

Mining, the environment, and human rights in Ghana: An Area of Limited Statehood Perspective.

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Abstract

While the global norms meant to guide corporate environmental human rights conducts have steadily improved, there have been limited efforts directed at exploring whether business-related environmental human rights infringements have as a result reduced. To address this gap, this paper examines the extent to which mining companies meet their responsibility to respect human rights and ensure that environmental rights of community members in mining areas are not violated. By privileging community voices, the paper offers nuanced insight into why gaps continue to persist between corporate commitment to human rights objectives and community experience in areas of limited statehood (ALS). We show that weak governmental capacity, neoliberal business model, and differences in socio-cultural logics mediate between corporate environmental human rights commitments and their conduct on the ground. The paper concludes by considering the theoretical implications for business and human rights in ALS.

Keywords: business, environment, mining, human rights, governance, community involvement, developing countries

1 Introduction

On December 12, 2006, the investigation by Ghana's Commission on Human Rights and Administrative Justice (CHRAJ) revealed that there is evidence of widespread corporate human rights abuses within communities such as violent/illegal arrest, pollution of water sources, deprivation and loss of livelihoods (CHRAJ, 2008). For instance, following major cyanide spills in October 2003 and June 2006, the rivers in Dumasi village were rendered unsafe for daily use, with dead fish, crabs and shrimps floating on the surface of the river (Geenen, 2016). Although, community members did notify the Environmental Protection Agency (EPA) of these environmental discharges, no action was taken (CHRAJ, 2008). Recently, a report by the UN Working Group on Business and Human Rights have noted that while several years have passed since the release of CHRAJ's report, adverse human right impacts and environmental degradation continue to persist in Ghana's mining industry (UN Human Rights Office, 2013). This situation is worrisome given that "a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights, including rights to life, health, food, water and development. The exercise of human rights, including the rights to information, participation and remedy, is vital to the protection of the environment" (Knox, 2018, 2). Unfortunately, while the analysis of the complex and evolving nature of the relationship between business, environment, and human has been conceptually strong, rigorous empirical analysis remains scarce (Deva et al, 2019). Hence, we have limited insights into the efficacy of claims by corporations that there are now 'corporate human rights defenders' (Wettstein et al., 2019). Furthermore, the global norms meant to direct business environmental human rights conduct (e.g. UNGP) often implicitly assumes strong institutional contexts that can put pressures on companies to

respect human rights. The reality is that most mining companies tend to operate in areas of limited statehood within Africa where such incentive structure might not exist. Against this background, this paper seeks to address two core objectives:

(a) To examine the extent to which the commitment of Golden Star Resources to environmental human rights are reflected in community experience on the ground.

(b) To consider the theoretical and practical implications of our findings for business and environmental human rights in areas of limited statehood within Africa.

2 Areas of Limited Statehood: Analytical frame

Given that mining companies go to wherever mineral deposits are found, they tend to also operate in Areas of Limited Statehood (ALS) within developing countries. Accordingly, the concept of a “sphere of influence” (Ruggie, 2008) remains a useful construct for companies to consider the environmental human rights impacts of their business activities on their stakeholders. Krasner and Risse (2014) have noted that the notion of ALS describes those countries or areas of a country where the central authorities (i.e. governments) do not have the capacity (administrative, material or institutional) or may lack the ability to implement and enforce rules and decisions. However, ALS is not an ungoverned or ungovernable space that lacks complete social coordination and/or provision of collective goods. This is because the provision of governance is not only dependent on the existence of a functioning state institution (Borzel and Risse, 2016). In these contexts, weak or limited state does not always lead to weak or bad governance, because governance gaps create opportunities for non-state actors to engage in non-hierarchical modes of coordination (Risse, 2011). At its core, the framework challenges the view that self-regulation is only effective within the context of the

