

**INTERNATIONAL NORM AND TRANSNATIONAL CORPORATION:
THE CONTRIBUTION OF L'ORÉAL TO ERADICATE CHILD LABOR
MICA MINING IN INDIA**

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ABSTRACT

This article explores how L'Oréal respond to to the issue of illegal activities and child labour in their mica supply chain from India. It emphasizes that despite economic interests are always embedded in transnational corporation's, L'Oréal responses to the issue of illegal and child labour mica mining suggest that the action of the company is influenced by international norm such as the UN Guiding Principles on Business and Human Rights. The Guiding Principles has influenced the construction of the L'Oréal identity and behaviour in their business activities. The company has used their business code of conduct in related to human rights in justifying their responses to deal with the illegal and child labour in its mica supply chain from India. It has been emphasized that mica supply from India should comply with globally recognized workplace employment, occupational health and safety, and environmental standards that include prohibitions on the use of child labour.

Keywords: *Business and human rights, Transnational corporation, International norm, Child labour, illegal mining*

INTRODUCTION

Illegal mining including the problem of child labour have been a common issue in many developing countries (Hilson, 2002; Banchirigah, 2008; Samuel, *et al*, 2012; Boadi, *et al*, 2016). The International Labour Organization (ILO) defines child labour as 'the work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development' (International Labour Organization, n.d). Child labour takes many different forms, but the ILO identified

some of the worst forms of the child labour. As stated in the Article 3 of ILO Convention no. 182, among some forms of child labour such as slavery and the trafficking of children, the use of child for prostitution and illicit activities, any work done by child, by its nature, that is likely to harm the health, safety or morals of the children are also considered as the worst forms of child labour (Worst Forms of Child Labour Convention, 1999).

Referring to definition of the ILO Convention, mica mining and processing in India could be categorized as the worst form of child labour. The illegal mining are inherently endanger the children as they work without any safety equipment and engaging with naturally dangerous activities such as cutting mica with hammer and climb down narrow (DanWatch, 2014: 4). In addition, the risk of exposure to respiratory diseases due to dust from mica mines is inevitable. Some studies showed that mica workers and miners are likely to experience respiratory problems (Zinman, *et al*, 2002; Sébastien, *et al*, 2013). By realizing some risk factors of mica mining, the Indian Law prohibits children under the age of 14 from working in underground mines, cutting/splitting mica, or engaging in processes involving contact with free silica. Unfortunately, despite the legal framework does exist, illegal mining are still occurring such as the ones in Jharkhand and Bihar (Srivastava, 2019; Roy, 2020).

Mica mining from Jharkhand and Bihar are supplied widely to many global companies including to a giant cosmetic company L'Oréal. As the world's leading companies for personal care with the valuation at around US\$11.75 billion in 2020 (Statista, 2021), L'Oréal collaborates with various countries and suppliers to get their raw material needs such as mica for its products. The mica supply for L'Oréal comes from all over the world, especially from India. With regard to this, there is indication that L'Oréal receive supply from illegal mica mines from India. A report said that L'Oréal is very likely to receive mica from illegal sources in India that they bought from global suppliers (DanWatch, 2014). Against this backdrop, this article focuses in two interrelated questions including: what strategies the L'Oréal do to deal with the issue of child labour in their mica supply? how the L'Oréal action and contribution to eradicate child labour in mica mines in India be explained? To answer these questions, this article draws on the responses and roles of L'Oréal, through a non-profit organization called Responsibility Mica Initiatives (RMI), in attempt to eradicate the

problem of illegal and the practices of child labour in mica mining in India especially in Jharkand and Bihar.

This article proceeds as follows. First section explores the literature of norm with regard to its power in influencing and guiding actor's behaviour and interest. It explains that international norms has not only power to construct state's identity and behaviour, but also non-state actors such as transnational corporations. Second section explains the strategies used by L'Oréal in dealing with the allegation of the use of illegal mica in their products. In this section, it is emphasized that action taken by the L'Oréal contributes in the effort to eradicate illegal mica mining in India. Third section discuss the L'Oréal's responses to the issue of illegal and child labour in their mica supply chain from India to norm literature especially related to the constructivist argument that norm have power to constructs actors's (including transnational corporation) behaviour, interest and identity. The last section is the conclusion.

