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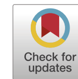

Arc of avoidance: An analytical framework for analysing mining companies' actions in the global South

Ainsley Elbra

School of Social and Political Sciences, University of Sydney, Australia

A B S T R A C T

Given the relationship between mineral extraction and conflict, human rights violations, and environmental degradation, there is an urgent need to examine how to mitigate harm in a more mineral intensive future. Thus far the literature has focused on two areas, the governance gaps present in the global governance of multinationals and the private governance scholarship which examines the rule-making power of mining firms. This paper argues that this story of mining firms' power is incomplete. Mining MNCs not only make rules, they also actively avoid regulations put in place to temper their impact on communities. To address this, the paper develops a chronological 'arc of avoidance', detailing the methods by which mining firms evade their fiscal and legal obligations to host communities. These methods include negotiation of tax concessions, tax avoidance, closing avenues of redress, and abandonment of mines without recourse. Using the case study of Paladin Energy, the paper confirms the power of large MNCs over governments and citizens of the Global South. It demonstrates that mining MNCs engage in avoidance tactics throughout the life of a mine, and that their power over host states does not weaken once investment has been made. Such tactics lead to entrenched negative outcomes for mining communities in the Global South. The findings reveal the full extent to which firms accrue the benefits and avoid the consequences of mineral extraction throughout the production process, and are of particular significance as we shift to extracting the resources required for the uptake of renewable energy.

1. Introduction

Mineral extraction in the Global South often accrues wealth to multinational companies (MNCs) whilst causing serious harm to local communities and their environment. Modern mining is capital intensive, creating few jobs, but causing serious environmental and social harm (Dresse et al., 2021; Kramarz et al., 2021). The benefits of mining often accrue to private capital, while the impacts are felt by local communities, creating a serious imbalance in the distribution of costs and benefits of large scale mining (O'Faircheallaigh, 2015). The negative impacts of mining extend beyond the mine site and the temporal life of the mine. Mine-site communities are frequently displaced as a consequence of mineral extraction through physical relocation, but also by way of loss of security and self-determination (Arellano-Yanguas, 2011). Mining also leads to significant development gaps, most clearly seen in mineral rich states in the Global South, where states continue to experience negative economic and social outcomes from mineral extraction. Sub-optimal outcomes from mining include lower economic growth, environmental harm, increased instances of civil war and violence, 'crowding out' of other sectors, and limited evidence of mining's contribution to government revenues (Bebbington et al., 2018; Ross, 2015; Van Der Ploeg and Poelhekke, 2019; Venables, 2016). These impacts remain at the centre of debates over governance of the extractives sector (Coumans, 2017).

Formal and legally binding treaty approaches to governing multinational firms have been on the agenda since the 1970s, including an international treaty addressing the intersection of business and human rights (Cutler and Lark, 2022; Woods, 2014). Yet global governance regimes have been unable to reign in poor corporate practices. The failure of global governance to hold mining MNCs to account for poor environmental and social impacts from mining has placed the onus back on mineral-rich Global South states to govern their practices (Cutler and Lark, 2022). Complicating this approach is the historical and ongoing pressure on Global South states to liberalise trade and legal regimes in order to attract foreign investment, the result of which has been to distort the balance of power between host state governments and mining MNCs. The regulatory power of host states has been diminished, allowing companies to self-regulate their impacts on mining communities and the environment, through a burgeoning suite of voluntary governance initiatives, embedded in corporate social responsibility (CSR) (Zaman et al., 2022). The diffusion of transnational private regulatory authority in the global economy has seen non-state actors such as NGOs and firms emerge at the centre of mining governance (Cutler et al., 1999; Strange, 1996). Regulation of the mining sector now involves a mix of corporate self-regulation, civil society initiatives, and multistakeholder partnerships in what Ludwig (2018) refers to as an 'emerging transnational regime complex' (Schleifer, 2023).

Drawing on this regime complex, this article develops a framework

E-mail address: Ainsley.elbra@sydney.edu.au.

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to map firms' avoidance tactics. That is, the methods by which companies avoid their legal and fiscal obligations to host states and communities over the life cycle of a mine. By developing this classification scheme, it is shown that mining firms avoid obligations to host states prior to mining commencing through the negotiation of preferential tax deals, throughout the life of the mine by minimizing the rights of the state and closing avenues of redress for aggrieved parties, and finally after the mine has ceased being productive through abandonment without recourse. Building on the scholarship which examines the challenges to governing mining MNCs in the Global South, this framework is then applied to the single case study of the uranium miner, Paladin Energy Limited (hereafter Paladin). Paladin is an Australian based company, which owned and operated (through its wholly owned subsidiary Paladin (Africa) Ltd) uranium mines in Namibia and Malawi (Paladin Energy Ltd, 2018). The study of Paladin provides an opportunity to study in-depth the particularity and complexity of a single case (Stake, 1995). In this case, the avoidance tactics of a single firm throughout the mine life cycle from early negotiations with host states, through to end of mine productivity. The analytical choice of Paladin is important, studying this firm allows us to examine impact of corporate practices over the temporal life of mines and in host states where Paladin has shifted production away from the company's home state (Australia) to take advantage of Global South states' need for foreign investment. It is demonstrated that domestic regulation augmented by voluntary governance regimes cannot fill the governance gap identified in the literature. Mining MNCs are able to ignore calls for voluntary governance and circumvent host state regulation throughout the mine life cycle, and in doing so continue to cause serious harm to mine communities.

The paper is structured as follows. Firstly, literature on the challenges of governing mining MNCs is explored, with a focus on the governance gap that has emerged between the failure of domestic regulation and the voluntary nature of CSR. Next, drawing on this scholarship, a framework for analysis is developed. This framework outlines four methods by which firms engage in avoidance tactics. The framework maps these avoidance tactics onto the mine lifecycle model to demonstrate that avoidance takes place across a temporal scale, from before mining begins to long after the mine is productive. Lastly, this framework is used to analyse the actions of Paladin in Namibia and Malawi, where the company has engaged in practices of avoidance that have resulted in sub-optimal outcomes for mine communities and host states. This article contributes to the critical literature on CSR by developing the concept of avoidance, or the practice by which mining firms exploit the governance gap between voluntary governance and domestic regulation to minimise their obligations to states in the Global South.

2. Governing multinational mining corporations

Globalisation and the emergence of global value chains have created immeasurable opportunities for MNCs, that is companies that can take advantage of permeable borders through trade and investment. At that same time, these cross-border operations have proven difficult to regulate due to the evasive nature of what Ohmae (1990) coined, 'the placeless corporation'. Efforts to govern mining MNCs have occurred at the global level, where various attempts have been made to develop and implement binding rules for transnational corporate activity. At the domestic level, through public regulation, or hard law. And, by way of voluntary initiatives, developed and led by industry (O'Faircheallaigh, 2015). Failure to implement binding global rules to govern MNCs has left host states with the responsibility of regulating foreign companies, a role complicated by limited liability enjoyed by parent companies in modern corporate structures. Where an MNC wholly or partially owns subsidiaries, it is generally not liable for any risks or liabilities incurred by these companies, beyond its monetary investment, except for in the most exceptional cases (Ruggie, 2018) .[1] This section explores efforts to regulate mining MNCs through global governance, national regulation, and firm-led voluntary initiatives.

Efforts to govern MNCs at the global level have largely proven ineffectual. Throughout the 1970s and 1980s attempts were made to govern the actions of MNCs from their home state, through the OECD's Guidelines for Multinational Enterprises and the 1988 UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. However these norms were never formally adopted, instead morphing into the less onerous UN Global Compact (Choudhury, 2017; Ruggie, 2018). In 2005, the UN again attempted binding principles for business behaviour developing the UN Guiding Principles on Business and Human Rights, commonly known as the Ruggie Principles. The Ruggie Principles mirror international law in emphasising the legal responsibility of the state and encouraging states to regulate MNCs by formalising voluntary CSR obligations in investment agreements (Cutler and Lark, 2022). More specifically, the World Bank has developed a complex set of standards, or a 'transnational legal system' that apply to mining operations, aimed at addressing the socio-envrionmental regulation of large mining projects (Szablowski, 2007). However, as Campbell (2012) notes, these transnational norms still require states to ratify and monitor at the local level, leaving many host states and communities no more empowered than before (Choudhury, 2017). For states in the Global South, the potential loss of investment or risk of being seen as a relatively more stringent jurisdiction can be reason enough to avoid ratifying global agreements (Backer, 2016; Deva and Bilchitz, 2013).

