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Building New Partnerships

A Model for Implementing CSR frameworks in Extractive Industry Enterprises

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Introduction

In the past few years, Corporate Social Responsibility (CSR) – voluntary actions that intend to further social good beyond the interests of the firm and that which is required by law – has been of growing interest to businesses and investors. In the US, while in 2001 just under 20% of S&P 500 companies published a sustainability or CSR report, by 2013 that number had grown to 72%.[1] Leading this trend are companies in the extractive industries sector, which often state their commitment to CSR principles, justified not only on the basis of ethical business conduct but also on the understanding of its commercial value. For example, the homepage of Newmont Mining, the world's second largest gold-mining company, states: 'We believe the protection of the health and wellbeing of our people, environment stewardship and being a catalyst for sustainable economic empowerment in our host communities are not just the right thing to do, they're good for our business'.[2] However, Newmont has been repeatedly accused of bypassing community consent and of human rights and environmental violations in some of its operations in Africa.[3] Similarly to other companies in the sector, while its commitment to CSR principles appears high, impactful implementation on the ground remains low, particularly in low and middle-income countries, and is regarded by many a PR exercise.

The literature on CSR in the extractive industries sector offers various explanations to account for the gap between CSR rhetoric and practice: inappropriate programmes that ignore the specificities of social, political or cultural contexts in which they are implemented; disconnect between real community development needs and programmes; the limits set by companies' short-term commitment to communities and other issues resulting from the unaccountability or unsustainability of programmes; and the voluntary, self-regulatory and non-binding character of the CSR agenda. The frequently proposed remedy for these problems, which is now inherent to CSR international protocols such as the EITI, is 'stakeholder involvement' – enhancing community-company-government dialogue and, by implication, the suitability of CSR programmes. However, the literature has paid little attention to the asymmetry in power between corporations and communities that may undermine the success of such involvement. To alleviate power asymmetry and contribute to the success of CSR initiatives, this paper suggests directly involving community members in decision and profit making in extractive industry enterprises.

Demonstrating that business models *can* be effective in distributing the benefits of extraction to local communities, this paper provides evidence on a link between community integration in decision and profit-making and company-community positive collaboration. This evidence is based on the examination of a unique deal signed between the members of a Colombian gold mining community located in the Province of Santander, north of Bogota, and a junior Canadian mining company.[4] The deal stipulated the integration of local mining title-holders as significant shareholders and board members of the company. Local miners received not only remuneration for salaried work, the provision of services, and land usage in local gold mines in light of CSR principles, but also a significant amount of shares in the company and the ability to take direct part in, and influence, decision-making at the highest level of company management. Although the deal was not framed under an official CSR framework, its success illuminates the inherent weakness of current programmes and provides lessons for improving CSR programmes; two years after the company was listed in Canada, it was sold in a public transaction, benefiting Colombian miners, their community, and the Canadian company involved.

The paper is organised in two key parts as follows: the first part offers a critical assessment of CSR in the extractive industries sector, identifying general and sector-specific CSR principles and frameworks and the business drivers for adopting them, as well as making a case for the direct engagement of communities in decision and profit making. In the second part of the paper, I examine the deal between miners in Colombia's Santander district and the Canadian company Calvista Gold. With reference to CSR principles, I then trace the process by which local miners were incorporated as key shareholders, community-company negotiations, the motivations

1 Bliss 2015.

2 Newmont Mining 2015.

3 MAC 2011.

4 Calvista Gold, traded as TSX:CVZ.

of both parties in entering the partnership, their anticipated benefits and the deal's ramifications for company-community relationship. Through the analysis of company documents and interviews with company executives, the evidence presented in this paper contributes to current debates on CSR in general, and CSR in the extractive industries in particular, by drawing attention to power dynamics and offering one possible route to the successful implementation of a socially-oriented business model in the industry.

CSR Implementation
in the Extractive Industries Sector

CSR Principles and frameworks

Originating in the 1950s and becoming almost universally embraced by multinational corporations during the 1990s, CSR generally refers to a company's social, environmental and good governance activities and to its commitment to sustainable economic development in host communities.[5] While there is no agreed definition, the concept assumes that companies have an obligation to work towards meeting the needs of a wider array of stakeholders, responsibly address issues raised in the course of doing business, and adhere to international best practice regarding human and labour rights, accountability and transparency.[6] This 'social license to operate' is not only a principle but also a method of managing the company, which seeks to integrate into the company's strategy profitability that is harmonious with social, environmental and community development considerations.[7] In that sense, CSR is foremost a comprehensive business model and management tool for formulating and implementing expanded roles and responsibilities of the corporate sector, which aims to meet the expectations and needs of a wider community. Its triple bottom line includes economic, social and environmental results.[8]

In general terms, the rise in CSR in the past 20 years is closely related to the rise in neoliberalism and globalisation processes, whose underlying assumption is that markets can keep corporations in check when they are functioning freely; the neoliberal model implies a reduction of state intervention and regulation that cedes ground to corporate self-regulation and voluntary initiatives.[9] In the CSR era, corporate self-regulation has evolved into the promotion of initiatives that go beyond legal obligations in countries where the companies operate and where they are self-motivated to improve social, environmental and human rights standards. In the mining industry, CSR developed also as a response to criticism from local communities affected by mining, civil society organisations, Western governments and transnational networks concerned with the social and environmental impacts of mining.[10] In fact, the extractive industries sector spearheaded the CSR movement and heavily popularised the CSR concept in developing countries in response to demands made by shareholders and stakeholders, and as a result of global mining firms' recognition of the significant problems created by, and faced by, their sector.

CSR programmes can improve the living conditions of local communities, or in the case of extractive industries – reduce the negative impacts of mining operations. Specific to CSR frameworks in the extractive industries sector is also the assumption that the wealth derived from mining should provide substantial benefits to host communities, often poverty-stricken populations, raising their living standards and offering them opportunities in return to the exploitation of their natural resources; unlike any other resources, natural resources are exhaustible public assets, owned by a country's citizens to benefit many rather than a few, as well as future generations. Furthermore, such frameworks are meant to address concerns related to the 'resource curse' – the economic slowdown, political instability, corruption, conflict and struggles that tend to accompany natural resource production, particularly in low and middle-income countries.[11] Responding to these varied demands, CSR programmes in the sector generally fall under two categories: enterprises initiated and devised by the company as part of its commitment to responsible mining, and international protocols designed for companies and governments of producing countries.

Company initiatives typically include investment in local infrastructure (electricity, roads, bridges, schools, hospitals etc.), building social capital by providing education to the local population, or building human capital by training locals and employing them. Such programmes by mining companies have multiplied in the past decade and feature prominently in their annual CSR reports. For example, Barrick

5 The World Business Council for Sustainable Development 2001.
6 Jones defines CSR as 'the notion that corporations have an obligation to constituent groups in society other than stockholders and beyond that prescribed by law or union contract' (Jones 1980, 59-60).
7 Vintro and Comajuncosa 2010, 32.
8 UNECA and AU 2010, 128. For other working definitions of CSR, see Yakovleva & Genkins 2006; Bebbington 2010.
9 Utting 2005.
10 Hamman & Kapelus 2004.
11 On the resource curse, see (among many others) Ross 1999.

Gold reported in its 2012 Corporate Responsibility Report that it contributed $1.4 million to building 22 separate projects near its operating site in Lumwana, Zambia (projects included schools, staff houses, health centres and production centres).[12] Royal Dutch Shell's 2014 Sustainability Report states that the company contributed $14.8 million to scholarships and $112 million to social investment projects in Nigeria that year.[13] It also notes that 90 percent of contracts were awarded to local companies and that 95 percent of the company's employees in Nigeria were locals. Newmont's 2014 Beyond the Mine report states that the company invested $6.82 billion in total direct economic contributions to countries in which it operates, including $27.9 million towards community initiatives.[14]

International protocols for CSR in the extractive industries sector have emerged in the early 2000s, following a surge in academic literature during the previous decade documenting the Dutch Disease and other negative effects of natural resource production in developing countries.[15] Accumulating evidence on the resource curse, which first referred to the negative association between natural resource abundance and economic growth, and was then expanded to refer to links between natural resources and increased poverty, conflict, authoritarianism and corruption, led to the establishment of an alliance of strong civil society organisations including Global Witness, Human Rights Watch, Oxfam America and Revenue Watch (which was initially established specifically to investigate the flow of funds from oil companies to governments in the Caspian region), that pushed for increased transparency in the extractive industries sector. This movement culminated in 1999 in a global civil society campaign titled 'Publish What You Pay' (PWUP), which called on companies in the extractive industries sector to adopt a policy of full transparency and disclose data on their operations, particularly financial transactions.[16]

In 2001, BP was the first company to respond to the campaign by publishing a signature bonus of $111 million it paid to the Angolan government for an offshore license.[17] When the Angolan government responded with anger and threats to terminate its contracts with BP, oil companies argued for a shift away from company reporting to reporting by host governments. This led in 2003 to a conference in the UK of civil society, company and government representatives and the establishment of the Extractive Industries Transparency Initiative (EITI), a global Standard based on 12 principles aimed at the promotion of transparent and accountable management of the natural resources sector. In implementing countries (currently 49), both governments and companies pledge to disclose information on tax payments, licenses, contracts, production and other key elements around resource extraction in an annual report, allowing citizens access to information on how their country's natural resources are being managed and the revenue they are generating. Thus, while the EITI was initiated as a CSR effort aimed at companies, it turned into a global Standard that requires the participation of both companies and governments.

