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The Untouchables. Why it's Getting Harder to Stop Multinational Corporations.

http://foreignpolicy.com/2016/04/11/the-untouchables-zimbabwe-green-fuel-multinational-corporations/?utm_source=April+12%2C+2016+EN&utm_campaign=4%2F12%2F2016&utm_medium=email

April 11, 2016

CHISUMBANJE, Zimbabwe — Joyce Chachengwa woke up one morning to find her crops — her only source of food and income — ground into the dirt.

Chisumbanje is a small village in eastern Zimbabwe, right on the border with Mozambique. Chachengwa had been growing maize and cotton here her whole life. Every year, she took out loans for seeds and fertilizer, and then paid them back with her harvest. Since she lost her husband, she had relied on her two daughters and eight grandchildren to help tend her 75-acre plot. Some years, they produced as much as four tons of maize and 120 bales of cotton.

But on that morning, Chachengwa came out to her plot to find her entire season — months of work — plowed over, the earth scraped into lines, ready for someone else's crops to be planted.

From there, things only got worse. Chachengwa learned that everyone's plots, all the surrounding villages, had been sold to an ethanol company. The land was going to be converted into sugarcane fields. The processing plant, eight miles away, was already under construction.

Chachengwa, like everyone else, would never get her original land back. She would be allocated a new plot, about one-sixtieth the size of her old one, and farther from her home. Yes, it was

smaller, her district chief told her, but it would be irrigated, more productive, and easier to tend.

After she planted her maize, though, Chachengwa discovered that the irrigation only came intermittently, the canals drying up for days at a time. Even worse, the irrigation water was runoff from the sugar mill, acidic, with a greenish tint. She started getting cracks on her feet and rashes on her arms. From nearby villages, she heard rumors of miscarriages, cattle dying after drinking it.

These days, Chachengwa's plot yields just more than 100 pounds of maize per year, about one-eighth of what she used to produce. She knows she should be rotating her crops, leaving part of the land fallow so the nutrients in the soil regenerate. But the maize is all she has to eat. By the time she harvests one season's crop, she's already running out of the previous one. So she plants maize on the same land over and over again, getting less out of it each year. Every year, it gets harder to afford her next round of seeds, and she's running out of things in her house to sell.

Things were never good in Chisumbanje, but they have never been this bad. One of Chachengwa's granddaughters is 13 years old. After she stopped going to school because Chachengwa couldn't afford the tuition anymore, she became one of the many wives of a village elder. She's already pregnant. The daughters of Chachengwa's neighbors and friends have jumped the border to Mozambique, becoming prostitutes in the cities or on the highways, making just enough money to eat plus a little extra to send back home. The men were promised jobs on the sugarcane plantations, but the company running them only hires temporary workers and pays just \$2, plus a warm meal, for a day's work.

It has been seven years since Chachengwa lost her land. The sugarcane farms now cover an area of eastern Zimbabwe the size of Manhattan, feeding a processing plant that is the largest in Africa. More than 10,000 people have been displaced.

You know where I'm going with this, right? I'm about to tell you that the company behind all this is Monsanto, or Shell, or Coca-Cola. That your car is running on the ethanol this plant is producing. That the U.S. government is funding or facilitating or failing to prevent what is taking place here.

But none of that is true. The company responsible for all this is called Green Fuel. It is headquartered in Zimbabwe, it isn't listed on any stock exchange, it doesn't sell any products in the United States, and it has no Western investors.

And it is, increasingly, the rule rather than the exception. When you think of the worst abuses in poor countries — land grabs, sweatshops, cash-filled envelopes passed to politicians — you probably think they're committed by companies based in rich ones: Nike in Indonesia, Shell in Nigeria, Dow in Bhopal, India.

These days, the worst multinational corporations have names you've never heard.

These are the cases you're most likely to hear about, but they are no longer representative of how these abuses actually take place — or who commits them. These days, the worst multinational corporations have names you've never heard. They come from places like China and South

Africa and Russia. The countries where they are headquartered are unable to regulate them, and the countries where they operate are unwilling to.

For the last 10 years, I've worked at an NGO dedicated to preventing multinational corporations from violating human rights. Here's why every actor in the West that could have prevented what happened in Chisumbanje — the media, the international agencies, my own NGO — is becoming increasingly powerless to do so.