The failure of global governance to produce overarching norms of behaviour for firms places responsibility for regulating mining MNCs with the host state. However, domestic regulation of MNCs has also proven challenging. From the 1980s onwards states in the Global South experienced increasing pressure to liberalise their trade regimes, environmental standards, and other laws governing transnational business – particularly in the extractives industries (O'Faircheallaigh, 2015). Sustained pressure on mineral rich states in the Global South from international financial institutions such as the World Bank and International Monetary Fund, led to a process of liberalisation that produced three generations of mining codes, each providing less protection for and power to the state than the last (Campbell, 2004 see also, Besada and Martin, 2015). As states engaged in a 'race to the bottom', competing over investment on the basis of the most liberalised mining regime, a shift in authority occurred, from the state to private actors such as MNCs (Campbell and Hatcher, 2019). Mineral-rich states in the Global South face what Sazblowski (2007) identifies as a common predicament, because FDI provides much needed exports and hard currency, states are encouraged to implement investor-friendly policies in order to attract investment. However, in doing so, these policies generate internal political pressures over issues such as the recognition of indigenous land rights, demands for environmental protection, and calls for greater benefit sharing (Szablowski, 2007, p. 27). These demands often emerge from rural communities, where extraction takes place, and where the structural power of mining firms is so significant that any resistance against the growing authority of business in the face of the state and its communities is extinguished (Tuokuu et al., 2019). Moreover, as is the case globally, Global South states have faced industry capture

[1] Although, there are a growing number of examples of courts 'piercing the veil' to hold MNCs accountable for subsidiaries' conduct emerging, particularly in the UK and Canada. See Chen (2022); Dignam and Oh (2019); Khimji and Nicholls (2015).

(O'Faircheallaigh, 2015). As the private authority of business grows, as does its power, and ability to set the regulatory agenda in industries deemed critical to national economies (Mikler et al., 2019).

While hard law provides some recourse to the state and communities, it has been shown to be inflexible and unresponsive to local needs, and on occasion leads to catastrophic outcomes (O'Faircheallaigh, 2015). Even where regulation is designed effectively, it remains that 'powerful actors often retain discretion over the enforcement of rules' (Haslam, 2018, p. 423). The challenges to host states effectively regulating MNCs is further heightened by the potential for firms to initiate proceedings under investor-state dispute settlement (ISDS) clauses embedded in many bilateral trade agreements. Such clauses allow MNCs to sue host states over actual or projected loss of income stemming from policy changes such as environmental protection, a shift to greener energy, or increased government stake in mines (Tienhaara, 2018). The cost of ISDS provisions for states is financially material, but also reputational. The relative ease with which cases can be initiated under ISDS clauses and the implicit threat in these clauses leads to regulatory chill, and a situation where 'states never win; they only do not lose' (Mann, 2015).

A lack of enforceable global rules and domestic regulation has left a governance gap, which is often suggested could be remedied through voluntary soft law, where private actors are encouraged to hold themselves of others to account using market-based instruments (Cutler et al., 1999; Hall and Biersteker, 2002; Pattberg, 2006; Ruggie, 2018). In response, a plethora of soft, non-binding, firm-led, private governance initiatives have been developed in order to address concerns around the impacts of MNCs activities (Elbra, 2017; Reinsberg and Westerwinter, 2021). In the case of mining, private governance initiatives address a range of issues facing the sector including conflict (e.g. Voluntary Principles on Security and Human Rights, Conflict Free Gold Standard, Kimberley Process), environmental degradation (e.g. UN Global Compact, International Cyanide Management Code), corruption (e.g. The Extractive Industries Transparency Initiative) and indigenous peoples' displacement (e.g. International Council for Mining and Metals' (ICMM) Indigenous People and Mining Statement). Many of these market-based governance mechanisms are directly focused on addressing the risks mining firms (rather than communities or governments) perceive as evolving from operating in developing states (Büthe and Mattli, 2011; Cashore et al., 2004; Pattberg, 2007). These range from scrutiny over noncompliance with host or home country law (Haufler, 2001) through to the administering of force and provision of security around mine-sites (Bebbington et al., 2008).

Despite their prevalence, critical political economy scholars have hastened to highlight the limitations of these initiatives (Bush and Oosterveer, 2019; Hall and Biersteker, 2002). They are often designed in a business-friendly manner through the exclusion of critical voices meaning global standards have often failed to deal with local issues such as pollution, conflict around mine sites, or the displacement of people (Le Billon and Spiegel, 2021). They have attracted criticism for their weaknesses in reporting, accountability, and transparency (Dingwerth, 2008; LeBaron and Rühmkorf, 2017; Schleifer, 2019). Furthermore, large, powerful mining MNCs are able to leverage private governance initiatives to create a dichotomy of 'good' and 'bad' firms, based on their compliance with voluntary standards, thereby deflecting scrutiny away from the remainder of their business practices (Dauvergne, 2018).

The emergence of firm-led voluntary initiatives coincides with the liberalisation of mining codes in the Global South. The weakening of regulations that govern mining were undertaken 'in exchange for an implicit commitment from firms to apply best practices in environmental and social management, with the expectation of increased growth, export diversification and economic development' (Campbell, 2012). In this sense, the state strategically 'absent[s]' itself from the legal regimes intended to smooth relations between mining companies and communities (Szablowski, 2007, p. 45). The role of government evolves to become a facilitator of private investment, and an 'efficient and apolitical regulator' (Abuya, 2016; Szablowski, 2007, p. 34). Simultaneously, companies fulfill the role of developmental agents, assuming functions usually to be expected from the state, including the provision of public goods and services, standard setting and inspection (Utting and Marques, 2010, p. 2) This depiction of business-state relations, where the state's absence makes way for CSR is one that is frequently ascribed to the mining sector (Haslam, 2018). Mining companies operating in the Global South can longer deflect criticism by highlighting their commitment to host state's legal requirements. Instead, as states are viewed as 'too weak or too complicit' to regulate in an era of globalisation, mining companies are increasingly 'subject to social claims' (Szablowski, 2007, p. 60). In some cases, states may also find it desirable, or convenient, to shift the responsibility for tasks previously associated with governments (infrastructure, roads, hospitals) to the private operators of large scale mining projects (Campbell, 2012). This 'beyond voluntary' approach is explored by Hall and Biersteker (2002, p. 419), who argue that governments can pressure companies into going above and beyond voluntary contributions to mine communities, and as such, 'much of what passes for voluntary CSR in this sector is both coproduced by the state and implies the subversion of existing institutional arrangements'.

The voluntary initiatives that have emerged from this model of governance are designed to 'spread the benefits of mining and minimise its negative impacts' (O'Faircheallaigh, 2015, p. 92). It is through these initiatives that firms are able to paint themselves as 'not only part of the problem' but also 'as part of the solution' (Elbra, 2020; Idemudia, 2014, p. 1). While this liberal approach to international political economy sees voluntary initiatives located in companies' CSR programmes as a market-based mechanism for embedding socially responsible practices into MNCs' business models, it is possible to take a more critical approach by highlighting the limitations of CSR, particularly in the mining sector.

Critical voices suggest terms such as CSR exist less as guidelines for better corporate practices, and more as central tenets of a discourse which regulates relations between mining firms and the communities impacted by their operations (Kirsch, 2014). In this sense, CSR can be viewed as a 'reactive endeavour by companies to both deflect criticism … and prevent the creation of putative transnational regulation' (Deva, 2006; Nolan, 2005; Soares de Oliveria, 2013, p. 185). It is often characterised as a public relations instrument, used to avoid criticism, engage and placate critics, and capitalise on business opportunities associated with being seen to be 'doing good' (Littlewood, 2014; Newell and Frynas, 2007, p. 670; Ramasastry, 2015). This leads to particular issues being prioritised over others, generally those that can be remedied by corporations, and those which focus on what a corporation *should not do* rather than the way they can genuinely benefit the societies in which they operate (Wilson, 2022). Whereas, the very practices that are central to the profitability of firms, and most detrimental to local communities, are left off the agenda (Bolay & Knierzinger; Newell and Frynas, 2007, p. 674). Such practices include improving employment relations, corporate taxation, dumping of waste, and mine site closure (Jenkins and Newell, 2013; Utting and Marques, 2010).