Nevertheless, mining companies' support for the EITI has been critical for the evolution of the initiative and its success; following the protocol's publication, over 40 institutional investors signed a statement of support for the initiative, arguing that information disclosure would improve corporate governance and reduce risk.[18] The benefits in supporting the EITI for business are evident: political instability caused by opaque governance is a clear threat to investments particularly in extractive industries, where investments are capital intensive and dependent on long-term stability to generate returns. Transparency of payments made to governments can also help demonstrate the contribution that investment made to a country. Currently, over 90 major companies involved in oil, gas and mining are committed to supporting the EITI, through operations in implementing countries, international-level commitments and industry

12 Barrick 2012, 47.
13 Royal Dutch Shell 2014, 36-7.
14 Newmont 2014, 2.
15 The Dutch Disease refers to the causal relationship between the increase in the economic development of a specific sector (typically, natural resources) and a consequent decline in other sectors (typically, manufacturing and agriculture).
16 PWYP 2015.
17 EITI 2015.
18 Ibid.

associations. Companies' support for the protocol also led in 2004 to the establishment of the World Bank-administered Multi-Donor Trust Fund for the EITI, which has disbursed almost US$60 million in technical and financial assistance to EITI programmes in 37 countries.[19]

Various other CSR protocols have been developed since the late 1990s by industry actors to assist companies in the extractive industries in designing, implementing, monitoring and evaluating their CSR strategies. In 1998, the Global Mining Initiative (GMI) was instigated by nine large mining companies aiming to 'change the way in which the mining industry operated through an exploration of the sector's role in the transition to sustainable development'.[20] In 2000, the Voluntary Principles (VPs) on Security and Human Rights were published, in which oil and mining companies committed to human rights standards for their security operations.[21] In 2001, the International Council on Mining and Metals (ICMM) was established to 'act as a catalyst for performance improvement in the industry... [and] maximise the contribution of company members to sustainable development'.[22] The Council committed its members to implement and measure their performance against ten principles relating to ethical business practices and corporate governance, human rights, risk management, community development and transparency. As part of their CSR efforts, mining companies also pursue certifications such as ISO14000, SA8000 and AA1000 (environmental, working conditions, and accountability certification, respectively) and endeavour to be listed in the Dow Jones Sustainability Indexes.

Business Drivers for CSR and the gap between rhetoric and practice

The widespread rise in the commitment of business to the CSR agenda since the 1990s spurred much academic and public debate into the drivers behind it. In the 1970s and early 1980s, the corporate world was almost unanimously united behind Milton Friedman's position that 'the social responsibility of business is to increase its profits'.[23] Studies found that this assertion was not recently abandoned in favour of new corporate philanthropy; rather, companies were encouraged to proactively embrace CSR by the growing realisation that business will 'do well by doing good'.[24] In the early 1990s, there were obvious benefits to be derived from embracing a CSR agenda: consumers increasingly favoured products and services from socially responsible, transparent and trustworthy firms; investors increasingly favoured responsible companies over reckless ones, who found their cost of borrowing rising; and potential employees were attracted to more accountable companies. It was also shown that engaging with stakeholders outside the firm encourages innovation in business, and that being trusted and pursuing responsible policies assists in avoiding regulation and reduces risks arising from safety issues, potential boycotts and deteriorated corporate reputation.[25]

Thus, companies in the extractive industries sector adopted the CSR agenda in response to consumer demands and in order to protect human and capital assets, manage risk and reputation and avoid regulation. However, the emergence of CSR in the extractive industries was also motivated by a desire to legitimise the sector after decades of environmental disasters and the trampling of indigenous rights.[26] Companies in the sector grasped not only the business case for embracing CSR, the new reality of being held to account for their actions by consumers and investors, and the growing importance of securing a 'social license to operate', but also that CSR rhetoric would help buffer against the criticism that has mounted over the industry's operations in developing countries. Indeed, as the extractive industry came under intense pressure to improve its performance, industry leaders were advancing the position that promoting accountability will minimise social risk and conflict with local communities, improve issues related to international legitimacy and credibility, and provide the company with an improved competitive advantage vis-à-vis other companies in and outside the sector.[27]

19 The World Bank 2012.
20 Smith, Shepherd & Dorward 2012, 242.
21 Voluntary Principles 2015.
22 ICMM 2015.
23 Friedman 1970.
24 Benson & Kirsch 2010; Trebeck 2008; Frynas 2005.
25 Smith, Shepherd & Dorward 2012, 242.
26 Carter 2005.
27 Joyce & Thomson 2000.

Within the extractive industries sector, the pressure to embrace CSR was arguably greater in the mining than in the oil and gas industry. First, unlike oil and gas operations that often take place offshore, mining activities are exclusively onshore and can have more immediately visible impacts on local communities. For example, 'dirty' gold mining practices that release cyanide, mercury and other toxic substances have contaminated the environment, water sources and entire landscapes in South and Central America, enraging local communities. Second, while oil delivers immediate wealth, profit from mining follows a long process of strategic prospecting, the identification and extraction of minerals, and refining – which altogether can take more than a decade, during which community consent it key. Third, the mining industry is more labour-intensive than the capital-intensive oil and gas industry, heavily relying on the expertise of local labourers and their cooperation. Finally, while deals for the exploration and production of oil are negotiated between companies and governments, mining is often negotiated between companies and local communities, miners and land or license holders. Thus, to mining companies, a successful CSR programme that achieves a harmonious relationship with the local community is a crucial strategic investment.

The function of CSR in the sector is evidently clear to companies: stakeholder engagement strategies, community consultation processes, and environmental and social impact assessments are now intrinsic tools in companies' toolboxes, accompanied often by dedicated departments and personnel. Some big mining companies are investing social development budgets in specific mine sites that at times exceed what a host government allocated to an entire province. However, while the rise in CSR strategies has meant safer mining technologies and overall better stakeholder engagement processes, as well as a business model of efficiency and motivation that improves employee and public perceptions of multinational companies, the rhetoric used by companies regarding the significance of their CSR commitments often greatly exceeds the reality found on the ground; there is little evidence of any real, long-term socio-economic development at the grassroots, even in new extraction localities. The numerous manifestations of the resource curse that continue to emerge under improved conditions of 'socially responsible resource extraction', the rise in conflict around extractive industries despite the sector's significant CSR efforts, and communities' continuous disdain for mining companies, are all testament to the fact that a gap exists between CSR discourse and practice.

This gap was documented in many studies and various explanations have been offered to account for it.[28] In a study of CSR in the mining industry in Argentina, it was shown that the CSR framework in place was inappropriate for understanding local company-community relationships and that local perceptions of the CSR programme have contributed to the exacerbation, rather than the alleviation, of social conflict.[29] A study of two extractive industries in Papua New Guinea showed that the failure in CSR practice came from greater emphasis on meeting global 'performance standards' than on the specificities of the social contexts in which strategies were implemented.[30] In a study in Nigeria, where Shell and other mining companies have been championing CSR, it was demonstrated that programmes made little if any contribution to the country's socio-economic development in general and to oil communities in particular, and did not provide benefit flows to non-mining sectors.[31] Significantly, CSR programmes did not interrupt the capture of resource rents by governments and elites in Nigeria, which reduces the flow of wealth that could reach local communities in direct transfers or development programmes.[32]

The gap between rhetoric and practice can be explained from a number of other different perspectives. First, although companies loudly proclaim their support for CSR, they set sharp limits on how far they are willing to go. This was illustrated for example in the oil industry's response to the World Bank's Extractive Industries Review (EIR), in a letter signed by CSR 'leaders' as BP, Shell and Statoil, which established distinct limits to what the industry would tolerate in terms of CSR.[33] Another issue concerns the question of accountability and sustainability: while

28 Banks 2009; Frynas 2005; Hilson 2007; see also Benson & Kirsch 2010.

29 Yakovleva et al 2012.

30 Gilberthorpe & Banks 2012.

31 Watts 2008.

32 Shochat 2014.

33 For the content of the letter, see Pegg 2006, 262-263.

companies may initiate community development programmes, it is not clear who has responsibility and who will be held accountable for the long-term success of programmes – the company, which is bound to exit once resources have been exhausted, or the government, which may be incapable of sustaining them? Perhaps the ultimate limit to the CSR concept is its voluntary, self-regulatory and non-binding character.[34] Self-regulated CSR has no enforcement mechanism, is not subjected to objective independent assessments, and fails to promote the implementation of mandatory uniform standards for all companies in the sector to follow; some companies may choose to adopt some programmes, while others may choose to adopt others or none at all.

