step in and contribute to the process, but it is rarely able to bring about political change by itself" (Dudai, 2007: 1261).

The rapporteur process and the individuals associated with the program are not uncontentious. Civil-society organizations critique the politicization of the rapporteur appointment process (Pinheiro, 2003: 7–8). Because their access is dependent on host countries, their engagements can be problematic. Rapporteurs have the opportunity to "serve as voices for the voiceless and as spokespersons for the victims, but (their) effectiveness depends on maintaining a dialogue with host countries and concerned capitals around the world" (Pinheiro, 2003: 10).

Despite political and procedural limitations that mitigate against rapporteurs, incremental changes and pressure from multiple angles may heighten awareness of human rights issues. Rapporteurs "may not produce immediate changes, but they do

contribute to the struggle for human rights; they increase transparency and accountability” (Pinheiro, 2003: 12–13). Specifically, their reports ask governments to respond to alleged human rights violations and provide the opportunity for alternatives to be proposed. While they lack formal power, they nonetheless can elevate a human rights cause to the international stage.

Food as a fundamental right?

Undergirding the human rights system is the issue of food insecurity, which is contested conceptually. In 2012, seven UN rapporteurs, including the rapporteur for the right to food, used the term *food insecurity* to describe the risks for the 40,000 people impacted by the proposed Phulbari mine in Bangladesh. While there are a multitude of food security definitions (Maxwell, 1996), I will focus on the UN definitions to contextualize how the rapporteurs evoke food insecurity, as their use of food insecurity terminology draws from the UN Food and Agriculture Organization (FAO). The term was originally coined during the food crises of the 1970s around ideas of price and production stability. The 1974 World Food Summit defined food security in relation to the supply of food:

Availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices.

[Food and Agricultural Organization, 2003: 27]

The 1983 FAO food security definition expanded to incorporate the ability of vulnerable populations to access food, recognizing that availability of food alone does not ensure that the most vulnerable receive physical and economic access to available food (Maxwell, 1996). Following subsequent reinterpretations of the concept, the FAO rebranded food security in 2001 to reflect a range of socio-economic issues, preferences and healthy living outlined in The State of Food Insecurity:

Food security [is] a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.

[Food and Agricultural Organization, 2003]

Patel (2009: 664) critiques the latest FAO definition, as it fails to address by whom and how the food system is controlled and ultimately is “both a cause and consequence of its increasing irrelevance as a guiding concept in the shaping of international food production and consumption priorities”. The politically neutral idea of the recent definition of food security allows states to side-step specific food commitments without domestic accessibility and accountability. This approach further does not acknowledge that a small minority structure our food system, so “to talk of a *right* to shape food policy is to contrast with a *privilege*” (Patel, 2009: 667). More recently, the idea of food sovereignty is encouraged as a more holistic approach to food issues recognizing the importance of who controls the food system and the broader political system within which it is embedded. La via Campesina, an international peasant movement, noted that food sovereignty is a precursor to food security, and in 1996 affirmed that “food is a basic human right” (La Via Campesina, 1996).³ Though not yet fully enshrined, this movement shows the ways that the right to food is evoked, but not agreed upon.

³ In the 2007 Declaration of Nyéléni, La via Campesina defined food sovereignty as, “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations” (La Via Campesina, 2007).

Food insecurity, food sovereignty and the right to food are distinct concepts, and yet at times they can be on a continuum or conflated. The use of food insecurity in the Phulbari mining condemnation statement reflects the position of the UN affiliation of the rapporteurs, while they also maintain their individual roles as rapporteurs representing various human rights. Olivier De Schutter, the current UN right to food rapporteur, explicitly links land access and livelihoods to the fundamental guaranteed to the right to food. De Schutter earlier explained his position on this matter:

The human right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without suitable alternatives; if local incomes were insufficient to compensate for the price effects resulting from the shift towards the production of food for exports; or if the revenues of local smallholders were to fall following the arrival on domestic markets of cheaply priced food, produced on the more competitive large-scale plantations developed thanks to the arrival of the investor.

