

When Business Harms Human Rights: Affected Communities that are Dying to be Heard

Abstracts (Alphabetical by Author): Part II

Jena Martin & Jennifer Oliva, *Country Roads: Appalachian Veteran Coalminer Narratives*

Natural-resource extraction has played a diminishing role in the economies of affluent nations in the post-industrial economy. Although the United States, like much of the Global North, continues “to consume vast quantities of natural resources, the contribution of extractive industries to total employment and to total national economic production—as typically measured by gross domestic product—has been declining for decades.” Scholars have attributed this decline to everything from mechanization to coal’s failure to achieve cost-competitiveness with other energy-generating natural resources to the consumer demand for clean energy. This national-level pattern has manifested itself across the United States in a variety of regions, including Appalachia, which has been closely connected to extractive industries, such as coal mining, since the mid-1800s. Indeed, Appalachia’s historical identity as a region is inextricably intertwined with coal mining, notwithstanding the fact that relatively few of its residents are still employed in the mining industry. “This tendency for many in a community to identify with an industry that was historically important in the local economy, but that may not be any longer, is regularly exploited by extractive industries to maintain their political influence, which is often used to avoid government regulations aimed at ensuring the protection of the environment and public health.”¹

West Virginia is also home to one of the highest per capita veteran populations in the United States. As highlighted in the recent West Virginia Public Broadcasting documentary, *Vietnam: West Virginians Remember*, West Virginia had the highest per capita service and sacrifice rates in the country during the Vietnam War. Much like coal mining, military service often exacts a significant toll on the human body and mind. A recent literature review assessing the mental health consequences of the wars in Iraq and Afghanistan found “clear evidence of higher rates of homelessness, alcohol abuse, domestic violence, relationship breakdown, and criminality” among veterans of those wars with untreated mental health conditions. Moreover, reports indicate that veterans are more likely to be unemployed than non-veterans, account for 20% of U.S. suicides, and comprise nearly 20% of the American homeless population. In fact, the United States Department of Veterans Affairs confirms “that veterans face a variety of difficulties related to readjusting to civilian life, including financial and employment, relationships, legal difficulties, homelessness and substance abuse.” As historian John M. Kinder reminds us, “[m]odern war is about many things, but its most defining feature is the rupturing, wounding, and destroying of human bodies.”

¹ Bell, Shannon. and York, Richard. "Community Economic Identity: The Coal Industry and Ideology Construction in West Virginia" *Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Hilton San Francisco, San Francisco, CA, Aug 08, 2009.* 2014-11-29 <http://citation.allacademic.com/meta/p306587_index.html>

As such, this chapter explores the significant health and environmental impacts the military and the coal mining extraction industry have wrought on West Virginia veteran coalminers and their communities through first-person narratives.

Our interviews with veteran coal miners throughout the state illuminate several striking themes. First, most of the veterans who returned from service to work the West Virginia mines did so because their significant personal and family financial obligations precluded them from taking advantage of the G.I. Bill and attending college. Unfortunately, it appears that these veterans' inability to attain higher education operated to narrow their employment options in an economy dominated by a single industry to which they became captive. Second, veteran coal miners were quick to point out that military service and coal mining share several distinctive cultural commonalities, such as a demanding appreciation for solidarity and camaraderie in the face of near-constant risk, danger, and uncertainty. Third, veteran coal miners identified as valuable the sense of personal pride and self-worth that a male coal miner enjoys in a community that highly prizes and views as definitely "masculine" the considerable physical labour demands of underground mining. Finally, many of the veteran coal miners candidly characterized the coal mining companies for whom they had worked as exclusively profit-driven entities, which frequently prioritized the bottom line at the expense of the health, well-being, and safety of their miners.