Voluntary international CSR mechanisms such as the EITI, which advocate community stakeholder engagement in decision-making processes as a measure to achieve accountability, have been criticised on similar grounds.[35] In many developing countries, where there is an inherent lack of transparency and high levels of corruption, the value of this engagement is debatable. Findings from a study on community representation in Madagascar indicate that the power relationships that exist between stakeholders in the highly lucrative mining industry in the country override efforts to achieve 'good governance' through voluntary community engagement.[36] Similarly motivated by the need for international legitimisation to facilitate future investment and funding opportunities, governments and mining companies work towards EITI compliance, while 'the real power remains in the hands of government and corporate elites'.[37] As Gillies notes: 'all the major Western oil companies quickly signed up as EITI 'supporters', a status which requires little action on their part yet provides an attractive label which they use widely'.[38] Revenue transparency will not be sufficient in addressing corruption and the misuse of revenues in producing countries, if it fails to address the complex power relations between stakeholders or the motivating factors behind company-government relationships.[39]

34 Shamir 2004, 647.

35 Hilson & Maconachie 2009, 91.

36 Smith, Shepherd & Dorward 2012.

37 Haufler 2010, 69.

38 Gillies 2010, 119.

39 Smith, Shepherd & Dorward 2012.

Indeed, the key 'business' motivation behind the CSR agenda significantly influences the effectiveness and value of CSR programmes. As Soares puts it regarding oil companies: 'the goal is not to reduce poverty and increase democratic participation, accountability and broad-based prosperity; it is the successful extraction of crude oil for sale in the world market with the smoothest and least bothersome relationship possible with the state that owns it... '.40 As CSR initiatives are motivated by a desire for legitimisation, they can be used to deflect criticism as a way of not directly addressing claims made by communities ('green-washing'). Disparity is then likely to occur between programmes that focus on delivering 'high profile' infrastructure such as schools, clinics and new roads which can be portrayed in company annual reports, and the actual needs of the community, especially as long as CSR programmes lack an independent assessment of their community value.41 Although they may enable corporations to go beyond compliance with local laws and can provide socio-economic relief for certain beneficiaries, the successful implementation of CSR programmes remains elusive and their benefits for local communities questionable.42 Moreover, such an approach does little to ameliorate the investment risks to companies that were and remain a key rationale for the adoption of these social responsibilities in the first place.

Addressing the problem of power relations

Whether CSR fails as a result of inadequate consultation with local residents, short sighted implementation that does not meet the community's long-term development needs, or the unequal distribution of CSR benefits, the common denominator that seems to underlie the weaknesses of various CSR programmes in the extractive industries sector is their failure to sufficiently connect with local populations. While studies point out that greater engagement with local communities will facilitate the development of more mutually beneficial and appropriate CSR strategies, routes to such greater engagement remain under-specified. More importantly, CSR initiatives based on the relationship of business with stakeholders in

40 Soares 2007, 265.

41 Himley 2010.

42 Blowfield & Frynas 2005, 506-7.

general, and with communities in particular, ignore or minimise power dynamics.[43] Many such initiatives, including the EITI, are based on Stakeholder Theory, which posits that in order for CSR to be effective and meaningful, the interests of a range of stakeholders other than shareowners need to be taken into account by corporations. However, this assumes that companies can balance the competing interests of various stakeholders in their CSR agendas, while it has been shown that when companies' interests collide with those of the local community, the firm's financial interests will take precedence.[44]

The problem of power relations is even more acute in developing countries. In Western democracies, companies are subjected to intense regulation by the public sector and to scrutiny by a robust civil society, marking a clear distinction between public, private and third sector actors and facilitating higher negotiating power for communities during stakeholder engagement consultations. In developing countries, however, institutions are weak, strong regulatory frameworks are often absent, governments lack the political will or the institutional capacity to enforce regulations, and civil society can be non-existent, reducing the chances for effective stakeholder engagement. Moreover, in many developing countries the government becomes a *de facto* partner in the extractive industry through joint ventures, blurring the division between business and government. At the same time, since such governments often fail to fulfil their responsibilities and adequately provide various social services (such as piped water or electricity), companies are frequently expected to assume greater responsibility in the area of community development and service provision as part of their CSR agenda. This can leave local communities dependent on companies for the supply of basic services, tilting the balance of power even further against them.

Taking into consideration the above, on top of the obvious greater ability of companies to gain access to financial, legal, and technical resources and know-how that are unavailable to local communities, how can the problem of power dynamics be addressed? Evidence from local communities affected by extractive industries in different countries suggests they largely present similar requests to companies in the sector: to take greater part in decision-making processes on matters that concern the community so that real attention to community concerns is paid, compensation for damages and lost livelihoods, and a share in profits made from resources exploited on their land. In current CSR initiatives, these elements are downplayed: the ability of local communities to influence companies' decision-making in their favour remains slight to non-existent; community consent is not gained based on principles of free, prior and informed consent, directly responding to compensation requests; and profits from mining remain solely in the hands of the company and local political elites. The alleviation of the asymmetry in power between corporations and communities in developing countries should thus begin, this paper proposes, with the direct involvement of community members in decision and profit making.

Such involvement is already taking place, albeit indirectly and not universally. Community involvement in decision-making processes by *government*, disregarded until the early 1990s, has been growing steadily over the past two decades and is now common practice in many countries, impacting in some places sector-related public policy.[45] The arguments in favour of enhancing citizen involvement focus on the benefits for the decision-making process itself, which becomes more effective by contributing to decisions that are in better touch with public (i.e., voter) preferences. Arguably, what motivates governments to abdicate part of their decision-making responsibilities to citizens may not be a sincere desire to improve policy outcomes by becoming better educated about community preferences, but the prospect of a more cooperative public. As observed: 'More often than not, the impetus for public involvement comes from a need to obtain acceptance as a prerequisite to successful implementation'.[46] The same impetus can serve as a powerful motivator for companies: if community members are included in decision-making, CSR will be more realistically grounded in communities' preferences and responsive to community concerns, resulting in publics who are more sympathetic to the

43 On corporate-community power imbalances, see Garvey & Newell 2005.

44 Palacios 2004.

45 Irvin & Stansbury 2004.

46 Thomas 1995, 113.

tough decisions companies have to make. This in turn may facilitate higher approval and demand rates for the company's goods on the part of consumers.

Revenue sharing is also already taking place in the extractive industries sector – between companies and host governments, and between central and local governments. This is done mainly through taxes, which consist of a combination of general taxes for companies (corporate tax, value-added tax, export taxes) and taxes and fees specific to the sector that are levied only on extractive industries, such as unit and value-based royalties, windfall taxes and resource-rent taxes (the sector's taxing regime varies extensively between countries, and even within countries taxes are rarely uniform across the sector, varying between different provinces or states, different commodities, and different phases of the project cycle, i.e., exploration versus production).[47] Citizens of producing countries and regions can then benefit from their natural resources, if revenue is well-managed and efficiently re-distributed at the sub-national level between the central and local governments according to an equitable revenue-sharing formula. In the US, for example, oil-producing states such as Texas, Louisiana, and Alaska share 50 percent of revenues generated from onshore oil and natural gas production with the federal government.

However, equitable revenue sharing between different tiers of government characterises mainly developed countries, where a clear trickle-down effect of royalties can be traced down to the community level in localities responsible for their production. In developing countries with high levels of resource dependency, the process of re-distribution is often characterised by inequity, corruption and inefficiencies, to the detriment of host communities that end up receiving a meagre share of the revenue if any. In these countries, citizenry engagement in decision-making processes by governments is also minimal, leaving communities with little ability to access or influence both decision-makers and revenue distribution policies. Since building institutional capacity to allow greater citizenry participation in developing countries may take some time to develop, a practical solution to the power-imbalance problem may be the *direct* involvement of locals by companies, without the mediation of government. Indeed, in the past two decades, local communities (i.e., in Nigeria and Brazil) have been demanding both the distribution of revenue through direct payments to communities and direct negotiations between community representatives and companies.[48] Evidence from Colombia discussed in the second part of this paper on the implementation of CSR in the country's mining sector, and the case of the Santander gold mines, exemplify the need for, and the implementation of, this approach.