Naming the shameless

An employee of Rio Tinto walks past a glass window in the Shanghai offices. Photo credit: PHILIPPE LOPEZ/AFP/Getty Images.

In 2004, a mining company called Rio Tinto discovered a deposit of diamonds just outside Zvishavane, Zimbabwe. In the early stages of exploration, the company found that the only way to dig them up was to resettle the 140 or so families living on top of them.

Rio Tinto spent the next two years in negotiations, holding town hall meetings and coming up with a resettlement plan designed to leave the farmers better off than before. The company bought up new farms with similar soil conditions and then planted crops on them so they would be ready for harvest when the farmers moved in. It built schools and health clinics, trained community members to increase the productivity of their cattle, and even moved 265 graves to the new village. Once the families were resettled, the company agreed to a 10-year “Communities Action Plan” to keep providing training and investment after it started operations.

All of this took place just 150 miles from Chisumbanje, just four years before Green Fuel arrived. So why did one company put so much effort into resettling the poor farmers living on its land, while the other simply swept them aside? The answer lies in the location of each company's headquarters and the incentives that generates.

Rio Tinto is based in London. It's listed on stock exchanges in the United Kingdom, Australia, and the United States. It has to follow European Union reporting requirements. If the company pays bribes in Zimbabwe, it can be prosecuted under the U.S. Foreign Corrupt Practices Act or the U.K. Bribery Act. If it kicks communities off their land, they can lodge a complaint with Britain's National Contact Point for the Organization for Economic Cooperation and Development (OECD) or its export credit agency. An international NGO can sue the company in U.S. courts.

Activating any of these remedies would have a BBC camera crew on Rio Tinto's front stoop the following day, broadcasting images of distraught villagers, destroyed crops, and idling bulldozers to consumers back home. Soon, Rio Tinto's investors would be on the phone, asking why NGOs were urging them to divest.

This architecture is one of the greatest international human rights triumphs of the last 50 years. These mechanisms aren't perfect — cases in U.S. courts get thrown out on technicalities; publicity blows over; OECD National Contact Point recommendations sit on shelves — but

together, they've raised the cost of committing human rights violations in developing countries. And, just as crucially, they've given companies a reason to spend money avoiding them. A name-and-shame campaign wouldn't work because the company doesn't need to defend its reputation — it doesn't have one.

Now contrast Rio Tinto with Green Fuel. A name-and-shame campaign wouldn't work because the company doesn't need to defend its reputation — it doesn't have one. Litigation outside of Zimbabwe wouldn't work because the company has no international investors or shareholders. It doesn't even have international customers: The ethanol it produces is of such low quality that it's only sold domestically. Every leverage mechanism we have, this entire architecture we've built, is based on chasing companies back to jurisdictions where regulators, customers, and civil society have the power to punish them. But for Green Fuel, and thousands of other companies like it, the trail goes cold. (Numerous attempts to reach Green Fuel were not returned.)

Sarah Labowitz, a researcher at New York University's Stern Center for Business and Human Rights, calls this the "denominator problem."

"We always knew that transnational accountability mechanisms don't reach every single multinational corporation," she said. "But in the last 10 years, we [have seen] this explosion of companies where we have no leverage whatsoever."

Since 2003, investment from developing countries to other developing countries has grown by more than 80 percent annually, now accounting for 39 percent of the total.

The 2014 Fortune Global 500 list included 118 companies headquartered in Brazil, Russia, India, or China. Just like Green Fuel, these companies aren't subject to any transnational regulatory mechanisms. They don't have to report their activities abroad, and they can't be taken to court in their home jurisdictions.

Labowitz points out that since the Rana Plaza factory collapse in 2013, which killed 1,130 people, international clothing brands have made significant efforts to improve working conditions in their supplier factories. The Bangladesh Accord on Fire and Building Safety and the Alliance for Bangladesh Worker Safety now cover almost 2,000 factories in Bangladesh and have put in place better building inspections, more frequent audits, and "no tolerance" blacklisting of suppliers that refuse to improve.

But that's hardly the whole story. Labowitz also found that less than a third of the garment factories in Bangladesh sell directly to big Western brands. The majority — all 5,000 of them — sell clothes on the domestic market, to consumers in China and India, or to companies that make brandless products.