[De Schutter, 2009: 3]

Globally, of the estimated 925 million people categorized as food insecure, nearly half depend on subsistence agriculture and are plagued by land loss, poor soil, or lack of irrigation (De Schutter, 2011: 256). Drawing from broader concerns of food insecurity, the rapporteur statement frames the Phulbari mining project and associated land grabbing and food implications to a range of human rights violations. The use of the right to food trope derives from the growing prominence of the right to food agenda in development, and from the regional changes in right to food legislation. For example, India passed the National Food Security Act in 2013, which recognizes the right to food and provides grain subsidies for two-thirds of the nation’s population. The *Right to Food Campaign India (2013)* led the struggle for the legislation to respect that, “everyone has a fundamental right to be free from hunger and under-nutrition. Realizing this right requires not only equitable and sustainable food systems, but also entitlements relating to livelihood security such as the right to work, land reform and social security” (Right to Food Campaign India, 2013). The government of Bangladesh has not adopted right to food legislation, although there are national programs to address persistent food insecurity and mechanisms to address food challenges during natural disasters (Shahabuddin, 2010: 128).

The seven UN rapporteurs representing the right to food, right to safe drinking water and sanitation, right to adequate housing, indigenous peoples, freedom of opinion and expression, freedom of peaceful assembly and of association, extreme poverty and human rights issued a statement criticizing the Phulbari mine. While it is not unusual for statements to be co-authored by multiple experts, the range of rapporteurs included in this condemnation displays the extent of potential violations associated with the mine. The main themes highlighted by the rapporteurs include food insecurity, water insecurity, displacement and indigenous rights and the right to democratic dissent.

A critical aspect of the statement focuses on potential food insecurity, as the project is proposed for Bangladesh’s most productive agricultural region. The argument centers on the importance of subsistence farming for Bangladesh, and responsibilities to protect the right to food. De Schutter, notes that “nearly half the Bangladeshi population is food insecure, and nearly one quarter severely food insecure. Local food production should be strengthened, not sacrificed for industrial projects” (Office of the High Commissioner for Human Rights, 2012a).

For Phulbari, the rapporteurs warn that entire indigenous habitations, including the villages of Santal, Munda, Mahili and Pahan will be affected (Office of the High Commissioner for Human

Rights, 2012a). Such land alienation leaves people increasingly cut off from their livelihoods, commercial interactions and community connections (Cernea, 2000: 23). Further, development related displacement is proven to lead to impoverishment and enduring community and environmental challenges (World Bank, 2001: 1). The potential impact of such displacement can be severe:

The displacement of small-scale farmers from the lands they depend on would further worsen the situation of a group, representing between 1.5 and 2 billion people worldwide, which is already marginalized, and which represents up to half of the people who are too poor to feed themselves.

[De Schutter, 2011: 259]

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[De Schutter, 2011: 259]

The rapporteurs estimate that the project will “displace hundreds of thousands of people and lead to the violation of fundamental human rights” (Office of the High Commissioner for Human Rights, 2012a). This language forces awareness that displacement is a rights concern, and that there should be consideration for both *in situ* and *ex situ* project related displacement. *In situ* displacement does not occur directly at the onset of the project, but instead could be characterized by a lengthy dispossession over time (Feldman and Geisler, 2012: 971). In contrast, *ex situ* displacement involved the immediate extraction of people from their land, homes and livelihoods (Feldman and Geisler, 2012: 971). The unequivocal use of language about a range of displacements and impacts contrasts with corporate claims that the project will impact a fixed number of compensated people, when the project is estimated to have residual impacts for years to come as the water, soil and livelihood options in the region change dramatically.

Underlying the food and displacement issues are apprehensions about the lack of space for democratic dissent. Following the use of violence and intimidation against protestors, the rapporteurs note that prior, informed consent is vital and those impacted “must not be intimidated out of exercising their rights to express their opinions and peacefully assemble” (Office of the High Commissioner for Human Rights, 2012a). The experts call on the government of Bangladesh to integrate human rights principles in development planning. Through this approach, they acknowledge that democratic rights and space for dissent are prerequisites for the protection of fundamental human rights. In conclusion, they note that, “the Phulbari coal mine may entice developers. But for many Bangladeshis the wholesale environmental degradation of the Phulbari region will exacerbate food insecurity, poverty and vulnerability to climate events for generations to come” (Office of the High Commissioner for Human Rights, 2012a). Their statement garnered international attention to the project, and the project promoter felt compelled to publically contest their assertions.