47 Arellano-Yanguas & Acosta 2014.

48 Ibid.

Methodology

Primary analysis for this study was carried out in two stages, both centred primarily on desk-based remote analysis. The first stage included the examination of the legal framework that governs Colombia's mining sector and reports produced by the government, international organisations and companies operating in Colombia, to provide evidence on the state of CSR in Colombia's gold mining industry and context for the analysis of the Santander mines case study. The second stage included the analysis of the deal between miners in Colombia's Santander Department and the Canadian company Calvista Gold, based on the analysis of 73 documents filed by the company on SEDAR.com, a database on which Canadian publically traded companies must disclose financial and legal information regarding their operations. Forty-nine documents extracted from the database contained information relevant to this research. These included purchase and sale agreements with miners, technical reports, annual information forms, MD&A reports, and news releases. The analysis of documents was followed up by interviews with Colombian and Canadian company board members involved in the execution of the deal, which took place in December 2015. While company documents provided detailed evidence regarding the legal and technical specifics of the deal between the mining community and the Canadian company, interviews provided evidence on the background to the deal, the motivations of the actors involved, the relationship between stakeholders, and the extent to which the deal affected the community at large.

CSR in Colombia's Mining Sector
and the Case of the Santander Gold Mines

Multinationals' takeover of the gold mining industry

Colombia is an important player in the mining industry, producing oil and high quality minerals including nickel, coal, emeralds and gold. Gold mining in Colombia dates back as far as 325 BCE, famously playing a pivotal role in luring the Spanish *conquistadores* to the area during the 16th century. Many Afro-Colombians, the descendants of enslaved Africans who were brought to Colombia by the Spaniards to work in gold mines and pioneered the extraction of alluvial gold deposits, still engage in ancestral gold mining. Indeed, according to Colombia's 2011-13 mining census, the great majority of gold in the country is extracted through small-scale, informal operations: 63 percent of all mining operations were categorised as 'informal', while 72 percent of operations fell under 'artisanal and small-scale mining', which in its simplest form involves planning gold in rivers, using wide wooden pans to separate golden grains from sand (medium-scale mining involves more machinery impacting larger areas).[49] In 2013, about 340,000 Colombians worked in small and medium-scale mining – lacking an official mining concession or title; the law grants indigenous people the right to mine. Colombia's indigenous people also hold officially recognised titles to 29.8 percent of the country's landmass (or 34 million hectares).[50]

While large-scale mining comprised only ten percent of mining operations in Colombia in the 2011-13 census, multinational companies have become increasingly interested in exploring Colombia's resource-rich areas over recent years.[51] Foreign direct investment in the mining sector has doubled in the past five years, with one estimate expecting Colombia to have attracted $2.1 billion in gold-related investments alone by the end of 2015.[52] Canadian mining companies are leading investments in the sector; of 34 companies that undertook mineral exploration in the country in 2010, 22 were Canadian (other major companies were American).[53] Colombia's four percent royalty rate for gold, one of the world's lowest, attractive tax brakes, and the recently negotiated Free Trade Agreements with Canada and the US (which came into force in 2011 and 2012, respectively) provide strong incentives for investment. Indeed, these agreements were pursued as part of a national strategy to attract foreign capital and make extractive industries a major 'engine' of Colombia's economic growth; President Juan Manuel Santos identified mining as one of five 'engines' of the Colombian economy during his 2010 inauguration speech.[54]

The central government's encouragement of large-scale mining can be traced back to 1988, when a reform of the national mining code identified mining as a source of foreign capital inflows.[55] In 2001, a new mining code, bill 685, was introduced, establishing that the rights to explore and exploit mines would only be granted (from 2001 onwards) through mining concession agreements. The new code, intending to boost foreign investment and lower restrictions on large-scale mining projects, laid the groundwork for granting mineral rights titles – property rights to exploit an area for its minerals – to foreign corporations or their subsidiaries, overturning a longstanding tradition that allowed local miners to easily get titles to mineral rights.[56] Furthermore, Article 159 of the code labelled mining that is conducted without official titles 'illegal', illegitimating many small-scale miners' source of income.[57] It also defined underground resources as a 'public utility', inferring that national development plans would take precedence over local interests by law. In 2010, the government introduced another reform to the mining code, confirming that protected natural reserves could *not* be used for mining, but allowing projects that already gained environmental licenses in high-biodiversity areas to be carried forward nonetheless.

With foreign companies aggressively acquiring the official titles to substantial portions of Colombia's land – by 2013, it was reported that over 1.5 million hectares of Colombian land have been sold off to large-

49 IIED 2014.
50 Ibid.
51 Ibid.
52 UK Trade & Investment 2015.
53 Weitzner 2012.

54 Presidencia 2015. The other four 'locomotives of the economy and development' were housing, infrastructure, agriculture and innovation.
55 Latinlawyer 2015.
56 Ibid. Mineral rights titles are separate from land ownership.
57 Despite the fact that at least 15,000 families subsist directly from small-scale mining revenues.

scale mining corporations, covering more than half of the country's territory[58] – local mining communities began viewing their presence as a serious threat to the continuation of small-scale mining and their way of life. Local miners were already threatened in recent years by the entry of medium-scale illegal mining; paramilitary and guerrilla groups, often with the cooperation of government officials, have become increasingly involved in illegal mining as a way to finance their operations.[59] The government's discriminatory new code made artisanal mining even less economically viable; a 2014 report noted that between the passage of the code and November 2013, 80 percent of 3,114 applications by locals to formalise mining operations were rejected.[60] Moreover, the new code weakened the ability of indigenous groups to veto mining on their land; municipal authorities lost the ability to ban mining within their jurisdiction, and prior consultation with populations over ancestral lands became legally non-binding. Indeed, it was reported that some 9,000 mining titles were awarded over national parks and indigenous reserves without authorisation from local councils, resulting in land dispossessions and forced displacement.[61] The government's pro large-scale mining policies also prepared the ground for poor CSR practices in the mining sector.

CSR in Colombia's gold mining industry

Colombia is signatory to several CSR instruments. It is the regional headquarters for the UN Global Compact (UNGC), an instrument of ten principles relating to human, labour and community rights, corruption and other matters of business ethics. It is also a member of the OECD Guidelines for Multinational Enterprises, another set of recommendations on business ethics, and of the Voluntary Principles on Security and Human Rights (VPs), concerning the safety of communities in the presence of public and private security forces (which typically accompany extractive industries). In 2006, the government and mining companies initiated a mining-energy committee (*Comité minero-energético)* and the Multi-Party Initiative (*Guias Colombia*) to discuss implementing the VPs. Recently, Colombia has also expressed its commitment to EITI principles and was accepted as a candidate in October 2014. Multinational companies operating in Colombia also refer to the Global Reporting Initiative (GRI), a self-reporting CSR standard, while some reportedly adhere to the Performance Standards dictated by the International Finance Corporation, which conditions loans on observing its standards (Colombia is the IFC's third largest client with $900 million in investment).[62] Despite this multitude of pledges, however, there is strong evidence to suggest that CSR principles are not upheld in Colombia's mining sector.

A report by the US Office on Colombia titled 'Large-scale mining in Colombia: human rights violations past, present and future' associated the entry of multinational companies to the mining sector with an *increase* in human rights abuses, conflict and violence in the country.[63] The report documented repeated violations by companies of indigenous communities' rights to free, prior and informed consent, mining-related land dispossessions and the forced displacement of populations, and an increased number of extrajudicial killings targeting union leaders, environmentalists and land rights activists. Another recent report by the OECD on the implementation of the Anti-Bribery Convention in Colombia stated that, 'The working group is particularly concerned about persisting shortcomings in Colombia's corporate liability regime, particularly concerning the lack of liability of publicly-traded companies, financial institutions, and non-profit entities…'.[64] Indeed, several foreign companies operating in Colombia are facing bribery allegations.[65] Another study on Colombia's extractive industries by the Canadian North-South Institute established that, 'as evidenced by the examination of companies… very few operating in Colombia actually subscribe to or implement CSR codes'.[66]

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58 US Office on Colombia 2013, 4.

59 In May 2015 it was reported that Colombia's armed forces raided 63 illegal gold mines operated by FARC (Reuters 2015).