‘shadow of hierarchy’ (i.e. only if the state can credibly threaten to make and enforce rules if self-regulation fails). Instead, Borzel and Risse (2010) suggested that effective governance is possible in ALS because there are other functional equivalents to the ‘shadow of hierarchy’ cast by effective state institutions. First, governance gaps associated with ALS can incentivize other actors like multinational corporations and NGOs to work either collaboratively or on their own to provide public goods (i.e. *shadow of anarchy*). Second, external actors like foreign governments and international organizations linked directly or indirectly to ALS context can cast an *external shadow of hierarchy* that can substitute for its absence in the domestic context and influence other non-state actors to engage in governance. The last is the *shadow of socially embedded market* that is based on how social norms may create reputational incentives (i.e. the business case logic) for non-state actors to contribute to governance. The effectiveness of these functional equivalents is still dependent to some degree on functioning state institutions (Börzel and Risse, 2016). ALS then, is not necessarily the opposite of unlimited statehood but that of consolidated statehood because ALS can manifest along several dimensions including: (a) geographic space;(b) sectorial (i.e. specific policy arena); (c) social (i.e. specific part of the population) and (d) temporal (Risse, 2011).

The value of ALS framework for our study partly stems from the fact that it directs attention away from state-centric conceptualization of institutional settings by acknowledging the existence of certain peculiar state formations such as weakened or mal-functioning institutions that shape business-society relationship (Azizi and Jamali, 2016). It also allows us to take seriously the important governance role that corporations can assume in developing countries with/without state engagement. This is particularly the case given that Hanekom and Luiz (2017) have suggested that in ALS context where institutions can be

ineffective in reducing uncertainty and signaling what conduct is legitimate and which is not, organizations may engage in either opportunistic behavior or seek to contribute towards addressing the associated governance gaps. Opportunistic behavior is likely when a firm is sufficiently insulated from consumers and ordinary citizen and as such can adopt an 'autonomous' strategy. Conversely, firms are more likely to contribute to addressing governance gaps when they are 'embedded' in local context and therefore not insulated from the social risks in their business environment and thus have to engage with local consumers and stakeholder directly. This proposition is yet to be empirically examined.

3 Connecting Mining, Environmental Degradation & Human rights in Ghana

The fact that the mining sector has contributed to the growth of the Ghanaian economy and has had a significant negative ecological footprint is not often in contention. Following the adoption of the structural adjustment program in the 1980s, the government of Ghana enacted several laws that were to a large extent geared toward attracting foreign direct investment in mining rather than regulating the behavior of multinational mining companies in their host communities (Tuokuu *et al*, 2019). This contradiction underpins the regulatory framework (i.e., institutional context) within which mining activities take place, and demonstrates how the relationship between mining companies and local communities unfold. This regulatory context has had two major effects for both the enjoyment of environmental human rights by communities and for corporate environmental behavior. First, despite the fact that the African Charter of Human and Peoples rights clearly establish the interdependence between the environment and human rights by distinguishing between the extent of the right of the individual and the obligation of the state, the Ghanaian government amendment to the original PNDC law 153 that governed mining via its repeal

and replacement with ACT 703 of 2006 does not provide a clear and specific mechanism through which communities may formally seek redress for the violation of their rights (Armah et al, 2011). This is further compounded by the fact that the 1992 Ghanaian constitution makes no direct reference to the environment, which has created some ambiguity as the measures that are actually implemented often depend on both the administrative capacities of the agencies and the clarity of the policies and laws (Singh et al, 2007). The unintended consequence is that the lack of good legal regimes through the enactment of appropriate environmental laws generates conflicts that allow for environmental human rights violations. The implication is that communities have limited options for seeking redress, and in other instances such efforts for redress can be extremely expensive, thus insulating mining companies from the risks associated with poor environmental performance within their business environment.