INTERNATIONAL NORM AND ACTOR'S BEHAVIOUR

In the field of International Relations (IRs), the study of international norm emerged significantly and systematically after the emergence of constructivism (Onuf, 1989; Wendt, 1992 and 1999; Checkel, 1998). Constructivism emerged as a theoretical project to fill the gaps in the study of IRs that have been ignored by the rationalists¹ (such as neorealists and neoliberals), regarding the content and sources of actor's (mainly state) interests and the social fabric of world politics (Checkel, 1998). Since its emergence, Finnemore and Sikkink (2001) have noted that a wide range of research and studies has been developed that applies the core assumptions of constructivism. They include: the theories of agency and culture (Lapid 1996; Bukovansky 2001), security communities (Adler and Barnett, 1998; Acharya, 2009), theories about organisational behaviour (Finnemore, 1996), social movement theory (Keck and Sikkink, 1998; Risse-Kappen and Sikkink, 1999), state's identities and regionalism (Checkel, 2001; Acharya, 2000 and 2005), and concepts about norm diffusion and

¹ In the field of IRs, especially in the American mainstream, rationalism is commonly associated with neorealists and neoliberals, who emphasize individualism, rationality of state and material structure (Snidal, 2002). See Waltz (1979), Keohane (1984 and 1986), and Baldwin (1993) for further reading on neorealism and neoliberalism.

contestation (Finnemore and Sikkink, 1998; Risse-Kappen and Sikkink, 1999; Prantl and Nakano, 2011; Acharya, 2004 and 2011; Wiener, 2009; 2014; 2018).

By applying a sociological approach, constructivists put the role of ideas in the first place when seeking to understand world politics (Onuf, 1989; Katzenstein, 1996; Lapid and Kratochwil (eds.), 1996; Wendt, 1999). Despite constructivism is not a single, unified school or theory – with notable division between conventional and critical constructivists (Hopf, 1998; Wiener, 2004) – however, they share common ground, one of them is the assumption on the constitutive role of norms in constructing behaviour, interests and identities (Wendt, 1999; Finnemore, 1996). Constructivists believe in the prominent role of ideational factors such as norm in directing the actor's interests and actions. Norms are seen as having the constitutive power or structural characteristics necessary to influence not only social and political actions, but also shape the social identities of a state (and other actors in general) (Reus-Smit, 2009).

While rationalists tend to emphasize on the instrumental and rhetorical behaviour of actors with regard to norm (Keohane, 1984; Schimmelfennig, 2005), constructivists believe on the dual impacts (regulative and constitutive) of norm to actors. As Katzenstein argues that in some situations 'norms operate like rules that define the identity of an actor that specify what actions will cause relevant others to recognize a particular identity. In other situation, 'norms operate as standards that specify the proper enactment of an already defined identity' (1996: 5). Norms thus either define or constitute identities or prescribe or regulate behaviour, or they do both.

Norms not only have power to constitute behaviour and identity of state but also non-state actors such as transnational corporations. By recognizing the extensive study of the regulative and constitutive effect of international norm on state and INGOs' identity and behaviour (Beckfield 2003; Schofer & Longhofer 2011) and transnational advocacy (Bandy & Smith 2005). Some scholars attempt to address the influence of corporations on global governance and vice versa (Bartley, 2018; Hillemanns, 2003; Weissbrodt and Kruger, 2003). It has been argued that not only state and transnational advocacy that contribute to the rise of global governance on particular regulations, but transnational corporations also play significant role for pushing standard for safety, sustainability, and human rights through their global supply chains (Bartley, 2018: 2).

At this point, this article is an explanation on the behaviour of L'Oréal, as a transnational corporation, to ensure the legality of its mica supply from India and to eradicate the practices of child labour in the mica mining.

