

The Political Possibilities of CSR: Mining Company-Community Conflict in Peru

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ABSTRACT

This paper examines the ways in which corporate social responsibility (CSR) is used by mining companies in Peru to minimize conflict between themselves and communities. It assesses the use of CSR at both the community and national levels, and concludes that there are important limitations to a reliance on the privatized management of social conflict. Most importantly, a reliance on corporations to manage conflict in which they themselves take part inherently limits the outcomes of this conflict for the communities to those which do not threaten the business interests of the companies. This paper further argues that the political organization of communities and the involvement of external actors in the conflict has an effect on the type of CSR policies enacted by the company. Thus, communities who are better organized, especially with the help of external actors, may achieve more favourable results from CSR-led negotiations with companies.

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LIST OF ABBREVIATIONS

CONACAMI.....	Confederación Nacional de Comunidades del Perú Afectadas por la Minería
CORECAMI.....	Confederación Regional de Comunidades del Perú Afectadas por la Minería
CSO.....	Civil society organization
CSR.....	Corporate social responsibility
FCE.....	Federación Campesina de Espinar
FDI.....	Foreign direct investment
FICAE.....	Federación Intercomunal de Campesinos de la Provincia de Espinar
EIA.....	Environmental impact assessment
ICMM.....	International Council on Mining and Metals
MEM.....	Ministerio de Energía y Minas
MNC.....	Multinational corporation
MPSP.....	Mining Program of Solidarity with the People

CHAPTER 1: INTRODUCTION

As non-state actors are increasingly playing a role in global governance initiatives, much has been written about the ways in which corporations have become politically and economically influential actors on the world stage (Cutler, Haufler and Porter, 2002; Utting, 2006; Ruggie, 2006). However, corporations do not exert their influence at the international level alone, but have an effect on national and local politics. There may be no better example of this than the national and community level effects of mining companies, whose activities have an undeniable environmental, economic and social impact on the host state and local communities in which they operate. Extractive industries have often been singled out as targets of anti-corporate protest for their destructive environmental impact, as well as a few well-documented, high-profile cases of involvement in violence against local populations. Furthermore, communities often find that modern mining does not create many long-term jobs and significantly disrupts traditional ways of life, while at the same time the industry is offered a favourable regulatory environment by host country governments (Kapelus, 2002; Szablowski, 2002; Sagebien and Lindsay, 2011).

However, many mining corporations have adopted corporate social responsibility (CSR) codes based on the idea that firms should “move beyond the focus on shareholders to consider the impact of their activities on ‘stakeholders’” (Haslam, 2007, p. 271). In the case of the mining industry, stakeholders may include the communities closest to the mine (in the mine’s so-called zone or area of influence); national and local level governments; and non-governmental organizations (NGOs) which often assume the role of representing or advocating for community or environmental interests.

Over the last decade, CSR practice has expanded beyond voluntary codes of conduct to include a wide range of projects and activities, primarily in developing countries. These include community development programs; the support of local small businesses; and the fostering of dialogue and consultation with local communities. In this way CSR has expanded what can be considered the social role for the private sector – corporations are now not only responsible for shareholder profit and compliance with local regulatory standards, but for improving the well-being of “stakeholders” not directly related to business activity, thus acting as a development agent in their area of influence.

As Blowfield and Frynas (2005) claim, “the fact is that we know very little about the impact of CSR initiatives in developing countries, and what we do know raises questions about [...] the tangible benefits for the poor and marginalized” (p. 506). This is especially true if CSR policies are considered as a stand-in for state involvement in the community. Although there is a fair amount of literature discussing the reasons for the emergence of CSR and increasingly its contribution to community development, there are fewer case studies which examine the potential for CSR to address conflict between communities and companies. As Coumans (2010) notes,

CSR literature is generally not attentive to the ways in which CSR practices that are voluntarily adopted by corporations, and carried out under the direction of corporations, may be strategically employed to undermine community agency, particularly in situations where community interests are in opposition to mining company interests (p. 35).

Therefore, this project investigates the potential role that CSR – in a variety of incarnations – may play in the governance of community-company conflict. This entails looking at company specific CSR policies, the history of community-company interactions in the specific case studies, the source of the conflict, and the ways in which the company and the community have attempted to use CSR policies to address conflict.

Peru was chosen as the “host country” and the community-company conflicts selected were those related to the Tintaya and Antamina mines (the basis for selecting these case studies will be discussed at greater length below). Peru is a particularly relevant case study due to the development of its extractive industry and a number of initiatives related to CSR that have been undertaken by both government and the private sector. These include a policy of fiscal and political decentralization; the Mining Program of Solidarity with the People (MPSP); and the creation of a number of private development funds controlled by mining companies which work within the sphere of influence of particular mines and beyond. Peru also experiences a high level of mining-related conflict, and it is argued in this paper that a number of the aforementioned CSR-related initiatives are an attempt to manage this conflict. The time period selected for the case studies, approximately 1999-2010, corresponds with the beginning of the democratization and decentralization processes following the end of the Fujimori era, as well as the increase in the promotion of CSR at the company and national level. With his election in 2011, president Humala has made a number of policy changes related to mining, including abolishing the MPSP, and although he has certainly not adopted a less pro-mining stance than his predecessors, it remains to be seen how national-level CSR initiatives will develop.

Ideally, CSR policies provide a link between multinational corporations (MNCs) and local communities and work to guarantee a mutually beneficial relationship. However, both the motivation for the adoption of CSR policies and their ultimate effectiveness are highly contested. As Bebbington (2010) notes, if we dismiss CSR policies and projects as nothing more than public relations initiatives for multinational corporations, then there is not much reason for further investigation. However, many academics and members of the business community promote CSR as something more than this. A critical assessment portrays CSR as a means

through which private entities take on some of the governance roles formerly associated with the state (Cutler, 1999); or buy off, silence or manipulate communities or community leadership into accepting the presence of mining activities (Calvano, 2007; Bebbington, 2010). On the other hand, the liberal assessment of CSR, while not unequivocally supportive, does suggest that CSR can be a viable means through which both businesses and communities can further their respective development goals while interacting in a mutually beneficial manner. If so, CSR programs and policies may be a way to create institutional spaces, especially in areas of limited state intervention, which manage social conflict and meet the needs of local communities through the provision of public goods.

This project seeks to answer both practical and theoretical questions about the role of CSR in community conflict. Theoretically it compares the critical (primarily neo-Gramscian) and liberal assessments of CSR, and further applies these to the CSR practices of the two selected companies. Specifically, the project asks the following question: What role does CSR play in private sector-management of community-mining company conflict? As mentioned above, two primary hypotheses emerge from the literature: either CSR policies provide a channel for communication and contestation that communities can use to their advantage; or they function to buy off community leadership, weaken or delegitimize resistance and defuse conflict without addressing its root causes. According to both perspectives, CSR policies can be understood as a form of social governance in the communities in which they are in effect – as Sagebien and Lindsay (2011) note, they frame CSR as a governance mechanism “because the actors in the system are political actors involved in making decisions that affect the collective social and environmental value. Issues of power and legitimacy form part of this notion” (p. 28). During the early stages of this work, the assumption was made that the more critical hypothesis – that CSR

functions to silence or buy off community leadership, co-opting resistance and thus defusing conflict – was the most likely outcome. Ultimately, however, the varieties of approaches to CSR, as well as the national context in Peru, necessitate a less categorical assessment.

This paper argues that CSR is used by companies in an attempt to manage opposition to mining at both the national and local level. At the local level, which is the primary focus of this paper, CSR programs are used by companies to manage conflict with communities in the area of influence of the mine. In the case of Tintaya, the company's CSR policies have focused on facilitating on-going dialogue with communities and NGOs, and are an attempt at creating an institutional space for the management of the social and economic issues raised by the affected communities. However, the limits to dialogue facilitated by the private sector in this case are clear, with the company unwilling to engage with certain issues raised by the communities, especially if these issues are directly related to business practice. On the other hand, Antamina's CSR programs have focused on community development programs, which have been used by the company, especially during the earlier stages of operations, as a tool to weaken regional resistance to mining activity while positioning the mine as a necessary social actor in the region. Furthermore, while Antamina undeniably contributes significant financial resources to development in the region in which it operates, issues of community concern related to the business practice are not adequately addressed by CSR programs. Thus, as in the Tintaya case, the limitations inherent to relying on the private sector to manage and find solutions to social conflict become clear. This paper concludes that the Tintaya model represents a comparatively more positive example of the use of CSR, as it created an institutionalized space for contestation and dialogue, which, unlike Antamina's programs, allowed for communities to advocate collectively for their own interests. However, in both cases the reliance on CSR as a private

institution to manage conflict in which the company itself takes part is inherently problematic as it limits the range of possible outcomes— whether at the local or national level – and leaves communities vulnerable to the good will of the company, a situation which contravenes the ideal of public policy formation in a democratic state.

The CSR programs and practices of mining companies in Peru have adopted some of the roles that correspond to the state both in terms of social management and the provision of public goods. Therefore, this paper further argues that the promise of social development for “stakeholders” is an attempt to legitimize the privileged position of the mining industry at the national level in Peru, despite the reality that extractive activity causes serious environmental and social damage, and that the majority of the population does not directly benefit financially from this mining activity. In this way, CSR is used by the private sector to manage social conflict at the national level.

Finally, despite the emphasis on private-sector solutions to development and conflict management, any investigation of CSR requires an analysis of the role of the state in its promotion, perhaps at the expense of assuming its own role as an agent of social and economic development for local communities. In the case of Peru, increased private-sector involvement in both local development and the management of social conflict has been part of a successful political and economic restructuring of the state with the explicit goal of attracting FDI in mining. While CSR may meet the material needs of communities, the promotion of an expanded social role for the private sector raises questions about the long-term development of legitimate democratic institutions. Specifically, the delegation of the management of social conflict challenges the principles of representative democracy in which policies are formulated by public sector officials in the service of public interest. Not only are mining companies unelected, they

are far from uninterested actors – companies operating in Peru have a stake in the outcome of social conflicts as well as the overall development trajectory of the country. Thus, as Levy and Kaplan (2009) note, the involvement of the private sector in this kind of decision-making may limit the possibilities for policy change; for example limiting the promotion of strategies for economic development that do not give primacy to extractive activity. Although this was not the primary focus of this paper from the outset, questions regarding long-term institutional development came to the fore both through the reading of secondary material and the interviews carried out as part of this project. Therefore, the long-term effect on the state of private-sector involvement in subnational governance provides interesting questions for further research.

The thesis proceeds as follows. After a brief discussion of methodology and the fieldwork undertaken for this project, Chapter 2 provides a review of the relevant literature, with a focus on the key actors involved in community-company conflict; the role that CSR plays in expanding the social role accorded to business; and its role in the management of social conflict. Chapter 3 gives an account of the national context for this paper, detailing the economic impact of mining in the country; the situation of mining-affected communities in Peru; and the various CSR-related programs that have been promoted by both the national government and mining companies operating in the country. The chapter ends with a general discussion of mining conflicts in Peru, including the most commonly cited reasons for conflict and the role that CSR may play in addressing these issues. Chapter 4 provides a description of the two selected case studies, including an assessment of the reasons for the conflict and the effect that the CSR policies of the companies had on the outcome, followed by the conclusion.

Methodology

Kapelus (2002) and Szablowski (2002) provide examples of the type of methodology employed in this thesis project. In order to tackle the question of whether CSR adequately addresses the development goals of a specific community, Kapelus investigated how the CSR policy of Rio Tinto has been implemented by a subsidiary in South Africa. Szablowski's article examines the impact of a World Bank regulatory mechanism on the actions of a Canadian mining company and the community in Peru. Both scholars begin with an analysis of the CSR practice of the company in question. They then identify the various actors that took part in the company-community conflict, and provide the historical context for the conflict. Finally, they describe what happened to precipitate the conflict, and the outcome. Both authors conducted participant interviews with community members and employees of the mining companies in question.

This paper is based on both secondary research and semi-structured interviews with key informants involved with the Peruvian state, NGOs and mining companies. The majority of interview participants were identified before arrival in the country, through shared contacts in Canada and Peru. However, "snowballing" was used to obtain a number of additional contacts. These interviews were useful in obtaining factual accounts of events during the case study conflicts as well as fleshing out the information that obtained through secondary sources (for example company sustainability reports or NGO literature) and gaining an understanding of the perception of the conflicts of the key actors.

Fieldwork was carried out during three weeks in February and March of 2012 in Lima, Cusco and Arequipa, Peru. In total, fourteen interviews were conducted with a range of "key

informants” which included representatives of NGOs involved in the selected cases, CSR and/or mining in Peru generally; academics; one government employee from the Ministry of Environment; one employee from one of Antamina’s CSR organizations; and one employee of the Canadian International Development Agency. Unfortunately, requests to visit the mine sites were denied, however, one visit to the town of Espinar, in which the Tintaya mine is located, was carried out. In all but one case, interviews were carried out in person in Spanish, and in most cases were recorded. One interview was conducted over e-mail.

Case Selection

By selecting case studies within one country and one industry, I cut down on the number of variables included (different legislation and industry standards, for example). It was necessary to select communities in which conflict has existed between the mining company and the community, and in which companies have adopted CSR policies. Other relevant variables include the company itself, the different actors involved in the conflict, the reasons identified for the conflict and the company responses to this conflict. The cases selected were the conflicts related to the Tintaya and Antamina mines.

The table on the following page outlines the key variables in these cases:

Variable		<i>Antamina</i>	<i>Tintaya</i>
Company	Owner(s)	Teck/Mitsubishi/Xstrata/BHP Billiton	Xstrata (formerly BHP Billiton)
	Size	Senior	Senior
	Country of Origin	Canadian/Japanese/Swiss/Australian	Swiss
History	Traditional mining region	Yes (mostly artisanal)	Yes
	Length of time of operation	1999-present	1980-present (although mining in area since 1917)
Community	Traditional livelihood	Agriculture, mining (artisanal)	Agriculture, mining
	Collective organization	Low	High

Conflict	Length of time	1999-present	Events that precipitated original conflict occurred in 1982. However, the resurgence of conflict and the subsequent dialogue process took place between 2001-present.
	Intensity	Low	Low-high
	“all or nothing conflict”?	No	No
	Sources of conflict	Land sales and relocation; environmental/water use; perception that development commitments/promises made by company are unfulfilled	Land sales and relocation; environmental/water use; perception that development commitments/promises made by company are unfulfilled
	External actor involvement	Low	High
	Government involvement	Low	Low
Corporate Social Responsibility	CSR policy in place from the beginning of the conflict?	Yes	Yes (following privatization) none during the earlier, state-run era.
	CSR strategy	Communications Community development projects through: Fondo Minero Antamina Asociación Ancash and other development funds supported by the company	Tintaya Dialogue Table and other subsequent dialogue processes, community development projects through: Fundación Tintaya

As can be seen, the two cases share a number of important similarities. The most important differences highlighted in the table are the involvement of external actors in the conflict (primarily national and international NGOs); the political organization of the communities; and the CSR programs initiated by the companies.

Following the hypotheses presented above, the outcome variables will be either the co-option/ diffusion of conflict; or positive engagement and dialogue between company and community, in which the underlying problems that are the source of the conflict are adequately

addressed. The presence of CSR policies can be seen as an intervening variable which has a specific impact on the outcome of conflicts between communities and companies. In this case, one way of assessing the impact of CSR is to examine how the conflict was transformed with the intervention of CSR programs or policies. With this in mind, a number of indications of the co-option or diffusion of conflict could include:

- An uneven distribution of goods provided by the company (examples in the literature include jobs at the mine site going to former anti-mining movement leaders, the disbursement of funds to only some community groups, [Bebbington et al, 2007]); and
- The acceptance of the mine by some members of the community/community groups and not others and the splintering of formerly unified groups; the demands of some groups are met while others are not, thus the overall movement weakens.

On the other hand, positive engagement between the community and the company could include:

- Meetings between company and community, followed by steps taken by company to meet community demands, for example environmental precautions, hiring, infrastructure, etc; and,
- A widespread acceptance or satisfaction with the outcome of community-company dialogues, where the demands of some groups are not privileged while others are ignored.

CHAPTER 2: LITERATURE REVIEW

The following literature review provides an initial discussion of the themes that have emerged throughout the research on Peru and mining generally as well as the case studies that make up the bulk of this thesis. It begins with a brief discussion of social conflict, before providing a definition of CSR and the so-called “CSR system” which includes a description of the various actors that play a role in the operation of CSR policies, namely the company, communities, NGOs and the state. Following this is a discussion of the ways CSR has created an expanded social role for business, through which the private sector takes on some of the activities formerly reserved for the state. These include the formation of policy that pertains to their own activities; self-regulation through private codes of conduct and CSR policies; the promotion of social and economic development through extensive development projects (this is particularly the case with companies in the extractive industries); and finally, the use of CSR to govern conflict with host communities, both at the national and the local level.

This section draws on the available literature to argue that CSR plays a role in managing conflict surrounding industry activity in two ways. At the national level, CSR positions the corporation as a key actor in promoting social and economic development, thus justifying the privileged position companies are often afforded by host governments. At the local level, CSR policies and initiatives play a role in conflict management both through facilitating company-community dialogue and working to gain the consent or “social licence to operate” of communities by means of extensive development projects.

While there is a significant literature on the origin and effectiveness of CSR policies in terms of voluntary self-regulation and promoting development, there is less on the role that CSR plays

in conflict, and whether or not these private modes of governance can provide an effective channel through which social conflicts can be mediated. However, much as in the debate about the long-term sustainability of relying on the private sector as a development agent, this expanded social role for corporations raises a number of serious questions about the long-term development of effective and democratic political institutions in a context in which the private sector is increasingly playing a governance role.