Second, while the Ghanaian government has an important role to play in the regulation of corporate environmental performance to protect the environmental human rights of its citizens, it appears that the ultimate responsibility for proper environmental behavior still lies with the corporations themselves (Armah et al, 2011). Case in point, there are several regulatory vacuums that allow mining companies a significant amount of discretion over how they are governed and when corporate environmental regulations does exist, enforcement mechanisms are often weak or not well laid out (see Tokuu *et al*, 2019). Therefore, when mining companies violate the law, there is often no retribution from the government (Korsah-Brown, 2002). The implication is that the inaction of the EPA and the government demonstrate not only a weakness in governmental regulatory function, but also encourages future violation of extant laws by mining companies (Armah et al, 2011). This

situation provides support for Krasner and Risse (2014) assertion that Ghana exhibits some characteristics that are synonymous with ALS.

Finally, the structural driver for the limited protection of environmental human rights in Ghana is partly rooted in the rentier character of the Ghanaian state. For instance, Korsah-Brown (2002, 93) noted that “the Ghanaian government has conflicting interests and is interested in the revenue from the taxes that company would provide while supposedly promoting the development of communities rendering it unable to be a neutral party to any such negotiation”. The implication is that governmental interest in tax revenue and royalty and the interest of mining companies in the profitability of mine is often in symbiosis meaning that as government pursues its self-interest, it invariably privileges the interest of mining companies over those of local communities.

4 Methodology

Given the explorative nature of the study, we opted for an inductive research strategy (Idemudia, 2017). Qualitative data was collected through semi-structured interviews as it allowed for flexibility and the emergence of new ideas (Parr, 2015). Official reports produced by the Government of Ghana and Golden Star Resources were also examined to ascertain the language that the mining company and the various government institutions use to engage with and give meaning to corporate environmental human rights responsibilities. Nineteen (19) semi-structured individual interviews were conducted in English and/or Twi (Ghanaian local language), lasting between 30 to 60 minutes. The in-depth interviews were with Community Relations Officer(s) of Golden Star Resources (GSR); representatives from the community organization WACAM; representatives from the community organization WUSC; local chiefs; representatives of the Ghana Minerals Commission; representatives

from the Commission on Human Rights and Administrative Justice, representatives from Ghana Chambers of Mines. Interviews were conducted using an interview guide. The interview guide solicited responses from participants about the institutional context in Ghana, as well as expectations and experiences of mining communities regarding the environmental human rights conduct of businesses. As the questions were open-ended, some interviewees also discussed issues they felt were relevant to them and wanted to draw our attention to. Data analysis consisted of the careful reading from beginning to end of transcripts and notes to engender familiarity with the data (Wolcott, 1994). The transcripts were read a second time for open coding and first-order analysis (Gioia, Corley & Hamilton, 2013). Coding scheme was deductively developed from the research questions and the ALS framework, and inductively from the data itself which allowed for the grouping of codes into related themes (Bazeley & Richards, 2000). Axial coding consisted of establishing the relationship between the different emerging themes and matching corresponding quotes with the identified categories which invariably allowed for other themes to emerge. The data in each theme were carefully re-read for internal consistency and to secure anonymity, participants were allocated a code.

5 Background on Mining-Induced Resettlement in Dumasi

GSR is a Canadian federally incorporated global mining company with assets in Ghana. The company has been operating in the country for over 17 years and owns 90% of two operating mines; (1) Wassa and (2) Prestea/Bogoso, located on the Ashanti Gold Belt in Ghana (Golden Star Resources, n.d.). In 2006, GSR became a signatory of the United Nations Global Compact, and GSR asserts that “GSR continues to integrate the UN Global Compact principles into its business activities” (Raffield and Wasel, 2018, 249). GSR also claims that it is committed to the voluntary principle of security and human rights. With

regard to the environment, GSR states that it is “committed to meeting or surpassing regulatory requirements in all of its exploration, development, mining, and closure activities while safeguarding the local environment for stakeholder communities and future generations” (Raffield and Wasel, 2018, 251). Therefore, GSR believes its CSR practices are in line with a human rights approach to sustainable community developments reflected in their 2016 sustainability report which states: “As a responsible corporate citizen, we act to respect and uphold human rights in our sphere of influence. This responsibility is embedded in our Policy on Community Relations and Human Rights. [...] Our investments in local schools help provide access to education, in support of the right to education. Our investments in health stewardship initiatives help enable stakeholders to enjoy the right to health. These are but a few examples of the countless ways in which we can help promote the enjoyment of human rights”. (p. 18). The implication is that GSR takes its commitment to respect and support environmental human rights seriously and as such purport to be a ‘corporate human right defender’.