With regard to this, the UN Guiding Principles on Business and Human Rights (2011) is one of international norms that has been adopted by the UN Human Rights Council to regulate the behaviour of business enterprises in line with international human rights standards. John Ruggie in his report, as the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, entitled *Protect, Respect and Remedy: A Framework for Business and Human Rights* stated that companies should comply to both national laws where they operate the business and respect to international standard of human rights, labour and non-labour rights (2008: 199-202).

In the Guiding Principles, it is emphasized, under Pillar II, that 'Business enterprises should respect human rights. This means that they 'should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved' (UN Guiding Principles on Business and Human Rights, 2011: 13). Moreover, the Guiding Principles suggests that business enterprises should have a human rights due diligence process to enable them to identify, prevent and mitigate the impacts of their business activities on human rights (UN Guiding Principles on Business and Human Rights, 2011: 16). As Ruggie emphasized that the concept of due diligence is needed to ensure that companies have clear steps and control system to become aware of, prevent and address to, human rights impacts (2008: 199). Some conclude that the Guiding Principles 'provide an equally important platform to redefine the significance of business as an instrument for contributing to the welfare of society rather than a mere profit generating process' (Addo, 2014: 147). At this point, L'Oréal's strategy in dealing with illegal, and the issue of child labour of, mica supply from India may reflect the both responsibility of the company to the welfare of the local communities and their compliance to international standards of human rights by ensuring the safety and legality of the supply.

L'oreal Contribution to Eradicate Illegal Mica Mining in India

This section discusses the responses taken by L'Oréal to the issue of illegal and the use of child labour in its mica mining supply from India. India is known widely as a mica export country (SOMO, 2016). According to the Indian Bureau of Mines (IBM), India's mica export in 2012 was over eight times the country's official production (DanWatch, 2014: 4). Some of the primary mica belt in India are located in the states of Jharkhand and Bihar that contributed around 74 percent of India's mica export in 2015, and the rest of them are exported from Rajasthan and Andhra Pradesh at around 15 percent and 11 percent, respectively (DanWatch, 2014; SOMO, 2016: 19). Almost all mica mining in Jharkhand and Bihar are illegal (SOMO, 2016: 25). In these illegal activities, children have been employed, often working alongside their families, without any safety equipment and doing a dangerous activities such as 'climb down narrow, crumbling mine shafts at the risk and peril of being trapped underground in case of collapse, and cut mica with hammer and chisel for 7 to 8 hours a day (DanWatch, 2014: 4).

Since the illegal mica mines are widespread in India, it is very likely that L'Oréal received their mica supply from the illegal mining sites. As reported by DanWatch's investigation, one of the companies to receive mica from Jharkhand and Bihar is L'Oréal. The company buys mica through a German pharmaceutical and chemical company Merck and a Chinese company Kuncai, as the biggest buyers of mica from that illegal mines area. Therefore, DanWatch report emphasized that it is very likely that child labour lies behind the mica in L'Oréal products (DanWatch, 2014: 17). L'oreal acknowledged that mica they used in their products especially those are supplied from India are prone to issues such as child labour and unsafe working conditions (L'oreal, n.d). L'Oréal took the issues seriously and launched a repair plan solution for its mica supplier in India (Moloney, 2017).

Normatively, L'Oréal has emphasized their commitment to uphold human rights principles as part of the identity of the company. As stated in the Code of Conduct, L'Oréal emphasized the company is committed to respect and promote human rights in their supply chain by saying that they are committed 'to help end the

exploitation of children in the workplace and the use of forced labour' (L'Oréal Ethics, n.d: 3). It is explained that if the L'Oréal's foreign suppliers were being investigated on charges of forced labor, the company would immediately submit them to the L'Oréal Social Audit which involved sending an outside auditor to verify the facts about the employment practices, working conditions and any other relevant issues (L'Oréal Ethics, n.d: 13). It is also emphasized in the L'Oréal Human Rights Policy that the company believe that 'business have a responsibility to respect internationally recognised human rights and must take steps to identify and address any actual or potential adverse impacts' (L'Oréal Human Rights Policy, 2017: 1).