Conflict

The goal of this project is not to elaborate a theory of social conflict in which private actors play a central role, but to provide an examination of the role that CSR policies play in community-company conflict. Thus, a basic definition of social conflict is required at the outset. The definition of conflict employed in this project is the following: “conflict ‘is a situation of competition in which the parties are aware of the incompatibility of potential future positions and in which each party wishes to occupy a position that is incompatible with the wishes of the other’ (Obershall, 1978, p. 291). Furthermore, social conflict refers to a situation in which the conflicting parties are an “aggregate of individuals, such as groups, organizations, communities and crowds” (Obershall, 1978, p. 291).

According to Gurr (1968) the underlying cause of social conflict is relative deprivation, “defined as actors’ perceptions of discrepancy between their value expectations (the goods and conditions of the life to which they believe they are justifiably entitled) and their value capabilities (the amounts of those goods and conditions that they think they are able to get and keep)” (p. 1104). As deprivation increases, the likelihood of conflict also increases. However, the demands of the “deprived” group will “encounter the resistance of those who previously had

established a ‘vested interest’ in a given form of distribution of honour, wealth and power”
(Coser, 1957, p. 203)

A number of factors or conditions may inhibit the emergence of social conflict, including “institutionalization” and the perceived legitimacy of the ruling regime (Gurr, 1968; Obershall, 1978; Coser, 1957). Institutionalization refers to the existence of “stable, enduring and strong associations and solidarities... [which] provide members with an opportunity to obtain what they think they are entitled to. Their presence will thus lower deprivation, or else provide nonviolent means of voicing discontent” (Obershall, 1978, p. 300). According to Gurr (1968) these institutions provide a “routinized and typically non-violent means for expressing discontent” (p. 1105). On the other hand, a lack of perceived legitimacy or popular support of the current order will increase the likelihood of social conflict; as Coser (1957) explains “if certain groups within a social system compare their share in power, wealth and status honour with that of other groups and question the legitimacy of this distribution, discontent is likely to ensue” (p. 203).

The concepts of relative deprivation, and institutionalization are central to an analysis of the role that CSR can play in community-company conflict. As will be discussed below and in the following chapters, CSR may make up part of a company’s (or industry’s) efforts to prove the legitimacy of the current order by attempting to reduce the relative deprivation of the mining-affected communities. Furthermore, CSR, when focused on community consultation and dialogue, aims to provide an institutionalized channel for communities to express discontent, in the absence of effective, state-based means to do so.

Defining CSR

CSR can be broadly defined as a wide range of activities undertaken by a corporation, the benefits of which extend beyond the corporation’s shareholders. It is argued that beyond

maximizing value for shareholders, a company has a responsibility to a range of stakeholders, “defined as “any individual or group likely to be affected either positively or negatively... by corporate activities, policies or decisions” (Haslam, 2007, p. 271). CSR has become standard part of business practice, particularly that of large MNCs.

CSR policies operate at both the international and local levels. Beginning in the late 1970s with the OECD Guidelines for Multinational Enterprises, international initiatives that promote responsible business conduct and respect for human rights and the environment have multiplied. These initiatives are all non-binding, although they incorporate mechanisms of enforcement that work on a public-relations level – for example companies that do not submit yearly reports to the Global Compact are no longer allowed to use its seal on promotional materials and may be delisted from the website. Finally, although originating from a variety of sources, the goals of these initiatives are similar – to bring companies’ behaviour in line with a variety of normative standards that include respect for human rights and the environment and the promotion of sustainable development, without subjecting them to stringent government regulations.

Participation in these initiatives is highly visible at the international level, but CSR codes also operate locally. Many companies have their own CSR codes (often based on or guided by the aforementioned international initiatives) that govern their relationships with host communities. These can range from guidelines involving labour and environmental standards to programs that encourage community participation and dialogue. CSR policies also often involve substantial financial contributions to host communities, casting companies in the role of agents of development. The CSR programs of mining companies are often in operation in the areas immediately surrounding the mine – servicing the populations that have been identified as key stakeholders. However, as will be discussed in greater detail in the following chapter, companies

expand their CSR commitments by creating non-profit associations that are “argued to have some degree of autonomy to engage in regional development work – generally in areas beyond the immediate influence of the mine” (Bebbington, 2010, p. 106). Thus, CSR covers a wide range of company activity, from voluntary standards and self-regulation mechanisms, to guidelines requiring community consultation to small and large-scale development projects. What these various initiatives have in common is that in all cases companies go beyond what is legally required of them in terms of operation standards, and activities are carried out with little to no state involvement.

The CSR System

CSR policies are meant to establish guidelines for the relationship between a company and its stakeholders – however these have been defined. Thus, there are a number of other actors in the “CSR system” – companies, communities, NGOs and states – that have an impact on the effectiveness of CSR policies. Though it is important to understand how these different actors relate in individual case studies, the points below are often raised in the literature.

Companies

Any analysis of CSR must include the corporation as a central actor. This paper is concerned specifically with the shift in the role of the corporation from a wholly private to quasi-public actor – in other words, having responsibilities towards stakeholders and potentially providing public goods through extensive CSR policies. In an examination of the role of multinational oil companies and community conflict in Ecuador, Burke (2002) argues that the firm’s interaction with a wide array of other social actors – both state and non-state – implies a

public role for private business; “the direct participation and communication between multinational oil companies and indigenous peoples challenges the traditional economic, private nature of multinational enterprises (MNEs) and suggest a quasi-public role for MNEs in the global system” (p. 223). Burke claims that this public role for corporations endows these actors with authority in the international, national and/or subnational context. A traditional liberal analysis of authority focuses on the authority of sovereign states in the international system, and relegates political and economic issues to the public and private spheres, respectively (Cutler, Haufler and Porter, 2002). However, this view ignores the role that private actors play in the formulation of policy at various levels. In the case of CSR this includes, especially in developing countries, the role that corporations may take on as agents of development or in the provision of public goods and services. As Burke (2002) notes “the recent mobilization of transnational actors and successful policy changes in response to issues such as human rights, the environment, women’s rights, and indigenous rights suggests that non-state actors do possess a level of authority within the international system” (p. 225). An understanding of the firm as a public actor brings corporate activity into the public, and therefore political sphere, thus rendering it a target of legitimate political contestation (Utting, 2010), as well as potentially endowing it with an expanded set of social responsibilities. As will be discussed below, the expansion of CSR programs are an example of this changing social role for the corporation.

Communities and NGOs

In the context of extractive industry operations, stakeholders may include entire communities in the vicinity of operations. Depending on the case, the community may be historically disempowered which can lead to a variety of conflicts; as Newell (2005) notes, “as a

result of this marginalization and underrepresentation within state-level policy processes, poorer (particularly rural) communities are often involved in disputes with the state over land claims and entitlements” (p. 544). It is also a mistake to present the community as a homogenous entity; “poorer sections of communities are often underrepresented in, or left out altogether, from processes of constructing and implementing ‘soft’ regulation (non-legally binding) and self-regulation, even when cited as the intended beneficiaries”(Newell, 2005, p. 543). Furthermore, as Kapelus (2002) notes, different community members may have conflicting interests in the outcomes of negotiations, which can further complicate company-community interactions.

When communities and mining companies come into conflict, other actors such as NGOs or civil society organizations (CSOs) may become involved. The role of these actors, as well as the impact that CSR policies have on a conflict will vary from case to case; however, Calvano (2007) identifies a number of issues that characterize company-community conflicts. Most important is the power disparity between the different actors; communities are likely at a disadvantage in any struggle with an MNC. Therefore, communities may feel they have few resources at their disposal and turn to fairly disruptive or even violent means of resistance. However, they may also choose to work with international networks or NGOs to publicize their struggle, or engage with CSR mechanisms such as multi-stakeholder dialogue or other consultation processes which involve dialogue between community and company representatives, local authorities and at times national and international NGOs, who often act as facilitators or mediators (Calvano, 2007).

When communities work with transnational NGOs, they gain access to greater resources and a wider audience than would otherwise be possible. The ways in which civil society actors (generally transnational, northern-based NGOs) can work to support local human rights and

environmental movements in the south are well documented in scholarly work on global civil society, and transnational networks (Keck and Sikkink, 1998; Smith 2002). In these cases, relatively weak local and international actors work together to pressure more powerful actors. Keck and Sikkink (1998) identify this “boomerang pattern” in which transnational or northern groups provide less powerful actors with “leverage and information (and often money) they could not expect to have on their own; for northern groups, [networks] make credible the assertion that they are struggling with, and not only for, their southern partners” (p.13). The type of leverage employed in these struggles is rarely financial in a direct sense; transnational networks do not generally have the means to directly impact states on an economic level. Instead, they use moral pressure and public attention to influence target actors. For a campaign to be successful,

target actors must be vulnerable either to material incentives or to sanctions from outside actors, or they must be sensitive to pressures because of gaps between stated commitments and practice... Countries that are most susceptible to network pressures are those that aspire to belong to a normative community of nations (Keck and Sikkink, 1998, p.29).

This description of transnational network campaigns is fairly state-centric and implies at least some level of democratic participation; at the very least northern voters may be moved by advocacy campaigns to demand their governments take action at the international level. When the target actors of protests are private companies, the process is likely somewhat different. Private companies are of course vulnerable to material leverage, but the effectiveness of this depends on the will of the state in which they are operating to levy fines or in some other way penalize companies for negligent behaviour – something developing states may be unwilling or unable to do. Their vulnerability to moral leverage, or at least bad public relations, is also unclear. While many states are subject to the opinions of voters, MNCs are primarily beholden to their shareholders and the states in which they operate. Some MNCs, especially those who

produce goods attached to an easily recognizable brand, are vulnerable to consumer opinion. Other companies, including mining companies that do not produce consumer goods (diamonds of course being the notable exception) may be less susceptible to boycotts and consumer pressure. Finally, while Keck and Sikkink do include MNCs as possible targets of transnational activist networks, they do not mention the ways in which they may be active participants in these interactions, taking on an active role in conflicts instead of merely responding to pressure to modify their behaviour (Burke, 2002).

The State

While MNCs have a fairly prominent presence at the international level, their interactions with social movement and state actors at the national and subnational level are still constrained or facilitated by the state itself. Therefore, one of the most important actors in community-company conflicts is still the host state; as Bebbington (2008) notes, making particular reference to the mining industry,

in the triad of relationships among movement, business and state, it may well be that the outcomes of conflicts...hinge around how far state agencies ultimately identify with one set of claims over another. The position taken by the state depends in turn on the relative importance of mining in the national economy and the effectiveness with which it is lobbied by pro and anti-mine lobbies (p.12).

The degree to which state agencies identify with the claims of MNCs is, as Burke (2002) argues, related to their dependence on FDI; “weak states that are dependent upon the resources of a firm are more penetrable to private authority and actors than are strong states that do not depend upon the resources of a firm” (p. 229). Thus these states may support MNC interests at the expense of environmental or social concerns articulated by other sectors of society. While the state and industry may share economic goals, Burke (2002) claims that this convergence of interests is complicated by situation in which the state “does not represent the majority of its societal forces,

such that alliances with firms only facilitate economic success, but not social representation and equity” (p. 229). As will be discussed at greater length below, this appears to be the case in Peru, where not only do the interests of the central state (primarily to attract FDI) conflict with the priorities of some local communities and social movements (concerned with environmental issues, preserving traditional livelihoods and autonomy), but when local and regional government itself often acts in opposition to the central government – particularly employing an anti-mining discourse to gain popular support.

However, although CSR is often called upon to fill the “governance gaps” left by a weak or absent state (Sagebien and Lindsay, 2011), a number of scholars have suggested that state intervention is necessary for its proper functioning; that the “shadow of hierarchy” created by the constant possibility or threat of state intervention may be necessary to ensure companies adopt and comply with their own CSR standards (Newell, 2005; Lund-Thomsen, 2005; Ruggie, 2008; Risse and Börzel, 2010). As Risse and Börzel (2010) claim, regarding non-state actor involvement in governance initiatives,

non-hierarchical coordination and the involvement of non-state actors do not necessarily hold their promise to increase the effectiveness and the legitimacy of public policymaking [...] ‘governance without government’ is mostly likely to be effective if a strong state looms in the background which sees to it that non-state actors contribute to the provision of collective goods (p.113).

Thus, as Sagebien et al. (2008) argue in the case of CSR “in order for these initiatives to have enough depth and scope to have significant impact upon targeted stakeholders, these initiatives must form part of a socially and environmentally responsible system” which includes the state (p. 116). However, this creates something of a conundrum for proponents of CSR; they argue that the necessity for non-state based regulation is greater in “weak” states “in which central authorities (governments) lack the ability to implement and enforce rules and decisions” (Risse and Börzel, 2010, p. 119). Yet states which cannot enforce their own decision-making power

cannot cast an effective shadow of hierarchy, thus potentially rendering private regulation initiatives less effective.

Of course, this discussion does not address the question of for whom a well-functioning CSR regime is working. As Szablowski (2002) notes, even when the state is a part of the process, it would be a mistake to think it will automatically protect the interests of its citizens as opposed to the financial interests it may share with MNCs. As will be discussed in later chapters, a situation such as this, when the state actively supports an agenda directly opposed by social movements and local communities leads to increased social conflict. Corporations, in their role as significant public actors, are often at the centre of this conflict. Thus CSR has emerged as a means for companies to manage this conflict and gain legitimacy for the private sector's importance in the development of the country.

CSR and an Expanded Social Role for Business

Although business has always had to manage its relations with society, CSR by definition expands the social role of the corporation (Carroll, 2009). These new spheres of activity for corporations include the formation of voluntary codes of conduct, self-regulation of corporate activity, and, increasingly, the elaboration of development projects for stakeholders under the banner of community relations or CSR. This marks a dramatic change in what is considered the proper social role for business; in fact, it can be argued that CSR represents “a major secular development, driven by a long-term re-evaluation of the role of corporations in society” (Carroll, 2009, p.42).

A critical perspective explains the emergence of CSR regimes as part of a neoliberal globalization – an extension of private governance regimes (Levy and Kaplan, 2009, p. 441). For

example, according to private authority scholars, private actors such as MNCs take on an authoritative role previously afforded only to states and participate in formerly “state only” activities such as rule making and dispute settlement. Cutler, Haufler and Porter (2002) write extensively about the emergence of this type of private authority at the international level, and raise serious concerns about the democratic legitimacy of policies formulated by private actors. Some scholars (Utting, 2010; Blowfield, 2010; Ougaard, 2006) include CSR initiatives as examples of private authority, referring to the ways in which CSR normalizes the privatized, self-regulation of corporate activities, including over issues that are outside typical areas of corporate concern, including,

what might be called the externalities of corporate activity – the side effects of modern production, distribution sales and service. Self-regulation is therefore concerned with “social standards,” “contentious policy issues,” and “rules and standards in socio-political areas” [...] The new wave of self-regulation, in other words, is concerned with issues that traditionally have been thought of as matters for public policy (Ougaard, 2006, p. 232).

In fact, as Kaplan and Levy (2009) claim, even efforts to restrain the market are increasingly relying on market forces as opposed to state control – “NGOs increasingly adopt strategies that bypass states and attempt to pressure businesses directly through non-state, market driven governance systems” (p. 444).

Beyond policy formation and self-regulation, corporations are increasingly involved in development initiatives. In the mining sector, this has taken the form of local level development projects aimed primarily at the communities located in the mine’s zone of influence. For Himley (2010), the increased involvement of extractive companies in development projects is exemplary of a situation in which, while the state has not completely abdicated authority, “decision-making in the resource sectors increasingly occurs through the interaction of a more diverse and multi-scalar constellation of state, hybrid, and non-state actors and institutions” (p. 3272) and is indicative of a consolidation of neoliberal forms of governance. The involvement of mining

companies in community development is further motivated by the prevalence of the discourse of “sustainable development” in international policy on development. As will be discussed in more depth in the following chapter, modern mining practices are not easy to reconcile with an emphasis on sustainable development – beyond the fact that extracting a finite resource is inherently an unsustainable activity, modern mining involves the use of large amounts of resources (particularly water) and does not generate much demand for local goods and labour – while modern mining may be an economically appealing strategy for companies, it holds little benefit for the host communities. Therefore, mining has had to reposition itself as an agent of development apart from its business activity in order to maintain the legitimacy of the activity (Himley, 2010). As will be discussed below, this goes some way towards counteracting an anti-mining discourse on a society-wide level (Himley, 2010).

