Multinational Companies and the Quality of Local Governance in Sub-Saharan Africa:

The Challenges of Limited and Restrained Statehood

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Abstract

This paper explores to what extent the quality of governance by MNC in areas of limited statehood depends on the limitation, and, more importantly, on the restraint of statehood. We argue that the (local) control over the monopoly of force and a minimum of state capacity to set and enforce rules are at best a necessary condition in this regard. The power and capacity of state actors have to be checked and controlled to ensure a certain quality of business contributions to governance. To develop this argument, we introduce the concept of quality of business contributions to governance and discuss to what extent limited and restraint statehood accounts for the substantial variation in quality observed empirically. Based on a discussion of the ambivalent role of statehood for governance by non-state actors, we conceptualize restraints on state power and capacity as a scope condition for the quality of business contributions to local governance. In addition to institutional restraints drawn from liberal state and democratic theory, such as the rule of law and elections, we consider societal mechanisms of restraint at the local level, such as embeddedness in societal institutions and community pressure. Empirically, we explore our argument and the power of these various mechanisms of restraint in case studies of mining companies in Subsaharan Africa. The last part of the paper examines gold mining sites in Tanzania in more detail.

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1. Introduction

This paper contributes to the debate whether and in what forms business contributes to governance and discusses the problems related to non-state actors providing collective goods and services, such as health care, education, or security. We are concerned with potential contributions of multinational companies (MNCs) to governance in the particular context of areas of limited statehood. In areas of limited statehood, the state has no monopoly over the legitimate use of force and/or limited capacities to set and enforce rules. Rather than treating MNC as problem or cure, some of the governance literature has focused on exploring conditions under which companies may indeed contribute to the provision of collective goods and services, aka governance. However, these attempts have so far mainly focused on whether companies commit to voluntary standards and contribute to governance *at all*. We contend that it is essential to look at the *quality* of such contributions.

This paper explores to what extent the quality of governance by MNC in areas of limited statehood depends on the limitation, and, more importantly, on the restraint of statehood. We argue that the (local) control over the monopoly of force and a minimum of state capacity to set and enforce rules are at best a necessary condition in this regard. The power and capacity of state actors have to be checked and controlled to ensure a certain quality of business contributions to governance.

To develop this argument, we, first, introduce the concept of quality of business contributions to governance and distinguish three dimensions along which variation in quality can be assessed. We then discuss to what extent limited and restraint statehood may account for such variation. Based on a discussion of the ambivalent role of statehood for governance by non-state actors, we conceptualize restraints on state power and capacity as a scope condition for the quality of business contributions to local governance. In addition to institutional restraints drawn from liberal state and democratic theory, such as the rule of law and elections, we consider societal mechanisms of restraint that might hold authorities accountable to some public good and thereby improve the quality of business contributions to governance at the local level.

The empirical part of the paper explores the explanatory power of our argument with the help of case studies conducted on the role of mining companies in local governance in Sub-Saharan Africa.[1] The cases vary with regards to the limitation and restraint of statehood. After briefly assessing the link between formal restraints of statehood and the quality of business governance contributions at national level, we zoom into the case of gold mining companies in Tanzania. Under conditions of a medium degree of both limited and restraint statehood, we

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illustrate how various mechanisms of political and societal restraint account for the differing quality of business contributions to local governance.

2. Business contributions to governance, limited statehood and functional equivalents

The governance literature has identified the threat of state intervention as a key incentive for non-state to engage in governance. This so-called "shadow of hierarchy"is not only required to make self-interested non-state actors voluntarily commit to the provision of collective goods and services; it also ensures that they honor their commitment, on the one hand, and that the quality of their governance contribution statisfies the public rather than their own private interest, on the other(cf. Scharpf 1997; Mayntz and Scharpf 1995). The shadow of hierarchy is generated by statehood defined as the capacity of state actors to credibly threaten the unilateral adoption and enforcement of collectively binding rules on the provision of common goods and their unilateral provision, respectively (Börzel 2010). The threat of state intervention has been found particularly important to induce governance contributions of companies, professional associations, pressure groups or consultancies. Unlike state actors and not-for-profit organizations (e.g. public interest groups), these actors are not obliged by formal institutions or social norms to pursue the common good.[2] With the emergence of corporate social responsibility, business has increasingly committed itself voluntarily to comply with human rights, social and environmental standards. However, it is economic and reputational concerns that motivate such behavior. If their voluntary governance contributions do not pay off, companies are likely to renege on their commitments (Börzel and Thauer 2013).

At the same time, there is no systematic link between different degrees of limited statehood and the extent of non-state actors' contributions to governance. In so called "areas of limited statehood", which include large parts of Sub-Saharan Africa, the state is often too weak, and often not willing either, to set and enforce regulation aimed at the provision of collective goods and services and the direct delivery of collective goods and services (cf. Risse 2011). The state is not capable of casting a shadow of hierarchy by making credible regulatory threats either. However, the mutual relationship between limited statehood and governance contributions by business is not necessarily negative. On the one hand, companies which operate in areas with very limited or no statehood, such as in the DRC, still make attempts to positively contribute to local governance, whereas other companies do not (Börzel, Hönke and Thauer 2012; Börzel and Hönke 2012; Hönke and Thauer 2012). On the other hand, highly capable state might not be willing to set and enforce rules for extended governance contributions by companies. China, for instance, has the capacity to set and enforce higher environmental standards for firms; it often chooses not to do so. The same is true for a number of states in the U.S., which would be able to

[2] This is not to say that state actors are motivated to pursue the common good and always do so. But unlike business or interest groups, most governments (and non-governmental organizations) can be held accountable and face legal and/or social sanctions, if they abuse their legal or moral authority to pursue private self-interests.

enforce stricter environmental standards on firms, but have decided against. In other words, the governance behavior of companies varies within contexts of different degrees of statehood.