And this sector of the economy — where the factories are invisible to boycott campaigns, where there is no one asking them to perform audits at all — is growing the fastest.
Village chiefs vs. multibillion-dollar corporations

Traditional huts are pictured in a historical region of Zimbabwe. Photo credit: DEAGOSTINI/Getty Images.

Oliver Makwalo has 18 wives and 114 children. Before his 500-acre farm in Chisumbanje was plowed over in 2008, he ran his family like a corporation: Sons worked in the fields; wives and daughters pounded maize into meal; children did their homework, all on a sprawling homestead of huts mingled in with the trees.

Like much of the developing world, it's not always clear who owns the land in Chisumbanje. People like Makwalo have been living and farming and grazing cattle here for hundreds of years. They know which plot is theirs from tradition and custom, not from a land title or ownership deed. That's why, when Green Fuel representatives came to buy up the land, they didn't speak to the farmers. Instead, they negotiated with the district chief and his deputies (the "head men"), the traditional leaders with the power to sell the land out from under their subjects.

The Green Fuel reps kicked off the negotiations by buying the district chief a car. Once the land was plowed over and the sugarcane planted, they told him they were saving 10 percent of their holdings to be distributed back to the villagers. It was up to the chief to divide it up and distribute it back to them.

Almost immediately, the system broke down. Former residents who hadn't lived in Chisumbanje for years returned to claim plots of land, leaving less for the people who had had theirs plowed over. The chiefs allocated one plot to each household, rather than each individual, without taking into account who had more land originally. Makwalo's family, with its 150 members, was counted as just one household and got the same plot, the size of half a football field, as everyone else.

And Makwalo, it turns out, was one of the lucky ones. Of the more than 1,700 households that were displaced by Green Fuel, only around 500 were compensated with a new plot of land. When villagers complained, the chief told them that the land had never been theirs and that it had been granted to their grandfathers only temporarily. The chief was the rightful owner.

Meanwhile, the chief and the head men allocated themselves one plot per person, granting their own polygamous families vast swaths of irrigated land. Makwalo now pays \$100 per year to rent an extra plot from one of the head men.

Other farmers ended up with nonirrigated land several hours' walk from their homes. They spent weeks clearing brush and cutting down trees to get their new plots ready for planting, only to be told by the chief that the land had been re-allocated to the company. They would have to start over on a new plot. "They were just using us to clear their land," one farmer told me.

Soon, desperation started to turn the villagers against each other. Neighbors started stealing maize and sending cattle to graze on each other's crops. The only people who could still grow cotton, the region's traditional cash crop, were the head men. Many of the other farmers gave up on income entirely and started growing vegetables for food. One of the farmers I met had bought a freezer and generator so he could sell fish by the side of the road. On good days, he earns

around \$3.

The community eventually started fighting back against the company, stealing sugarcane and destroying tractors. Two years ago, someone burned down more than 1,000 acres of sugarcane fields. Last year, a Green Fuel employee got his arm hacked off with a machete in a fight with a farmer. After that, the situation reached a tenuous stalemate: Every time the community held a protest or swiped some sugarcane, the company turned off the irrigation water for a few days.

But even this mutually destructive truce turned out to be unstable. Last summer, the company started impounding community members' cattle, their last source of income. Green Fuel tells community members they are grazing their cattle on company land. The community says the borders of Green Fuel's property aren't marked, that the company's land has been their grazing ground for decades, and that security guards are simply impounding cattle on sight. The company charges \$4 for every day it holds the cattle and reportedly doesn't feed them in the time it takes community members to scrape together the impound fee.

Since 2013, the communities here haven't met with Green Fuel representatives directly. All information comes filtered through the chief and the head men and usually in the form of decrees — Green Fuel is taking a new block of land, the impound fee is increasing from \$3 to \$4 — rather than proposals. The protests and vandalism, farmers say, are their only way to communicate with the company. Force is the only way the company has communicated back.

These local authority structures — the corrupt leaders, the divided community, the company using one against the other — aren't unique to Zimbabwe. The World Bank estimates that more than 90 percent of Africa's rural land is unregistered or communally owned, most of it administered by traditional chiefs.