In addition, L'Oréal is a signatory party of the United Nations Global Compact to ensure they have a transparent, legal and traceable supply chain of mica. The UN Global Compact emphasized that all their members should respect its core commitment especially exercising business responsibly by accommodating and implementing the internationally recognised human rights principles. In more details, it is emphasized in its Ten Principles that corporations' business should eliminate all forms of forced labour and taking action to abolish the practices of child labour (UN Global Compact Management Model, 2010).

It is also implicitly mentioned in the report of the management model that all corporations that already become parties of the UN Global Compact should works with their supply chain partners in addressing and implementing their commitment and strategies toward a responsible company especially with regard to human rights, labour and environment (UN Global Compact Management Model, 2010: 10). It can be argued that L'Oréal has internalised this principle into their normative company's profile which is emphasized that the company stick to human rights at every level of their value chain. In its human rights policy, L'Oréal emphasized that all their suppliers and subcontractors should 'act in accordance with internationally recognized human rights... and identified the working conditions of their workers as a salient human rights issue, respect of all ILO Core Conventions is included in our Purchasing contracts and we encourage them to cascade this requirement throughout their own supply chain' (L'Oréal Human Rights Policy, 2017: 1). At this point, the company is not only prohibit employing persons under the age of 16, but they show a commitment and effort to make

sure that their business activities including its supply chain of the raw material, including mica, are sourced from a legal and respected-human rights suppliers.

Practically, L'Oréal has collaborated with some partners to reinforce their effort to implement human rights values in their business activities. The company is working together with an NGO called Fair Wage Network to provide them data as the basis to decide an appropriate living wage for their employees and suppliers. In 2019, L'Oréal signed a partnership with an independent national human rights institution of Denmark, the Danish Institute for Human Rights (DIHR), in order to identify areas or issues for the improvement of L'Oréal's human rights program (L'Oréal, n.d).

Furthermore, L'Oréal's commitment to human rights could be seen in their contributions to eradicate child labour by initiating (together with other companies) a non-profit organization so-called Responsible Mica Initiative (RMI). L'Oréal was one of the founding members of the RMI and thus L'Oréal becomes one of the RMI's Board of Director. In addition, the Sustainable Sourcing Manager for Raw materials of L'Oréal, Nisrine Carmen Zaaroui, has been appointed as a Sustainable Sourcing Director (Responsible Mica Initiative, n.d). RMI has been established to ensure a legal and responsible sourcing of mica in India, and disconnect the chain of child labour in mica mining and improve the living and working conditions of the local communities (Global Cosmetics News, 2017). As has been emphasized in the RMI Annual Report in 2018 that the main goal of the emergence of the initiative is 'to enable a responsible mica supply chain in India that can be sustained without the use of child labour' (Responsible Mica Initiative Annual Report, 2018: 3). It is also emphasized in the 'Three Goals' of the RMI that 'mica supply chain participants in Bihar and Jharkhand should comply with globally recognized workplace employment, occupational health and safety, and environmental standards that include prohibitions on the use of child labour (Responsible Mica Initiative Annual Report, 2018: 5). In other words, L'Oréal's action focus more on the effort to eradicate child labour in the mica mining by ensuring the traceability and transparency of the supply chain rather than discontinue the use of Indian mica that may cause unfortunate consequences for the local communities.

At this point, L'Oréal's action to eradicate child labour through the RMI could be claimed as the obedience of the company to the UN Guiding Principle. As stated in

the point 13 of the principle that business enterprises should ‘Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts’ (UN Guiding Principles on Business and Human Rights, 2011: 14). In other words, international norms such as the UN Guiding Principle on Business and Human Rights, as stated in the L’Oréal Code of Ethics, have influenced the constitution of the company’s identity or profile and behaviour in regard to their business.