60 The International Institute for Environment and Development 2014.

61 US Office on Colombia 2013, 14.

62 IFC 2015.

63 US Office on Colombia 2013.

64 OECD 2015, 5.

65 Kennedy 2014.

66 Weitzner 2012, 139.

Notably, Colombia's mining sector is occupied by junior companies that may have less knowledge of, and experience in, CSR frameworks compared with multinationals. Indeed, in interviews with industry representatives in Colombia, it was shown that only companies that were financed by international financial institutions, which condition their loans on meeting standards of CSR tools, had sufficient CSR knowledge.[67] Inexperience can lead to poor practice when implementation is in place; for example, representatives of a junior company that was planning the resettlement of a Colombian mining community reported that consultation with the community had taken place (with over 1,200 meetings) to 'explain the project and its benefits to the people affected' *following* the exploration and feasibly assessment phase.[68] However, according to ILO Convention 169 and Colombian law, consultation processes should take place *prior* to exploration to be effective. Small companies may also have less economic incentives to pursue CSR frameworks; they are not subjected to scrutiny and consumer boycotts as much as multinationals and have fewer resources at their disposal to invest in CSR. Accordingly, companies' representatives in Colombia stated in interviews that while they adhere to the country's legislation and to international principles, they would not go beyond what is required by law through CSR initiatives.[69]

While the dominance of inexperienced junior companies and the limits companies place on their willingness to engage in CSR initiatives may partly explain why CSR instruments in Colombia's mining sector have been unsuccessful, evidence from Colombia suggests CSR failure can also be explained by the reliance in CSR tools on 'stakeholder engagement' while ignoring the asymmetry in power between companies and stakeholders. First, the Colombian government's alliance with mining corporations in the search for mineral wealth has blurred the distinction between the public and private sectors, creating conditions of tolerance for low corporate responsibility. Governments that adhere to CSR instruments commit to promoting and enforcing their use amongst multinationals operating in their country, a challenging task if companies are allowed to exert a disproportionate influence over government; companies in Colombia were able to recruit high-level public officials to serve as company representatives, encouraging a rotating door between the public and private sectors, and have allegedly influenced the drafting of the new mining code.[70] In the words of an industry representative: 'the state has the responsibility to uphold all the laws on human rights. If it doesn't do its job, what can we do?'[71]

Second, low corporate responsibility in Colombia is further exacerbated by the country's weak and ineffective public institutions. While the CSR legislative framework is developed, there is no clarity regarding which regulatory agency has the role of oversight. There is also the problem of corruption; Transparency International, which ranks Colombia 94th out of 175 countries in its Corruption Perceptions Index, has recently reported that 80 percent of Colombians view their public officials as corrupt, while 93 percent of local entrepreneurs believed companies to be paying bribes to government.[72] Corruption in local government, ripe in Colombia (local elections are typically fraught with irregularities and the influence of guerrillas, paramilitaries, and drug traffickers), also affects the distribution of mining revenues; while 80 percent of mining royalties are due to return to the producing region by law, it is unknown whether local governments receive any mining revenue or how it is spent.[73] Furthermore, despite the government's declared 'war' on illegal mining, the Colombian police admitted it has no capacity to control it; illegal miners pay bribes to security officials to enable heavy machinery to enter mining areas to the detriment of local miners, undermining any CSR attempt that might be taking place. As noted, 'In Colombia there isn't a lack of legislation but a lack of a police force that works'.[74]

Finally, the involvement of civil society organisations in the implementation of CSR in Colombia has been trivial. While Non Governmental Organisations (NGOs) have been active in advancing appeals to challenge government policies that promote large-

67 Ibid.
68 Ibid, 145.
69 Ibid.

70 US Office on Colombia 2013
71 Weitzner 2012, 150.
72 TI 2014.
73 Whiting 2014.
74 Gagna 2015.

scale mining – mining policy has become a contested issue in Colombia, with numerous appeals against the new mining code pending in the Constitutional Court – NGO representatives have reported they do not take part in the negotiation and implementation of CSR mechanisms, tools that ultimately depend on 'stakeholder involvement'.[75] Indeed, Colombian activists have explained the lack of civil society participation due to the asymmetry in power: 'the relationship is very asymmetrical, and companies look down to NGOs. One sits down at those tables and it is very clear… when the dialogue takes place, it's very aggressive from companies to NGOs…'; 'Human rights' NGOs greatly distrust all these instruments, so there is a radical reaction… there have been some real problems with each of these companies… corruption, environmental catastrophes… NGOs find it hard to sit at the table with actors responsible for these to discuss voluntary instruments'.[76]

In the face of mining regulations that focus on promoting foreign investment to the disadvantage of local communities, weak and corrupt state institutions, and the lack of civil society participation in negotiating and implementing CSR instruments, companies may overlook, or misevaluate, local communities' needs and concerns, guaranteeing the failure of the CSR agenda and the perpetuation of the gap between discourse and practice. It was noted that CSR reports in Colombia are not disseminated at the community level, but rather posted on companies' websites, demonstrating strong disconnect between companies and communities which ultimately results in hostility and suspicion by both parties.[77] In the words of a Colombian activist: 'there is a huge mistrust from the communities… when they are presented [with] concepts around CSR, they state 'it is business as usual…'.[78] It was further noted that companies in Colombia typically engage in 'tokenistic projects such as building schools for children, rather than preventing negative impacts or distributing real benefits'.[79] It is these real benefits – involvement in decision and profit making – that can tip the power imbalance between communities on the one hand, and state institutions that side with companies on the other, as the Santander gold mines deal demonstrates.

The Santander mines deal

On March 12, 2010, following several months of intense negotiations, a deal was signed between 27 members of a gold mining community in northeast Colombia and a Canadian mining company. The deal stipulated the purchasing of eight mining titles – the right to explore and exploit a designated area of land for its minerals – from local title-holding miners, in exchange for substantial benefits and reimbursements. These included an initial aggregate cash payment of nearly US$2.2 million, followed by an additional cash payment of US$1.43 million to be paid in two equal installments at the first and second anniversary dates of the signing of the agreement, and a further royalty payment to be made on the basis of US$12 per economically viable proven ounce of gold.[80] Furthermore, the miners were to receive nine million common shares in the company upon signing of the deal, equivalent to 30 percent of the outstanding shares of the company, and two additional million common shares in the two consecutive anniversaries. Two community-appointed representatives were also given seats in the company's seven-member board, while miners and other community members were contracted as company employees to work in the mines and provide vehicles, mules, food and various services. Miners had also retained (in the initial agreement) the right to continue artisanal mining in the territories of the titles they had sold.

The deal sparked interest and wonder in Colombia's mining sector, in which titles were until then bought off from local miners for meagre payments. The sellers of the mining-titles, members of a small community of about 1,800 people located in the rural California mining district in the Santander Department, 65 km from Santander's capital city Bucaramanga, north of Bogota (see Map 1), were able to capitalise on a unique negotiating position.[81] First, the region contained

75 Weitzner 2012.
76 Ibid, 63-4.
77 Ibid.
78 Ibid, 68.
79 Ibid, 69.

80 To a maximum of US$12 million. The exact sums of the initial and subsequent payments made were US$2,196,225 and US$1,437,270, respectively (Calvista Gold Corporation 2012a, 7).
81 According to the Departmento Administrativo Nacional de Estadistica census of 2005, the municipality of California had a population of 1,783.

proven gold reserves – the greater California district had historically been a hub of gold exploration and exploitation: it was the site of gold mining by the indigenous *Sura* people in pre-Colombian times and small-scale gold exploitation has been taking place in the region since, constituting its principle economic activity (although no official record of this production appears to exist)[82]; the Spaniards reportedly discovered gold northeast of the titles in 1549 during a military activity and operated two open pit mines in the area; and British, French and American mining companies performed explorations and drillings in the area between the end of WWI and the 1980s.[83] Second, titles still held by local miners were becoming scarce – thanks to its historical record, the California district was one of the first mining districts to attract foreign mining investment in Colombia's recent gold boom. In the mid-1990s, large-scale mining companies including Eco Oro Minerals, Galway Resources and Ventana Gold had begun purchasing, and soon after competing over, the region's mining titles, providing remaining local title holders with more leverage in the negotiating table.[84]

Third and most importantly, local miners and title owners have become increasingly resentful to the entry of large-scale mining companies to the area, after many of them were not only tempted to sell their titles cheaply, but also lost the ability to continue artisanal mining when entire areas were 'frozen' under exploration concessions taken over by the companies. This was partly due to the 2001 Mining Code, which left artisanal and small-scale miners at a disadvantage when requesting mining concessions (the code does not differentiate between different scales of mining operations), and partly due to the government's 2010 National Formalisation Policy, which in its attempt to tackle illegal gold mining by formalising the mining sector failed to differentiate

Map 1: Department of Santander, Colombia and the 'California Project'
Source: Calvista Gold Corporation 2012b.

small-scale mining from illegal operations; the policy presented requirements artisanal miners were unable to meet (the elimination of mercury in mining activities and complying with various technical, environmental, social and labour standards). Big mining companies' strict adherence to the policy meant artisanal mining had to be terminated, enraging local miners. Indeed, in 2011, the National Confederation of Colombian Miners *Conalminercol* held a national strike in which miners in the California district participated to protest against the 'mining engine' model pursued by the government that privileged international corporations while undermining the rights of traditional miners.