Flexible moralities and the limits of voluntary agreements

In response to the rapporteurs’ statement, the mine promoter GCM Resources sent an open letter to De Schutter. GCM (2012a,b) argued that their statement misrepresents the project’s impacts and related corporate efforts to mitigate them. The corporation detailed that the UN experts do “not recognize the benefits that the Project will bring to the population of the country as a whole and to the people of the Phulbari area” (GCM Resources, 2012a,b). The company stated that the project has “the potential (and arguably an obligation) to enhance the human rights of the people they affect” (GCM Resources, 2012a,b). It is noteworthy that GCM uses the term ‘human rights’, but they fail to define it. This leaves ambiguity regarding what rights and responsibilities they invoke through their statement. It further provides the opportunity for the company to frame human rights as aligned with their commercial interests.

GCM argued that agricultural productivity will increase, which they assert will stem from project-related year round irrigation (GCM Resources, 2012a,b). However, the letter does not clarify where people will be able to acquire new, fertile land for farming. Following this assertion, we would do well to ask more about the ways we theorize agricultural equity. Further, is the right to food not symmetrical with marketplace driven models of economic justification?

The letter exposes flaws in efforts to hold offending corporations accountable via nonbinding human rights standards. The company applies language of rights without demonstrating how their knowledge of the concept translates into the protection of rights for people displaced or affected by the proposed mine. For example, GCM highlights how all of their employees receive training in human rights (GCM Resources, 2012a,b). This training does not translate into effective human rights practices. Further, the company does not address the right to food concerns associated with the mass displacement of people for the mine. Their statement presumes that displacement is inevitable for commercial promotion, while claiming that subsequent operations will be aligned with a nebulous notion of human rights. The fissure between narratives of justification and practice demonstrates that for the corporation CSR is a “ritualized performance” (Dolan and Rajak, 2011: 5). In effect, the adherence to human rights principles appears to be more performative rather than substantive. Through this logic, they fail to understand that the project associated *ex situ* and *in situ* displacement and agricultural loss will fundamentally deprive people of their right to food. This may be emblematic of a broader tension associated with the corporate parameters of social responsibility and the parameters of human rights activists. Abstract human rights may be difficult to put in action via a corporate intervention.

The company is a signatory of the UN Global Compact. Principle Two of the Compact requires that corporations not be complicit in human rights abuses. In the face of vast potential human rights violations, GCM’s claims of global accountability highlight the limitations of voluntary principles. A review of the project’s resettlement plan reveals similar mis-steps. Written with the Asian Development Bank (the Bank has since withdrawn from the project), the resettlement plan acknowledges that both displaced and host communities are concerned about their future ability to farm. In response, the resettlement plan fails to address the challenge associated finding replacement fertile agrarian land for the 40,000 people proposed to be directly uprooted for the mine. Instead, they offer compensation and claims of training without stating whether the training will be linked to agriculture. For example, in response to the reality that displacees expressed concern about the “loss of agricultural land and the resultant negative

impact on agricultural production” the company offers that all project-affected persons will receive “compensation for all land and asset losses” and “skills and training programs” (Asian Development Bank and Asia Energy, 2006: 9–10). The corporation avoids specifics on future resettlement and compensation plans as the project evolves. They state:

The complexity of the Project, involving the acquisition of large tracts of land and the resettlement of a substantial number of households and business enterprises over a relatively long period, precludes the establishment of a fixed blueprint. People’s compensation and livelihood-earning preferences are bound to change as they witness the implementation of mining and resettlement activities, and as new opportunities emerge”.

[Asian Development Bank and Asia Energy, 2006]

Corporations draw from specific models of progress which presume growth and particular ideas of development. They then legitimize extraction by attesting to promises of skills and training that would presumably increase employability and ability to meet the vision of emerging economies industrializing and turning low-income agrarian economies into ‘modern’ middle class consumer classes. This generic approach misses contextual and cultural differences among those who would be impacted by mining.

The GCM documents adopt some language reflecting the needs and interests of displacees, but their narrative clouds the challenges associated with loss of direct access to food and livelihood resources. Historically, movements and communities contested similar development induced injustices. However, the particular confluence of information and voices associated with lauding or contesting the Phulbari mine highlights new actors and new access to information through channels including Wikileaks. The infusion of these voices complicates efforts to narrowly justify the mine without clarity of the precise right to land and food claims expressed by a range of actors. The Phulbari case demonstrates limitations of voluntary principles, particularly given the inadequate framework for environmental regulation in Bangladesh.