It is suggested that when CSR is proactive, it is often used as a discursive tool, co-opting the language of critics and parroting this back to shareholders in language they expect to hear in order to position themselves as critical to the transition to renewables in what Bainton et al. (2021) refer to as 'corporate enclosure'. O'Faircheallaigh (2015, p. 92) notes the voluntary initiatives can be abandoned due to changes in management or ownership and are subject to serious concerns around enforcement and monitoring (see also Campbell, 2012). Abuya and Odongo (2020) extend this in developing their concept of 'unfilled promises', when CSR passes from one mine owner to the next, showing that mine communities in feel deceived by CSR commitments made but never fulfilled. CSR initiatives often result in superfluous job creation, or the over-employment of communities in redundant tasks, which masks wider displacement (Geenen and Gleiberman, 2021). Furthermore, voluntary initiatives are usually top-down driven, resulting in unwanted

outcomes ‘concentrated in secured enclaves, often with little or no economic benefit to wider society’ (Ferguson, 2005, p. 378). The enclaves that emerge demonstrate the economic, political and social damage caused by over-investment in one geographical region (Ackah-Baidoo, 2012; Hancock and Sovacool, 2018; Owen et al., 2021). CSR programmes are ‘very efficient tools for building and maintaining the ideological boundaries of extractive enclaves in ways that aim to reduce frictions with the local environment’ and insulate ‘CSR practices from the political implications of extractive projects’ (Bolay and Knierzinger, 2021, pp. 2–3; Cross, 2014).

Ultimately, while it is possible for CSR to make a difference at the margins, it more often legitimises the industry’s inherently harmful practices, rather than transforms them (Gamu and Dauvergne, 2018). This article argues that while regulation of transnational capital is left to the market, in the form of voluntary private governance and CSR, the existing system which privileges the rights of capital and downplays the responsibilities of government will continue to minimise the rights of local communities relative of to those of MNCs (Cutler and Lark, 2022).

3. Developing an arc of avoidance

In this section I develop a framework for analysis which maps the practices of fiscal and legal avoidance that MNCs engage in over the life cycle of a mine. Drawing on the CSR and private governance literature, it argues that the shallowness with which mining firms engage with host states, through CSR, gift giving, and the creation enclave economies allows firms to dismiss their legal and fiscal obligations to host states. As simply as firms can selectively engage, firms can equally disengage due to the superficial nature of their relations with host states and communities. It builds on claims made by scholars that mining firms have ‘little impetus to adhere to good environmental practices and develop communities’ by pointing to the three stages at which mining firms actively avoid meeting legal and fiscal obligations to host states (Kamlongera, 2013, p. 379). The model enhances the CSR literature in two ways. Firstly, by demonstrating the impacts of enclave economies and gift giving rhetoric and secondly, by mapping the methods of avoidance against the mine life cycle.

This research is a continuation of research conducted by the author in the field of business-state relations. In order to develop this framework for analysis, desktop research was undertaken. Documents including, company policies, NGO reports, publications by international organisation, development agreements, and media reporting were analysed. Effort was made to triangulate and corroborate sources wherever possible, however it should be noted that publicly available information such as listed above is limited in its nature and should be considered the starting point for further analysis.

The life cycle of a mine begins long prior to extraction, at the point of exploration. This work is often done by ‘junior’ mining firms, whose confirmed reserves are then purchased by the better known mid and top tier mining companies. If proven reserves are financially viable, negotiation with the host state over a mining licence begins. Once this has been agreed mine construction begins, after which the mine enters its operational phase, and during which time output peaks. As output declines, led by a fall in reserves, demand, or price of the commodity, the mine enters closure and then rehabilitation. This arc is represented by Fig. 1, along which mine productivity is displayed on the y axis, and time is displayed on the x axis.

The arc of avoidance represented by Fig. 1 is informed by the various fiscal and legal loopholes employed by mining MNCs throughout the extraction process – from negotiation of the conditions contained in the mining license, mine operation, and after extraction has taken place. Four key loopholes are explored in this section.

3.1. Exploration – negotiation of ‘sweetheart’ deals

In an attempt to attract foreign direct investment, many developing states have introduced tax incentives into their legal systems (Swank, 2016). Tax incentives are specific measures applicable to one industry (in this case mining) that provide favourable investment conditions. They include tax holidays, lower corporate taxation rates, the ability to offset losses, import duty relief, and reduced or sliding scale royalty rates (IGF and OECD, 2018). These incentives can be formally written into the tax code, e.g., where the corporate tax rate for the mining industry is discounted below the standard rate.

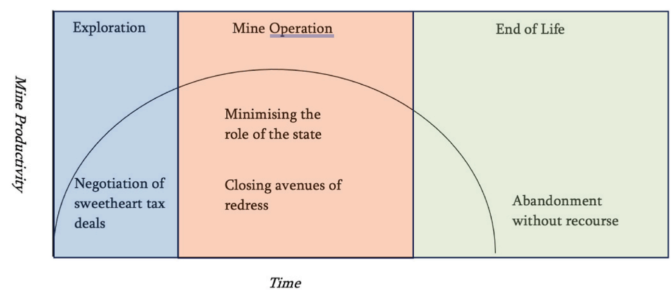

Fig. 1. The chronological arc of avoidance.

While industry-wide exemptions are common there is also ample evidence of powerful firms negotiating incentives on an ad hoc basis, thereby weakening the tax base of the host state (Readhead, 2018). Mining MNCs have shown themselves to be adept at avoiding corporate taxes and royalties in developing states, wielding their economic power to negotiate ‘sweetheart tax deals’. Many companies argue sweetheart deals are vital to encourage investment, yet in many cases the investment may have gone ahead without the favourable treatment. Furthermore, firms become highly reliant on the conditions they have secured and exercise threats to shut down operations if these are not implemented permanently, leading to the entrenchment of such detrimental arrangements (Readhead, 2018).

These deals, while legal, are negotiated directly between policy makers and powerful corporations, and are usually kept confidential in order to not encourage protest from other economic actors not subject to the same exemptions. This practice prioritises the financial interests of one party, the corporation, over the state and other economic entities (Ring and Grasso, 2022). Such confidentiality breaches the EITI’s principles on transparency and accountability for government revenues from mining, which highlight the ‘importance of transparency by governments and companies in the extractive industries’ and ‘accountability by government to all citizens for the stewardship of revenue streams’ (EITI, 2003).

3.2. Mine operation – minimizing the role of the state

Once mines are operational, firms have used loopholes in the global tax system to avoid or reduce their tax liabilities by legally shifting profits from high tax jurisdictions to low tax jurisdictions. Firms shift profits and erode their tax bases by making inter-company loans at artificially high tax rates, shifting sales functions offshore and creating unnecessary inter-company sales and loans that move profit to low or no tax jurisdictions (Eccleston and Elbra, 2018). Some of the world’s largest mining companies have been found to have avoided corporate tax through the use of complex tax structures. They have done so in some of the world’s poorest countries. Such complex tax avoidance regimes are estimated to cost developing states US$427 billion per annum in lost revenue (Tax Justice Network, 2020).

The ICMM’s Sustainable Development Principles requires companies to ‘maintain ethical business practices and sound systems of corporate governance’ while the World Nuclear Association (WNA) Principles of Uranium Stewardship calls for sound corporate governance, yet neither explicitly mention tax avoidance (World Nuclear Assosication). Unsurprisingly, corporate CSR discourse has largely ignored the social

irresponsibility of tax avoidance (see Christensen and Murphy, 2004; Jenkins, 2005). Yet, it remains that the 'widespread practice of tax avoidance sites uncomfortably with much of the moral rhetoric in many corporate codes of conduct' (Dowling, 2014, p. 174).

3.3. Mine operation - closing avenues of redress

Instances of workplace harm, violence, and environmental damage in and around mine sites are commonplace. Business is now expected to not only avoid human rights violations, but to remedy violations when they occur (Santoro, 2015). In response, mining firms have proven to be adept at the use of legal mechanisms to limit victims' rights to compensation and remedy. Mining firms have been encouraged by international organizations including the United Nations, International Finance Corporation, and the OECD, to implement 'operational-level grievance mechanisms' (OGMs), designed to serve as site-based or localized remedy processes for victims of mine site violence, displacement, and accidents. In 2011, the UNHCR recommended the development of site-based remedies on the basis there 'is a remedy gap created by legal, practical and procedural barriers to access judicial remedy for victims of human rights abuses in many jurisdictions with weak judicial systems in which multinational corporations operate'(UNHRC, 2011). The provision of remedy represents the third pillar of the UN's Protect, Respect and Remedy Framework, recognizing that even in the most effectual arrangement, human rights abuses cannot be ruled out (Kemp and Owen, 2017; Ruggie, 2018). OGMs are established outside the country's legal framework, the rationale for which is that access to formal judicial system can be prohibitive in some cases, and that localized responses can serve as an early warning system to mining MNCs so that potential issues could be detected promptly (Owen et al., 2021). While OGMs can be useful channels for recourse they are not always established and when they are, in some instances they have removed the claimant's right to utilise national regulatory and judicial bodies to seek recourse in a way that the UN Guiding Principles on Business and Human Rights did not envisage (Coumans, 2017).