Thus, when negotiations began between Canadian investors and miners from the California community, local mining titleholders were able to significantly raise the bar for the purchase of their titles.[85] The project grew from eight to eleven titles, and the original 27 signatories were joined by over 40 other community members with claims to the titles (mainly family members) to establish Sociedad Minera La

82 O'Prey 2008; Calvista Gold Corporation 2012b, 23.
83 The British Colombian Mining Association and the French Francia Gold and Silver operated there at the end of World War I. In 1947, the Anaconda Company completed mapping and drilling, and in 1967 the Nippon Mining Company completed drilling. Exploration was undertaken by Placer Development and Ingeominas in the 1970s and 1980s, respectively (Calvista Gold Corporation 2012b).
84 Calvista Gold Corporation 2012b. Confirmed in a personal interview. January 29 2016, Interviewee 2.

85 Personal interview. January 29 2016, Interviewee 1.

Baja California, a limited company owned by its 70 members (which arguably raised their bargaining power further).[86] The miners' company then carried out negotiations with the Canadians on behalf of the miners. Following the purchase and sale agreement signed between the parties, payment for titles and the issuing of common shares were made to the association by Calvista Gold Colombia, the local subsidiary of Calvista Gold, which was founded for the purpose of the deal (under Colombian law, to be granted a concession agreement foreign entities that act as mining concessionaires must establish a local affiliate).[87] The miners' company was also responsible for managing the distribution of payments and shares to each of the title-holders (according to the size of land in each title; the 11 titles in the deal were grouped into six non-contiguous blocks, covering an area of approximately 169 hectares), and for employing and distributing salaries to miners and community members.[88]

The deal signed between the parties was not framed under an official CSR framework or chiefly motivated by the CSR agenda; in company official documents, there is no mention of adherence to specific corporate responsibility tools practiced in Colombia or Canada (although experienced Canadian board members were well-versed in the CSR theme). The company's key goal in pursuing the deal was, as can be expected from a commercial company, 'creating shareholder value by concentrating on the acquisition and development of properties that have the potential to contain economic gold deposits'.[89] Moreover, the company involved was not a veteran corporation but a junior Canadian mining company, whose mining operations in the California district remained its only project.[90] While attempting to secure the deal, the company competed over mining titles with multinationals operating in the area, which may have impacted its readiness to yield to miners' demands. As noted in a company report: 'Calvista faces strong competition from other mining companies in connection with the acquisition of properties producing, or capable of producing, precious and base metals. Many of these companies have greater financial resources, operational experience and technical capabilities than Calvista'.[91]

Nevertheless, or possibly *because* the deal was not under the auspices of CSR, its success can illuminate the inherent weakness of current programmes and provide lessons for improving CSR in the extractive industries sector. As noted in the previous section, the problem of power dynamics between companies and host communities, which is largely overlooked by international CSR tools, can begin to be addressed by allowing communities to take a greater and more meaningful part in decision-making processes on matters that concern the community, providing compensation for mining-related damages and lost livelihoods, and offering communities a share in profits made from resources exploited over their land, to which they feel entitled. In the current practice of CSR by companies, such elements are largely absent: the ability of local communities to influence companies' decision-making remains minimal; community consent is not gained based on principles of free, prior and informed consent, directly responding to compensation requests; and profits from mining remain solely in the hands of the company and local political elites. In the Santander mines deal, company-community power asymmetry was significantly reduced thanks to the involvement of community members in decision and profit making.

First, the deal stipulated the integration of local mining title-holders as significant shareholders and board members of the company. Local miners were to receive not only remuneration for salaried work and the provision of services and land usage in local gold mines as practiced by CSR-adhering companies, but also a significant amount of shares in the company and the ability to take direct part in, and influence, decisions at the highest level of company management. While 'cash and shares' deals are common in the gold mining sector, shares offered to locals are typically less than one percent.[92] The uniqueness of this deal was in the weighty sum of shares, 30 percent, offered to miners' through their association. As significant shareholders, miners were entitled not only to a large share of the company's profits, but also to taking an

86 Personal interview. January 29 2016, Interviewee 2.

87 Mining titles can be held by several family members.

88 Personal interview. January 29 2016, Interviewee 2.

89 Calvista Gold Corporation 2012a, 2.

90 Ibid, 4. Calvista Gold was traded as TSX:CVZ.

91 Ibid, 16.

92 Personal interview. January 29 2016, Interviewee 1.

active part in the decision-making process; major decisions which would have had an effect on their rights required their approval. While shareholders generally have little power over how companies are run and although the Colombian board members were in minority in the seven-member board, miners were able to exercise their shareholder capacity in votes to ensure decisions do not adversely affect them, as board decisions required unanimous agreement.[93] The two board members, a lawyer and a miner elected for the position, participated in all board meetings either via the phone or in person (on few occasions, they were flown to Toronto from Colombia).

For example, in 2011 Calvista filed requests to Colombia's mining authority for the suspension of artisanal gold exploitation activities by local miners in the California district, in response to the Mining Authority's own request to bring to standard artisanal mining within the areas under Clavista's titles.[94] In a company report, the request was explained on the grounds that small-scale mining methods 'may expose Calvista to liability based on the frequent violation of mining and environmental laws by traditional miners (including their use of hazardous substances such as cyanine)'.[95] The cessation of artisanal mining in such circumstances typically takes place without compensation to miners beyond the payments already made for their titles. However, in this case, as miners had insisted during the initial agreement to retain their right to engage in artisanal mining, the company's requests were filed only following negotiations with the miners and obtaining their consent in exchange for appropriate compensation. In November that year, six settlement agreements over the territory of six mining licenses were reached between the company and miners, facilitated through their board representatives, providing compensation for the cessation of artisanal activities in the form of cash payment and extra shares to be paid over a three year period.[96] Thus, involving miners in the decision-making process guaranteed their concerns were addressed effectively and that community consent was properly obtained.

Second, the engagement of miners created an alliance between the community and the company that safeguarded the interests of both parties and which both sides had strong incentives to uphold. On the company's part, keeping miners and other community members 'happy and motivated' was crucial due to the long-term endurance required in gold mining operations before seeing a return-on-investment. As recognised in a company report: 'once mineral deposits are discovered, it can take a number of years from the initial phases of drilling until production is possible, during which the economic feasibility of production may change'.[97] Moreover, despite the record of small-scale gold mining in the area, this was a high risk, speculative venture; no mineral resources or mineral reserves were identified in the California district prior to the acquisition of the mining titles by the company and there was no certainty, at the time of purchasing the titles, that the expenditures made by the company towards the search and evaluation of gold will result in discoveries of commercial quantities of gold or other minerals.[98] A company report noted: 'there has been insufficient exploration to define a mineral resource and it is uncertain if further exploration will result in the target being delineated as a mineral resource'.[99]

To protect its investment, the company operated in ways that were conducive to positive community-company relationship in the short and long term. Following the signing of the purchase agreement, the company instigated the provision of community services, including repairs to infrastructure, a monthly payment for the fixing of the community's church, school and hospital, weekly English lessons for the community's children, and cleaning of the town. In a company technical report, it was noted that 'very limited resources are available in the municipality of California'.[100] Efforts were therefore concentrated on improving the town's basic amenities and services, not to be featured on a glossy CSR report (indeed, none was produced) but subsequent to a consultation process that included miners and their families and was responsive to the community's needs and

93 Personal interview. January 29 2016, Interviewee 2.

94 Bringing to standard artisanal mining was 'outside the scope of the project'. Personal correspondence, February 3 2016, Interviewee 1.

95 Calvista Gold Corporation 2012a, 13.

96 An annual cash payment of US$221,587 and an annual issuance of common shares with a value equal to US$147,725 (Calvista Gold Corporation 2012a, 13).

97 Calvista Gold Corporation 2012a, 14.

98 Ibid, 12.

99 Ibid, 6.

100 Calvista Gold Corporation 2012a, 16.

preferences, creating mutual trust and strengthening community-company ties.[101] Consultation had taken place from the outset of operations through the miners' association and was open and inclusive, allowing community members to have a say; decisions in the miners' association were reached democratically through a simple majority vote by the five-member board, then communicated to the company through the two Colombian board members.

Furthermore, while other companies operating in the area have reportedly recruited non-indigenous workers, the company in this case had it as a key policy to employ the majority of its workers from the town.[102] In a company report, it was noted that 'Calvista engaged a number of community personnel via its major shareholder, Sociedad Minera La Baja California, to construct trails and drill platforms, perform site clearing and preparation activities, as well as moving the drills and ancillary equipment between drill sites. La Baja will also rehabilitate the drill sites upon completion of the drilling'.[103] In another company report, it was noted that 'the core was brought to the logging facility in California on a daily basis by La Baja personnel'.[104] The employment of locals spurred economic activity in the town; since the local vegetation supports only a limited level of agriculture and livestock pasture, the loss of small-scale gold exploitation would have resulted, in the absence of job creation, in the unemployment and economic deterioration that is often reported in host communities to extractive industries in the developing world (there were seven producing artisanal mines in the area, which produced in the 15 years prior to the agreement a reported amount of 63 kilos of gold).[105] It also created a sense of affiliation; a board member noted that community members viewed the company as 'the town's company'.