DISCUSSION

The case of L’Oréal in the issue of illegal and child labour in mica mining in India may suggest that international norm such as the the UN Guiding Principles on Business and Human Rights creates situation that private sector tend to obey rather than violate the norm. Back to the discussion on the extent to which international norm construct the actors behaviour, the case of L’oreal shows that even though the company has been motivated by material interest in compliance with the UN Guiding Principles on Business and Human Rights, it is still valid to argue that the norm has strongly influenced the L’oreal behaviour and interest toward the mica supply from India.

While L’oreal may use their economic interest in the issue of illegal mica mining in and supply from Jarkhand India, the evidence showed that they tend to follow, rather than to ignore, the international principles on that issue. On one side, from a material interest perspective, it could be argue that the obedience of L’oreal to the international principle is motivated by its economic interest in the issue of the illegal mica mining in, and supply from, Jharkhand India. L’oreal may understand that the use of illegal sources may harm the image and profile of the company, and thus it could influence the sales of the product and even the general performance of the company. This argument may be true that L’oreal act rationally, by considering cost and benefit, to ensure they use mica from a legal mining activities to maintain their credibility in the market. At this point, the L’oreal behaviour toward the illegal mica mining is claimed as profit-oriented rather than a norm-guided behaviour.

However, on the other side, the influence of material interest does not necessarily mean that actor behave in a pure instrumental manner in the sense that the actor is only pursue material interest. L'Oréal has choices to ignore the international norm on business and human rights and focuses on the accumulation of profit by continue to receive mica from illegal mines. Yet, the company tend to follow the ethical values of human rights in their business that is claimed as part of the company's identity (L'Oréal Ethics, n.d). Despite international actor such as transnational corporation may put forward their interest in their norm's compliance behaviour, but at the same time it shows that norm has power in guiding and constructing actor's behaviour and interest. The case of L'oreal suggests that transnational corporation could do both pursuing material interest and uphold international norm on business and human rights. In other words, norms remain the central factor that guide the attitude of actor (including transnational corporation) in justifying their behaviour by taking into account the ethical values of particular norms. As explained that L'oreal actively involve, rather than passively follow, in RMI to uphold the ethical values of business and human rights especially in regard to illegal mica mining and the issue of child labour in India. Linked back to norm literature, as Finnemore emphasized that 'norms create new interests, values for actors, and the actions ... not by constraining actors with a given set of preferences, but by changing their preferences' (1996: 5-6). At this point, the preferences of actors are not given, but rather shaped by norms. For constructivists, international actors are not always know what they want and what they should do especially in regard to particular issue. In this situation, norms provide guidance and pathway to actors how to behave appropriately based on the moral values of the norms. With regard to the issue of illegal and child labour in mica production in India, for example, the international standards of human rights provide guidance not only for state(s) but also global company and business enterprises should do response to the problem. In this case, this is what L'Oréal do, by upholding the international standards of human rights, in their efforts to deal with the illegal mica supply from India.

CONCLUSION

The behaviour of L'Oréal in contributing to eradicate illegal and the issue of child labour in the mica mining in India demonstrate the influence of international norm such as the UN Guiding Principle on Business and Human Rights that constructed the

company's commitment to, and identity on, human rights. The way the L'Oréal response to the issue of child labour in their mica supply from India shows that the corporation is committed to both the international standard of human rights and the empowerment of local communities. This suggests that international norm not only have power to constitute the identity and behaviour of state but also non state actors such as transnational corporations. This is not to suggest that L'Oréal lack interesting in pursuing economic profit. Indeed, transnational corporations work on the logic of profit accumulation. Yet, the international norm provide guidance that companies and business enterprises could pursue economic profit without undermines the very basic rights of people. The existence of the UN Guiding Principle has created values and standards, such as responsibility, credibility, and trustworthiness, that guide transnational corporations and business enterprises such as L'Oréal to behave accordingly to the norm. Thus, despite the pursuing of interest is inherent in the L'Oréal's effort to stop child labour in India, the way the company address the issue of illegal mining and child labour in their mica supply chain from India highlights the strong commitment of the company to internalize the international standard of human rights.

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