CSR and the Governance of Conflict

According to a liberal assessment of CSR, companies adopt these policies as a response to pressure from civil society and consumers to act in a socially responsible manner. Due to this pressure, firms are increasingly finding CSR necessary to maintain a social licence to operate (thus avoiding conflict) in host communities (Oxfam, 2008). This argument implies that corporations are forced to adopt CSR policies to defend against criticisms from civil society. Levy and Kaplan (2009) note that this perspective endows civil society organizations with significant ability to pressure MNCs to modify their behaviour, and sees this NGO-MNC contestation as inherently democratic. If this is the case, it implies the possibility for positive outcomes for communities engaged in struggles with MNCs. Similarly, Jenkins (2002) argues that CSR policies should be regarded as “contested terrain which can be used to advance the

cause of workers in the South and to carve out space for them to organize and to struggle to improve their own wages and working conditions” (p.28). Haslam (2007) argues that the normative power of CSR can be used by stakeholders to achieve their ends, based on the widespread acceptance of the underlying norms of the CSR regime. Specifically, stakeholders on the ground where operations take place are able to “confer consent on the activities of the firm and this legitimacy is sought by firms guided by the principles of the CSR regime. Norms of consultation, transparency, and multi-stakeholder processes give such stakeholders a seat at the negotiating table” (p.283). This in turn evens the playing field where negotiations take place between companies and stakeholders, giving communities and CSOs a moral authority that can be translated into real bargaining power (Haslam, 2007). In his study of the CSR policies of Rio Tinto in South Africa, Kapelus (2002) comes to similar conclusions, arguing that companies can be motivated to adopt CSR policies by ethical and pragmatic concerns, and can both promote development and legitimize liberalization in the view of the affected communities. Therefore, these scholars see the potential for CSR policies to be useful tools for companies and for a variety of stakeholders. In this view, CSR practices such as dialogue tables can allow for the negotiation of outcomes beneficial to both companies and communities; outcomes which often include further CSR commitments from companies that mitigate the negative impact of company operations as well as provide tangible, development-focused benefits to communities in the form of infrastructure and social and economic development projects.

From a neo-Gramscian perspective, CSR can be thought of as managing potential conflict on a society-wide level, securing and legitimizing corporate power (and a capitalist world order more generally) against crisis and instability. As Utting (2005) notes, the promotion of CSR can be understood not just as a reaction to external criticism, but as a proactive approach adopted by

the business community to influence institutional reform, and economic and social change. CSR allows the corporate sector to highlight the benefits of corporate activity that extend beyond financial gain for the shareholders, as well as to propose market-based solutions to a wide variety of public problems, in an attempt to legitimize what is often perceived of as increasing corporate power in international (as well as national) politics. In this way, corporations are able to exercise moral, intellectual and cultural leadership in a number of issue areas (Utting, 2010). This increasingly includes leadership on development issues, such as provision of health services and education and the support of small businesses, as can be seen from the CSR programs of many mining companies.¹ Blowfield (2010) argues that this type corporate involvement in development provides corporations with a chance to demonstrate the valuable role of corporate activity in society, while avoiding contentious issues related to corporate behaviour, as “distributive elements, such as corporate taxation, though part of the debates about development economics, are not normally incorporated into normative debates about the responsibilities of business” (p.139).

At the local level, CSR plays a similar role, working to solicit the acceptance of host communities of corporate activity through the material benefits the company can bring to the community. The effects of company-led development projects are especially important in a context in which the state has abdicated its responsibility to promote improvements in the living standards of marginalized communities. However, CSR policies may also play a more active role in conflict management, directing conflict through company-sanctioned channels, thus providing a useful tool for companies to manage opposition to their presence. A company’s CSR policy

integrates potential veto players in civil society as “stakeholders”, establishes a flow of material resources intended to incorporate stakeholders, and advances a total world (economic) view

¹ For example, the areas of focus for Compania Minera Antamina’s CSR fund, Fondo Minero Antamina: health and nutrition; education; productive development; institutional strengthening; and infrastructure.

which rejects the role of the state as protector of the community interest and channels all dissent into semi-institutionalised multi-stakeholder consultations managed by the firm (Haslam, 2007, p.278).

CSR practices such as multi-stakeholder dialogue, which bring together stakeholders with historically opposing goals, make the implicit assumption that conflict can be resolved because both parties can agree on certain core values, and that the goals of these actors are in fact compatible. In the case of mining company-community conflict, this would involve the adoption of environmental and human rights norms on the part of firms and the acceptance by communities, NGOs and civil society actors of the necessity of operating within an economic and political system that places primary importance on economic growth, often through attracting FDI.² Therefore, as Cox (1996) writes, facilitating this type of dialogue may be a strategy of “assimilating and domesticating potentially dangerous ideas by adjusting them to the policies of the dominant coalition” (p. 130), thereby neutralizing potential opposition and managing social conflict without direct coercion. However, in the event that issues arise over which neither party is willing to compromise, the limits to this type of dialogue, which relies on the good-will and voluntary compliance of all involved, may become clear. In this case, conflict cannot be managed in this politically “productive” manner, and may devolve into violence.

Therefore, as a number of scholars (Levy and Kaplan, 2009; Bebbington, 2010) note, allowing business to play such a major role in the regulation of society-business relations has the effect of limiting possibilities for change, as,

typically, business agrees to concessions that modify corporate practices at the margin, but which do not challenge the fundamentals of managerial authority or market rationality. As a mode of governance, CSR accords a measure of legitimacy to external stakeholders, but reserves to corporate management the role of benign stewardship of societal resources (Levy and Kaplan, 2009, p. 445).

² That community consultation and multi-stakeholder dialogue functions in this way has been stated explicitly by NGO workers, regarding the government’s policy of attracting investment in the extractive sector (Perera, 2007).

In this view, CSR policies play a part in social governance by positioning the corporation as the central actor in local development. This role is problematized by the observation that companies may use the promise of development to divide or buy-off sections of the community by the targeted provision of goods for community leaders or CSOs who prove less confrontational or who are more adept negotiators, at the expense of other groups (Bebbington, 2010; Bebbington et. al, 2007). As Gustafsson (2011) argues, fostering a relationship of dependence (she frames it as a patron-client relationship) between companies and communities may be a means of managing social conflict as the targeted provision of “public” goods and other benefits can be understood as allowing companies to co-opt community leadership and weaken wide-spread resistance to mining operations. Therefore, although relationships between mining companies and communities may supply communities with necessary public goods, Gustafsson (2011) argues that this type of exchange weakens political institution building and undermines social movements opposed to mining activity, as communities “are dependent on the social benefits that the patron offers, [and] the individual incentives and bonds of loyalty undermine the identification of common interest and collective action” (p.9). She further argues that CSR investments in community development are often aimed at defusing (as opposed to resolving) conflict:

Some leaders or groups receive benefits and are thus convinced of the advantages or simply bought off, which often results in different actors disagreeing or entering into conflict with each other [...] There are thus tendencies of co-optation and hence disagreements that can frustrate the emergence of a common interest and horizontal organization (p.9).

Beyond the fragmentation of anti-mining movements in local communities, this type of dependent relationship may hinder long-term social and political development. When communities find it more immediately beneficial to enter into conflict with and receive benefits from mining companies rather than state institutions, the impetus for the state to develop political

institutions able to deliver public services to the population is lessened, as companies take over the state's role as service provider. Therefore, as Sagebien and Lindsay (2011) argue,

Though the notion of private sector agents voluntarily addressing governance gaps, alone or in partnership, is laudable, it is also somewhat questionable not just from a veiled self-interest point of view (how else to obtain a social licence to operate?) but also from a political legitimacy point of view. Utting (2005) suggests that CSR risks involving a 'transfer of regulatory authority to largely unaccountable agents [...] We would caution against private sector forays into the public space beyond discretely defined spaces of legitimately agreed to through consensual processes that involve the polity and the state (pp. 24-25)

The involvement of companies in both managing social conflict and contributing to economic and social development may bring immediate material benefits to communities as well as alleviating financial pressure on the state, but raises questions about the long-term development of institutions that meet basic standards of legitimacy and accountability to the populations which their activities are meant to benefit.

Summary

This thesis asks what role CSR plays in mining company-community conflicts. This chapter has drawn on the available literature to argue that CSR plays a role in managing conflict related to the mining industry in two ways. On a broader level, the CSR discourse positions the corporation as an important social actor whose activity is beneficial to a wide array of stakeholders – a population that exists beyond the limited number of company shareholders. This is especially important in the context of the extractive industry which is increasingly dominated by foreign investment and which often operates as an enclave industry – exporting mineral wealth while neither employing local people nor using local goods in its operations. Therefore, while foreign mining companies may not bring a significant direct economic benefit to local populations, they can demonstrate that they contribute positively to local development through extensive CSR commitments. This may be all the more convincing when the host country

governments rely on companies to promote development and the central state is uninvolved in local communities, which, as will be elaborated below, is largely the case in Peru.

At a local level, CSR policies and initiatives may also play a more direct role in community-mining company conflict. As CSR can take a variety of forms, the exact role it plays in conflict can either be in the direct management of a conflict through multi-stakeholder dialogue, or through a process of convincing the local population, or at least key representatives, of the benefits the company can bring, through the promise of development, thus gaining a social licence to operate. As will be demonstrated through the case studies below, this has been the case in the Tintaya and Antamina conflicts respectively.

Finally, though the involvement of the private sector in the provision of public goods and services in local communities may provide immediate economic relief to these communities, it also involves the transfer of governance responsibility to actors which are both largely unaccountable to and not representative of the interests of, citizens.

CHAPTER 3: PERU

The purpose of this chapter is to provide the national context for the case studies of the community-company conflicts at the Tintaya and Antamina mines. It includes an examination of the place of mining in the Peruvian economy, as well as the various measures that the government has taken to promote mining as a strategy for national development. Following this, it describe in general terms the situation of mining-affected communities and the actors commonly involved in conflict. It will then present a discussion of the responses to conflict on the part of both the national government and large mining companies – namely the decentralization process and the promotion of CSR at the national and local levels.

This chapter examines the role of the state has played in facilitating the expansion of modern mining, which seems to be inherently linked to social conflict in the communities closest to the mine. However, the state has not ensured that the benefits of this expansion of mining are enjoyed by the majority of the Peruvian population. Instead, with regards to mining, the state has focused on its role of attracting mining investment, without ensuring that extractive industry activity is part of a larger national development plan (Campbell, Roy-Gregoire, and Laforce, 2011). Due to policy decisions made by the state, this chapter argues that the onus has been placed on private companies to contribute to the development of local communities, as well as work to manage the resultant social conflict, thus legitimizing the disruptive presence of mining activity.

Mining and the State in Peru

Mining and the Economy

Natural resource extraction, particularly mining, has been an important part of Peruvian economic development strategies since colonial times. However, the country's resource wealth

may be a mixed blessing. Like many other heavily resource-dependent countries, Peru can be said to be suffering to some extent from the resource curse, with a lack of widespread economic growth, conflict and weak institutions at least partly attributable to the country's dependence on extractive industries. As Arellano (2008) argues, "the extractive character of the Peruvian mineral-state neither facilitated modern institution-building nor improved the living conditions of the majority of the population. In fact, Peru developed a weak state historically alienated from its people" (p.15).

The lack of widespread economic and social development attributable to the mining has not deterred successive governments from promoting the extractive industry as an important part of the country's development strategy. Different administrations have managed the extractive sector in various ways; in the twentieth century, the mining industry has undergone periods of state-control and subsequent privatization and internationalization. The latter began in the early 1990s under president Fujimori as part of a broader set of policy reforms that embraced orthodox neoliberal principles (Bury, 2005). Essential to these reforms were efforts to attract FDI and strengthen the export sector and since 1990, the mining sector has been a critical component of the country's export-led economy (Bury, 2005). Following the end of the Fujimori regime, presidents Toledo and Garcia have been successful in furthering the implementation of policies that support the Peruvian extractive sector. For example, between 2002 and 2007, the stock of FDI in the mining sector increased sixty-five percent compared with a twelve percent overall increase in FDI; mining's contribution to internal tax revenue increased from five to twenty-nine percent; and its contribution to exports increased from fifty-five to seventy percent (Arellano, 2011a). Importantly, these policies were implemented during a spike in minerals prices. This mining "boom" further attracted foreign investment to the mineral rich country, and Peru has

become the second largest producer of silver and the third largest producer of copper and zinc in the world, as well as being home to Latin America's largest gold mine (Bury 2007). Today, Peru's mining sector is largely privatized as well as "internationalized"; ninety-five percent of mineral production is now carried out by private enterprise and over fifty percent of the world's largest mining companies currently operate in Peru and find themselves among the most profitable in the country (Bury 2007).

Despite this mining boom, the sector is often accused of contributing relatively little to broader economic and social development. Mining generates half of Peru's foreign currency reserves, and has contributed between four and five percent of GDP over the last decade (US State Department, 2011). However, employment rates attributed to the mining sector are low, though increasing from 0.2 percent in 2002 to 0.9 percent in 2010 (ILO). This is in part due to technological advances in the industry, which go hand in hand with the internationalization of the sector. Mining operations have grown in scale, and are dominated by large MNCs, while small and medium sized operations which employ more people and rely less on advanced technology, are disappearing (CIPMA/IDRC, 2002). The employment situation is further complicated by an increased "flexibilization" of labour laws, which has permitted the subcontracting of workers that would have formerly been hired directly by the mining companies, contributing to lower wages and weakened job security (CIPMA/IDRC, 2002).

Overall, while the extractive sector is responsible for the majority of national exports and is an essential source of foreign currency, it creates few linkages with the wider economy such as in-country mineral processing, and thus contributes little to employment or poverty reduction (Bury, 2005; Arellano, 2008; Campbell, Roy-Gregoire and Laforce, 2011).

Mining Policy and Legislation

Over the last two decades the Peruvian state has implemented numerous policies, often in line with prescriptions from international financial organizations, to support and promote the extractive sector. In fact, according to Arellano (2008), Peru has been “one of the most faithful followers of the economic and political prescriptions of the international financial institutions” (p.10). Peru has also kept up with international trends and policy prescriptions including joining the Extractive Industries Transparency Initiative and fostering public-private partnerships in the extractive industry as key features of policy reform related to democratization (Arellano, 2008).

Examples of the measures implemented to attract FDI in the extractive sector can be found in the country’s tax regime. In the 1990s, the Fujimori government passed legislation that made new mining operations exempt from paying royalties,³ and required that they pay no income tax until initial investments had been recovered (Arellano, 2008). Laws were passed specifically to attract FDI; for example, in 1991, Decreto Legislativo 662 established non-discrimination between national and foreign investors and eliminated limitations on property rights for foreign companies (CIMPA/IDRC, 2002). Other legislation passed at this time removed all restrictions on the repatriation of profits and eliminated competition from national or state-owned firms. The majority of foreign-owned companies have arrived in the country since the implementation of DL 662, with many acquiring formerly state-owned companies during the privatization process, including the Tintaya mine, while others have developed new properties such as Antamina (CIPMA/IDRC, 2002) Finally, land-use laws were simplified and concession granting agencies were centralized, making it easier for private and foreign companies to gain access to formerly state- or community-owned land (Bury, 2007).

³ In recent years new concessions have included royalties payments of between 1-3% and President Humala announced a new system of royalties payments in September of 2011.

In 2002, legislation regarding the so-called *canon minero* (the income tax paid by mining companies) was passed as part of the decentralization process discussed at greater length below, which changed the distribution of the income tax payments of mining companies. During the Fujimori regime companies had paid twenty percent tax, all of which had gone to the central government, this new legislation guaranteed that fifty percent of income tax paid by the companies would be distributed to regional governments, especially to the regional governments closest to mining operations (Arellano, 2011b). It is through this redistribution of tax revenue that mining has the greatest impact at the local and regional levels. According to Arellano, between 2004 and 2008, “these *canon* transfers were so substantial and so unequally distributed that they transformed the economic panorama of Peru.”⁴ However, while the amount of money transferred to the local level has been increasing, it has not been well-invested and, according to Arellano (2011b), has contributed to a rise in social conflict.

Although much of this pro-mining legislation was challenged by opposition leaders during the election of 2006, including by presidential candidate Alan Garcia, upon his election, Garcia renewed agreements with the extractive sector, promising not to implement royalty payments or a windfall tax (Arellano, 2011a).

While recent administrations have been committed to attracting mining investment, the industry’s perception of the country is mixed; in the past few years, Peru has consistently ranked highly in terms of the economic potential of its mineral deposits, but ranks much lower on different policy issues, including land claims; socioeconomic agreements and community development; and political stability (McMahon and Cervantes, 2011). Much of this negative perception stems from the fairly high levels of socio-economic conflict related to mining projects. In response, the Peruvian government has attempted to institute some of what Arellano

⁴ Translated by author.

(2008; 2011b) calls the “new strategy for the extractive industries” influenced by numerous studies carried out at the international level in the late 1990s. These reports

unanimously advocated for a comprehensive reform agenda for the mining industry including: greater operation transparency, collaboration with local authorities and civil society, and strengthening cooperation with local governments; environmental protection; scrupulous observance of human rights; and promotion of local development through corporate social responsibility (CSR) initiatives (p. 22).

This “new mining” paradigm has been embraced, at least rhetorically, by both the government and the private sector in Peru. Arellano (2011b) uses the term to refer to the conjunction of policies that advocate the redistribution of income tax from the central to subnational governments and encourage the participation of mining companies in local development, designed primarily to counteract the growing hostility of local communities towards extractive industry activity. Both large national and international companies operating in Peru declare themselves committed to social and environmental sustainability, though on this point, the performance of international companies is generally better than that of domestic companies (CIPMA/IDRC, 2002). In 2003, legislation was passed that formally requires a CSR commitment from companies to:

- Perform their productive activities within the framework of a policy that looks for environmental excellence;
- To act with respect for local institutions, authorities, culture and customs;
- To maintain a continuous and opportune dialogue with the regional and local authorities, the population in the area of influence etc.;
- To participate in the local development with the communities of the area;
- To promote local employment; and
- To prefer and acquire local goods and services (Oxfam, 2008, p. 24)

Furthermore, in 2007, the Garcia administration, partnering with the National Society of Mining and Oil, introduced the “Mining Program in Solidarity with the People” (MPSP), a voluntary contribution of between three and five percent of mining company profits for five years. This program was framed as an alternative to implementing the windfall tax which Garcia had promoted during his campaign. This program “involved considerably lower costs for the mining companies and made the social programs directly managed by the mining companies as private funds rather than to be administered by public institutions” (Gustafsson, 2011, p.13). The MPSP was part of a broader set of policies of political and economic decentralization which will be discussed at greater length below. Although the mining companies had a generally positive perception of the MPSP, President Humala announced in 2011 that it would not be renewed under his administration.