Commitment to best practice was also demonstrated by the company in its respect to local environmental laws and regulations, which had been established in every stage of the company's operations. Prior to assuming activities, the company sought a confirmation from the Corporacion de Defensa de la Meseta de Bucaramanga, Santander's local environmental authority, that all mining titles controlled by it were outside areas identified as the Paramp ecosystem, an ecosystem above 3,200 meters elevation, where the Colombian mining code prohibits mining and exploration activities.[106] During explorations, a company report noted that all phases of operations were subject to environmental regulation, which mandated 'the maintenance of air and water quality standards and land reclamation... [and] set forth limitations on the generation, transportation, storage and disposal of solid and hazardous waste'.[107] In 2012, during a phase of exploration activities, the company reported it is 'in compliance with all environmental regulations'.[108] This record exceeds industry standards; various mining companies in Colombia have been accused of severe environmental violations, one of the key drivers behind the emergence of a strong anti-mining front in Colombia in recent years.

The alliance between the company and the community also provided miners with incentives to safeguard company interests. Following years of small-scale mining for little profits, miners in the California community aspired to capitalise on what they perceived as their ancestral right to the area's gold riches, and on the benefits that could be derived from gold-related investments pouring into the country. While they did not have the resources, skills or technical means to engage in large-scale mining on their own, they resented the exploitative tactics used by corporations already operating in the area, as well as the government which had sided with them. However, the deal made miners key company shareholders of a publically traded company – in May 2011, Calvista completed an Initial Public Offering for nearly US$18million and was listed in the Toronto Stock Exchange. As major shareholders, miners were motivated to act in defence of the company's interests. For example, during discussions regarding the continuation of artisanal mining, miners agreed to the cessation of operations (in exchange for compensation), partly

101 Personal interview. January 29 2016, Interviewee 2.
102 Confirmed in personal interview. January 29 2016, Interviewees 1 and 2.
103 Calvista Gold Corporation 2012b, 79.
104 Ibid.
105 Ibid. However, the actual number could be as high as 360 kg for the same period due to possible under-reporting.
106 Ibid, 5. Confirmation was received in May 2012.
107 Calvista Gold Corporation 2012a, 8.
108 Ibid, 10.

so that the company avoids fines. In a vote on the sale of Calvista to AUX Acquisition in 2013, which required miners' agreement, the majority of miners (reportedly, some 90 percent) supported the decision through their board representatives and the sale was approved.

Miners were encouraged to protect the company's interests in two other ways. First, as part of the deal, the company committed that in the event it opts not to continue developing the California titles, it may decline future payments and in return to the cancellation of shares may instead transfer to Baja California all of the mining licenses.[109] While this justly guaranteed that miners would receive either profits from the exploitation of gold or their titles back (typically, 'unused' mining titles are returned to the state), large-scale mining is far more profitable in the short-term than artisanal mining, profits in which miners had keen interested. Second, provisions were made in the agreement also for the opposite scenario, in which the Canadian company decides to extend its hold of the titles beyond their expiration date (mining titles in Colombia are for periods of twenty years). A company document notes: 'some of the licences that make up the property are in their second ten-year term. Upon expiry of the licenses, Calvista Colombia will be entitled to apply for a Concession Agreement, which would extend their duration over the same areas as the expired licenses'. An intention was also expressed to integrate into a single exploration and development unit the different titles (Article 101 of the Mining Code provides that different contiguous mining titles that have been granted for the same mineral deposit may be integrated). Such long-term investment by the company in the region would have continued to benefit miners and their community.

Finally, an important feature of the deal that should be illuminated was the relative absence of interference from the Colombian administration and local government in the process of negotiations and during the deal's execution. While the Colombian government acted eagerly to attract foreign mining investment, it neglected to put a robust, workable mining policy in place at the local level; thus, while the mining code provides the legal infrastructure for the purchase of mining titles by foreign companies from local title-holders, and companies' technical, environmental, tax, and financial obligations, it does not mandate government engagement at any point of the negotiating or implementation process. Indeed, unlike the oil and gas industry, in which agreements for the exploration and exploitation of resources are signed between companies and national governments, the mineral mining industry is often managed at the level of local government and deals are signed between companies and individuals (or their representatives) without official government mediation. Board members interviewed in this study maintained that an intervention by government in the deal would have had adverse effects on its results due to corruption and inefficiency: 'local government interference would have made the deal worse... a person knows better how to spend their money'.[110] Government non-attendance may serve as a prerequisite for the application of this deal in other cases.

109 And a four percent return royalty on any commercial production.

110 Personal interview. January 29 2016, Interviewee 1.

Conclusion

The current implementation of Corporate Social Responsibility in the extractive industries sector, while an improvement on the industry's previous disregard for social, environmental and economic implications of natural resource and mineral exploitation, is still largely unsuccessful. This paper contributed to current debates on CSR in the sector by drawing attention to the gap between companies' rhetoric and results on the ground, and by attributing this gap to power dynamics between industry stakeholders which remain unaddressed both in the literature on CSR and in practice in international CSR mechanisms. The paper suggested that to reduce the inherent asymmetry in power between companies and host communities, communities should take direct part in decision and profit making. This approach was illustrated empirically with an example of a deal between gold miners and a Canadian mining company in Santander, Colombia, which illuminated the weaknesses inherent in current CSR discourse and practice. While the deal was not part of an official CSR mechanism, it demonstrated a 'social' response to local concerns that exemplifies in pragmatic terms such community integration; the deal has dramatically improved the quality of life for miners, their families and the community at large with a significant transfer of wealth to miners (the company was sold in 2013 for over Canadian $70 million, a third of which retained by miners, the owners of 30 percent of the company).

Indeed, the understanding of power dynamics should be inherent to the way CSR strategies are integrated and understood and should be far more central to policy debate and practice than it currently is; 'stakeholder theory', upon which many CSR tools are based, advocates stakeholders' involvement without acknowledging crucial differences in the access of actors to power. What this means for local communities wherever CSR is practiced is not only a continued lack of sustained community engagement in decision and profit making, but also the paradoxical perpetuation of social and economic deterioration in the presence of lucrative extractive industries, and increased risk to all parties. Only when critical power dynamic factors are taken into consideration in the design and implementation of CSR can policy begin to have positive impacts on the indigenous communities they are imposed upon and, ironically, only then can it provide the social risk insurance that attracts mining companies to CSR activities in the first place. While some argue that business engagement in community development endeavours is destined to be superficial, short-termed, and neither equitable nor sustainable, this case demonstrates that community consent can serve as a powerful motivator for companies to surrender some of their powers. In the words of a company board member: 'If you involve the people in the project, you will have much more public cooperation... They are aligned with your goals'.[111]

111 Personal interview. January 29 2016, Interviewee 1.

Bibliography

Arellano-Yanguas F.J. and Acosta A.M., 2014. Extractive Industries, Revenue Allocation and Local Politics, UNRISD. Accessed June 27 2015. http://www.unrisd.org/80256B3C005BCCF9/search/8F5A973D956120F3C1257C940048D310?OpenDocument

Banks G., 2009. Activities of TNCs in extractive industries in Asia and the Pacific: Implications for Development. *Transnational Corporations*, 18(1), 43-60.

Barrick Gold, 2012. Responsible Mining, 2012 Corporate Responsibility Report. Accessed November 28 2015. http://s1.q4cdn.com/808035602/files/responsibility-report/2012/Barrick-2012-Corporate-Responsibility-Report.pdf

Bebbington G., 2010. *Extractive Industries and Stunted States: Conflict, Responsibility and Institutional Change in the Andes. Corporate Social Responsibility: Discourses, Practices and Perspectives*. Palgrave MacMillan, Raman. London.

Benson P. and Kirsch S., 2010. Capitalism and the politics of resignation. *Current Anthropology* 51(4), 459–486.

Blowfield M. and Frynas J.G., 2005. Setting new agendas: critical perspectives on corporate social responsibility in the developing world. *International Affairs*, 81 (3), 499-513.

Calvista Gold Corporation, 2012a. Annual Information Form for the fiscal year ended December 31, 2011. March 30. Accessed on www.sedar.com.

Calvista Gold Corporation, 2012b. Technical Report on the California Gold Project California, Santander Department, Republic of Colombia. May 30 2012. NI 43-101 technical report and resource calculation.