On January 30, 2013, a resettlement agreement was signed between GSR and the Dumasi Negotiation Team which consisted of 33 representatives of elders, religious groups, traders, farmers, artisans, civil servants, youth, unit committee, and the Dumasi Oversight Committee. Initial discussions regarding relocation started in 2005 after the company “identified the need to re-open and expand the existing Dumasi pit, which is adjacent to the Dumasi community” (Dumasi Resettlement Agreement, 2013, p. 4) with the actual negotiations beginning in January 2011 (Thorpe & Gyamfi, 2013). A total of 25 working meetings were facilitated comprising of community forums, focus group discussions, a series of consultations and resettlement discussions.

As it is commonly done in the extractive sector, the agreement refers to the International Finance Corporation Performance Standard 5 (IFC PS 5) and promises to adhere to both relevant national laws and international best practices during the relocation process (Dumasi Resettlement Agreement, 2013, p. 4). The negotiation process and planning activities were supposed to be in accordance with the local content agreement and “provide fair, high standard resettlement package supported by livelihood restoration and community development program” (Dumasi Resettlement Agreement, 2013, p. 6). A key principles within IFC PS 5 is to improve the living standard for affected individuals and communities. Recognising this principle, GSR made a commitment to strive for a general improvement of the living conditions for residents of Dumasi via the provision of replacement housing as well as appropriate communal structures and services for public use namely community centre, public school, marketplace, sacred sites, cemeteries, electricity, water systems and a public refuse waste system (Dumasi Resettlement Agreement, 2013, p. 6 & 12-13).

Furthermore, members of the Dumasi community were supposed to be relocated to a new site approximately five (5) kilometers from the village, near the main road that is leading from Bogoso to Kumasi. As part of the process, about 1,696 structures from within 533 compounds would have been physically displaced. Compensation was to be done based on ‘buildings for buildings’ – only annexes and second or third houses of multiple house owners may be compensated in cash. It was anticipated that production from the Dumasi deposit commences in early 2015 and that the deposit would provide both refractory and non-refractory ore sources for at least six (6) years from 2015 (Golden Star Resources, 2013). However, community leaders and the Assembly-woman of Dumasi explained that GSR halted the resettlement process due to financial constraints and may or may not resume at a later time. Thus far, GSR has not issued an official public statement to provide

clarity about the resettlement status of Dumasi and thereby violating community rights to information. According to a participant from Dumasi, “*GSR is not honest with us. Until today, we don’t know what is happening with the resettlement.*”

6 GSR’s Commitment to Environmental Human Rights & Community Experience: Issues and Prospects

While a variety of factors mediates the extent to which GSR’s commitment to environmental human rights has translated into the reduction of business-related environmental human rights infringement, we examine three main factors below. These three interrelated factors provide critical insights into how and why disjuncture might continue to exist between corporate commitment to environmental human rights objectives and community experience on the ground.