Despite this recent attention to the social and environmental issues related to mining, social conflicts have increased along with investment in the sector (Arellano, 2011a). This may be in part due to the lack of tangible economic benefits experienced by communities surrounding these mines, either in the form of local employment or well-managed economic contributions, whether voluntarily contributed or the result of taxation. As Arellano (2008), notes, mining is routinely promoted by the national government as the path to Peru’s economic development, which increases widespread expectations of social and economic improvements. However, “the failure of macroeconomic prosperity to meet public expectations eventually reinforced the widespread feeling of social malcontent [and] the government has failed to diversify the economy as mining gains a bigger share of exports, state revenue and foreign investment” (p.11). This social discontent is most acute in communities located in mining regions, as will be discussed in greater detail in the following section.

Mining and Communities

Although Peru is categorized as a middle income country by the World Bank, this masks an income disparity that is especially highly pronounced in rural regions, where fifty-four percent of the population lives below the national poverty line (World Bank). Today, despite the mining boom in these areas, the highest levels of poverty are still found in the Andean regions (and to a lesser extent the Amazonian region) of the country. Peru has 5,818 official peasant communities (or *comunidades campesinas*), with a population of four million. These communities represent the poorest sector of the population, and live on the least productive land (Arellano, 2011b).

As is the case in many resource rich countries, the poorest regions of Peru are home to the most mining operations. Although Peruvian mining has been historically associated with the high Andes region, recently mining has expanded across the country; in the second half of the twentieth century, large mining operations began on the southern coast and sierra, including the Tintaya mine. Local rural populations are generally pastoralists, organized in peasant communities that have historically managed to coordinate with mining activity without abandoning peasant farming; in regions that have been traditionally associated with mining, seasonal migration to work at the mines formed part of a peasant strategy for centuries (de Echave, et al, 2009a). However, the arrival of large-scale, foreign-owned mining altered this cycle, creating a salaried labour market and disrupting traditional livelihoods in the area (CIPMA/IDRC, 2002). On the other hand, many of the largest mines are located in areas that have not traditionally been the site of large-scale mining. In these areas, conflict between mining operations and peasant economic strategies are made more evident with the growth of operations and the companies' control of increasing expanses of territory, causing many local actors to

consider mining to be incompatible with local development based on small-scale agriculture (CIPMA/IDRC, 2002).

This situation is further aggravated by the nature of “modern” mining in Peru. As Arellano (2011b) notes, technological advancements have encouraged open-pit mining which allows companies to obtain greater quantities of minerals with a reduced workforce. This method of mining also requires a greater quantity of water and can generate considerable environmental damage. Modern mining practice is seen to reduce direct benefits to communities, while exposing them to greater risk. Thus, according to Bebbington and Hinojosa (2009), the policies outlined in the previous section of this chapter, which privilege mining over other types of economic activity, have jeopardized traditional peasant livelihoods – particularly small-scale agriculture – or at the very least created the perception that traditional livelihoods are under threat.

During the 1960s the military government of Juan Velasco Alvarado implemented land reform policies which gave peasant communities the right to own and manage land communally. Since these reforms, social citizenship has been closely tied to land rights and agriculture, and the official peasant communities were given constitutional protection in order to collectively and autonomously manage their land (Gustafsson, 2011). These communities formed *federaciones campesinas* which operated via deliberative decision-making, and interacted with the centralized state as both demand-making bodies and mechanisms through which the central government was able to provide social programs and agricultural credits (Gustafsson, 2011; Coxshall, 2010). However, laws pertaining to land use have been changed significantly over the last two decades. The Fujimori administration dismantled the communal land-holding system, legislating a distinction between surface land rights and rights to the subsoil, the latter being deemed

“national heritage” and thus no longer under the control of local peasants but the state, which was in turn able to sell the land rights to mining companies (Coxshall, 2010). Thus, “rural populations were incorporated into the clientelistic forms of resource allocation of the authoritarian government, which during the 2000s increasingly were replaced by the social investments of corporations in mining regions” (Gustafsson, 2011, p.13). Despite the legal dissolution of peasant collective organization, these organizations remain important at the local level and have been extensively involved in conflicts with mining companies. In particular, organizations called *rondas campesinas* have provided various services for peasant communities in the absence of state-run programs. The *rondas campesinas* were initially formed to defend against petty crime and later, Shining Path insurgents. However, today many are involved in struggles over land in mining-affected communities across Peru (Coxshall, 2010).

According to Arellano (2011b), the Peruvian state suffers markedly low levels of confidence among the population compared with other Latin American countries. This is due in part to the perception that the central government is largely controlled by the interest of international mining companies, and that the government does not work to reduce poverty or contribute to the development of poor communities (de Althaus, 2011). This perception is strongest in rural communities, and has not improved despite a number of years of economic growth, perhaps due in the part to increased gap in poverty levels between urban and rural zones (Arellano, 2011b). Low levels of trust in government have an important impact on the ways that rural communities choose to engage in conflict with mining companies – beyond the state’s lack of involvement in improving conditions in rural communities, a history of marginalization and persecution by the central government has created a situation in which these communities may prefer that the state remain uninvolved, and instead turn to private actors to meet their needs (Arellano, 2011b).

Rural communities are not the only actors involved in conflict with mining companies. Since the democratization process following the end of the Fujimori era, civil society and NGOs have become important actors in conflicts with mining companies. These organizations take on a number of roles, including helping to overcome power imbalances (related to capacity and access to resources) between companies and communities, advocating on the part of communities, and acting as facilitators in conflict. Regardless of their role in specific conflicts, the NGO sector as a whole agrees that mining must at least reduce its negative impact on the environment and contribute to local development (CIPMA/IDRC, 2002). One of the most important of these organizations is CONACAMI (Congreso Nacional de Comunidades Afectadas por la Minería), formed in Lima in 1999. The formation of this group was spurred by the mining boom of the nineties, during which mining activity greatly expanded into peasant and indigenous communities, especially in the Andean zone (CIPMA/IDRC, 2002). CONACAMI works to channel the efforts of mining-affected communities at the national level, and has regional offices across the country (CIPMA/IDRC, 2002).

Mining and Conflict

This section will expand on the types of conflicts that emerge between mining companies and communities; the various factors contributing to conflict; the government's decentralization process and its relation to these conflicts; and finally the promotion of CSR as a response to conflict. The Peruvian Ombudsman (*Defensoria del Pueblo*), which publishes monthly reports, includes as conflict incidences of “threats to life, integrity and health of persons; damage to public or private property; obstruction of free transit; impediments to the exercise of public authority; and obstruction of the provision of public services” (p. 29).

Types of Conflict

According to the Peruvian Ombudsman, in December 2011 there were 149 active conflicts in the country, 102 of which were labelled socio-environmental conflicts. The majority of socio-environmental conflicts reported in the Ombudsman reports are related to extractive industry activity – either mining or hydrocarbon projects (Defensoría del Pueblo, 2011).

Arellano (2011a) argues that mining company-community conflicts can be roughly divided into two categories. The first category could be called “all or nothing” conflicts, in which the community protests the expansion of a mine or the exploration/exploitation of a new mining site with the aim of completely preventing expansion or development. Examples of this type of conflict include the opposition to the Rio Blanco and Tambogrande projects; the exploration by Bear Creek near Puno; and the ongoing conflict around the Yanacocha-La Conga project. According to Arellano (2011a), this type of “all or nothing” conflict arises only when local populations believe that they have preferable alternative livelihoods (generally agriculture) and thus do not need the mining company to survive. Communities and the organizations supporting them often use an environmental discourse when justifying their resistance to mining projects. According to Bebbington and Bebbington (2009), citing environmental concerns brings communities two advantages. First, a politically leftist discourse which focuses on social justice or wealth redistribution has been delegitimized in Peru’s recent history by the Maoist Shining Path, and is received quite negatively by the state and broader society. Therefore, environmentalist arguments may mask a wider variety of issues and concerns – economic, social justice or rights-based – and frames the conflict in a way that is politically more acceptable in the Peruvian context. Second, environmental concerns are more likely to attract the support of a

wide range of international NGOs the involvement of which brings with it more public and media attention, which goes some way towards redressing power imbalances between the various actors (Keck and Sikkink, 1998; Oxfam, 2008). This has been the case with a number of conflicts, including Tintaya, which gained significant international attention. In “all or nothing” conflicts, communities may also use contentious politics – roadblocks, protests, property destruction – to put pressure on the companies, eventually making the continuation of operations no longer a viable option as in the Tambogrande case (Arce, 2008). These types of conflicts often occur in areas which do not have a long history of mining; these communities have a conception of development that does not include a positive role for mining, instead seeing extractive activity as posing a threat to their way of life (de Echave, 2008).

However, while cases like Tambogrande and Yanacocha gain the most international media attention, they occur much less frequently than the second type of conflict Arellano describes. These generally arise in response to increases in prices of mining products, and the desire of local communities to see the benefits of mining profits and for companies to comply with promises and agreements they have made regarding environmental or social commitments (de Echave, 2008). Like “all or nothing” conflicts, actors may choose to use contentious politics in these cases, but this should be understood as a pressure tactic that precedes bargaining; in fact, Arellano (2011a) argues that “the more successful local political actors are in making compensation focused conflicts look like all-or-nothing conflicts, the more successful they will be” (p.630). Arellano claims that these more common conflicts are driven primarily by the desire to access greater financial gains from mining company operations, and the most common reasons include:

- An increase in company profits gives the communities an incentive to push for better agreements with the company regarding community development commitments or to call for the implementation of agreements that remain unfulfilled;
- Discontent over land transfer agreements. Often the price of land increases significantly after the company moves in, and residents subsequently feel they were not paid a fair price for their land; and Fair compensation for loss of livelihood, most commonly agricultural land.

Arellano argues that the motivations for communities to engage in conflict with mining companies are almost uniformly economic. On the other hand, a report by the IDRC (2002) cites a number of other common community complaints, which include both financial and non-financial concerns, such as:

- High expectations regarding employment at the mine – of a significant portion of the population and are frustrated when there is little local hiring and experts are brought in from outside the area;
- The perception of companies as non-compliant with national environmental legislation as well as international agreement and that local governments as being unable to defend the environment; and
- The perception of a lack of transparency in the management of information during the Environmental Impact Assessment (EIA) process, as well as an absence of mechanisms for community consultations regarding mining concessions (CIPMA/IDRC, 2002).

Bebbington and Bebbington (2009) claim that the theoretical perspectives of researchers may frame conflict differently, leading to varying assessments of both the causes and solutions to

mining company-community struggles. For example, research related to the resource curse (of which Arellano's work is an example) frames conflict as being fundamentally about compensation. Therefore, this perspective regards these disputes as ultimately negotiable, hinging on institutional issues of transparency, redistribution and compensation. On the other hand, a post-development perspective explains conflict of this kind as a manifestation of contradictions between different understandings of the development process. This research frames these conflicts as much more difficult to solve, involving issues such as human and environmental rights, and community autonomy (Bebbington and Bebbington, 2009). Ultimately, it may be necessary to look at cases on an individual basis to achieve an understanding of communities' motivations to enter into conflict with a mining company. What is clear, however, is that company-community conflicts put pressure on both companies and the state;

conflicts harm current operations' profits and put the viability of large planned investments at risk. In response to this situation, mining companies, in collaboration with the national government and international institutions, are trying to apply international prescriptions to the Peruvian context (Arellano, 2008, p.23).

The decentralization process, discussed in the following section, initiated during the Toledo administration, as well as efforts to increase the CSR commitments on the part of the mining companies are examples of attempts by the Peruvian state to deal with an increase in mining-related social conflict.

Decentralization

Peru has long been a highly centralized country, with both financial and political power concentrated in Lima.⁵ However, in 2002, the Toledo administration began a process of political

⁵ Eighty percent of private investment, fifty-five percent of GNP, eighty-five percent of industries and ninety-six percent of fiscal revenues can be found in the Lima metropolitan area (Arellano, 2008). Furthermore, during the

and economic decentralization with the aim of dispersing considerable decision-making power to regional and local governments (Arce, 2008). The government was restructured on three levels, with national institutions based in Lima; twenty-five regions (or departments); and 195 provinces encompassing 1,832 districts (Arellano, 2008). The purpose of this decentralization process was to increase governing capacity at the local level, which would include the transferring of funds from Lima to regional and local governments. The decentralization process also included formal mechanisms for citizen participation in decision-making regarding the expenditure of government revenue transferred to the local level, and encouragement for non-state actors – most often mining companies and civil society organizations – to be involved in decision-making⁶ (Arellano, 2008). According to a UNDP report surveying preliminary results of decentralization, the inclusion of civil society actors has been uneven, and should be strengthened for the improved functioning of regional and local governments (UNDP, 2006). Mining communities have been at the forefront of efforts to involve civil society and the private sector in decision-making processes; mining projects such as Tintaya have been laboratories where the private sector has experimented with innovations such as community consultations, supported by changes in legislation that is meant to facilitate civil society participation in decisions related to mining (CIPMA/IDRC, 2002).

Beyond the limited success in expanding civil society participation in decision-making, the decentralization process appears to have been ineffective, or at the very least is far from fully implemented, in terms of devolving both political and economic resources to regional and local levels. Decentralization has done little to reduce poverty, including in regions with high levels of mining activity, meant to be some of the primary beneficiaries of the decentralization process

Shining Path insurgency, the state's limited reach outside of the capital region had severe security repercussions (White, 2009).

⁶ For example, the formal *mesas de dialogo* carried out by the Grupo Dialogo Minero

(Arellano, 2008). The reason for this may be the lack of capacity, as well as real political power, of the newly formed regional and local governments. As White (2009) argues, very little has actually been accomplished in the way of capacity building for regional and local government institutions, specifically in improving accountability and democratic decision-making. Furthermore, much of the formal decision-making power remains in the hands of the central government; for example in the case of mining, licence granting (for exploration or exploitation activities), regulation and inspection remain the purview of national-level institutions. In other spheres, critics complain, the transfer of power has been made formally, but without the necessary personnel or budget being transferred to the local level (UNDP, 2006). This is exacerbated by an increased political fragmentation as a result of the decentralization process. While national political parties hoped to strengthen their presence in the regions, instead, a wide array of movements and smaller political parties have arisen at the regional level, winning elections locally, without representation at the national level (Arellano, 2011b). This in turn leads to a complicated situation regarding mining policy, with contradictions appearing between the policies created at the national level, and the opinions expressed by local leaders, who often run on an anti-mining platform (De Echave, 2009b), despite the fact that the increased competition in local level politics may be a direct result of the increase in *canon minero* resources transferred from the central government (Arellano, 2011b).

Finally, according to Arellano (2008), what money has been devolved to the local levels has not been well-directed towards necessary community development and social services programs. All these factors result “in decentralised institutions that are void of political power but faced with the discontent of the people day after day” (Arellano, 2008, p.17), and in fact, local-level conflict has increased since the implementation of decentralization (Arellano, 2011a).

The Mining Program of Solidarity with the People and the Social Funds

During the height of the boom in commodity prices, the Peruvian government was faced with increasing demands from domestic civil society to raise taxes on mining companies, institute a windfall tax or guarantee royalties payments. While President Garcia campaigned on a promise to change mining legislation related to royalties payments, upon assuming office he promoted an increase in corporate responsibility commitments instead of direct taxation (Bebbington, 2010). The Mining Program of Solidarity with the People (MPSP) was established by the Garcia administration to solicit voluntary contributions from mining companies, creating a plan for companies to contribute between three and four percent of pre-tax profits over the course of five years (Ascoli and Benzakin, 2009). The primary objective of this fund was to promote the wellbeing and social development of local populations in mining-affected areas through projects in the following priority areas: infant and maternal nutrition; primary education and educational support programs and technical capacity building; health; and development and improvement of public management (Ministerio de Energia y Minas, 2007). Although the MPSP was created by government legislation, and was coordinated by government bodies, the Ministry of Energy and Mines (MEM) emphasizes that, “the [MPSP] is not a state-run program, but a pledge of voluntary economic contributions [...] and will be treated as such, being neither implemented nor executed by this Ministry”⁷ (Ministerio de Energia y Minas, 2007, p.5). In fact, the MPSP created company-specific development funds (called the “social funds”) that frequently bear the name of the respective company and are run by company staff; examples include Fondo Solidaridad Cajamarca (funded by Yanacocha), Fondo Minero Antamina and Fondo Minero Regional Tintaya (World Bank, 2010).

⁷ Translated by author

The response of the Peruvian state to popular pressure for greater contributions from mining companies to Peru's economic and social development has been to increase CSR commitments from the industry, rather than to raise taxes and channel this money through state-controlled institutions.⁸ Encouragement of private sector involvement in community development is based on the assumption that it will lead to a more efficient distribution of resources, thus increasing the legitimacy of the presence of mining operations in local communities as well as the promotion of mining at the national level (Gustafsson, 2011). Therefore, the social funds, as well as other CSR projects, are meant to display the benefits of mining activity to local communities, and according to Gustafsson (2011), cast companies in a role that has traditionally been that of the state; "providing social services and channelling [...] political demands of local populations" (p.2).