Carter A.S., 2005. New constituencies: extractive industries and protected areas. In: Mcneely, J.A. (ed.), *Friends for Life*.

EITI 2015. Accessed October 22 2015. https://eiti.org/eiti/history

Friedman M., 1970. The Social Responsibility of Business is to increase its Profits. Accessed October 1 2015. http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html

Frynas J.G., 2005. The false developmental promise of corporate social responsibility: evidence from multinational oil companies. *International Affairs*, 81(3), 581–598.

Gagna D., 2015. Illegal mining threat is equal to drug trafficking: Colombia Govt. Accessed April 21 2015. http://www.insightcrime.org/news-briefs/illegal-mining-threat-is-equal-to-drug-trafficking-colombia-govt

Garvey N. and Newell P., 2005. Corporate accountability to the poor? Assessing the effectiveness of community-based strategies. *Development in Practice*, 15 (3&4), June.

Gilberthorpe E. and Glenn B, 2012. Development on whose terms?: CSR discourse and social realities in Papua New Guinea's extractive industries sector. *Resources Policy*, 37, 185-193.

Gillies A., 2010. Reputational concerns and the emergence of oil sector transparency as an international norm. *International Studies Quarterly*, 54(1), 103-126.

Hamman Y., Kapelus G., 2004. Corporate Social Responsibility in Mining in Southern Africa: Fair accountability or Just Green-wash? *Development* 47(3), 85–92.

Haufler V., 2010. Disclosure as governance: the extractive industries transparency initiative and resource management in the developing world. *Global Environmental Politics*, 10(3), 53–73.

Hilson G., 2007. Championing the rhetoric? Corporate social responsibility in Ghana's mining sector. *Greener Management International*, 53, 43–56.

Hilson G. and Maconachie R., 2009. ''Good governance'' and the extractive industries in sub-Saharan Africa. *Mineral Processing and Extractive Metallurgy Review*, 30, 52–100.

Himley S., 2010. Global mining and the uneasy neoliberalization of sustainable development. *Sustainability*, 2, 3270–3290.

ICMM 2015. Accessed October 16 2015. http://www.icmm.com/

IFC 2015. IFC in Colombia. Accessed April 26 2015.

http://www.ifc.org/wps/wcm/connect/region__ext_content/regions/latin+america+and+the+caribbean/countries/colombia

IIED, 2014. 'What is legal?' Formalising artisanal and small-scale mining in Colombia. Accessed July 20 2015. http://pubs.iied.org/pdfs/16565IIED.pdf

Irvin R.A. and Stansbury J., 2004. Citizen participation in decision-making: is it worth the effort? *Public Administration Review*, January/February, 64(1).

Jones F., 1980. Corporate social responsibility revisited, redefined. *California Management Review*, 22, 59–67.

Joyce E. and Thomson B.T., 2000. Earning a Social License to Operate: Social Acceptability and Resource Development in Latin America. *The Canadian Mining and Metallurgical Bulletin* 93, 1037.

Kennedy P., 2014. Canadian mining firm facing bribery allegations in Colombia. Stockhouse.com. Accessed April 23 2015. http://www.stockhouse.com/news/natural-resources/2014/02/06/canadian-mining-firm-v-csg-facing-bribery-allegations-colombia

Latin lawyer 2015. Mining 2015: Colombia. Accessed April 28 2015. http://latinlawyer.com/reference/topics/46/jurisdictions/8/colombia/

Newmont Mining, 2014. Beyond the Mine. Accessed November 12 2015. http://sustainabilityreport.newmont.com/2014/_docs/newmont-beyond-the-mine-sustainability-report-2014.pdf

OECD, 2015. Phase 2 Report on Implementing the OECD Anti-Bribery Convention in Colombia. Accessed April 23 2015. http://www.oecd.org/corruption/anti-bribery/Colombia-Phase-2-Report-ENG.pdf

O'Prey M., 2008. Technical Report on the La Bodega Property, California-Vetas Mining District, Department of Santander, Colombia. ANI 43-101 Technical Report prepared for Ventana Gold Corp.

Palacios J.J., 2004. Corporate Citizenship and Social Responsibility in a Globalized World. *Citizenship Studies*, 8(4), 383-402.

Pegg S., 2006. World leaders and bottom feeders: divergent strategies toward social responsibility and resource extraction. In: May, C. (ed.), *Global Corporate Power*. Lynne Rienner Publishers, Boulder.

Personal interview, interviewee 1. January 29 2016.

Personal correspondence, February 3 2016, Interviewee 1.

Presidencia 2015. The time for Colombia is now! Accessed April 28 2015. http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_27.aspx

PWYP 2015. Accessed October 16 2015. http://www.publishwhatyoupay.org/

Ross M.L., 1999. The political economy of the resource curse. *World Politics*, 51(2), 297-322.

Reuters, 2015. Colombia army raids illegal mines funding FARC rebels. Accessed April 26 2015. http://www.reuters.com/article/us-colombia-mining-illegal-idUSKBN0NW27220150511

Royal Dutch Shell, 2014. Sustainability Report. Accessed November 12 2015. http://reports.shell.com/sustainability-report/2014/servicepages/downloads/files/entire_shell_sr14.pdf

Shamir R., 2004. Between self-regulation and the Alien Tort Claims Act: on the contested concept of corporate social responsibility. *Law and Society Review*, 38(4), 635–664.

Shochat S., 2014. Oil and women's political participation: A sub-national assessment of the role of protests and NGOs in Nigeria. PhD thesis. http://etheses.lse.ac.uk/1029/

Smith S.M., Shepherd D.D and Dorward P.T., 2012. Perspectives on community representation within the extractive industries transparency initiative: experiences from south-east Madagascar. *Resources Policy* 37, 241-250.

Soares de Oliveira R., 2007. *Oil and Politics in the Gulf of Guinea*. Columbia University Press, New York.

The International Institute for Environment and Development 2014. Accessed April 26 2015.http://www.iied.org/

The World Bank 2012. Implementing EITI for Impact report. Accessed July 22 2015. https://eiti.org/files/Implementing%20EITI%20for%20Impact_Handbook%20for%20Policy%20Makers%20and%20Stakeholders.pdf

The World Business Council for Sustainable Development 2001. http://www.wbcsd.org/home.aspx Accessed July 15 2015.

Thomas J.C., 1995. *Public Participation in Public Decisions*. San Francisco, CA: Jossey-Bass.

Trebeck K., 2008. Corporate social responsibility and democratisation: opportunities and obstacles. In: O'Faircheallaigh, C., Ali, S. (Eds.), *Earth Matters: Indigenous Peoples, the Extractive Industry and Corporate Social Responsibility*. Greenleaf Publishing, London, 8-23.

UK Trade & Investment 2015. Doing business in Colombia: Colombia trade and export guide. Accessed July 20 2015. https://www.gov.uk/government/publications/exporting-to-colombia/doing-business-in-colombia-colombia-trade-and-export-guide

UNECA (United Nations Economic Commission for Africa) and AU (Africa Union), 2010. Minerals and Africa's Development: A Report of the International Study Group on Africa's Mining Regimes, Second Draft. August.

US Office on Colombia, 2013. Large scale mining in Colombia: human rights violations past, present and future. May. Accessed April 27 2015. http://www.usofficeoncolombia.org/docs/large-scale-mining-full-report.pdf

Utting C., 2005. Rethinking Business Regulation: From Self-Regulation to Social Control. United Nations Research Institute for Social Development (UNRISD), Geneva 15.

Vintro J. and Comajuncosa F., 2010. Corporate social responsibility in the mining industry: Criteria and indicators. *Dyna* 77(161), 31–41.

Voluntary Principles 2015. Accessed October 29 2015. http://www.voluntaryprinciples.org/

Watts M., 2008. *The Curse of the Black Gold*. Powerhouse Press, New York.

Weitzner V., 2012. Holding extractive companies to account in Colombia: An evaluation of CSR instruments through the lens of indigenous and Afro-descendent right. North-south institute. Accessed May 2 2015. http://www.nsi-ins.ca/publications/holding-extractive-companies-to-account-in-colombia-an-evaluation-of-csr-instruments-through-the-lens-of-indigenous-and-afro-descendent-right/

Whiting B.K., 2014. Additional reforms needed in Colombian mining sector. Americas Quarterly. Accessed April 23 2015. http://www.americasquarterly.org/content/additional-reforms-needed-colombian-mining-sector

Yakovleva N. and Jenkins Y.F., 2006. Corporate social responsibility in the mining industry: Exploring trends in social and environmental disclosure. *Journal of Cleaner Production* 14, 271–284.

Yakovleva N. et al, 2012. Corporate social responsibility in the mining industry: perspectives from stakeholder groups in Argentina. *Resources Policy*, 37, 212-222.