6.1 Ghana’s Mining Sector: ALS Meets Rentierism

The Ghanaian state seems to show some characteristics of ALS *along the sectoral dimension (i.e., ineffective regulation of mining activities)*. For example, a participant stated that *one of the major challenges we face relates to weak state institutions and weak enforcement of the law*. Another respondent noted “*there are a lot of uncertainties with regard to regulations. Presently, there are too many regulators trying to pass conflicting laws. For instance, there is a regulator for air, one for diesel, another for a vehicle, and yet another for water and so on* . For the NGO WACAM, the regulatory bodies are also sometimes part of the problem. A participant noted: “*One thing we have realized is that in most instances, most of the stakeholder, and I’m speaking from the community point of view and our experiences, we have realized that there is a very slow response from the regulators to these [human rights-related] reports from communities. This has led to several forms of riots between the community and the company and even the regulators*”. Given this, the state appears to be unable

to formulate and implement effective environmental policy geared toward the protection of the environmental human rights of community members. The issue of weak enforcement capacity is compounded by extant law that tends to privilege resource extraction over the protection of human rights which participants have further noted does not also sufficiently emphasize the protection of community rights. A member of the Minerals Commission acknowledged *[the law] is not necessarily sufficient but it addresses some rights of mining communities*. Similarly, a respondent from WACAM noted : *[...]the issue is the law itself. As I said, the mining law is promotional. The only right which a community person really has is to protect its property and negotiate for compensation. They don't have the right to say no to these activities. So it leaves you with little power in deciding on what you want.*

Furthermore, it was alleged that the mining laws were formulated in an ambiguous manner: *the law is also not straight forward, in one section it says, upon doing this the company can go straight to start [mining]. When you go to another section, they also say that communities should be paid compensation before they start [mining]*. This problem of poorly specified legal code was also captured by an employee from the Office of Administrator of Stool Lands who pointed out that mining laws, relating to compensation for land and foregone crops are vague. However, he also stated that: *[...] we have had an improvement in the law which says that you must compensate for the loss of livelihood. And it goes further to say that compensation must be fair and adequate. But we still have issues on how soon compensation is paid*. Contrastingly, the phrasing of “fair and adequate compensation” also allows for varying and contradictory interpretations between communities and mining companies. For example, a community member explained that *one of the main sources of conflict revolves around compensation for landowners. What a landowner or farmer might consider fair might be quite different from what GSR sees as adequate compensation. Because of that, negotiating a decent resettlement package took as long as two years.*

This two year wait period often comes at a great economic and social cost to the farmers and infringes upon their economic and cultural rights. An employee from the Ghana chambers of mines noted that, *resettlement comes with a lot of challenges because the value of land and crops are not properly regulated. However, mining communities can take advantage of the petitioning mechanism that has been put in place. For instance, they can file a petition to the Minister of Lands and Natural Resource. But generally, we do encourage mining companies to go above and beyond the law* . While this might suggest that the state provides some access to remedy, the reality, however, is that community members often do not have the capacity to take advantage of this process and governmental response are often slow or inadequate. Finally, the inability of the government to make and enforce effective laws that protect the environmental human rights of communities essentially removes the threats associated with the ‘shadow of hierarchy’ that can make self- regulation effective. This problem is partly due to the rentier characters of the Ghanaian state as it relies on mining revenues to be able to reproduce itself. Thus, mining projects are overwhelmingly interpreted as worthwhile undertakings that will benefit the general public. According to an employee from the Minerals Commission, *sometimes you will have farmers or community members who completely reject the idea of mining and show very little willingness to engage in dialogue. In most cases, when there is a dispute, the mining project wins because it is very difficult for farmers to make the case that their farming activity will create as many jobs and generate as much income for national development.* This suggests that the financial prospects of mining projects informs governmental decisions and it is used to justify projects and its associated involuntary resettlement as being in the public interest. Consequently, a respondent from the WACAM argued that that government agencies may also be pursuing their self-interest by stating *that I’m not surprised [about the statement] because they are the Minerals Commission. [...] One way or the other they have to find*

ways to exploit our minerals. This participant stressed that the argument that *mining is contributing to the country's development shouldn't really be used [...] because those involved in agriculture are contributing far more with less environmental impacts, and less human rights violations.* This finding is consistent with extant literature that suggests that the regulatory framework governing mining in Ghana is bloated, confused, discordant and disadvantages local communities (Taabuzuing et al, 2012).