Though GCM emphasized dialogue and voluntary action, their CSR activities have shortcomings. Human rights are not requirements, but appear to be tokenistic gestures which offer legitimization for corporate projects. Corporations have become increasingly savvy in adopting CSR language and principles. The apparent mainstreaming of CSR needs to be continuously problematized, as some free rider corporations may appropriate the language without altering their practice. Caution is urged to avoid the indiscriminate application of CSR in mining. This case alludes to the need for more nuanced interrogations of the inevitable discrepancies between CSR rhetoric and the diverse realities of CSR practice on the ground. As with contextual diversity, there is a range of ways that different corporations put their CSR into action, with some more tokenistic than others. In response, we as researchers also need to study the different interpretations and manifestations of standardized CSR claims.

Voluntary principles legitimize processes that deserve examination. This case highlights the need to scrutinize mining practices in light of CSR claims being voluntary and self-regulated.

Nonbinding corporate measures to ensure human rights or social protections may not be sufficient to meet demands from civil society for accountability (Maassarani et al., 2007: 136). The example of land grabbing demonstrates how voluntary principles normalized the process of land deals, rather than providing a new forum to fundamentally contest the acquisition of agricultural land.

Borras and Franco (2012: 3) trace the ‘re-framing’ of land rights when the International Food Policy Research Institute established the need for a code of conduct for the practice in 2009 and the

World Bank proposed Principles for Responsible Agricultural Investment. These initiatives shift the focus from questioning the acquisition of agricultural land, to accepting the mainstreaming of land grabbing. In so doing, the process is set as ‘inevitable’ and framed as a scenario where all ‘stakeholders’ can gain. Also, voluntary principles divert attention from concerns including “coming to terms with how rural poor people’s land (and water) rights, interests and concerns must be prioritised and promoted, and not just recognized and protected” (Borras and Franco, 2012: 3). This raises broader questions about efforts for corporations to be capital-generating entities, while also promoting social responsibility.⁴

Theoretically, international principles promoting a range of fundamental rights are progressive steps, and some corporations rise to the occasion. However, the potential good of principles is unraveled by corporations such as GCM who use them as a shield to guard themselves from meaningful changes on the ground. Proponents of the UN Global Compact argue that calls for mandatory criteria and independent monitoring of corporate activity push the principles to fulfill a mandate contradictory to the ‘learning network’ approach (Ruggie, 2002: 31). However, when such principles provide authenticity to a process that is incongruent with protecting the rights of those affected, there are severe implications. While many corporations may proceed in good faith, there will always be rogue companies that pursue their goals without concern for undertaking real reform.

Recognizing that possible implementation of the Phulbari mine would be complex and may lead to local ambiguity regarding potential opportunities or challenges (Banks, 2006), the moral implications remain theoretical while the mine is only proposed. If the project were to proceed, the company would have the power to make decisions that could directly impact people’s access to food. “At a practical level (when stakeholder claims are deemed to take precedence), the tension involves the ability of the firm’s board and management to exercise their moral will to take decisions that go against their interests (and those of shareholders)” (Kapelus, 2002: 290). GCM Resources adopts the appropriate language to assume the moral high ground, but there is no guarantee that food sovereignty will take precedence above and beyond commitments to shareholders. CSR language provides a tool for the company to clothe these intentions in narratives that have become the mining industry standard.

When not to mine?

The fate of the proposed Phulbari mine and those it would impact is embedded in the broader Bangladesh context, including the agricultural context and political response to the mine. While transnational activism arguably ‘hollow(s) out’ the authority of the state (Power, 2005: 20), in this case the policy choice of the government will prove critical. The power of the range of voices contesting the mine is dependent on how the Bangladesh government balances human rights warnings with commercial interests, energy security and diplomatic pressure. The Bangladesh government did not issue a public response to the rapporteurs’ warning. Through the OECD review, it came to light from the UN’s Special Procedures Committee that “rapporteurs are awaiting a substantive response from the Government of Bangladesh on the issues” (Murdoch et al., 2013: 10). The rapporteurs further “welcome Prime Minister Hasina’s acknowledgement that coal extraction in Bangladesh would threaten densely populated areas”, but note that “mixed messages, however, are emerging and investors continue

⁴ One corporate association that encourages voluntary CSR principles, the International Council on Mines and Minerals, is challenged for generating pro-industry knowledge and for ‘green-washing’ as a means to protect the financial stability of members (Bebbington et al., 2008: 904).

to push forward” (Office of the High Commissioner for Human Rights, 2012a). They seem to allude to GCM Resources’ February 1, 2012 report which claimed that they are engaged with government discussions “that would strengthen the Phulbari proposition” (Jackson, 2012). The WikiLeaks cable revealed that following his meeting with the US Ambassador, the Prime Minister’s energy advisor agreed to encourage the project via parliamentary process (Karim, 2010). There is also speculation that the corporation will provide the government with a 30% stake in the project (Ahmed, 2013).