3.4. End of life – abandonment without recourse

The useful life of a mine depends on many factors, including the quality or grade of the mineral deposits, spot price of the commodity being extracted, and financial viability of the mining firm. Following the cessation of mining activities, firms have used various tactics to evade their fiscal responsibilities in respect of mine rehabilitation and end of life practices. Mining firms use a range of loopholes to avoid rehabilitating their mines at the end of life. These include putting mines into 'care and maintenance' mode thereby delaying the requirement to undertake costly rehabilitation, expanding production until the firm runs out of cash to pay for rehabilitation, failure to rehabilitate, selling to an unknown small firm, or expanding the mine (Environmental Justice Australia, 2016; Pepper et al., 2021; Vivoda et al., 2019). While the ICMM has a 'good practice' guide to mine closure, it notes that is not prescriptive and instead should be used as a best practice guide. It suggests that mine closure should be considered 'an integral part of the mine operations' core business' and goes on to suggest ways in which this can be best implemented taking 'into account environmental, social, and economic considerations' (ICMM, 2019, p. 6).

This article focuses on the ability of mining firms to sail through the governance gap left by host state regulation and private governance. Using a single case study of Paladin, it is shown that with a lack of engagement with any CSR or private governance initiatives firms are able to avoid their legal and fiscal obligations to host states, despite the presence of mining regulations. In this sense, this is an example of what is possible if complete non engagement takes place. While Paladin is a member of the WNA and as such, supports the WNA Principles on Uranium Stewardship and the ICMM Sustainable Development Principles, the company does not reflect these principles in its engagement with host states Namibia and Malawi. Paladin is also prohibited from extracting uranium in its home state of Australia due to regulation banning uranium mining in several Australian states, despite the company holding mining licenses over known reserves. The company instead exports its corporate practices to countries where investment is prioritised over the protection of workers, local communities, and the environment. This prioritisation results from a combination of colonial-era legacies (including outdated tax treaties), weak regulation, and a disregard for international standards and norms that have been put in place to govern uranium mining.

4. Paladin's arc of avoidance

This section demonstrates mining firms' power through the employment of the framework of avoidance. It does so by exploring the tactics of avoidance used by Paladin over the life cycle of its two uranium mines. Paladin Energy was formed in 1993 and acquired its Namibian and Malawian mines in 2007 and 2009 respectively. At this time, uranium prices were increasing rapidly, with the commodity tripling in value between 2006 and 2007. However, a series of environmental and workplace incidents at the mines, as well as the 2011 Fukushima nuclear disaster have since rendered the company unprofitable. Due to the fall in uranium prices and the company's high indebtedness, Paladin was placed into administration in 2016, and both mines are currently in care and maintenance mode. The Kayelekera mine, located nearby to the UNESCO world heritage listed Lake Malawi, has been in care and maintenance mode since 2014. In 2020 Paladin sold its 85 percent stake in Kayelekera to Lotus Resources and its joint venture partner Kayelekera Resources Pty Ltd. Lotus paid $200,000 cash and issued shares for the remaining $4.8million (ASX, 2020; Mzembe and Meaton, 2014). The Langer Heinrich mine, located in the Namib Naukluft National Park in Namibia, has been non-operational since May 2018. The company retains 75 percent ownership of the Langer Heinrich mine and operations recommenced in the first quarter of 2024. This section applies the arc of avoidance framework to Paladin's operations, highlighting the avoidance tactics used by a single firm across the life cycle of its operations.

4.1. Exploration stage

Prior to the commencement of mining, Paladin leveraged its ability to bring in government revenues to 'dictate the terms' of its development agreement with the Malawian government (Mzembe and Meaton, 2014, p. 196). UK civil society actor, Action Aid (2015), estimates that the sweetheart tax deals included in this agreement cost Malawi at least US $15.635 million between 2009 and 2015. In this case, Paladin negotiated a reduced royalty rate (tax as a percentage of revenue) on the uranium extracted from its Malawian mine. The Malawian Minerals Act specifies a royalty rate of five percent, yet Paladin negotiated to pay 1.5 percent for the first three years of mine operation, and three percent thereafter (Government of Malawi, 2007; Kamlongera, 2013). Paladin's Development Agreement, as negotiated with the government of Malawi, also includes a clause which notes that these arrangements cannot be amended for a period of 10 years after implementation (Government of Malawi, 2007). Not only was Paladin able to negotiate an individual reduction in royalty rates, all mining companies operating in Malawi are exempt from customs duty, excise duty, and value added taxes on mining machinery, plant and equipment (UNOHCHR, 2013). In their 2013 report, the UN Special Rapporteur on the right to food, Olivier de Schutter, estimated that losses to the government of Malawi from tax incentives, over the thirteen-year mine life, to be between US$205 and US$281 million (UNOHCHR, 2013). This equates to approximately four percent of Malawi's GDP, or the equivalent of the country's total 2018 education budget (World Bank, 2020).

4.2. Mine operation

Once mining commenced in Malawi, Paladin exploited loopholes in the global tax system, specifically a tax treaty between Malawi and the Netherlands, to minimise or eliminate corporate tax on profits from uranium mining. Until 2015, the government of Malawi was subject to the 1969 UK-Netherlands tax treaty, inherited through the UK's colonisation of the country. This treaty allows companies such as Paladin to minimise the tax paid to the government of Malawi. Paladin Africa is a thinly capitalized company, that is, it is funded mostly through debt rather than equity. Eighty percent of the company's finance comes from intra-company loans, and its principal lender is Dutch-based Paladin Netherlands BV, which has no employees (Action Aid, 2015). Between 2009 and 2014 Paladin Africa Ltd made US$48 million in interest payments to Paladin Netherlands BV (Action Aid, 2015). Payments of this sort to Australia would normally attract a 15 percent withholding tax in Malawi, however the Malawi-Netherlands tax treaty allows these to be sent to the Netherlands tax free, and then onto Australian equity holders. The company has also negotiated a reduction in the corporate tax rate from 30 percent to 27.5 percent and an exemption from the 10 percent resource rent tax (CHRR, 2021). According to the United Nations' Special Rapporteur Olivier De Schutter, treaty shopping by Paladin cost the government of Malawi between US$205 and US$281 million over the thirteen-year lifespan of the mine (Curtis, 2013; UNOHCHR, 2013). In Namibia, Paladin employed a thin capitalization strategy to transfer US $136 million (a fifth of its annual sales revenue) to Paladin Netherlands BV in management fees. Much of this was then passed back to Australia – again, avoiding the 15 percent withholding tax. Then in 2014, when Paladin sold 25 percent ownership in the Langer Heinrich mine the company routed sale proceeds through a subsidiary established in the tax haven of Mauritius (Langer Heinrich Mauritius Holdings Ltd), thereby avoiding liabilities for taxes to be paid in Namibia (Turner et al., 2018). It is estimated that this tax manoeuvre cost the Namibian government US$15.2 million in lost withholding tax, roughly one quarter of the mine share sale price of US$61.1 million.

The tax avoidance schemes outlined above, and the resulting reduction in government revenues from mining, are legal. They utilise existing corporate practices such as intra company loans and management fees, amplified by colonial era tax treaties, to eliminate tax paid to governments including that of Malawi and Namibia. In 2015, Malawi joined the EITI, requiring companies operating in the country to disclose how much tax they were paying. However, Paladin's Malawi mine had been shut down the prior year. There is little focus on tax avoidance as a cause of ongoing underdevelopment within the CSR discourse. Companies use complex tax avoidance strategies to move taxable income offshore and out of reach of developing state governments, all while championing sustainability and socially responsible business practices (Ponte, 2019; Seabrooke and Wigan, 2017). Although there has been much discussion of the impact of tax avoidance on developing states (McCarthy, 2022; Tørsløv et al., 2018), there has been little incorporation of this practice into the CSR practice or literature (Christensen and Murphy, 2004). This is despite the fact that developing states rely more heavily on corporate tax revenues than developed states (Avi-Yonah, 2000). And, that MNC tax avoidance is a self-reinforcing cycle, the state needs tax revenues to build capacity, but without capacity struggles to collect tax revenue (Jenkins, 2005).