6.2 Shirking Responsibilities & Divergent Socio-Cultural Logics

The Ghanaian government neglect of its developmental responsibilities within mining communities represents the *social dimension* of its ALS characteristics. For instance, a participant complained that, *"the government is not helping at all. I can't remember the last time I even saw one of them in the community."* In contrast, government officials suggested that mining companies should take more responsibilities when social and environmental problems are directly or indirectly related to their operations. A respondent from the government noted that *"If a mining company is taking the livelihood of community members, I expect more of them. For me, providing water when you have contaminated the water is not CSR. The company is simply providing an alternative as it should"*. Here, by emphasizing self-regulation, the government indirectly blames mining companies for environmental human rights violations whilst transferring governmental responsibilities to the mining companies. This was confirmed by a respondent that asserted that *"the government knows about our plight and has not shown any willingness to step in. For instance, when we approach the District Assembly with a request, they rather refer us to GSR as they believe it is an issue that falls within the responsibility of the company"*. Similarly, based on the Minerals and Mining Act of 2006, 703 Article 73 and 74, issues surrounding resettlement and compensations are to be negotiated between the holder of the mineral rights (i.e. mining companies) and the owners or lawful occupiers (i.e.

community members). Often this means that government oversight and involvement in these procedures are minimal or absent. The consequence of the transfer of responsibility to companies is the blame game strategy, as is the case in the Niger Delta area of Nigeria where contestation between government and oil companies over accountability for community rights violation often takes place at the expense of the communities (Idemudia, 2014). This view was shared by several community members in Dumasi. Today, the members of the Dumasi host community are living in a state of uncertainty as they lose their ability to secure their livelihood and build a stable sense of community. Scudder, (2012) has argued that companies can directly infringe on human rights by delaying, postponing or halting a planned resettlement project. This creates physiological, psychological and sociocultural stress, and forces affected individuals to live in limbo and develop anxiety about the future. Host communities find themselves undergoing an increased sense of insecurity and greater dependency on government and the company as their homes, social relations, and work and subsistence activities are disrupted. Companies may not recognize multi-dimensional stress as an important business risk and how this can constitute a form of violation of community right to self-determination in addition to their right to development. As summarized by a community member: *[...]you can't just come to my community which I have been, or my ancestors have been for hundreds of years and you just come in by virtue of your economic gain, come and disrupt my livelihood and my ancestral heritage.*

The absence of government in mining communities and the limited legal instruments to protect human rights, results in members of communities to tend to expect mining multinationals to become what Börzel and Deitelhoff (2018) refer to as governors by contributing to the provision of collective goods and services. An employee from Ghana's Minerals Commission highlighted: *"companies say that they are not the surrogate government, but*

the community believes that they represent the government". Conversely, a respondent from the NGO WUSC explained that "*communities have lots of expectations and want the company to do the work of the government due to their [community members] lack of understanding*". The idea that local communities have high or unrealistic expectations was echoed by other participants including staff from GSR, Ghana Chambers of Mines and local assemblymen in Bogoso/Dumasi. The assumption underlying these assertions is that local communities often fail to see a clear demarcation between the role of the state, and the role of the private sector. Community expectations are somewhat mediated by their specific socio-cultural understanding of what they conceive as the responsibilities of post-colonial political, social and economic institutions. In traditional Akan society, community members were entangled in a network of reciprocal responsibilities based on kinship relations (Wiredu, 1990). Unlike contemporary Ghana where governance and decision-making occur within an institutionalized context on a national level, political life in pre-colonial Akan society was based a strong sense of "mutual aid for survival" as one is not sufficient by his/her own (p. 247). Common sayings like, a human being is not a palm tree and *onipa hyia mmoa* (a human being needs help) among the Akan ethnic group attest to their worldview that a human being is entitled to help from others in order to achieve an adequate level of well-being (Wiredu, 1990). Therefore, the role of post-colonial institutions (i.e. the state and non-state actors) from an Akan perspective would involve functions and activities aimed at the promotion of community well-being.