Piergiuseppe Parisi and Gareth Sims, *Hindrances to Access to a Remedy in Business-related Cases in Colombia: The Case of Gilberto Torres*

In the course of the last regional consultation for Latin America and the Caribbean, held by the UN Working Group on Business and Human Rights, the Colombian representative pointed at the progress made within the country in the implementation of the UN Guiding Principles on Business and Human Rights through the Action Plan designed to domesticate the international standards, the Plan de Acción de Derechos Humanos y Empresa. He also noted that the third pillar on remedies was, at that moment, the weakest.

The Colombian Caravana UK Lawyers Group, a London-based charity, has long been supporting the case of Gilberto Torres Martínez, a former trade unionist, leader of the Unión Sindical Obrera de la Industria del Petróleo, in Casanare. In 2002, he was abducted and illegally detained for 42 days by paramilitaries. In that period and area, around 12,000 other people were either killed or disappeared. Fearing for his life, Mr Torres left the country and returned only 15 years later. In the meantime, some paramilitaries were prosecuted and subsequently found guilty for the abduction of Mr Torres, and a criminal case was brought against companies Ocesa and Ecopetrol, which is still ongoing. Mr Torres is the victim and main witness in this case. Due to his role, he has been the victim of several security incidents and, despite his protests, the few protection measures assigned to him by the Colombian state are insufficient to preserve his physical integrity.

Mr Torres' case is paradigmatic of the inadequacy of state-provided protective measures to guarantee the security of victims of human rights abuses. In cases where corporations are involved, the lack of effective protective measures, coupled with the asymmetry between victims and corporations in the legal process, represents the main obstacle to the victim's right to a

judicial remedy protected by principles 25 and 26 of the UN Guiding Principles on Business and Human Rights. The length of the proceedings against Ocesa an Ecopetrol also hinders the effectiveness of judicial proceedings by distancing the prospect of a remedy and exposing claimants to security risks. In order to find a remedy, Mr Torres has initiated proceedings against BP for its alleged involvement in the events in front of British courts.

Mr. Torres's case is but one example of the different ways in which the accessibility of judicial remedies may be trumped. The Caravana has detected several examples from various parts of Colombia uncovering a negative trend in the implementation of the third pillar of the UN Guiding Principles and the Colombian Action Plan on Business and Human Rights. In addition to the security risks faced by victims of business-related human rights violations, there are hindrances to the work of victims' legal representatives, which encompass lengthy drawn out legal proceedings and stigmatisation of organisations involved in the promotion of human rights vis-à-vis the industrial sector.

Jacobo Ramirez, *Tilting at Windmills: Conflict between Social Actors and Business with Wind Energy Projects*

Social actors, meaning indigenous people, government, and business groups, might each have assumptions that imply different interpretations for regional development projects regarding the aim to 'protect, respect, and remedy' human rights principles. This chapter employs development and human rights theory and research to investigate a conflict among social actors in a wind energy project in Mexico.

From 2013 – 2017, the author conducted qualitative research (interviews, focus-groups, and observations) in order to determine the different understandings of the wind-park project. Interviews and focus groups were conducted with (1) indigenous people of the Isthmus of Tehuantepec, Oaxaca; 2) Representatives of the Mexican government; (3) Corporate employees in the wind-energy sector; (4) Members of the Danish Institute for Human Rights, and (5) Members of the Working Group for Business and Human Rights who visited Mexico in 2016.

The results highlight conflicting understandings regarding territory, identity, consultation, and wind-energy benefits, which have resulted in unresolved conflict and violation of human rights. This chapter: (1) discusses social actors' incapacity to learn and assimilate information from past conflicts in the development of wind-energy projects in order to prevent human rights abuses; (2) questions typical assumptions of indigenous people as unorganized, illiterate in social media technology, and 'easy to buy' through so-called corporate social responsibility (CSR) initiatives, and; (3) discusses the importance of understanding the history embedded in indigenous peoples' territory in Mexico in order to establish a dialogue for free, prior, and informed consent in wind energy projects.

This research advances our understanding of indigenous communities as critical actors in wind-energy projects. Although several scholars have argued for the importance of considering power asymmetries of different social actors when conducting development projects, scholars and practitioners have lacked a fundamental understanding of these constructs, which are investigated and discussed in this research.