In this way, corporations can be seen as assuming a governance role beyond providing public goods for the communities in which they operate, playing a part in solving disputes and negotiating the terms of their presence in the communities. For example, companies may decide upon compensation for original land owners, terms of resettlement and other contentious issues in which the company and local populations may have competing interests (Gustafsson, 2011). Thus, as Gustafsson (2011) argues, the process of decentralization, along with the expanded social role for mining companies in Peru, has

opened up governance structures that are principally articulated at a local level, with small or non-existent involvement of the central government. This provides a governance model based on informal rules, soft law, and voluntary engagements, and consequently with low levels of enforcement (p.6).

The argument is often made that CSR is necessary in areas of limited statehood, in which companies provide economic, development and even security benefits for employees and other

⁸ Although this trend is being reversed to a certain extent by the current administration of president Humala.

stakeholders (Matten and Crane, 2003). While this does appear to be the case in mining areas in Peru, this analysis ignores the role that the state has played in facilitating this partial allocation of responsibilities to the local or even company level. The state is seen to be ineffective at the local level due in part to the problematic decentralization process, which as discussed above, has transferred monetary resources to the regional and local levels, unaccompanied by the requisite political resources. Thus, the central state has made the choice to remain uninvolved in local development, ignoring proposals from groups at the national level to promote development through state-based channels, for example by raising taxes on mining companies as part of nationally coherent development strategy instead of the creation of the MPSP, in order to provide “social services in rural areas and thus strengthen a state-led form of social citizenship” (Gustafsson, 2011, p.13).

However, this does not imply that the expanded social role for mining companies is always viewed negatively by local populations in mining-affected communities. The historically highly centralized nature of the Peruvian state has not accustomed peasant communities in remote regions of the country to rely heavily on the state for social support. Gustafsson (2011) notes that national level institutions are often perceived as distant and inaccessible; for local communities it may be easier to put pressure on a locally based company than the central or even regional governments.

Regardless of whether these developments have been perceived positively or negatively by mining-affected communities, the role of mining companies in local development is highly contentious. The promotion of CSR and corporate involvement in local communities and the process of political and economic decentralization have made mining companies the entities with the greatest immediate capacity to respond to the development needs of local communities, while

also creating situation in which these companies are key actors in community-level social and environmental conflict.

CSR and Conflict in Peru

The promotion of CSR initiatives in Peru, both at the national and the local levels is either in response to, or meant to pre-empt social and environmental conflict (Bebbington, 2010). At the national level, the establishment of the MPSP was a response to calls for greater taxation of mining companies, while at the local level, mining companies institute CSR programs to improve community relations, as well as respond to pressure from civil society activists in Peru and internationally (Arellano, 2011a).

The role that CSR is perceived to play in conflict depends on the type or causes of the conflict itself. If the root of conflict is economic and/or communities are open to negotiation and the continued presence of the company, then CSR could in theory serve a positive role, allowing companies and communities the opportunity to engage with each other and form a mutually beneficial relationship, while redressing some of the negative effects of mining activity, as proponents of CSR describe. From this perspective, the role of CSR in conflict is primarily an ameliorative one. CSR commitments from companies provide a number of benefits to communities in the form of development projects, as well as providing direct and indirect compensation for loss of livelihood or disruption of traditional ways of life due to the activity of the company. Finally, CSR commitments are meant to ensure that a company abides by certain human rights and environmental standards, thus guaranteeing its role as a responsible actor in the community. In Peru, companies and communities may work together to determine what projects and programs are most needed through a joint *mesa de dialogo* or roundtable discussion at which local authorities, community, and company representatives are present. Both the state and the

mining companies themselves have much invested in the positive outcome of these negotiations and in effective community relations in general. As Bebbington and Bebbington (2009) argue, in the Peruvian context, the state and the private sector

must believe in the effectiveness and validity of compensation because it is the principle that offers an exit strategy from mining conflicts, therefore permitting a mining project to advance, or at least, avoiding state-sponsored violence which companies, especially international ones, wish to avoid (p.72).

This attitude is shared by some NGOs and civil society organizations that support communities involved in conflict with mining companies. These communities are often impoverished, and the public goods delivered by company CSR programs may be acutely needed. Furthermore, given the current legislative framework and the general attitude of the Peruvian state towards the mining industry, accepting the presence of mining and the compensation offered by the company may be the best option for communities, as the possibility of rejecting mining outright does not exist, or at least requires a level of violent conflict in which communities may be unwilling to engage (Bebbington and Bebbington, 2009). Thus, in the context of the decentralization process, through which the state has at least theoretically devolved decision-making power in the areas of economic and social development to the regional and local level, and in the absence of capable local governing bodies with access to sufficient resource bases, CSR may represent the best option for communities to gain access to programs and resources for development. Conflict is thus a means of pressuring the companies to provide public goods and fulfill agreements made to the community. In the absence of a well-functioning state apparatus which can be pressured to contribute to development through democratic mechanisms, conflict, contestation and eventually dialogue are theoretically the means through which communities can communicate with mining companies and come to a mutually satisfactory relationship. In this way, “both the government

and the companies use fiscal decentralisation to mitigate conflicts and demonstrate that mining goes hand in hand with development” (Arellano, 2008, p.27).

However, Bebbington (2010) argues that whether or not CSR programs contribute positively to community development or solve company-community conflicts in individual cases, CSR programs serve an ideological function as well. Indeed,

beyond any corporate sense of ethical responsibility (a sense which may well exist), these programmes emerge in order to do something about conflict. In some cases they emerge to defuse conflict while in others they emerge to anticipate conflict in the hope of preventing it. In all cases, though, these programmes seek to delegitimize conflict as a valid means of expressing concerns and as a legitimate pathway towards institutional change (p.106).

In some cases, companies offer public goods to communities or groups within communities in exchange for the cessation of disruptive conflict (Bebbington, 2010). Overall however, the presence of extensive CSR programs, especially with the establishment of the MPSP and the social funds, serves to cement the privileged place that the mining industry enjoys in Peru. Indeed, the social funds, and other inter-company CSR projects, can be said to have set a development agenda for the country. For example, Yanacocha and Antamina, along with other large mining companies operating in northern Peru, have established the Grupo Norte organization, the aim of which is to elaborate local development plans and projects for mining-affected communities (Arellano, 2008; Bebbington, 2010). These projects have involved no government participation, and serve to establish the centrality and necessity of mining in the region’s development, positioning the extractive industry as a key actor in providing the funding for community development projects as well as the economic activity generated by the mine itself (Bebbington, 2010). In this way, CSR programs can be seen as delegitimizing an anti-mining discourse, as the industry becomes an increasingly important and necessary social actor in Peru.

CSR policies may also serve to delegitimize anti-mining perspectives at the level of individual community-company conflicts by creating a clientelistic relationship between communities (or certain groups within a community) and the mining company. The decentralization process has arguably facilitated the emergence of clientelistic relationships in mining-affected communities by creating weak local and regional governments unable to promote development or manage social conflict due to limited personnel and budgetary capacity (Arellano, 2008). Due to a lack of government support, communities, or groups and individuals within a community, may be more willing to turn to mining companies for the provision of public goods in the form of development programs and infrastructure projects. This empowers the company to bargain with community groups or representatives, offering jobs, infrastructure development or other benefits in exchange for community acceptance of mining operations, creating a relationship based on clientelism (Arellano, 2008). This in turn may create a situation in which some community members benefit while weakening overall resistance to the mining operation within a community.

Furthermore, the geographical distribution of CSR programs may also serve to weaken resistance to mining activity. As Gustafsson (2011) notes,

the territorial divisions of corporate citizenship do not coincide with the political and administrative units that structure state citizenship and the principal civil society organizations. Instead the territory is divided into different circles emanating from the mine, and the resources each community is entitled to increases the closer the community is located to the centre of the circles (p.21).

The principle stakeholders, and thus the primary beneficiaries of CSR programs, are generally those communities which possess or possessed the titles to the land under which the minerals are located; “these communities have been incorporated into business- and state-led negotiations and they are considerably more developed in terms of housing, education, health care and income than the neighbouring communities” (Gustafsson, 2011, p.21). This geographical distribution of

resources may create a situation in which the communities closest to the mine receive substantial benefits through CSR programs, while other communities not considered primary stakeholders, but who nevertheless perceive themselves to be affected by extractive activity, are excluded from these programs. This may in turn diminish the possibilities for collaboration between mining affected communities, thus weakening resistance to mining throughout a specific region.

As Arellano (2011a) notes, despite their limitations, CSR programs may be the best means of fostering local development and reducing conflict between mining companies and communities in Peru, but CSR programs to achieve these goals, he argues, CSR should not replace the payment of taxes, as this casts companies in the role of a substitute state. However, intentionally or not, companies are unable to meet these requirements in Peru. This is due in part to the political situation created by the process of decentralization. Mining activity is inextricably linked with conflict and decentralization process has created a situation in which the governance of this conflict is meant to take place at the local or regional level, despite the fact that these governing bodies appear not to have the capacity to deal with conflict or oversee an effective channelling of economic resources to communities. The solicitation of private sector involvement in development and community conflict resolution, through the MPSP and the resultant social funds and *mesas de dialogo*, is meant to ameliorate this situation. Thus, mining companies have been endowed with greater responsibilities at the local level, in terms of contributing to community development as well as managing conflict. It is not surprising that companies, not necessarily well suited to this role, have used CSR programs as a way to delegitimize conflict and undermine resistance to mining activities.

Furthermore, the involvement of mining companies in the management of social conflict raises serious questions regarding the long-term development of the Peruvian state. Campbell,

Roy-Gregoire and Laforce (2011) argue that the aforementioned emphasis placed on attracting FDI in the extractive sector has limited the ability of the Peruvian state to address the social and environmental concerns of local populations related to mining. Instead, the state responds to these “competing internal and external pressures involved by awarding ‘rights to the investor accompanied by an informal delegation of local regulatory responsibilities (Szablowski, 2007, p. 27)” (p. 91). As argued above, this transfer of responsibilities to the private sector legitimizes the privileged place of the mining industry in Peru, while making up for the lack of direct economic benefit to the communities from mining activity. However,

Such transfers not only silence the legitimate and indeed necessary right of governments to offer services to their populations, a precondition to their being held publicly accountable, they also contribute to obscuring the issue of government responsibility itself. The current sidestepping of the state, by suggesting companies can gain better legitimacy for their operations by offering social services, runs the risk of undermining a precondition for building responsible governments and the basis of democratic practice: the needs for governments to be accountable to their populations (Campbell, Roy-Gregoire and Laforce, 2011, p. 91).

What impact, therefore, will the emphasis placed on the private sector management of social conflict and the provision of public goods have on the long-term development of local government in Peru? This is an especially important question in the context of decentralization, where greater responsibility is being transferred to local governments.

CHAPTER 4: CASE STUDIES

This chapter presents the two selected case studies of the community-company conflicts of the Tintaya and Antamina mines. Each section will provide a description of the community and the CSR policies of the company, a summary of events, an assessment of the causes of the conflict and the perceptions of the key actors interviewed, and a conclusion regarding the role that CSR played in the management of said conflict.

Antamina and Tintaya are large-scale mining projects and both companies base their community relations on extensive CSR commitments, which have included dialogue processes and development projects carried out by private foundations run by the companies – both under the auspices of the MPSP and through bilateral agreements made with the communities in the areas of influence of the mines. While the Tintaya mine has much longer history, the most important events related to each conflict took place after the initiation of the decentralization process described in the preceding chapter. Both cases demonstrate ways in which CSR has been used by mining companies to manage conflict with communities. The most interesting point of comparison between these two cases is the ways in which the companies approached their CSR commitments and engagements with the communities in their areas of influence – essentially a comparison of CSR used as a tool to facilitate dialogue and CSR as a development practice. The Tintaya case is characterized by a commitment by both sides of the conflict to engage in a long-term dialogue and the attempt to create an institutional space for non-violent political contestation. On the other hand, Antamina has focused on becoming an important actor in local development and, from the beginning, relied on proving its commitment to social responsibility through extensive development projects to avoid conflict with communities.

Tintaya: CSR as Dialogue

The conflict between the Tintaya mine and the affected communities is unique amongst the mining conflicts in Peru. The peasant communities in the region have a long history of political organization, and were able to effectively reach out to first national and then international NGOs for assistance in presenting their grievances to the mining company. Subsequently, all parties engaged in a dialogue process that has been hailed as innovative and effective by academic and NGO observers of mining conflict in Peru. While conflict between the company and the community continues to the present, some participants and observers claim that the dialogue process has been successful as it has maintained open spaces for communication between the communities and the company and changed the culture of the company regarding its community relations (de Echave, 2009). However, the dialogue process has not managed to create a completely conflict-free relationship, and the long-term effects of the process are unclear.

Background

The Communities

The Tintaya mine is located near the city of Espinar (or Yauri) in Espinar province of Cuzco, in Southern Peru. Espinar is the largest municipality closest to the mine site, with a number of peasant communities including Tintaya-Marquiri, Alto Huancane, Huano Huano, Alto Huarca and Cañipía in the vicinity.

Agriculture, livestock breeding, and unskilled labour are the primary occupations of the peasant populations of the area. The agricultural products produced in the region are generally destined for local consumption with very little surplus, and the majority of agricultural land is held communally (de Echave, 2005). Mining contributes very little to local employment; in

2005, less than three percent of the population was engaged in mining activity for their primary source of income (de Echave, 2005).

However, mining has a relatively long historical presence in the region. Exploration began in 1917 by an American company, and during the 1970s, a state-run mining company was awarded the licence to develop the concessions. The company developed the Tintaya property throughout the 1980s and was privatized in the 1990s.

The level of political organization among the peasant communities in the region has been relatively high for over a century (Durand, 2009). According to Muñoz, Paredes and Thorp (2006), during 1920s, numerous rural uprisings strengthened the peasant movement which in turn helped create a popular base for left-wing political parties. Furthermore, community organization has benefitted from the involvement of outside organizations, particularly the Catholic church and NGOs who supported peasants' rights to land and worked with peasant groups in capacity-building (Muñoz, Paredes and Thorpe, 2006; Durand, 2009). During the 1970s, two important peasant organizations were established – the Federación Intercomunal de Campesinos de la Provincia de Espinar (FICAE) and the Liga Agraria de la Provincia de Espinar. During the 1980s, these two groups merged to form the Federación Campesina de Espinar (FCE) (de Echave et al., 2009). During this time, left-wing political parties were victorious in local elections (Muñoz, Paredes and Thorpe, 2006). Finally, CONACAMI developed an active regional branch – CORECAMI-Cusco – which later had a central role in the dialogue process.

The Companies

BHP Billiton.

The Tintaya copper mine has passed through a number of owners since the 1970s and the origins of the major conflict at Tintaya can be found during the operations of the state-run

company, Cerro de Pasco. When the company was privatized it was initially purchased by the American Magma Copper Company which was acquired by the Australian company Broken Hill Proprietary in 1996.⁹ In 2001, BHP Billiton had thirty-five operations world-wide, including the controversial Ok Tedi mine in Papua New Guinea (BHP Billiton, 2001).

BHP has a high involvement in international CSR initiatives, including the Global Compact, the Global Mining Initiative, the World Business Council on Sustainable Development, and the International Council on Mining and Minerals (ICMM) and its own Forum on Corporate Social Responsibility (BHP Billiton, 2001). BHP also maintains its own policy on health, safety, the environment and community matters in one set of management standards. Regarding community relations, “BHP Billiton is committed to maintaining and promoting dialogue with stakeholders in the resources industry and remaining responsive to the global community’s concerns and aspiration” (BHP Billiton, 2001, p. 11). BHP Standards require that internal and external stakeholders are identified and consulted with regarding their aspirations for community development. Consultation with government authorities and outside organizations is also undertaken when possible, to “contribute to the development of public policy” (BHP Billiton, 2001, p. 13). Conflict resolution is to be undertaken initially “through direct consultation with stakeholders or their intermediaries” (ibid). Regarding indigenous peoples, the company “respects the traditional rights of indigenous people...and value traditional heritage” (ibid). BHP engaged in a number of community development programs at Tintaya in the areas of health and education (BHP Billiton, 2002). As agreed during the dialogue process discussed below, the company also contributed three percent of its before-tax profits to the community development fund for Espinar and engaged in a process to address the primary complaints of the

⁹ BHP merged with Billiton PLC in 2001 to form BHP Billiton.

affected communities (BHP Billiton, 2003). The Tintaya Foundation was also created under BHP.

Xstrata.

Xstrata plc is a Swiss-Anglo company which has grown quickly over the last decade expanding to 20 operations world-wide, with a number of projects in Peru, including Antamina and Tintaya, purchasing the latter from BHP in 2005. Like BHP, Xstrata is involved in a variety of international CSR initiatives, such as the Global Compact, the ICMM, and ISO 14001 and has been recognized for its work in social responsibility by a number of these institutions (Xstrata).

Xstrata Copper under which Tintaya is managed, “is committed to contributing to the social, economic and institutional development of the communities where we operate to improve the quality of life for all” (Xstrata Tintaya, 2007, p.2), and to this end Xstrata funded 130 development projects with a contribution of US\$ 11 million (Xstrata Tintaya, 2007). These included projects in agricultural development, education, business promotion, power, and health. Xstrata attributes its successful community relations in Espinar to its involvement in the Dialogue Table, the resulting Framework Agreement,¹⁰ the MPSP, and the Tintaya Foundation (Xstrata Tintaya, 2007). As is outlined in the above description of the MPSP, projects are carried out in the areas of health and nutrition, education, and infrastructure development. Under the framework of the MPSP, Tintaya has also signed a number of agreements with regional and municipal government bodies.