Since the end of colonialism, developing countries have been pressured by international institutions and NGOs (like mine) to recognize traditional power structures. In communities without formal land titles or clear boundaries, it makes sense to empower one of its members to speak on behalf of the people living there.

On its own terms, this effort has succeeded. Dozens of countries now recognize customary or collective ownership and have standardized the role of traditional leaders in administering it. Across the developing world, land laws require buyers to consult traditional leaders before they purchase land.

The problem, though, is that these structures were never designed to come up against multinational corporations. Giving chiefs unassailable power over their communities makes sense when their primary role is settling boundary disputes or ordering their younger constituents to pay a pension to one of their older ones. In rural areas, where literacy is limited and the central government is weak or absent, it is, in fact, essential. But when traditional leaders start negotiating land purchases in the tens of millions of dollars or selling tracts the size of small European countries with little transparency or accountability, it's a recipe for disaster.

In South Sudan, traditional authorities granted a timber company a 49-year lease on a plot of

land the size of Delaware for just \$25,000. In Indonesia, traditional leaders sold their constituents' land without mentioning that they were receiving a salary from the company they were selling it to.

In most countries that recognize traditional ownership, communities lose all legal rights over their land as soon as it's purchased. This allows companies to promise jobs and development to traditional leaders — or simply pay them off — and then cut off all communication once the new title is issued. In 2012, Indonesia's National Land Agency recorded 8,000 ongoing land conflicts, many over palm oil plantations and forestry developments.

These are the kinds of stories that make me pessimistic about the ability of human rights NGOs to prevent future Chisumbanjes. Global demand for agricultural land has increased 14-fold since the 2008 spike in global food prices. Most of that land is rural, un-tenured, and informally administered — exactly the conditions that make it vulnerable to the Green Fuels of the world. State-sanctioned abuse

Zimbabwe's head of intelligence, Happyton Bonyongwe, confers with the commander of the Zimbabwean Army and President Robert Mugabe at Harare Airport. Photo credit: ALEXANDER JOE/AFP/Getty Images.

James Pachirera was working in his fields when the tractor came.

“What are you doing?” he shouted as the machine rolled over his maize, already taller than him.

“We're here on the orders of the president,” the driver said. “If you have a problem, take it up with him.”

The Green Fuel ethanol plant was Zimbabwean President Robert Mugabe's idea. He called it a “sanctions buster” and told his country that it would shame the West into lifting the sanctions it imposed after his sketchy re-election in 2002.

Needless to say, it didn't work. The poor-quality ethanol couldn't be sold on the international market. Instead of pushing for higher standards, the Zimbabwean government passed a law requiring all domestic fuel to be blended 5 percent with Green Fuel ethanol, a low enough percentage to be used in normal cars. Since then, the requirement has risen to 15 percent. The government hasn't just benefitted from the abuses committed by Green Fuel; it has actively participated in them.

The government hasn't just benefitted from the abuses committed by Green Fuel; it has actively participated in them. The company doesn't actually own its sugarcane plantations. It leases them from Zimbabwe's Agricultural and Rural Development Authority (ARDA), a state-owned enterprise that is mandated, at least nominally, to boost the productivity of rural farmers.

It was ARDA, not Green Fuel, that owned the tractors that cleared villagers off their land to build the plantations. Green Fuel pays more than \$100,000 to the local government every year as

part of its lease from ARDA. At least part of this payment is supposed to be distributed back to local residents, but every year it disappears before they see any of it.

Other government bodies are implicated in the human rights violations, too. Police officers have beat villagers who participate in protests. Local authorities have refused to release toxicity reports after cattle died from drinking the irrigation water.

In 2010, government inspectors came to assess the value of the land that had been plowed over. They walked out to the plots and told residents that their land was fallow and they probably weren't going to get any harvest that year anyway. Most of the compensation amounts were between \$4 and \$6. One farmer says his mother used to produce six tons of maize every year, more than \$350 worth. When the assessor came, he valued her land at \$1.50.

All of our existing tactics to keep multinational corporations from violating human rights — boycott campaigns, shareholder resolutions, extraterritorial lawsuits — have the same fatal flaw: They're aimed at shaming the companies committing the violations, not the governments facilitating them. Even when campaigns target government complicity, the lack of stick-and-carrot mechanisms means they're easily ignored.