Nonetheless, the expectation of host communities that mining companies should initiate sustainable development projects is partly because of the negative impacts of mining on their lives. A respondent pointed out, *[...] we don't have farmland to do work because of GSR and at the same time the company doesn't allow us to do galamsey (illegal small-scale mining), How are we*

supposed to eat? It's a paradox [...]. . According to another community member, *The blasting they do has cracked some of our houses and nothing is being done about this.* In fact, a member of the Dumasi community was convinced that governmental neglect is partly due to their *resettlement status* having been designated for resettlement. The implication here is that by being marked for resettlement, the community is further marginalized increasingly creating uncertainty for the provision of collective goods by the government. As shared by a community member: *“GSR told us that we would be relocated to a new place. So most of us stopped building our house. [...]. Even if somebody wants to do something to better the community, they will end up not doing it because of the resettlement.”* .

6.3 Neoliberal Logic of Profitability Collides with Respect for Environmental Human Rights

Host communities expect that the negative social and environmental impacts of mining are minimised while ensuring that developmental benefits accrues to the community. This is because, as one participant put it, *the relationship between the community and GSR is [...] like a man and a woman who live together simply because they cannot divorce each other.* If livelihood is understood as ‘the full range of means that individuals, families, and communities utilize to make a living such agriculture, fishing, foraging, petty trade and bartering.’ (IFC PS5, 2012a, p.1), then, according to a respondent from WACAM, *in rural communities, everything is about farming. Farming is the primary occupation [...]. So when we joke with issues concerning land, we are joking with their livelihood and that is one key issue of rights violation.*

Conversely, GSR points to high community expectations emphasizing the challenges it faces when trying to meet community expectations. For example, a participant who is a company representative shared: *Sometimes a community member might not be happy with the*

outcome of the grievance process. The issue might be resolved but because the outcome did not meet his or her expectations, it then becomes another issue. For instance, the government has a standard rate for land and crop valuation. And even though most of the time; we pay more than the set rate, community members are hardly ever satisfied. What is glossed over in this statement is the fact that mining multinationals are primarily concerned with increasing cost efficiency and profitability consecutively constraining the resources that are directed toward community development. During an interview with a Ghanaian business newspaper, Katherine Sutton, Director, Investor Relations and Corporate Affairs at GSR, stated that weak gold prices impact all areas of business including community investments. As profit margin decrease, GSR will face pressure from shareholders to contain operational expenses (Dugbartey, 2016). Indeed, a government official captured the issue in the following manner: *“There is competition between companies’ pursuit for profit maximization and community members’ livelihood and mining communities tend to be on the losing end”*. Because mining companies operate within a neoliberal business model, where capital accumulation constitutes the ultimate measure of success, their approach to community engagement tends to be encapsulated within a risk management framework (Idemudia, 2009). This tension between community cultural-specific expectations and mining multinationals’ neoliberal business logic creates the context within which environmental human rights violations occur.

7 Discussion & Emerging Issues

There are three main emerging issues from our findings. First, our study shows that while GSR might not have deliberately taken advantage of the ALS context, the functional equivalents to the *shadow of hierarchy* have not bridged the expectation gaps between local communities and GSR or led to the reduction of business-related environmental human