During the operational stage of Paladin's mines, the company was also the subject of numerous workplace health and safety, and human-rights claims. The Danish Institute for Human Rights and a local NGO, Citizens for Justice, documented a series of incidents at Paladin's Malawi mine including cases of workplace injuries, illness (including the dismissal of a worker who contracted cancer), death, and reported corruption (Citizens for Justice, 2014). In 2009, two miners died, and another was severely injured at Paladin's Malawi mine, after an explosion during the cleaning the base of a 7-m steel tank. The company's initial incident report referred to unsafe practices from mine contractors which may have contributed to the explosion, yet the exact cause remains in dispute. Paladin 'denies any negligence on its part and maintains that the Company acted humanely and with the utmost compassion in trying to afford the three injured contractors their best chance of survival' (Fitzgibbon, 2015). In the years following the incident Paladin refused to offer the surviving contractor, Caldwell Sichinga, compensation for their injuries. Relying on the fact the contractor was employed by an intermediary firm, 'Paladin's view, based on legal advice it has received, is that the other parties are liable for Mr. Sichinga's damages' (Fitzgibbon et al., 2015a). Since this time three more miners have died in workplace incidents, Paladin has been cleared of wrongdoing in all cases (Fitzgibbon et al., 2015a).

These claims are the type that under the UN Global Compact could warrant the establishment of an operational-level grievance mechanism. These mechanisms are designed to meet the remedy gap faced by potential claimants in human rights cases against mining firms. Despite claims against the company, Paladin failed to establish an OGM at either of its mine sites, instead relying on the company's Human Rights Policy, which has since been replaced with a ten page Code of Business Conduct and Ethics (Paladin Energy, 2022). Without an OGM in place, workers or communities that perceive harm from Paladin's operations need to seek remedy through their respective country's legal system, and incur the costs and challenges associated with opposing an MNC through formal legal processes. This is likely to deter claimants without financial and legal support (Coumans, 2017). By failing to provide an avenue for redress through an OGM, Paladin requires those seeking recompense to navigate the country's legal system, incurring significant, and potentially prohibitive, costs.

In addition to the workplace incidents outlined above, INGO Human Rights Watch (HRW) accused Paladin of failing to provide avenues for recourse for affected communities around its Kayelekera mine (Human Rights Watch, 2016, p. 38). Since the establishment of the mine, local communities have expressed particular concerns that mine water run-off is polluting drinking water, and that of Lake Malawi, a UNESCO protected ecosystem and source of food for local communities (Kacungira, 2017). Paladin management has publicly stated that the company monitors the environmental impacts of their activities in Malawi, and that they share these reports with the Malawian government. However HRW notes that these reports are not publicly available (nor are they made accessible to HRW), which leaves local communities unable to assess the impacts of mining on their health and livelihoods (Human Rights Watch, 2016). Several weaknesses in the environmental assessment report used to support the company's Namibian operations were also found, with the report being deemed inadequate by the South African Institute for Environmental Assessment, specifically in relation to assurances around water supplies and worker health and safety (Fig, 2008). Civil society organisation Earthlife Namibia also commissioned a report that noted the plan for dealing with tailings waste was inadequate and that there was no attempt to debate the need to mine in a national park (Fig, 2008).

4.3. End of life

The cessation of production at both mines has led to a loss of employment, while mines in care and maintenance mode continue to pose a significant risk to local communities and their environment. Non-operational mines pose a serious threat, particularly from water run-off (some of which would have otherwise been used in the mine's operations) and poorly maintained tailings dams. A global standard in tailings dam management was only introduced in 2020, despite tailings dam collapses representing the majority of environmental threats from mines. These risks, combined with the absence of senior management responsible for overseeing potential hazards, represents a danger to local communities and their environment. Paladin's approach to environmental standards has been criticized by outside observers. In assessing the company's environmental impact assessment of its Kayelekera mine,

Mudd and Smith (2006) highlight serious inadequacies including the overemphasis of economic outcomes and under acknowledgement of environmental risks, as well as a lack of planning for mine waste and rehabilitation. At the time of the Kayelekera mine's construction, experts assessed the tailings dam as inadequate, noting that 'every few years or so allowing the excess build-up of water to be discharged into the local river system and local water resources' (ABC, 2007). This is particularly the case when the mine is in care and maintenance mode and has no use for the excess water. In 2015, heavy rains did cause a spill over at the mine, and in the same year, Paladin obtained permission from the Malawian government to begin to pump excess water from the mine into the Sere River, which flows into Lake Malawi (Chamley, 2015).

Prior to sale of its share in the Kayelekera Malawi mine, Paladin had paid a US$10 million environmental performance bond to the government of Malawi, as part of the development agreement. The bond was transferred to Lotus Resources as part of the sale (Paladin Energy Ltd, 2021). Paladin has consistently recorded far greater mine rehabilitation liabilities on its balance sheet (i.e. $US86 million in 2017). And, given the financial status of the group (FY2020 net loss of US$46.1 million) is it not certain that if called on, these liabilities could be met (Paladin Energy Ltd, 2018, 2021). Failure to provision sufficient funds for mine rehabilitation risks significant impacts on local communities. The Kayelekera mine has since been on sold to another mining company, essentially allowing Paladin to offload its legal responsibilities around mine site rehabilitation. According to Malawian NGO, Citizens for Justice (2014), the Kayelekera rehabilitation costs are estimated to be US $100 million. When comparing the provisions made for similar mines elsewhere, this is perhaps a low estimate. Provision for rehabilitation of the Ranger uranium mine in Australia – also an open-pit uranium mine – is estimated at US$403 million, in addition to the US$346 million already spent rehabilitating the site – a total of US$749 million (Green, 2018). Despite the small bond being required to be set aside at the beginning of mine operations, there remains insufficient cash to rehabilitate either mine site. The ability of Paladin to on sell these liabilities to another company is a tactic of avoidance used by mining firms that tips the balance of power away from states and local communities, to powerful mining MNCs.

This section has documented the manner by which one single firm has evaded legal and fiscal obligations to two host states over the life of its mines. At each stage of the mine life cycle, from exploration through to mine site closure, powerful mining MNCs are able to exercise power over host states and local communities, resulting in the sorts of severe negative externalities outlined in the critical CSR literature. It has been shown that relying on firms' commitment to private governance initiatives and CSR is not sufficient to remedy the governance gap. Mining MNCs are capable of leveraging their power over host states to amend local regulations whilst ignoring calls for greater engagement with voluntary firm-led governance.

5. Conclusion

This article has mapped an arc of avoidance throughout which mining MNCs avoid fiscal and legal obligations to host states and their communities. Drawing on the scholarship on governing MNCs, it is demonstrated that while a governance gap remains unfilled corporations will leverage their power over host states to minimise issues such as tax avoidance, workplace safety, and environmental degradation. On this basis, a framework was developed to demonstrate the shallow nature of mining MNC's entanglement with states in the Global South. This framework mapped practices of avoidance across the mine life cycle, demonstrating the outcomes of this through the case study of Paladin Energy. The liberalisation of Global South countries' legal regimes, and a reliance on voluntary governance enables mining firms to rely on this discourse whilst doing genuine harm to mining communities and depriving states of much needed tax revenue.

This paper adds to the international political economy literature that argues that MNCs utilise their political power to circumvent, undermine and ignore existing rules and regulations, many of which were put in place to eliminate some the most harmful outcomes from mining. In most of these cases mining MNCs have been able to circumvent laws, or worse still, harangue governments into backing away from existing regulatory settings thereby favouring economic entities over the state. Put simply, it is not that the rules do not exist, it is that mining MNCs actively work to reduce their effectiveness using the aforementioned methods of avoidance to limit the influence of the host state. In particular, it is argued that CSR or voluntary private governance regimes and corporate taxation are an incompatible mix. It remains highly unlikely that firms will engage with the voluntary payment of taxes owed to a state, particularly while global governance over corporate tax avoidance remains weak.