According to Xstrata Copper, the company bases its community relations on stakeholder engagement. The company consults “with stakeholders regularly in culturally-appropriate and respectful ways, using materials that are easily understood and provide feedback to issues raised

¹⁰ Originally signed with BHP; when Xstrata purchased the Tintaya mine it agreed to uphold all agreements made by BHP regarding community relations.

in a similar way.”(Xstrata Copper) Xstrata has maintained dialogue with the communities through quarterly meetings with the Dialogue Table as well as engaging in dialogue with the community of Cañipía (Xstrata Copper, 2007).

The Conflict

Mining activity has taken place in the Espinar region for almost a century, with exploration beginning in 1917. In the 1970s, the state-run company Cerro de Pasco was given the right to develop the Tintaya deposits, and in 1980, the state mining company of Tintaya was established. The following year, the government expropriated 2,368 hectares of land owned by the Anta Cama community. This is often cited as the root of the conflict that has plagued the Tintaya mine since and the community filed a number of complaints with the MEM, including that the land was undervalued, but no action was taken (de Echave et al., 2006).

During the 1990s the majority of state-owned mines were privatized, and Tintaya was sold to an American company in 1994, before being bought by Broken Hill Proprietary in 1996. During this period the mine expanded operations and built a copper oxide treatment plant. This required the purchase of more land from the surrounding communities of Anta Cama, Alto Huancane, Huano Huano and Alto Huarca (de Echave et al., 2006).

The communities had a number of concerns regarding the validity of the land sales and environmental issues, and subsequently reached out to CONACAMI and the Peruvian NGO CooperAccion. An independent EIA was carried out in 2001 at the request of CooperAccion, which raised serious concerns about the proper disposal of tailings and water contamination for human and agricultural consumption (de Echave etl al., 2006). That year, five communities and CONACAMI, with the help of Oxfam America, requested that the Oxfam Australia Mining Ombudsman’s Office lodge a complaint against the Australian company (Aroca, 2007).

Subsequently the Ombudswoman brought together the various parties – CooperAccion, CONACAMI, CORECAMI-Cusco (the regional branch of CONACAMI for the province of Cusco), Oxfam America, community representatives, and BHP Billiton – together to participate in the Mesa de Dialogo de Tintaya, or Tintaya Dialogue Table. The dialogue lasted over three years, with committees formed to address the various areas of community complaint, including land, environment, human rights and sustainable development. Negotiations came to a standstill in 2003, when the various parties were unable to come to an agreement about the request by the communities to relocate the tailings dam of Huanipampa away from its current location in the river basin of Cañipía. In May 2003, the participating communities engaged in a peaceful protest, and shortly after, dialogue was resumed. Despite this disruption, and the eventual temporary withdrawal of CONACAMI from the negotiations, the Convenio Marco or Framework Agreement was signed between the company and the provincial government in September 2003, with the purpose of establishing “procedures, norms of mutual cooperation and commitments on the part of the signing parties, in order that they participate in a responsible and permanent manner in the execution of projects and the construction of public infrastructure for the sustainable development of the province of Espinar”¹¹ (Convenio Marco). In this agreement, the company committed to:

- A contribution of up to three percent of its before tax profits (or a minimum of \$US1.5 million) per year;
- The establishment of a communal environmental monitoring programme which would include the participation of a number of governmental bodies and the members of the Dialogue Table;

¹¹ Translated by author.

- Respect the decisions reached by other dialogue processes taking place in the region, specifically that of the Dialogue Table convened by Oxfam (Convenio Marco).

This agreement was signed by the provincial mayor of Espinar, the general manager of BHP Billiton Tintaya, and the representatives of a number of grassroots organizations and peasant communities.¹²

In 2004, the Dialogue Table finalized an agreement (Acuerdo de Consolidacion) that was approved by the five participating communities (de Echave et al., 2006). The agreement included:

- a resettlement plan that included technical support and infrastructure and agriculture development;
- the creation of a fund of \$US 300,000 donated by the company to be used for community development with the ongoing participation of the NGOs and communities;
- redress for human rights abuses; and,
- the implementation of environmental monitoring plans (de Echave et al., 2006).

However, in 2005, only twenty months after the signing of the agreement, protests erupted again around the Tintaya mine. On May 23, 2005, 500 community members gathered at the mine gates in an attempt to speak with BHP executives. The next day, thousands of people from local communities, as well as members of the organizations of FCE and other peasant organizations stormed the mine, which resulted in several injuries and arrests (Anguelovski, 2011). The primary concerns of these protestors were a renegotiation of the Framework Agreement signed in 2003; a faster implementation of the development projects outlined in the original agreement; and alleged environmental damage related to the Huanipampa tailings dam

¹² This agreement and the Tintaya Foundation were later used as the blueprint for the MPSP.

(Anguelovski, 2011). Additionally, the protestors demanded the company increase its financial contributions from US\$ 1.5 million to US\$ 20 million per year (de Echave, 2009). In response, the company stopped operations and a “crisis committee” was established with government and Oxfam representatives. After a number of meetings, which also included representatives from the community, new agreements were developed and signed (de Echave, 2009).

One year later, BHP Billiton sold Tintaya to Xstrata, which promised to uphold the agreements signed by BHP and the community (de Echave, 2009). As mentioned above, Xstrata has continued to engage in dialogue processes with the various affected communities, including opening up a new space for dialogue with the community of Cañipía (Xstrata Copper, 2007). Since 2006, normal operations have continued at the mine, although conflict persists regarding environmental concerns, conflict with informal miners, and demands for increased support from the mine for community development (Defensoria del Pueblo, 2009). Another source of concern is the potential environmental damage caused by the proposed expansion of Tintaya with the Antapacay project (Defensoria del Pueblo, 2010). A new version of the Convenio Marco was finalized in August, 2011, and included participatory environmental monitoring for the communities around the Tintaya and Antapacay projects (Defensoria del Pueblo, 2011).

Analysis

According to both interviews conducted as part of this study and secondary sources, the Tintaya conflict cannot be considered an “all or nothing” conflict (in accordance with Arellano’s typology). Instead, as de Echave (2009) explains, in areas such as Espinar, where mining has a relatively long history, the strategies of local communities and organizations are oriented towards negotiating conditions regarding the continuation and conditions of operations. The initial protests in 1990 and the later involvement of Oxfam and CooperAccion were the result of

concerns regarding the loss of communal lands and inadequate compensation; eviction; human rights abuses; and environmental concerns (de Echave et al., 2006). However, the communities have not demanded the cessation of mining activity.

The continued conflict with the communities is related to the agreements signed by Tintaya, levels of support for development, and environmental damage. According to one community representative, the communities' concerns are still primarily related to the original problems of land expropriation and livelihoods. As he explained "We are not against the mine, but we are children of the communities that gave their land to the mine. We are only asking that they comply with the agreements they made, agreements they made with my parents" (interview by author, March 2012).¹³ Finally, although it is often passed off by mining officials as being purely a political tactic, environmental damage remains a concern for the communities, and, as one interviewee from the Ministry of Environment noted, "there is evidence of contamination at Tintaya, although the position of the company is typical in that it denies the charges" (interview by author, February 2012). However, all these issues could, at least in theory, be ameliorated by changes in company behaviour, and the fact that the communities around Tintaya do not reject mining activity wholesale has left room for negotiation between the communities and the company.

The perception among interview respondents of Tintaya's commitment to its own CSR policies and the impact of the dialogue process is mixed. According to one community representative "there are always managers who are willing to dialogue" and "corporate responsibility has helped of course [...] the company has to realize, if it complies with its own agreements, everything is going to go well" (interview by author, March 2012). However, another interviewee claimed that "the Tintaya Foundation is not fulfilling the policies of the

¹³ All interviews were conducted in Spanish and have been translated by the author.

company” and that generally the company did not comply with its own CSR policies (interview by author, March 2012).

The assessment of Tintaya’s CSR performance is more positive among outside observers, especially employees of the NGOs which had participated in the dialogue process. According to one NGO representative, the dialogue process and the companies’ CSR commitments have managed to maintain a positive relationship between the company and the communities; “the parties constructed a good relationship, and the communities know the company will listen to them” because “Tintaya has put into practice the principles of its own CSR policies” (interview by author, February 2012). The agreements that were the result of the dialogue process, and the companies’ CSR policies generally are perceived as a useful tool for the communities and the organizations with whom they work. As one NGO representative said, CSR helped improve the situation for communities because “we can be vigilant and say look, you aren’t doing what you said. It’s not a useless instrument. You can say you aren’t doing what you promised to do voluntarily” (interview by author, February 2012). Thus, while the assessment of Tintaya’s commitment to CSR and community relations is not wholly positive across the board, it does seem that the company is generally perceived as being open to dialogue with the communities.

Finally, despite its interest in the viability of extractive industry operations, the role of the state in the conflicts between Tintaya and the surrounding communities has been minimal, beyond the initial land expropriation in the 1980s and police presence during protests. Except for the intermittent attempts by the MEM to act as a mediator, and the agreements signed between the company and the government at the provincial level, the state was almost entirely absent from the dialogue process (de Echave, 2009). There are two reasons for this, according to a representative from one of the participant NGO. On the one hand, “the state sees its primary role

as being to attract investment” and on the other, “the communities do not trust the state and do not want it involved” (interview by author, February 2012). This was at least in part confirmed by community members, who claimed that representatives from the national government occasionally visit the provincial municipalities but never interact with the local communities (interview by author, March 2012). In this, the Tintaya conflict is not exceptional.

What does the continued conflict, especially the widespread and violent protests of 2005 say about the success of the dialogue process? According to Anguelovski (2011), the primary reasons for the 2005 protest were the slow implementation of the 2003 Framework Agreement (signed between the province and the company), environmental damage from the tailings dam of Huanipampa and the desire to reformulate the Framework Agreement. Furthermore, she claims, participants in the protest felt excluded from the 2004 agreement reached by the Dialogue Table, claiming that this process had marginalized some communities while privileging the five communities involved. The protest was violent and roundly denounced in the national media as a political stunt, with government and industry officials portraying the protestors as trying to gain access to economic benefits for themselves (Reuters, 2005). On the other hand, Anguelovski argues that from the perspective of the participants, the protests were a demand for inclusion in a process of dialogue with the company, not a denunciation of the process itself.

Interviewees did not present this mobilization as a protest but rather as a proposal of dialogue. According to them, their objective was to set rules, an agenda, and dates for a new dialogue with the company [...] concrete community concerns were embedded into a larger demand for dialogue, mutual listening with the company, and hopes of building a new space for deliberation (Anguelovski, 2011, p. 391).

While the mainstream assessment of the communities as politically or economically motivated actors is meant to undermine the legitimacy of their actions, there may not be much difference between, in Anguelovski’s words, engaging in protest and a proposal of dialogue especially if interacting with the company represents the only means by which communities can access

certain resources. Engaging in the dialogue process and making agreements with the company had enabled specific communities to secure access to development projects and redress for environmental and social complaints. If they were not included in the dialogue process, or if they felt the dialogue process was not effective in meeting their needs, protest was perhaps the only other way for communities to gain the attention of the company. As one national NGO representative argued, “The communities that are the most politically effective will get all they can out of mining, and the ones that are weaker are going to lose” (interview by author, March 2012). In the absence of responsive political institutions, and when the company has been positioned as a key actor in the provision of development goods to communities, the types of protest directed at the companies must be expected (Arellano, 2011).

Conclusion

What was the role of CSR in the conflict between the affected communities and the Tintaya mine? The Tintaya case represents a fairly extraordinary attempt at creating institutionalized company-community dialogue with the heavy involvement of NGOs. At the very least, within a certain time and for a limited number of communities within Tintaya’s area of influence, the dialogue process and resulting agreements did appear to create the kind of space described by Jenkins (2002) and Kapelus (2002), in which communities can advance their own agenda and use CSR policies to hold the company’s behaviour to certain standards. This can be seen primarily in the work of the committees on relocation, human rights and sustainable development – communities were able to express their concerns, and concrete steps, formulated with input from communities and NGOs, were taken to address them. As de Echave et al. (2006) conclude, “the Tintaya dialogue led to the transformation of a latent conflict in a process in

which the implementation of agreements could result in the development of a collaborative relationship among stakeholders who were once antagonistic” (p. 77).

However, as was discussed above, the perception of the success of the process and the state of the relationship between the communities and the company is inconsistent, with the communities themselves having a less positive perception than the NGOs who were integral in creating the dialogue process. One explanation for this may be that the NGOs have been better integrated into the Dialogue Table, and thus perceive it to be more successful, than community members and even some community representatives. A multi-stakeholder dialogue process integrates

potential veto players in civil society as “stakeholders”, establishes a flow of material resources intended to incorporate stakeholders, and advances a total world (economic) view which rejects the role of the state as protector of the community interest and channels all dissent into semi-institutionalised multi-stakeholder consultations managed by the firm (Haslam, 2007, p.278).

Thus, those actors who have been successfully integrated will believe that the process is a valid and legitimate means of addressing the issues at hand. If the Tintaya Dialogue Table has incorporated only some NGOs and community representatives, then those communities who do not feel adequately represented, or were not included but still perceive themselves to be in the area of influence of the mine, may turn to protest in the absence of other channels to voice their concerns either to the company or state representatives. Therefore, it appears that the effectiveness of the Dialogue Table as an institution through which social conflict could be mediated was limited in that all the communities who considered themselves stakeholders did not feel adequately represented in the dialogue process.

The Tintaya conflict corresponds with a number of the indicators of both positive engagement and co-optation outlined in the introduction. For example, the agreement reached by the Dialogue Table regarding the issues raised by the various committees is an example of

“meetings between company and community, followed by steps taken by company to comply with community demands, for example environmental precautions, hiring, and infrastructure”. Furthermore, within a certain time period and among the communities included in the dialogue process, the standard of a “widespread acceptance or satisfaction with the outcome of community-company dialogues, where the demands of some groups are not privileged while others are ignored” was met. However, given that some communities who perceived themselves as stakeholders were not included, a situation was created in which there was an “acceptance of the mine by some members of the community/community groups and not others; in other words, the demands of some groups are met while others are not, thus the overall movement weakens”. The groups that were successfully integrated into the dialogue process may be less disposed to engage in active resistance to the mine. At the very least, this may be true for the NGOs involved who, of all the stakeholders, give the most positive assessment of the work of the Dialogue Table. Therefore in this case, CSR practices, with an emphasis on dialogue, have been only partly successful in “engaging stakeholders and providing a channel for communication and contestation that communities can use to their advantage.”

In their detailed case study of the Dialogue Table, de Echave et al. (2006) ask similar questions regarding the effectiveness of the process and raise a number of issues that limit the effectiveness of the Tintaya process. They conclude that,

What is certain is that the solution to the tensions between the mining industry and neighboring communities seeking to defend their rights should reaffirm the value of ‘forms of human coexistence and governance based on consensus, tolerance, inclusion and participation, ...’ when this view is not supported by the country’s legal framework, stakeholders in mining-related issues begin to develop their own tools for conflict management (p.76).

However, they argue that the success of the Tintaya dialogue process (and any others like it) is threatened by the weaknesses that exist within the Peruvian state, reflected in the state’s inability or unwillingness to manage social conflict related to mining (de Echave et al, 2006). De Echave

et al (2006) argue that the state context in which initiatives such as the Dialogue Table operate ensures that their long-term functioning cannot be guaranteed, despite being, by their very nature, outside the purview of the state. As was mentioned above, during moments of increased tension, the state, particularly representatives from the MEM, attempted to intermittently involve themselves in the dialogue process, and the provincial government was incorporated into the Framework Agreement signed in 2003. However, the state's involvement has been sporadic and unsustained, focusing on finding immediate solutions rather than engaging with the root causes of the conflict. As Durand (2009) notes, the Tintaya conflict has been characterized by a proactive involvement of the company and the communities and their representatives, with the state largely absent. However, what appears to be a solution (namely, a non-state based mechanism for managing conflict) "is in reality a serious problem, because the community and the company exclude the principal agent of the social contract – whose presence should be felt" (Durand, 2009, p. 30).¹⁴

It is logical that in the absence of state-based institutions through which communities could voice their concerns regarding mining company activity; receive financial benefits from this activity; and find redress for their serious complaints, communities would turn to the mining company to fulfill these demands. In fact, the state, through the policies discussed in the previous chapter, has created a situation in which companies must play this role. However, there are serious drawbacks to a reliance on the private sector to address community concerns – namely that they are in no way obligated to do so. Therefore, communities must rely on the goodwill of the company to undertake dialogue processes. This voluntary aspect is of particular concern when the complaints and concerns of a community are related directly to business practice, for example, plans for expansion or the location of tailing dams, processing plants and the like. Such

¹⁴ Translated by author.

was the case with the community concerns regarding the location of the Huanipampa tailings dam, which was a point of contention over which the company refused to negotiate.¹⁵ In this way, channeling conflict through institutions controlled by the company – a party that is both interested in the outcome and has access to substantially greater resources than the local communities – necessarily limits the range of issues that can be addressed by the participants and to which a negotiated outcome can be expected. As Levy and Kaplan (2009) note, the involvement of the private sector in policy formation reduces the possibilities for institutional change when private interests will be affected. At the level of community-company conflict, this leaves the communities ultimately beholden to the agenda of the company, and demonstrates the democratic limits to this type of privatized conflict management.