rights infringements. This finding diverges from the suggestion by Honke and Kranz (2013) that both the *shadow of anarchy* and the *shadow of the market* were effective drives of mining companies' efforts to contribute to environmental governance in South Africa beyond their legal obligation. The explanation for this divergence might lie in the fact that the Ghana case unlike the South Africa one, seems to highlight the ways in which the nature of the political and economic interests of a state might also shape state capacity and its ability to make and enforce rules. This issue might have been overlooked because of the tendency of the ALS framework to depoliticise the nature of weak state capacity. Our findings showed that the inability of the Ghanaian state to make and enforce the rule is not simply a function/problem of institutional dysfunction. Rather, it is born out decades of deliberate neoliberal reform in the mining sector that has transformed the role of the state, and its rentier character resulting in the state relying on natural resources revenue. Ongolo (2015) has also shown how the Cameroonian state has used 'gecko politics' to systematically exploit poor policy coordination and ambiguity around forestry conservation to maximize profits for state bureaucracies while avoiding undesired governance reforms promoted by external actors. Hence, the effectiveness of the functional equivalent of the 'shadow of hierarchy' also needs to be understood not only in terms of functioning state institutions but also in terms of the political economy of the context.

The second emerging issue is that our study contributes to highlighting the limits of the business case argument for responsible business behaviour. While the functional equivalent of the socially embedded market might partly explain the willingness of GSR to espouse commitment to environmental human rights as highlighted in its sustainability report, neoliberal logic of profitability in this case the need to reduce cost seem to also serve to constrain the translation of such commitments into concrete positive experience for

community. A situation compounded by governmental policies that insulate mining companies from the social risks in their areas of operation (see Alstine, 2009). This situation might explain why most mining “firms are still not ready to be safe rather than sorry” (Aaronson and Higham, 2013, 33). This provides empirical support for Borzel and Risse (2016) assertion that state institutions matter for the effectiveness of functional equivalent of ‘the shadow of hierarchy’.

Third, theoretical debate on business and human rights have largely neglected the voices of poor and marginalized communities in ALS in the Global South. Therefore, the tendency to conceptualize what is or is not business human rights obligations and what form it should take is based on assumptions rooted in a Western context and is problematic for at least two reasons. First, local communities use different socio-cultural logic to understand and delimit the human rights obligation of a firm and the form it should take. For instance, the Akan worldview based on group solidarity and collective responsibility puts a different kind and a much higher threshold on the responsibility a firm is expected to assume compared to what they might retain in a Western context. Thus, claims that communities have an undue high expectation or that firms are taking on governmental responsibility tell us more about Western context than the social-cultural context within which corporate-community relations unfold. Second, the neglect of community voices also inadvertently accentuates the disjuncture that exists between the worldview of local communities and the neoliberal one that shapes MNCs behavior. Unfortunately, the disjuncture tends to provide a fertile ground for environmental human rights violations. This suggests that while the notion of ALS remains useful for understanding the contribution of non-state actors to governance in Africa, there is a need for future research in different context of degrees/dimensions of limited statehood to confirm if our findings are in fact generalizable (i.e. theoretically) as

well as allow for the refinement of the ALS framework within the African context to address a number of key blind spots that still need to be strengthened.

8 Conclusion

There is no doubt that significant progress has been made in the development of global human rights frameworks meant to guide corporate human rights conducts. The extent to which this progress has resulted in concrete changes in corporate behavior and positive human rights outcome for those most vulnerable to business-related human rights infringement remains questionable. Our study takes this disjuncture between the expectations of global norms of corporate human rights conduct and actual corporate behavior on the ground seriously. Focusing on the Ghanaian context and drawing on ALS as an analytical frame, we offer insights into how and why this disjuncture continues to persist. Theoretically, our paper provides a bottom-up perspective to the analysis of business and human rights relationship that has largely neglected and marginalized the voices from below in theoretical debates whilst proffering new impetus for refining and sharpening the ALS framework. By identifying a variety of factors and global processes that limits corporate incentives to translate corporate commitments to human rights into the reduction of business-related human rights violations, this paper hints at the limits of contemporary global efforts to narrow the gaps between corporate acceptance of human rights obligations and their human rights conduct. Crucially here is that practical efforts for ensuring positive human rights outcomes on the ground would need to re-politicize the notion of weak government capacity and take seriously the disjuncture in the socio-cultural logics that shape corporate-community engagement in the context of human rights promotion and protection.

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