In the case of Paladin, there is little engagement with any private governance regimes or public commitment to CSR. This is central to the company's identity and its operating procedures. The company has dismissed claims that their operations caused harm to communities or workers, with the former CEO Borshoff noting 'Australia and Canada have become overly sophisticated. They measure progress in other aspects than economic development, and rightly so, but I think there has been a sort of overcompensation in terms of thinking about environmental issues, social issues, way beyond what is necessary to achieve good practice' (Australia's relationship with the countries of Africa, 2010). In response, Tracey Davies, a lawyer for the Centre of Environmental Rights notes, 'There is a very strong perception that when Australian mining companies come [to sub-Saharan Africa] they take every advantage of regulatory and compliance monitoring weaknesses, and of the huge disparity in power between themselves and affected communities, and aim to get away with things they wouldn't even think of trying in Australia' (Fitzgibbon et al., 2015b).

The article argues that mining firms represent a particular bellicosity in their dealing with host states and communities when compared to other sectors, where there are not the same opportunities to skirt regulation and cause hard before, during, and after the extraction of minerals. The fact that the implementation of avoidance measures exceeds the life of the mine (at both temporal end points) suggests that mining firms are unique in the aggressiveness of their approach. These long lasting impacts are not likely to occur, for example, in the case of manufacturing or service provision. Although this article uses the example of Paladin, it is certainly possible that this sector-specific behaviour opens the way for other firms within the mining industry to follow this lead, further compounding the negative effects of mining on developing states. The extraction of uranium, sometimes seen as a solution for emissions reductions through cleaner electricity production, exemplifies this. By examining the operations of Paladin, an Australian company unable to mine for uranium in its home country due to effective governance, we can identify the exportation of poor business practices to states in the Global South – in order to meet the world's clean energy goals. This represents a perpetuation of colonial relations through our transition to clean energy.

The arc of avoidance described in this article is a useful starting point for relevant and timely empirical research. As we move to a renewable future the findings in this model need to be tested across various commodities and geographies. For example, are there particular characteristics minerals and metals that make them more or less susceptible to these types of avoidance? Are there states where avoidance is more or less likely? What are the institutions of government that contribute to this? And, as we move to a less carbon intensive future, how might we improve the global governance of mining to address some of the issues raised in this article? These questions remain central to our understanding of the power of MNCs, development in the Global South and how we best govern the impending and important move to a less carbon intensive world (Kramarz et al., 2021).

Overall, the evidence provided above suggests that the power

imbalance between powerful MNCs and host state governments, and citizens, remains entrenched. And, that an embrace of social responsibility by some firms has not indeed led to improved outcomes for developing states. This lends weight to the body of literature that argues MNCs play a significant role in the governance of Global South states. And, that their power is exercised in multiple ways, including through overt threats and more implicit coercion (Fuchs, 2007). The chronological arc of avoidance emphasizes the power of large MNCs, from wealthy states over governments and citizens of the Global South. It details the use of financial and legal governance mechanisms, through which firms entrench the position of developing states. This contribution comes at a key time in the race to renewable energy, as our focus is (rightly) on the switch to less carbon intensive sources of energy we may neglect the governance challenges of this shift. This article adds to the burgeoning literature on improving governance of the extractive industries in a time of such rapid change.

CRediT authorship contribution statement

Ainsley Elbra: Conceptualization, Formal analysis, Investigation, Methodology, Project administration, Writing – original draft, Writing – review & editing.

Declaration of competing interest

The authors declare the following financial interests/personal relationships which may be considered as potential competing interests:

Ainsley Elbra reports was provided by University of Sydney. Ainsley Elbra reports a relationship with University of Sydney that includes: employment. Ainsley Elbra has patent pending to Nil. If there are other authors, they declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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References

ABC, 2007. Concerns over Paladin Malawi Mine [Television Series Episode] (Executive producer), Lateline.

Abuya, W.O., 2016. Mining conflicts and corporate social responsibility: titanium mining in Kwale, Kenya. Extr. Ind. Soc. 3 (2), 485–493.

Abuya, W.O., Odongo, G., 2020. Poisoned chalice or opportunity for positive impact? an analysis of the impact of 'inherited' corporate social responsibility (CSR) commitments in Kenya's titanium mining industry. Extr. Ind. Soc. 7 (3), 1002–1010. https://doi.org/10.1016/j.exis.2020.07.003.

Ackah-Baidoo, A., 2012. Enclave development and 'offshore corporate social responsibility': implications for oil-rich sub-Saharan Africa. Resour. Pol. 37 (2), 152–159. https://doi.org/10.1016/j.resourpol.2011.12.010.

Action Aid, 2015. An Extractive Affair: how one Australian mining company's tax dealings are costing the world's poorest country millions. Retrieved from London. https://actionaid.org/publications/2015/extractive-affair#downloads.

Arellano-Yanguas, J., 2011. Aggravating the resource curse: decentralisation, mining and conflict in Peru. J. Dev. Stud. 47 (4), 617–638.

ASX, 2020. Kayelekera resources pty Ltd. Lotus [Press release]. Retrieved from. https://www.asx.com.au/asxpdf/20200313/pdf/44g1wgrngybqvd.pdf.

Australia's Relationship with the Countries of Africa, Australian Parliament, 2010.

Avi-Yonah, R.S., 2000. Globalization, tax competition, and the fiscal crisis of the welfare state. Harv. Law Rev. 1573–1676.

Backer, L.C., 2016. Are Supply Chains Transnational Legal Orders: what We Can Learn from the Rana Plaza Factory Building Collapse, 1. UC Irvine J. Int'l Transnat'l & Comp. L., p. 11

Bainton, N., Kemp, D., Lèbre, E., Owen, J.R., Marston, G., 2021. The energy-extractives nexus and the just transition. Sustain. Dev. 29 (4), 624–634.

Bebbington, A., Hinojosa, L., Bebbington, D.H., 2008. Contention and ambiguity: mining and the possibilities of development. Dev. Change 39 (6), 887–914.

Bebbington, A., Abdulai, A.-G., Humphreys Bebbington, D., Hinfelaar, M., Sanborn, C., 2018. Governing Extractive Industries: Politics, Histories, Ideas. Oxford University Press.

Besada, H., Martin, P., 2015. Mining codes in Africa: emergence of a 'fourth' generation? Camb. Rev. Int. Aff. 28 (2), 263–282. https://doi.org/10.1080/09557571.2013.840823.

Bolay, M., Knierzinger, J., 2021. Corporate gift or political sacrifice? State-sponsored CSR and electricity provision in Guinean extractive enclaves. Polit. Geogr. 84, 102300 https://doi.org/10.1016/j.polgeo.2020.102300.

Bush, S.R., Oosterveer, P., 2019. Governing Sustainable Seafood. Routledge.

Büthe, T., Mattli, W., 2011. The New Global Rulers: the Privatization of Regulation in the World Economy. Princeton University Press, Princeton, NJ.

Campbell, B., 2004. Regulating Mining in Africa: for Whose Benefit?, 26. Nordic Africa Institute.

Campbell, B., 2012. Corporate Social Responsibility and development in Africa: redefining the roles and responsibilities of public and private actors in the mining sector. Resour. Pol. 37 (2), 138–143.

Campbell, B., Hatcher, P., 2019. Neoliberal reform, contestation and relations of power in mining: observations from Guinea and Mongolia. Extr. Ind. Soc. 6 (3), 642–653.

Cashore, B.W., Auld, G., Newsom, D., 2004. Governing through Markets: Forest Certification and the Emergence of Non-state Authority. Yale University Press, New Haven, CT.

Chamley, S., 2015. On the shores of Malawi's lake of stars, activists raise uranium fears. Guardian Australia. Retrieved from. https://www.theguardian.com/global-development/2015/jun/03/lake-malawi-activists-uranium-fears-paladin.

Chen, J., 2022. Modernizing corporate veil piercing in Canada. McGill Journal of Sustainable Development Law/Revue de droit du développement durable de McGill 18 (1), 63–92.

Choudhury, B., 2017. Corporate governance codes for the 21st century. In: du Plessis, J. J., Low, C.K. (Eds.), Corporate Governance Codes for the 21st Century.

Christensen, J., Murphy, R., 2004. The social irresponsibility of corporate tax avoidance: taking CSR to the bottom line. Development 47 (3), 37–44.

CHRR, 2021. The revenue costs and benefits of foreign direct investment in the extractive industry in Malawi – a Case study of Kayelekera Uranium Mine. Retrieved from. https://chrrmw.org/the-revenue-costs-and-benefits-of-foreign-direct-investment-in-the-extractive-industry-in-malawi-a-case-study-of-kayelekera-uranium-mine/.