Furthermore, the relative success of the initiative can be attributed in part to the fairly high levels of political organization and traditions of leftist organizing in Espinar, which gave the communities links to broader civil society and which led to the involvement of national and international outside support. The involvement of international civil society (namely Oxfam America and Oxfam Australia) precipitated the creation of the Dialogue Table. The communities alone would likely not have been able to convince the company to enter into this dialogue without outside involvement, specifically that of Oxfam Australia. However, the involvement of NGOs is not guaranteed to last indefinitely, or to exist at all in every mining company-community conflict. Therefore, as de Echave et al. (2006) note,

The challenge is to develop solid institutional structures that respond to current needs and that have a real capacity for addressing the social and environmental dimensions of sustainable development in the areas of influence around mining operations. This implies, among other things, reviewing the roles that have been played by various government agencies (p. 79).

¹⁵ This continues to be a source of conflict at the time of writing. In fact, violent protest has erupted again at Tintaya (May 2012) regarding environmental damage and the aforementioned tailings pond. The issue of the environmental damage, which the company denies, appears to demonstrate the limits to dialogue and represents the obvious need for state involvement.

A reliance on private actors to provide channels through which conflict can be managed does not ensure the long-term development of effective political institutions, and the Tintaya experiment, with its rather extraordinary involvement of national and international NGOs, is not reproducible within the current Peruvian context without the guaranteed involvement of external actors. Furthermore, conflict resolutions strategies that involve the voluntary participation and compliance of the private sector will ultimately limit the possible outcomes of this engagement.

Antamina: CSR as Development

Beginning operations in the late 1990s, Antamina has become one of the icons of socially responsible “modern mining” in Peru, as “from the beginning, the company presented a discourse of social responsibility with respect to its relations with the community and is commonly recognized is commonly recognized in the national media as a company with high social standards” (Salas, 2008, p. 196). However, a number of missteps made by the company early on its operations created distrust among the communities in the mine’s zone of influence. Furthermore, the company’s discourse of social responsibility and its emphasis on the positive impacts its activities would have on the development of the region raised community expectations very high. However, these expectations have not been met, and although there has been very little high intensity conflict, observers claim that apparent positive impacts of Antamina’s operations masks community discontent.

Background

The Communities

Antamina has operations in two locations the Andean region of Ancash. The Antamina mine is located in the province of Huari in the district of San Marco and the company has also

constructed a port on the coast in the province of Huarney, connected to the mine by a pipeline for transporting minerals.

During the 1990s, access to the province of Huari was difficult due both to a lack of paved roads and the presence of Shining Path guerillas (Salas, 2008). Located 270 km north-west of Lima, the district was categorized as “very poor” when Antamina began construction in 1999, with 62.5 percent of the population living under the poverty line, and ninety percent without electricity (de Echave et al., 2009). The population was eighty-eight percent rural, with high levels of illiteracy and little contact with the urban centers (Salas, 2008). The rural communities depend primarily on agriculture, with two types of farms in operation – those owned collectively by peasant communities and those that were private property, divided up amongst many families during the period of land reform (Salas, 2008). While some mining activity had taken place in the region, it was primarily small-scale or artisanal, with the largest foreign-owned mine being shut down during the height of Shining Path activity (Salas, 2008).

Political activity in San Marcos has been dominated by two powerful families who have maintained a position of power and influence in the area despite the land reforms in the 1960s and 1970s, developing relationships with the peasant communities and new regional authorities (Salas, 2008). Municipal elections have been the arena in which these family factions exercised their influence through clientelistic relationships, primarily with rural communities. Later, after the arrival of the mine, relationships with the company became central to the political struggle between these two families (Huber, 2009). Beyond this, the official peasant communities of San Marcos were historically disorganized institutions which were rarely able to maintain a consistent political position (Salas, 2008).

In the port of Huarmey, the majority of the 26,000 inhabitants base their livelihoods on fishing and agriculture, with a considerable integration into the national market and a much higher standard of living than in San Marcos (Huber, 2009).

The Company

The state-run company Minero Peru began exploration of the mine site in 1973. In 1996, investors, who were to form Compañía Minera Antamina, bid on the site, and the mine became the largest foreign investment in Peru (Huber, 2009). The company is a joint-venture whose shareholders are currently Xstrata, BHP Billiton, Teck, and Mitsubishi,¹⁶ although none of these shareholders are the mine operator – instead, Antamina has its own management team (Antamina).

The size, timing and the nature of Antamina give the project both economic and symbolic importance in Peru. As Huber (2009) explains,

For the Peruvian government, the mega-project had (and has) a singular importance, not only because of the direct income it signifies (through income tax, royalties and voluntary contributions) but also for its symbolic value. It demonstrates that after the country's 'lost decade', marked by internal conflict, hyper-inflation and political instability, Peru is again considered a desirable investment opportunity (p.99).¹⁷

Furthermore, both its size and its highly visible commitment to social responsibility make Antamina exemplary of the “modern” approach to mining identified by scholars such as Arellano (2008; 2011a) and Salas (2008). Indeed, Antamina has won a number of awards from industry associations, universities and NGOs for its social responsibility commitments and is a signatory of the Global Compact (Antamina). The company also has an extensive CSR policy that has been in place since the beginning of mining activity. This policy includes a commitment to:

¹⁶ formerly Bechtel was a shareholder and ran the construction phase of the mine development and Noranda Inc. was replaced by Xstrata.

¹⁷ Translated by author.

- Responsible behaviour from the start of operations. Respect for culture, values, environment and tradition of local communities;
- Recognition of the population's "right to know", and promoting access to information; and,
- Development of a permanent consultation process to involve communities in issues concerning their development and that of the mining operation, thus strengthening confidence and credibility (Antamina)

Antamina also makes significant investments in CSR projects, which are carried out by three bodies controlled by the company – the office of Community Relations; Asociacion Ancash, a legally independent organization wholly funded by the company; and Fondo Minero Antamina, a community development fund created by the MPSP.¹⁸ The direct sphere of influence of the mine extends from the direct vicinity to the provincial capital of Huaraz and on to the port of Huarmey, and the towns through which the pipeline passes (Antamina). The Office of Community Relations promotes development for these communities, while Asociacion Ancash, founded in 2002 focuses on projects related to sustainable tourism, promoting local culture and the conservation of natural resources in an area that goes beyond the mine's immediate sphere of influence (Asociacion Ancash). Finally, in 2007, the the Fondo Minero Antamina was formed under the MPSP, and supports development throughout the region with a focus on health, education, institutional capacity building and infrastructure development (Antamina).

As mentioned above, Antamina has gained the reputation of a modern and socially responsible company. However, Huber (2009) has found that the positive public perception of the company is not necessarily shared by the population in the mine's zone of influence.

¹⁸ With the cancellation of the MPSP under President Humala in 2011, this fund is no longer operational.

The Conflict

Since Antamina began activity in Ancash over a decade ago, conflict has been ongoing, though rarely erupting into violence. The most significant conflicts have taken place in the two primary areas of influence of the company – San Marcos where the mine itself is located, and Huarmey, where the company constructed a port.

When the company presented itself for the first time in the region in 1996, the project was well received by the population, and since the beginning, the company “expounded a discourse of social responsibility and promised to make substantial investments in the region”¹⁹ (Huber, 2009, p. 102). However, according to Salas (2008), along with investments in community development, company representatives promised opportunities for employment and the expansion of local markets – promises that, given the nature of Antamina’s operations, they would not be able to fulfill.

The first test of the company’s community relations policies was the process of buying land from the communities of Huaripampa and Carhuayoc in San Marcos in 1996. The negotiations have been described by both parties as initially harmonious, and both communities accepted the offer of US\$400/hectare of community land (Salas, 2008). However, beyond this, the experience of the two communities was quite different. Carhuayoc negotiated an agreement with the company regarding ongoing community development plans, and was able to form a community-owned transport business which rented its services to Antamina (Salas, 2008). However, in Huaripampa the community agreed only to the land sales, and the money the community received was invested in symbolic projects that brought no development benefits to the community (Huber, 2009).

¹⁹ Translated by author

More problematic than the land-buying process was the process of relocation for these communities, which began in 1998. Due to confusion about when and where relocation was to take place, the original land set aside for relocation was no longer available and the Accelerated Program of Relocation was initiated in 1999. However, it soon became clear that it was not possible to find sufficient land on a shortened deadline, and the company abandoned its plan to relocate the families, instead opting to offer monetary compensation of \$US 30,000 for relocation and an additional \$US 3,000 for six months of living expenses (Huber, 2009).

It was during and immediately after the land-buying process that groups began to organize in reaction to Antamina's presence. The Committee of the Environment was promoted by the municipality of San Marcos as well as Antamina, and was meant to act as a channel between the community and the company in response to growing complaints about the environment, however never amounted to an important actor. The Frente de Defensa de los Intereses de San Marcos was formed at the same time and served as a political platform that routinely criticized the company (Salas, 2008). Unfortunately, both groups were controlled by the opposing factions in the town and did little to serve the interests of the population (Salas, 2008). However, the Frente de Defensa did send a letter to the central government and the World Bank in protest of Antamina's behaviour during the relocation process, and though ignored by the Peruvian state, a team from the Bank's Multilateral Investment Guarantee Agency (MIGA) arrived in Ancash to investigate the group's claims. This visit spurred a reaction from Antamina, which subsequently gave more importance to community relations and formed a dialogue table where, "perhaps for the first time in history, both factions sat and discussed and arrived at some agreements. At this table the various parties approved a battery of projects to be designed by Antamina's community development team" (Salas, 2008, p. 337). However, unlike in the case of

the Tintaya Dialogue Table, this coordination was short lived and soon dissolved into factional competition for resources and the dialogue was not maintained (Salas, 2008).

As in San Marcos, the arrival of the company generated high expectations in Huarney regarding development opportunities, due in large part to a proposed highway the company had planned to construct between the mine and the port. However, these expectations were disappointed when the company decided to transport the mineral via pipeline (de Echave et al., 2009). Further aggravating tensions, the company passed off its attendance at a community-organized meeting to discuss development projects, to the MEM as proof that it had consulted with and informed the community regarding its activities (Huber 2009). Thus, the positive relationship between the community and the company quickly disintegrated.

In 1999 the Frente de Defensa de los Intereses de Huarney was formed and protests that brought together a number of civil society organizations in the region. In 2001, the Universidad de la Santa raised a number of environmental concerns with the Frente de Defensa regarding EIA that had been passed that year (Huber, 2009) The Frente subsequently organized a number of regional strikes between 2001 and 2003 over environmental concerns and support from the company for various projects. These protests were successful in pressuring the regional government to spend \$US 16 million from the Fondo de Inversion para el Desarrollo de Ancash (FIDA)²⁰ specifically in Huarney at the expense of other areas of the department.

Throughout this process, the company began to engage in consultation and development projects with select grassroots and social organizations in Huarney. According to Huber, (2009) this led to a splintering of organized opposition to the mine, as numerous new groups were

²⁰ The fund was created in 2001 when Antamina paid \$US 111.5 million to the regional government in fines for failing to invest the amount previously promised in community development programs. Thus, the company had to pay thirty percent of the difference between what was promised and what was actually invested to the regional government.

created from older ones, and “some of the oldest groups, linked to the Frente de Defensa, abstained from participating... In this way, the Frente was increasingly isolated, and in the last few years had completely lost its ability to organize successful provincial and regional strikes” (p. 122).²¹ Huber attributes this “neutralization” of the Frente de Defensa in Huarmey to a successful strategy of “divide and conquer” amongst the opposition groups, with the company’s various development funds providing public goods to the populations whose protests are sufficiently disruptive.²²

Antamina has been continuously affected by small conflicts, including during the period of 2005-2008, when the *canon minero* and the social funds were contributing greatly to the economic resources available in the region. According to Arellano (2011) the communities closest to the mines (including Huaripampa and Cuarhayoc) have continued to engage in low-level conflict with the community, occasionally staging strikes and protests. In response, the company has attempted to co-opt the leaders of the protest movements and local political parties²³ by offering business opportunities and employment at the mine in exchange for stopping anti-mining mobilization. Arellano (2011) quotes one informant who claims that during this period, “forming a Frente de Defensa against Antamina was the best business possible in the region” (p. 160).

Thus, while the company has managed to neutralize the most outspoken and critics of Antamina’s operations, Huber (2009) argues that the apparent calm in San Marcos is deceptive. Instead, he claims, ten years after the initiation of operation there are high levels of disappointment and discontent among the population. The communities believe the company to

²¹ Translated by author.

²² In this way he claims, Huarmey has succeeded in drawing more attention and resources from the company than the populations of San Marcos.

²³ An anti-mining stance is often an important part of election campaigns at the local and provincial levels.

be in non-compliance with promises it made regarding the economic progress and development projects that the company would bring to the region (Huber, 2009; Antamina, 2010). In fact, numerous low-level conflicts have persisted in all of the communities in which Antamina has operations, as can be seen in the reports by the Peruvian Ombudsman's Office (the Defensoria del Pueblo). While intermittent dialogue tables are established between the company and various community organizations, these are set up only in response to a specific issue and do not function in a sustained manner (Defensoria del Pueblo, Reporte no. 40, 2007). Beyond this, there are occasional protests which often involve blocking highways and marches, at times instigating the involvement of police (Defensoria del Pueblo Reporte no. 40, 2007; Defensoria del Pueblo Reporte no. 47, 2008; Defensoria del pueblo, Reporte no. 66, 2009, Defensoria del Pueblo, Reporte no. 71, 2010).

Over the last three years, Antamina has developed a complaints mechanism and has recorded the number of complaints received in 2009 (forty-nine) and 2010 (sixty-five) (Antamina, 2010). These complaints were related to relocation, labour issues, access to roads, environment and property (Antamina, 2010). The 2010 sustainability report also lists some of the broader concerns of the affected populations, including compliance with CSR commitments, environmental impact, local hiring, and the expansion of operations (Antamina, 2010).

Analysis

As in the case of Tintaya, the conflict between the communities and Antamina cannot be considered an "all or nothing" conflict. Instead, the primary drivers of community-company conflict in the Antamina case are related to past practices of the company regarding the land-sale and relocation, environmental damage and the extent to which the local communities do or do not benefit from Antamina's operations.

The latter was exacerbated by a number of factors during the early stages of Antamina's operations. The first of these was the lack of understanding on the part of the population of what a "modern" mining operation would entail, and the promises made by company representatives during the development stages of the project. Antamina was imagined by local populations as a market for their products and a source of employment. However, the requirements for skilled labour and quality standards that are part of an international corporation's operations ensured that both local hiring and purchasing were negligible (Salas, 2008). The lack of market for local products and limited employment opportunities continues to be a major source of the dissatisfaction on the part of the communities, despite the company's extensive development-focused CSR projects (Huber, 2009). This view was repeated by a number of interviewees, and has led to the situation in which, as one NGO representative noted, "while there have been many conflicts with the company, there are also many demands that the company provide more contracts, more employment and more social investment." However, the same interviewee explained, "the demands that the communities are now making of Antamina correspond with the responsibilities of the state... and with a zone of influence the size of Antamina's it can't be responsible for everything" (interview by author, February 2012).

The mishandling of the land-buying and relocation processes generated distrust between the community and the company which undermined the company's efforts at constructing positive community relations. The most significant issue was the failure to relocate families to similar plots of land or provide alternative livelihoods. As Salas (2008) explains, the policy of exchanging land for land would not have produced substantial changes in the local system of access to pasture. However, the payment to families of a lump sum of cash – an enormous amount for a poor district like San Marcos – introduced a different economic logic and disrupted

the traditional economy that had been maintained in these communities. Furthermore, the development projects that Antamina does undertake do not necessarily meet the needs of the community and have not adequately compensated the relocated communities for the loss of their traditional livelihoods – as one community organizer claimed “[in Ancash] you see a lot of people now who don’t have land and don’t have a job – this has created more poverty” (interview by author, March 2012). This view was reiterated by an employee of the Ministry of Environment, who claimed that, “the people don’t know what to do with the money [from the land sales] and when it is gone their previous means of subsistence are also gone – thus you have high rates of unemployment or under-employment in Ancash” and furthermore “the levels of poverty in the community have not changed” as a result of Antamina’s extensive development projects (interview by author, February 2012). For Salas (2008), this implies a lack of understanding of the local modes of social reproduction and thus non-compliance with the company’s own CSR codes – which, as noted above, include a respect for and understanding of local values and traditions.

This is further highlighted by the negotiation process undertaken with the communities of Huaripampa and Carhuayoc, the two communities closest to the mine site. As mentioned above, despite the similarities in their relationship with the company, the community of Carhuayoc fared much better than Huaripampa. According to Huber (2009), the community of Carhuayoc was better prepared for the negotiations with the company, with the population having generally higher levels of education and greater economic and social links to urban areas. Presumably, at least in part due to these factors, the community was able to negotiate an agreement with Antamina for financial contributions as well as development projects and the establishment of a communal transport business which would be used by Antamina (Salas, 2008). On the other

hand, Huaripampa agreed only to the land-sale and did not enter into any further formal agreements with the company. Both Huber and Salas argue that the outcome of these negotiations and the subsequent conflicts with the community of Huaripampa were due to a lack of understanding of local culture. According to Huber (2009), by agreeing to the land sale without making immediate further demands,

the community had looked to establish a relationship with the company: a long-term, clientelistic relationship with a powerful ally that could provide them protection. To accept the company's offer without much negotiation was a manner of establishing a relationship of reciprocity, which was obviously not understood by the company (p. 106).²⁴

Thus, a greater attention to local culture and traditions would have improved the effectiveness of community relations. However, both the communities and the company were operating in a context of weak political organization at the local level and negligible intervention from the central government. Especially in a region as poor as San Marcos, this in turn may create a situation where, as described above, the communities look to enter into a relationship in which the company provides public goods if government bodies are unable to do so. As a representative of one of Antamina's CSR funds argued, at the local level "the problem is low levels of institutionalization" and this impedes possibilities for meaningful or productive consultation with local communities. Furthermore, he claimed, the regional and local governments are almost entirely uninvolved in community-company conflict (interview by author, February 2012). As a government employee noted, in the case of the communities around Antamina, "the local state is lax because it is weak and the communities are the weakest, so they suffer the most" (interview by author, February 2012).