The successful articulation of agrarian and food grievances framing human rights varies greatly in relation to the issue, context and legal frameworks for resistance (Monsalve Suarez, 2012: 10). In this example, though diverse actors represent layering of narratives influencing the Phulbari mine decision, there are still important voices missing from the scope of the article. Future field-work will explore the evocations of mining critiques from communities and political parties in Bangladesh. Empirical engagement in the proposed mine area will reveal the distinct ways that mining proposals are experienced and contested. There remains ambiguity regarding the project’s economic potential, and further interviews will potentially cast light on the mixed impressions or conceptualizations of mining.

The diverse interpretations and use of human rights narratives expose the challenges associated with voluntary corporate principles, which incorporate legally mandated human rights (Stephens, 2002: 80). The UN Global Compact is used strategically by GCM Resources to legitimize their mining proposal as in accordance with international best practice. However, this voluntary corporate regulation lacks a mechanism to legally verify or bind member corporations to UN enshrined human rights, including the right to food. As a result, corporations have extensive opportunity and ability to frame their projects in a manner that is most beneficial towards their amoral pursuit of profit. In relation to UK companies, the World Development Movement noted in evidence given to the UK Parliament that Phulbari demonstrates “that there needs to be greater regulation of corporate activity by the UK government, rather than the government acting purely on behalf of UK business” (House of Lords. House of Commons, 2009: EV 135).

The UN rapporteurs occupy an unusual perch to question mineral extraction, and openly critique corporate and state practices which threaten the right to food and other human rights. Their activism represents the power of actors beyond the state to make claims about voluntary rights principles, beyond the scope of national regulation. In concert with local and national critiques, condemnation from the rapporteurs re-politicizes what is often a de-politicized space for companies to make CSR claims which do not recognize contextual power relations and unevenness. This reveals the dynamic nature of the terrain for promoting or contesting extraction. The narratives respond to or are influenced by the panoply of actors involved, and in reflection of changes in the context for the mine proposal. Collectively, these diverse actors represent the layering of voices weighing in on mineral extraction and associated right to food concerns.

The layered narratives and interpretations of the right to food represent a new terrain for the promotion and contestation of mining. It is nascent for a few distinct reasons. First, access to diplomatic information is increasingly made public through channels such as Wikileaks. Second, UN rapporteurs are a relatively new set of actors with the capacity to amplify rights concerns globally. Third, new government efforts to question corporate ethics, including those by the UK Parliament, reflect growing public interest in corporate accountability and transparency within and beyond national boundaries. Fourth, the relatively new OECD human rights review of corporate practice in relation to the Guidelines for Multi-national Enterprises provides an alternate forum to elevate civil

society or movement claims of human rights violations. Despite the range of voices altering the terrain for mining implementation or contestation, the stark reality remains that when the economic bottom line remains the main corporate driver, corporate amorality and lack of binding commitments permit human rights violations in the pursuit of mineral extraction and energy security.

Both CSR and voluntary standards attempt to mitigate the potential negative impacts of corporate interventions. While there is merit in the impetus behind such efforts, in practice the implementation appears to be a “one size fits all” approach to addressing social, economic and environmental change associated with extractive industries, without clear guidance for turning rhetoric into meaningful practice appropriate to distinct contexts. As a result, generic implementation across diverse places can prove problematic and inappropriate for particular settings. Mining is necessary to sustain humans on earth, but are there particular places where the social and environmental consequences are too great, even if the company adopts CSR narratives? Moody (2007) suggests that there are places that should not be mined because of the grave risks associated with extraction, and that the mining “industry” is not in a position to be entrusted with these decisions. Moving away from legitimizing narratives as a solution to any proposed extraction to this form of baseline questioning would depoliticize the economic, energy and/or CSR justifications for projects such as Phulbari.

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