Citizens for Justice, 2014. Paladin lies to Malawi Government on its Kayelekera uranium mine. Retrieved from. http://www.ejolt.org/2014/04/paladin-lies-to-malawi-government-on-its-kayelekera-uranium-mine/.

Coumans, C., 2017. Do no harm? Mining industry responses to the responsibility to respect human rights. Can. J. Dev. Stud./Rev. Can. Études Dev. 38 (2), 272–290. https://doi.org/10.1080/02255189.2017.1289080.

Cross, J., 2014. The coming of the corporate gift. Theor. Cult. Soc. 31 (2–3), 121–145. https://doi.org/10.1177/0263276413499191.

Curtis, M., 2013. Malawi's mining opportunity: increasing revenues, improving legislation. Retrieved from. https://curtisresearch.org/wp-content/uploads/Malawi-Mining-Revenue-Study-Report.pdf.

Cutler, A.C., Lark, D., 2022. The hidden costs of law in the governance of global supply chains: the turn to arbitration. Rev. Int. Polit. Econ. 29 (3), 719–748.

Cutler, A.C., Haufler, V., Porter, T. (Eds.), 1999. Private Authority and International Affairs. State University of New York Press, Albany.

Dauvergne, P., 2018. The global politics of the business of 'sustainable' palm oil. Global Environ. Polit. 18 (2), 34–52. http://www.mitpressjournals.org/loi/glep.

Deva, S., 2006. Global Compact: a Critique of the UN's public-private partnership for promoting corporate citizenship. Syracuse J. Int. Law Commer. 34, 107–151.

Deva, S., Bilchitz, D., 2013. Human Rights Obligations of Business: beyond the Corporate Responsibility to Respect? Cambridge University Press.

Dignam, A., Oh, P.B., 2019. Disregarding the Salomon principle: an empirical analysis, 1885–2014. Oxf. J. Leg. Stud. 39 (1), 16–49.

Dingwerth, K., 2008. Private transnational governance and the developing world: a comparative perspective. Int. Stud. Q. 52 (3), 607–634.

Dowling, G.R., 2014. The curious case of corporate tax avoidance: is it socially irresponsible? J. Bus. Ethics 124 (1), 173–184. https://doi.org/10.1007/s10551-013-1862-4.

Dresse, A., Nielsen, J.Ø., Fischhendler, I., 2021. From corporate social responsibility to environmental peacebuilding: the case of bauxite mining in Guinea. Resour. Pol. 74, 102290.

Eccleston, R., Elbra, A. (Eds.), 2018. Business, Civil Society and the 'New' Politics of Corporate Tax Justice: Paying a Fair Share?. Edward Elgar.

EITI, 2003. The EITI principles. Retrieved from. https://eiti.org/documents/eiti-principles#:~:text=We/20believe/20in/20the/20principle,government/20operations/20and/20in/20business.

Elbra, A., 2017. Governing African Gold Mining: Private Governance and the Resource Curse. Palgrave Macmillan, Basingstoke.

Elbra, A., 2020. Fool's Gold: business power and the evolution of the conflict-free Gold standard. Global Policy 11 (3).

Environmental Justice Australia, 2016. Dodging clean up costs: Six tricks coal mining companies play. Retrieved from: https://www.envirojustice.org.au/sites/default/files/filesEJA_Dodging_clean_up_costs.pdf.

Ferguson, J., 2005. Seeing like an oil company: space, security, and global capital in neoliberal Africa. Am. Anthropol. 107 (3), 377–382.

Fig, D., 2008. Stripping the desert: uranium mining inside Namibia' s namib-naukluft national park. South African review of sociology 39 (2), 245–261. https://doi.org/10.1080/21528586.2008.10425089.

Fitzgibbon, W., 2015. Australian miners linked to hundreds of deaths, injuries in Africa. Syd. Morning Her. Retrieved from https://www.smh.com.au/business/companies/australian-miners-linked-to-hundreds-of-deaths-injuries-in-africa-20150708-gi7rzk.html.

Fitzgibbon, W., Hamilton, M.M., Gallego, C.S., Lindenberg, F., 2015a. Australian mining companies digging A deadly footprint in Africa. Retrieved from. https://www.icij.org/investigations/fatal-extraction/australian-mining-companies-digging-deadly-footprint-africa/.

Fitzgibbon, W., Gallego, C.S., Immanuel, S., 2015b. Companies accused of 'taking advantage of regulatory weakness'. Retrieved from. https://www.icij.org/investigations/fatal-extraction/companies-accused-taking-advantage-regulatory-weakness/.

Fuchs, D., 2007. Business Power in Global Governance. Lynne Rienner Publishers, Boulder, CO.

Gamu, J.K., Dauvergne, P., 2018. The slow violence of corporate social responsibility: the case of mining in Peru. Third World Q. 39 (5), 959–975.

Geenen, S., Gleiberman, M., 2021. Superfluous jobs in extractive industries: the usefulness/uselessness of job creation after dispossession. Work. Employ. Soc., 09500170211008721

Government of Malawi, 2007. Development agreement between the Government of the Republic of Malawi, Paladin (Africa) Limited, and Paladin Energy Minerals NL on the Kayelekera Uranium Project.

Green, J., 2018. Paladin Energy puts second African uranium mine into care-and-maintenance. Nuclear Monitor. Retrieved from. https://www.wiseinternational.org/nuclear-monitor/862/paladin-energy-puts-second-african-uranium-mine-care-and-maintenance.

Hall, R.B., Biersteker, T.J., 2002. The Emergence of Private Authority in Global Governance, 85. Cambridge University Press, Cambridge.

Hancock, K.J., Sovacool, B.K., 2018. International political economy and renewable energy: hydroelectric power and the resource curse. Int. Stud. Rev. 20 (4), 615–632.

Haslam, P.A., 2018. Beyond voluntary: state–firm bargaining over corporate social responsibilities in mining. Rev. Int. Polit. Econ. 25 (3), 418–440.

Haufler, V., 2001. A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy. Carnegie Endowment, Washington DC.

Human Rights Watch, 2016. "The destroyed everything": mining and human rights in Malawi. Retrieved from. https://www.hrw.org/sites/default/files/report_pdf/malawi09_brochure_web.pdf.

ICMM, 2019. Integrated mine closure, good practice guide. Retrieved from. https://www.icmm.com/website/publications/pdfs/environmental-stewardship/2019/guidance_integrated-mine-closure.pdf?cb=60008.

Idemudia, U., 2014. Corporate social responsibility and development in Africa: issues and possibilities. Geography Compass 8 (7), 421–435.

IGF and OECD, 2018. Tax incentives in mining: minimising risks to revenue. Retrieved from. http://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf.

Jenkins, R., 2005. Globalization, corporate social responsibility and poverty. Int. Aff. 81 (3), 525–540.

Jenkins, R., Newell, P., 2013. CSR, tax and development. Third World Q. 34 (3), 378–396.

Kacungira, N., 2017. Fears of River Poisoning in Malawi: BBC.

Kamlongera, P.J., 2013. The mining boom in Malawi: implications for community development. Community Dev. J. 48 (3), 377–390.

Kemp, D., Owen, J., 2017. Grievance handling at a foreign-owned mine in Southeast Asia. Extr. Ind. Soc. 4 (1).

Khimji, M.F., Nicholls, C.C., 2015. Piercing the corporate veil in the Canadian common law courts: an empirical study. Queen's LJ 41, 207.

Kirsch, S., 2014. Mining capitalism. In: Mining Capitalism. University of California Press.

Kramarz, T., Park, S., Johnson, C., 2021. Governing the dark side of renewable energy: a typology of global displacements. Energy Res. Social Sci. 74, 101902.

Le Billon, P., Spiegel, S., 2021. Cleaning mineral supply chains? Political economies of exploitation and hidden costs of technical fixes. Rev. Int. Polit. Econ. 1–27. https://doi.org/10.1080/09692290.2021.1899959.

LeBaron, G., Rühmkorf, A., 2017. Steering CSR through home state regulation: a comparison of the impact of the UK bribery act and modern slavery act on global supply chain governance. Global Policy 8, 15–28.

Littlewood, D., 2014. 'Cursed'communities? Corporate social responsibility (CSR), company towns and the mining industry in Namibia. J. Bus. Ethics 120, 39–63.