Tara Van Ho, *Community, Interrupted: Cajamarca, Ibagué and the La Colosa Mine in Colombia*

The proposed La Colosa mine, centered in the Colombian town of Cajamarca but with tailings that would flow down to regional capital of Ibagué, would have been the largest gold mine in the Americas. The plans for the mine were developed without community input or consultation. As a result, when the mine became public, local community members were transformed into environmental and human rights defenders. This chapter considers what it means for individuals to become environmental and human rights defenders, and how the field of business and human rights should address the time they lost fighting the battles when they could have been living their pre-project lives.

The environmental and human rights defenders leading two grassroots NGOs, Eccoterra and Comité Ambiental de Cajamarca have been fighting for almost a decade to stop the mine's development. In that time, their lives were transformed, as they needed to develop the scientific, legal, political, and advocacy skills to effectively challenge the mine. They have spent time maneuvering through the dense and impractical websites of state agencies, and the reports of AngloGold Ashanti. They have visited other communities affected by mining operations, and learned the technical language and operations of both the mining industry and the law. They gathered petitions, secured referendums for local votes, and won those referendums. But to do that, they invested a great deal of time.

The Inter-American Court of Human Rights has recognized that when a human right is breached an individual may be entitled to compensation for the disruption of the "*proyecto de vida*" or the individual's "life plan." For the Inter-American Court, a 'life plan' refers to the notion that each individual is entitled to personal fulfillment, determined in part and tied in part to the options they have in their life. To date, the Court has awarded compensation for the disruption to a life plan only in cases where the underlying violation relates to violations of the prohibitions on arbitrary deprivation of life, arbitrary detention, and torture or cruel, inhuman or degrading treatment or punishment. This chapter uses narratives from the Cajamarca and Ibague leaders to consider whether businesses should be required to compensate environmental and human rights defenders for the time and life changes required to challenge the underlying violations of human rights by businesses.

Conclusion

The Conclusion summarizes the themes explored in the volume and outlines the challenges of implementing the Guiding Principles in the future.

Biography of the Editors

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Karen E. Bravo is a Vice Dean and Professor of Law at Indiana University Robert H. McKinney School of Law. Her research interests include regional integration, labor liberalization, personhood, and illicit international markets, including human trafficking. Professor Bravo practiced corporate law with international law firms in New York and Massachusetts following her graduation from Columbia Law School. Her practice areas included venture capital financing, mergers and acquisitions, and emerging and public company representation. She left her law firm practice to join the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) in the Republic of Armenia, where she worked with domestic judiciary and advocates and local and international NGOs on legal reform and education programs and strategies.

Jena Martin

Jena Martin is a Professor of Law at West Virginia University where she teaches in the areas of business, securities regulation, corporate accountability, and human rights. She also teaches a course on business ethics and the regulatory world for the College of Business and Economics. Prof. Martin's current scholarship focuses on expanding accountability and governance mechanisms for transnational corporations using methodologies generally reserved for more typical corporate and securities violations. Her current work include examining U.S. securities regulations within a business and human rights framework. Professor Martin has been an invited speaker at several conferences where she discusses issues of ethics, corporate accountability, and human rights.

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Tara Van Ho is a Lecturer in the School of Law and Human Rights Centre at the University of Essex in the UK. She holds a BA (Marietta, USA), JD (Cincinnati, USA), LLM (Essex, UK) and PhD (Essex, UK). Before returning to Essex, she was an Assistant Professor in Law at Aarhus University where she was affiliated with the INTRALaw Centre. She is a Senior Project Associate with the Essex Business and Human Rights Project through which she advises governments, intergovernmental organisations, and NGOs on issues of business, investment law, and human rights. She is licensed in the US State of Ohio.

Professors Bravo and Martin are co-editors of *THE BUSINESS AND HUMAN RIGHTS LANDSCAPE: MOVING FORWARD, LOOKING BACK* (Cambridge University Press 2016).