²⁴ Translated by author

Conclusion

What has the role of CSR been in the conflicts between Antamina and the various communities in the company's zone of influence? Due in large part to its extensive CSR programs, Antamina has gained the reputation of a socially responsible company, and has promoted itself as a driver of economic and social development for communities in its sphere of influence and beyond. By all accounts, Antamina is, as one NGO representative claimed, "much better than other companies" in terms of its social responsibility. However, he explained, while "community relations are in theory accepted as the most important tool, in practice, the necessities of the business take priority" (interview by author, February 2012).

During the early stages of operations CSR projects were used as a means of avoiding conflict and gaining the consent of the communities who were most effectively able to mobilize against the company. As can be seen in the different outcomes of the initial negotiations between Antamina and the communities of Cuarhayoc and Huaripampa, CSR commitments made by the company were a response to what was negotiated by the community. Thus, the communities which were better prepared to negotiate gained more from Antamina's presence. This same logic was used in Huarmey, where well-organized protests were met with increased investment commitments from the company and the regional government, and these protests were successful in diverting funds away from other areas of the region. However, in this case the company also appeared to use platforms of negotiation to isolate certain political groups at the expense of others (Huber, 2009). Thus, in this respect Antamina entered into relationships with and made commitments to the communities that were politically disposed or at least well-organized enough, to do so. This view is supported by one of the interview respondents who argued that

Antamina “uses its CSR programs to try to alleviate conflict, but it’s just a palliative measure – it does not treat the cause of the problem” (interview by author, February 2012).

Of course, the political environment in which Antamina operates may exacerbate this situation – as Salas (2008) describes, the area is politically dominated by family-based factions accustomed to forming clientelistic relationships with the local communities, which has weakened initiatives to create a dialogue table on community development. However, as Huber (2009), Arellano (2011) and Salas (2008) argue, the company has not been averse to using these political channels for its own ends; the company’s method of solving conflicts appears to consist of weakening or wearing out the opposition as was the case in Huarmey, or using development projects and employment opportunities to curry the favour of political supporters in San Marcos (Huber, 2009).

Therefore, in the case of Antamina, especially during the early stages of operations, CSR appears to be used much as Bebbington (2010) describes, “in order to do something about conflict. In some cases [...] to defuse conflict while in others to anticipate conflict in the hope of preventing it” (p. 106). As can be seen from the examples above, CSR projects have been used to defuse conflict in the face of protest and to weaken opposition to mining activity through the strengthening of groups and local authorities favourable to the mine while excluding opposing parties. As Gustafsson (2011) argues, when CSR projects are used in this manner, benefits are targeted at specific groups or leaders who then renounce conflict with the mine. In this way, horizontal organization between communities, against the mine, is frustrated. While Antamina’s CSR projects may contribute to the development of the area they also play a political role, undermining the formation of organizations that represent the interests of communities in the region.

Therefore, Antamina's CSR practice corresponds with the indicators outlined at the beginning of this paper which suggest that CSR was used to defuse conflict without adequately addressing its underlying causes. For example, in both the negotiations between the company and the communities in San Marcos, and in its dealings with the various grassroots groups in Huarmey, we see an "uneven distribution of goods provided by the company to former movement leaders, and the disbursement of funds and other public goods to only some community groups." Furthermore, in the case of the grassroots groups in Huarmey, there was, based on the distribution of CSR-related goods, an "acceptance of the mine by some members of the community/community groups and not others leading to the weakening of overall resistance to the mine". Thus, Antamina's CSR practice has functioned to buy off communities (or community leadership), weakening resistance and thus defusing conflict without addressing the root causes of conflict.

However, the focus of this paper has been on the use of CSR throughout the early stages of Antamina's operations, and it is reasonable to allow for the possibility that the CSR practices of the company have developed over time, becoming more responsive to community needs. In this respect, Antamina's performance is mixed. A number of interviewees claimed that, despite the relatively large amounts of financial assistance the company provides, levels of development remain low and under- or unemployment is a persistent problem in the communities closest to the mine. Furthermore, the issue of relocation has not been satisfactorily addressed, and claims of environmental damage persist. As mentioned above, Antamina's own reporting acknowledges that on-going conflict with communities is primarily related to environmental concerns; employment and local hiring; relocation and the expansion of operations. Of these, the only issue concretely addressed by Antamina is a program to increase local hiring and general

employment in the region, called Arukushum, carried out by the company's community relations programs which operate in the areas closes to the mine. As can be seen from the description above, the company's other extensive CSR programs are focused on areas such as the promotion of local culture and tourism through the work of Asociacion Ancash, and social programs in health, education, and infrastructure, as was outlined by the MPSP and carried out by Fondo Minero Antamina.

It is important to note that the majority of the causes of community concern – environmental damage, relocation and expansion of operations – are directly related to the business practice of the mine, and thus are not issues which can be addressed by CSR programs that focus on community development. In this way, as in the case of Tintaya, the limits of CSR when used to address the concerns of mining-affected communities become clear. Antamina contributes significant resources to local development projects, providing public goods and services in the absence of state programs to do so. However, these are unrelated to business practices, and thus do not affect the company's core interests while those community concerns that do affect the Antamina's operations directly remain unaddressed by its various CSR efforts. Thus the reliance on voluntary CSR-related mechanisms to govern the relationship between community and company necessarily limits the issues for which communities can seek redress from the company.

Therefore, beyond its effect on specific conflicts, the discourse of social responsibility employed by Antamina also serves the purpose of legitimizing the company's presence in the region. Antamina claims to contribute to sustainable development, while not creating a dependency on its operations among the population nor damaging the environment (Antamina, 2002) Thus, the company's contributions to sustainable development are constructed as

generosity on the part of the company, not the amelioration of environmental damage or social disruption caused by its operations (Salas, 2008). Furthermore, by claiming to contribute to a project of sustainable development – what is necessarily a long-term undertaking – the company justifies both its presence in the region, and the lack of immediate benefits that accruing to the communities. In this way, Salas (2008) argues,

the discourses of development and progress, of what I have called the promise of modernity, constitute a powerful ideological arm utilized by “modern” mining companies, not necessarily consciously, or with a bad intention, to maintain certain political equilibrium that permits them to continue operating (p. 348).

CHAPTER 5: CONCLUSION

The purpose of this project has been to provide a theoretical and practical assessment of the CSR practice of mining companies in Peru, with a focus on the role of CSR in the governance of conflict between local communities and companies. To this end, the paper presents a number of theoretical perspectives on CSR, specifically regarding the part CSR plays in the creation of an expanded social role for the private sector, which includes the provision of public goods and management of social conflict related to company activity. Following the theoretical discussion, this paper presents a discussion of the national context of the mining industry in Peru and the case studies of community-company conflict at the Tintaya and Antamina mines.

Two broad hypotheses regarding the role of CSR in conflict can be drawn from the selected literature. According to a liberal perspective, CSR can provide a channel for communication and contestation that communities use to advocate for their interests, thereby ensuring a certain standard of behaviour from the company as well the provision of public goods in the community. This view assumes, given the influence of the widely accepted normative values that are encapsulated in CSR, that community-company conflict occurs between parties who are relatively equal, perhaps with the additional assistance of outside NGOs advocating on behalf of the communities. This perspective regards CSR as a necessary development given the effect of globalization on states' capacity to regulate the activity of international corporations within their borders, as well as the "retreat of the state" from its role in the promotion of economic and social development. In this case, CSR policies can be seen as an attempt to create a private institution through which social conflict can be mediated in a non-violent manner, in the absence of state-based channels to do so.

A critical, specifically neo-Gramscian, perspective frames CSR, especially when focused on the provision of public goods in mining-affected communities, as a way to buy off community leadership, weaken or delegitimize resistance and defuse conflict at the local level without addressing its root causes. Furthermore, when CSR policies are focused on community-company dialogue, they have the effect of limiting the range of issues that are tabled for discussion as well as the possible outcomes of conflict to what will not pose a challenge to core business interests. According to this perspective, CSR can play a similar role at the national or societal level, acting as a means for the extractive sector to maintain its hegemonic position as the prime driver of economic and social development – despite the fact that the majority of the population may not perceive itself as directly benefitting from mining activity – by framing the company as a benevolent social actor providing necessary public goods. Thus, CSR is not a reaction to the roll-back of the state, but instead a tool used by the private sector to proactively manage opposition and conflict. In this case, the state may in fact promote this type of expanded social role for business in exchange for a favourable regulatory climate.

This project was undertaken based on the second, more critical assessment of CSR and this argument is generally maintained throughout the paper, based both on the examination of the national situation in Peru as well as the CSR performance of the selected companies at the local level. However, given the different forms of CSR carried out by the two companies, the assessment of the two case studies is not equally critical.

The two case studies provide examples of CSR practices that are considered successful by both industry and academic observers. Beyond this, a number of factors were considered in the comparison of the cases including the state context in which they are operating, the type of conflict, the reasons for conflict and the political organization of the community. A comparison

reveals that the Tintaya and Antamina cases are largely similar with regards to these key variables, with perhaps the most significant difference between the two being the political organization of the respective communities. In the case of Tintaya, peasant communities in the area had a long history of political organizing and were able to connect with national NGOs, directly leading to the involvement of Oxfam Australia and the subsequent creation of the Tintaya Dialogue Table. On the other hand, the political context of the communities in Antamina's zone of influence has been very different, with two large families dominating a factional local political situation in which communities have had little success in collective organization. This undoubtedly creates a difficult environment for Antamina to engage with the communities, and has led to a very different CSR practice. Instead of dialogue, Antamina's CSR programs have focused on the promotion of local and regional development, and through these programs Antamina has adopted many of the duties that would otherwise pertain to the state in the region. This has in turn made the company subject to the demands of the communities for the goods and services normally provided by the state – community development programs and the creation of economic opportunities through local hiring and contracting local businesses. Furthermore, at least during the early stages of operations, the CSR commitments made by Antamina were dependent on the negotiating capacity of the communities, with the better prepared groups gaining more from the company. Thus, the political organization of the communities engaged in conflict with the community seems to have a direct influence on the type of CSR adopted by the companies and the role that CSR plays in community-company conflict.

As discussed above, the role of CSR in both of the selected community-company conflicts has been first and foremost an attempt to manage conflict in order for company

operations to continue uninterrupted. In this respect both case studies are fairly successful examples from the perspective of the company, though neither has created a conflict-free area of influence. As stated in the introduction, this paper concludes that the Tintaya model represents a comparatively more positive example of the use of CSR, as it created an institutionalized space for contestation and dialogue, which, unlike Antamina's community development programs, allowed for communities to advocate collectively for their own interests without forming a clientelistic relationship between company and community. As one interviewee argued, CSR must "privilege the process and the creation of social capital rather than simply the amount of 'development' contributed by the company" (interview by author, March 2012). Though not perfect, the Tintaya Dialogue table went some way towards meeting this goal, while Antamina has focused primarily on contributing to community development without much attention to the process of constructing sustainable, politically viable relationships between company and community.

However, this does not constitute a positive assessment of CSR overall, and despite their differences similar criticism can be levelled at the CSR practices of both Tintaya and Antamina – namely that when the management of social conflict becomes the purview the private sector, private sector interests will necessarily set the agenda and limit the possible outcomes. Proponents of CSR construct the company-community relationship as not inherently unequal in terms of access to resources including legal support, financial resources, negotiation experience and host state support. Thus, as de Echave et al (2009) argue,

Power is one of the most notable absences in the corporate discourse that reduces sustainability to a series of technical, managerial, and economic questions, excluding social questions... it is a discourse that projects common interests between the community and the company in achieving development; an "apolitical discourse that lacks a theory of power" and "suggests that all agendas can be accommodated" (Garvey and Newell, 2004, p. 5) (p. 288).

Ultimately however, the reliance on the private sector to manage conflict in which it itself takes part is inherently problematic as it limits the range of possible outcomes— whether at the local or national level – and leaves communities vulnerable to the good will of the company to continue to participate in negotiations. The alternative, or implicit threat may be to rely on more repressive measures to deal with social conflict, which in the case of Peru, is often supported by the state.²⁵

CSR has a similar effect in Peru at the national level – the mining industry as a whole can point to the important role it plays in promoting development locally and regionally to combat the negative perception of the industry held by much of the population. This is necessary due in large part to the characteristics of modern mining operations which do not create local demand for labour or goods that local communities can provide. Instead, mining companies must prove they benefit the host state and communities in other ways. “Thus, the benefits that the mining companies offer the community are presented as voluntary... and not as a right of the affected population” (de Echave et al, 2009, p. 285). This has been actively facilitated by the state through the creation of the MPSP in implicit exchange for a favourable regulatory and tax framework for extractive corporations. Due to these developments, the mining industry has been cast in the role of development agent, and while this may serve an important political purpose in combating opposition to the pro-mining stance of the central state, it also forces the private sector to take on a number of roles to which it may not be well suited; though CSR commitments may provide some economic benefit to communities, they are attempting to address conflicts that in the long-term require political solution (de Echave et al., 2009).

²⁵ Ongoing examples of this include the conflict around the expansion of the Yanacocha mine in the Cajamarca region which, at the time of writing, has resulted in violent protest and the death of a number of protestors at the hand of police and the arrest of prominent social movement leaders.

Over the course of the research, particularly during fieldwork, a secondary question emerged – namely what is the long term effect on the role of the state in managing conflict related to mining activity, as the state has, in the words of one respondent “privatized its development function” (interview by author, March 2012)? One of the key points that arose in almost all the interviews conducted for this project, as well as in the literature on the social effects of mining in Peru, was that the state has systematically abdicated its role as mediator of company-community conflict and this has left both companies and communities in a precarious position. As de Echave et al (2009) describe the current situation,

The role of the state is just that of attracting investment, while developing and maintaining social relations and environmental management falls to the companies which rely on their own voluntary mechanisms – codes of conduct, environmental monitoring, dialogue and cooperation processes with communities, etc. This creates a bilateral relationship marked by the absence of the state (p. 258).

However, this increasing reliance on the private sector adoption of political and social roles may have a negative long-term effect on the development of responsive and democratic political institutions both promoted by the central state and as arising at the grassroots.

As was discussed above, the effects of CSR on local level politics are various. First, the targeted provision of social goods and services to certain communities or groups may weaken horizontal organizing at the regional and local level, as some groups maintain a combative attitude towards the mining company and refuse to participate in company-led initiatives while others do not (Gustafsson, 2011). Similarly, a reliance on private-led development shifts the spatial distribution of public goods and services, with the communities closest to the mine receiving the greatest CSR commitments, while equally needy communities outside the mine’s zone of influence do not benefit from these privatized development programs (Gustafsson, 2011). When the state does not step in to ensure that the benefits to mining are more equally distributed, conflict may increase in communities that perceive themselves as insufficiently

benefitting from extractive industry activity.²⁶ When rural populations increasingly look to the private sector to supply public goods, the social contract between communities and the central state is undermined. This in turn casts companies in a role of the de facto state and leads to the aforementioned situation in which the agenda of private business sets the social and political agenda for communities.

At the national level, a reliance on mining companies to manage social conflict and promote development in “their” communities lessens the pressure on the central state to ensure a more effective decentralization process, in which local level government would have the political capital to govern effectively, managing social conflict and promoting development through public institutions.

What is the solution? Mining activity seems to be inherently linked to social conflict due to the physical and social disruptions it causes in mining-affected communities. Furthermore, the unequal distribution of the economic benefits of mining increases the perception that mining is not beneficial to the majority of the Peruvian population. CSR has been promoted by both the private sector and governments as a way to manage this conflict, convincing local populations of the benefits that mining can bring without fundamentally altering the practices of modern mining. However, as Arellano (2011a) demonstrates, this increased decentralization and expanded social role for the private sector has not been successful in decreasing conflict overall, although this paper argues that on the level of individual conflicts, CSR can be successful in creating an environment in which company operations can continue relatively uninterrupted. As is argued above, the creation of private institutions to manage social conflict can be criticized for

²⁶ This is the core argument of Arellano’s (2008; 2011a; 2011b) work regarding the transfer of *canon minero* payments. Despite the state’s efforts in this regard, it seems to be repeating the same problems with tax revenue that CSR-led development could be charged with creating.

its effect of narrowing the array of possible outcomes of a conflict, and setting a political agenda for the communities (and the state) that correspond to the interests of the mining industry.

However, this type of theorizing should not be divorced from the reality of the Peruvian state. Comparing relatively successful CSR programs such as that of the Tintaya Dialogue Table to the ideal of public institutions in a democratic state, and finding them wanting, is ultimately a fairly pointless exercise. If we eradicate corporate-led development and conflict management programs, a perfectly functioning democratic state with responsive and effective political institutions will not immediately spring up in their place. However, a critical examination of the role that CSR plays in community-company conflict cannot but conclude that a solution to the ongoing, and increasing conflict generated by the expansion of the mining industry must not rest in private hands alone. Instead, a solution must be found that includes a proactive state, willing to advocate for the interests of its citizens and not just those of a certain sector of the economy.

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