Ludwig, K., 2018. The emerging governance landscape around zero deforestation pledges: insights into dynamics and effects of zero deforestation pledges. Background report. Retrieved from The Hague. https://www.pbl.nl/sites/default/files/downloads/2354_Ludwig_ZeroNetDeforestation.pdf.

Mann, H., 2015. ISDS: Who Wins More, Investors or States. Investment Treaty News.

McCarthy, J., 2022. A bad deal for development: assessing the impacts of the new inclusive framework tax deal on low- and middle-income countries. Retrieved from. https://www.brookings.edu/wp-content/uploads/2022/05/Tax-and-Bad-Deal-for-Development_Final.pdf.

Mikler, J., Elbra, A., Murphy-Gregory, H., 2019. Defending harmful tax practices: mining companies' responses to the Australian Senate Inquiry into tax avoidance. Aust. J. Polit. Sci. 54 (2), 1–17.

Mudd, G.M., Smith, H.D., 2006. Comments on the Proposed Kayelekera Uranium Project Environmental Impact Assessment Report. Retrieved from.

Mzembe, A.N., Meaton, J., 2014. Driving corporate social responsibility in the Malawian mining industry: a stakeholder perspective. Corp. Soc. Responsib. Environ. Manag. 21 (4), 189–201.

Newell, P., Frynas, J.G., 2007. Beyond CSR? Business, poverty and social justice: an introduction. Third World Q. 28 (4), 669–681.

Nolan, J., 2005. The United Nations' Compact with business: hindering or helping the protection of human rights. U. Queensland LJ 24, 445.

Ohmae, K., 1990. The Borderless World: Power and Strategy in the Interlinked Economy. Harper Collins, London.

Owen, J., Kemp, D., Marais, L., 2021. The cost of mining benefits: localising the resource curse hypothesis. Resour. Pol. 74, 102289.

O'Faircheallaigh, C., 2015. Social equity and large mining projects: voluntary industry initiatives, public regulation and community development agreements. J. Bus. Ethics 132, 91–103.

Paladin Energy, 2022. Code of Business Conduct and Ethics. Retrieved from: www.paladinenergy.com.au/wp-content/uploads/2024/02/2022.05.13-Code-of-Business-Conduct-and-Ethics-CURRENT.pdf.

Paladin Energy Ltd, 2018. Paladin energy Ltd 2017 annual report. Retrieved from. https://wcsecure.weblink.com.au/pdf/PDN/01945784.pdf.

Paladin Energy Ltd, 2021. Paladin energy Ltd 2020 annual report. Retrieved from. https://wcsecure.weblink.com.au/pdf/PDN/02274013.pdf.

Pattberg, P., 2006. Private governance and the South: lessons from global forest politics. Third World Q. 27 (4), 579–593. Retrieved from. http://www.jstor.org/stable/4017725.

Pattberg, P., 2007. Private institutions and global governance. The New Politics of Environmental Sustainability. Edward Elgar.

Pepper, M., Hughes, M., Haigh, Y., 2021. Loophole or lifeline? The policy challenges of mines in care and maintenance. Extr. Ind. Soc. 8 (3).

Ponte, S., 2019. Business, Power and Sustainability in a World of Global Value Chains. Bloomsbury Publishing.

Ramasastry, A., 2015. Corporate social responsibility versus business and human rights: bridging the gap between responsibility and accountability. J. Hum. Right. 14 (2), 237–259.

Readhead, A., 2018. Tax incentives in mining: minimising risks to revenue. Retrieved from. https://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf.

Reinsberg, B., Westerwinter, O., 2021. The global governance of international development: documenting the rise of multi-stakeholder partnerships and identifying underlying theoretical explanations. The Review of International Organizations 16, 59–94.

Ring, D., Grasso, C., 2022. Beyond bribery: exploring the intimate interconnections between corruption and tax crimes. Law & Contemp. Probs. 85, 1.

Ross, M.L., 2015. What have we learned about the resource curse? Annu. Rev. Polit. Sci. 18 (1), 239–259. https://doi.org/10.1146/annurev-polisci-052213-040359.

Ruggie, J.G., 2018. Multinationals as global institution: power, authority and relative autonomy. Regulation & Governance 12 (3), 317–333. https://doi.org/10.1111/rego.12154.

Santoro, M.A., 2015. Business and human rights in historical perspective. J. Hum. Right. 14 (2), 155–161.

Schleifer, P., 2019. Varieties of multi-stakeholder governance: selecting legitimation strategies in transnational sustainability politics. Globalizations 16 (1), 50–66.

Schleifer, P., 2023. Global Shifts: Business, Politics, and Deforestation in a Changing World Economy. The MIT Press.

Seabrooke, L., Wigan, D., 2017. The governance of global wealth chains. Rev. Int. Polit. Econ. 24 (1), 1–29.

Soares de Oliveria, R., 2013. Oil politics. In: Cheeseman, N., Anderson, D., Scheibler, A. (Eds.), Routledge Handbook of African Politics. Routledge, London.

Stake, R.E., 1995. The Art of Case Study Research. sage.

Strange, S., 1996. The Retreat of the State: the Diffusion of Power in the World Economy. Cambridge University Press, Cambridge.

Swank, D., 2016. The new political economy of taxation in the developing world. Rev. Int. Polit. Econ. 23 (2), 185–207. https://doi.org/10.1080/09692290.2016.1155472.

Szablowski, D., 2007. Transnational Law and Local Struggles: Mining, Communities and the World Bank. Bloomsbury Publishing.

Tax Justice Network, 2020. The state of tax justice 2020. Retrieved from. https://www.taxjustice.net/reports/the-state-of-tax-justice-2020/.

Tienhaara, K., 2018. Regulatory chill in a warming world: the threat to climate policy posed by investor-state dispute settlement. Transnational environmental law 7 (2), 229–250.

Tørsløv, T.R., Wier, L.S., Zucman, G., 2018. The Missing Profits of Nations. Retrieved from.

Tuokuu, F.X.D., Idemudia, U., Gruber, J.S., Kayira, J., 2019. Identifying and clarifying environmental policy best practices for the mining industry–A systematic review. J. Clean. Prod. 222, 922–933.

Turner, G., Amukeshe, L., Immanuel, S., 2018. Langer Heinrich Dodged N$219 Million Tax. The Namibian. Retrieved from. https://www.namibian.com.na/183974/archive-read/Langer-Heinrich-dodged-N$219-million-tax.

UNHRC, 2011. Report of the special representative of the secretary-general on the issue of human rights and transnational corporations and other business Enterprises, john Ruggie. Guiding principles on business and human rights: implementing the United Nations 'Protect, respect and remedy' framework. Retrieved from. http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

UNOHCHR, 2013. End of mission statement by the Special Rapporteur on the right to food. Malawi 12 to 22 July 2013 Retrieved from Lilongwe: http://web.archive.org/web/20130829181627/www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13567&LangID=E.

Utting, P., Marques, J.C., 2010. Introduction: the intellectual crisis of CSR. In: Utting, P., Marques, J.C. (Eds.), Corporate Social Responsibility and Regulatory Governance. Palgrave MacMillan, Basingstoke, UK.

Van Der Ploeg, F., Poelhekke, S., 2019. The impact of natural resources: survey of recent quantitative evidence. In: Why Does Development Fail in Resource Rich Economies. Routledge, pp. 31–42.
Venables, A.J., 2016. Using natural resources for development: why has it proven so difficult? J. Econ. Perspect. 30 (1), 161–184.
Vivoda, V., Kemp, D., Owen, J., 2019. Regulating the social aspects of mine closure in three Australian states. J. Energy Nat. Resource Law 37 (4).
Wilson, S.A., 2022. Measuring the effectiveness of corporate social responsibility initiatives in diamond mining areas of Sierra Leone. Resour. Pol. 77, 102651.
Woods, C.S., 2014. It isn't a state problem: the minas conga mine controversy and the need for binding international obligations on corporate actors. Geo. J. Int'l L. 46, 629.
World Bank, 2020. World Bank databank. Retrieved from. https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS?locations=MW.
World Nuclear Assosication. Best Practice in Uranium Mining. Retrieved from https://www.world-nuclear.org/our-association/publications/technical-position-papers/best-practice-in-uranium-mining.aspx.
Zaman, R., Jain, T., Samara, G., Jamali, D., 2022. Corporate governance meets corporate social responsibility: mapping the interface. Bus. Soc. 61 (3), 690–752.