But these abuses nearly always happen under the guiding hand of the government hosting them. In Angola, the state-owned oil company, Sonangol, is also the government regulator, responsible for policing conditions in its own sector. In Madagascar, the government tried to lease half the country's arable land to the South Korean company Daewoo Logistics without even asking for payment. Labowitz points out that many of the garment factories in Bangladesh are owned by politicians, the same people in charge of inspecting them.

Because they're matters of domestic politics, these kinds of abuses are almost impossible for the international community to do anything about. Last year, the European Commission, the EU's executive body, accused the Russian energy firm Gazprom of bullying European governments into letting it establish a monopoly. The company replied that because it was state-owned, this was a matter for diplomacy and that antitrust rules didn't apply.

China, which funds more infrastructure projects in Africa than the World Bank, doesn't have the same qualms about encouraging labor violations or propping up dictators. In the late 1990s, when international concerns over genocide chased Western companies out of Sudan, Chinese companies flooded in, taking over the oil fields and selling weapons to the government. Just a few miles from Chisumbanje, the Marange diamond fields were developed by joint-venture companies, half-Zimbabwean and half-Chinese, all state-owned. In 2008, the Zimbabwean army killed so many people living near the mining sites that the diamonds were briefly classified as conflict minerals.

My last meeting in Zimbabwe is with a government official. I arrive with my Zimbabwean colleagues, ready to relay what the farmers have told us.

Almost immediately, the official accuses us of trying to overthrow Mugabe. "The government's

just trying to provide humanitarian assistance,” he says, “but it’s clear you’re interested in making this political.”

Well, I’m paraphrasing. I’m not allowed to take notes in the meeting, and I can’t say who he is or where we meet him. “I’m trying to decide if it’s my department who should be regulating you, or the police,” he says as he ushers us out.

As we walk outside, a man in a dusty black suit is leaning against our car. One of my colleagues, a resident of Chisumbanje who lost his own farmland, speaks with him in hushed tones for a few minutes.

“Who was that?” I ask as we drive away.

“He’s from the CIO,” he says, referring to the Central Intelligence Organization, Zimbabwe’s KGB. “He wanted to know what we were talking about in there.”

Going it alone

A farmer in Chisumbanje surveys her land.

Mutare, the closest city to Chisumbanje, used to be a 90-minute drive, but the weight of all the trucks going to and from the ethanol plant has torn potholes into the road, doubling the travel time. Since Green Fuel started operating, its trucks have killed more than 100 people, 15 of them children, along the road. Last summer, a Green Fuel driver fell asleep at the wheel and veered off into the dust, running down two women and killing one. The company refuses to pay compensation for any of the accidents.

In the seven years since Green Fuel came to Chisumbanje, it has never attracted coverage from the international media. No NGO has launched a campaign to stop what is happening here. No international agency has launched an investigation.

But no one here was ever really waiting for them to do that anyway. In Chisumbanje, they have been filing cases in domestic courts, calling local news agencies, trying to find leverage in the only country in the world where they still have any: their own.

Since 2008, Green Fuel has been the subject of three parliamentary investigations. In 2015, 22 members of Parliament came here to talk to the communities. They produced a report documenting all the violations I’ve just told you about and then called on the rest of the government to fix them.

The Zimbabwe Environmental Management Agency came, too, and sent teams of inspectors in 2012 and 2013 to find out why the company never carried out an environmental impact assessment before it started operating. They tested the water and found it just as poisonous as the locals said it was.

Everything happening here is illegal under domestic law, but that doesn’t seem to matter.

Everything happening here is illegal under domestic law, but that doesn’t seem to matter. The

parliamentary recommendations have been shouted into the ether. The fines issued by the environmental agency were reduced to just \$20.

As we leave Chisumbanje, driving 20 miles an hour on the pockmarked highway, we pass two kids standing on the side of the road. It is 11 a.m. on a Tuesday, and they are probably 9 years old. But school costs \$10 per term. So they are here, with shovels, scraping gravel into the potholes. Pothole by pothole, they make the road a tiny bit smoother, until one of the trucks comes and opens them up again.