In our previous work, we have argued that a number of factors other than the shadow of hierarchy account for such variation. There are several functional equivalents to the threat with public regulation that can equally induce MNC and other non-state actors in areas of limited statehood to provide collective goods and services (Börzel and Risse 2010; Börzel, Hönke and Thauer 2012). We have shown that the risk of anarchy (absence of any state governance), the threat of external intervention, the pressures of the international or local community, or efficiency gains and competitive (dis)advantages provide important incentives to engage in governance, even in areas where the state is not capable or not willing to enforce effective regulation on their activities (Börzel, Hönke and Thauer 2012, Börzel and Thauer 2013; Börzel and Hamann 2013, cf. Prakash and Potoski 2007; Deitelhoff and Wolf 2010).

We have also shown that highly limited statehood can encourage rather than impair company contributions to governance. Governments outsource local governance to companies in areas of limited statehood in order to use business governance contributions to regain or strengthen control over regions and revenues. Through strategic absence, host states "indirectly discharge" the management of local grievances and conflict to companies, such as in mining regions in Southern and Eastern DRC (Hönke 2010; Hönke 2013b).

In sum, limited statehood – the level of capacities to set and enforce rules by (state) authorities – is not systematically related to whether companies engage in local governance. However, there is more to statehood and its effect on the role of business in local governance. We introduce two concepts in this respect: first, the qualities of business contributions to (local) governance, and second, the restraint of statehood as a factor that accounts for variation in the quality of governance outcomes.

As for the first move, we argue that we need to move beyond the question of when companies engage in the provision of collective goods and services and focus on the differences in *quality* of such non-state governance. Most companies provide club rather than public goods and as there is enormous variation in how comprehensive and inclusive their governance contributions are (see below, cf. Hönke 2013a; Thauer 2013). This will bring us then to the second question: to what extent is statehood still important in order to understand variation in the quality of business governance?

3. The quality of MNC contributions to local governance

What is still neglected in the growing literature on governance by business is the quality of its governance contributions. Many larger MNCs now refer to the CSR discourse and commit to at least certain voluntary standards. However, existing works usually does not consider who and how many actually benefit from such commitments at the local level. However, variation in the quality of company contributions to governance is substantial. We thus need to distinguish different scope and inclusiveness of companies' governance attempts. In addition, it should not be ignored how companies attempting to "do good" may actually produce serious negative side effects. Finally, we suggest to overcome the isolated study of specific company programs that contribute to collective goods and services and instead link it back and assess such programs in light of the negative externalities of a companies' business practices.

In our previous work, we have developed an analytical framework for distinguishing different qualities of governance outcomes (Hönke, with Thomas 2012; cf. Börzel and Hönke 2012). We consider three specific dimensions of the quality of governance: scope/inclusiveness, the indirect effects of governance, and the way governance contributions compare to the external effects of core business practices.

Two measures of how inclusive governance is stand out, namely the claimed and the actual scope of collective goods provision by an actor. Scope refers to both geographical and social reach: Which geographical areas are addressed and where is governance actually implemented? Who is addressed by governance and who actually receives or benefits from governance? In addition to criteria for the scope of governance contributions, we suggest to examine the perception of governance. One aspect of how governance contributions are perceived is how people evaluate the type and quality of goods they receive, and whether they assess the scope and distribution of governance contributions by the company as fair and inclusive, or as unequal and exclusionary (Hönke, with Thomas 2012: 9-13).

We consider, secondly, how governance for a particular collectivity or in a specific functional area may indirectly benefit or turn against others. Governance initiatives thus have positive and negative consequences. They affect local social goods provision in ways that are not foreseen in these policies. First, they can perpetuate local inequalities by upholding entrenched political hierarchies. Second, company programs that provide a service for a narrow group might increase conflict with other parts of local population. Especially in the sensitive area of security, such narrow provision for the few – often the company and a number of local collaborators - increases insecurity for many; usually more marginalized and less powerful parts of the local population (Hönke, with Thomas 2012, pp. 9-12). This directs the empirical analysis beyond studying policy programs and tracing their level of effective implementation towards the actual practical effects and political dynamics that unfold around MNC programs.

Finally, contributions to governance by companies in one area need to be considered in light of negative externalities of other company practices. Negative externalities are defined as the spillover of the costs of an economic activity on unrelated third parties. Concerning mining companies, typical examples for such negative externalities are the various forms of serious environmental pollution deriving from the production process, such as polluted water, water scarcity, the loss of agricultural land or dust. In the case of security, asset protection aiming at providing security as a private or club good often has negative effects on public security in an area. Overall, local governance contributions by companies are often eclectic and do not substantially reduce or compensate for negative externalities caused by the same company. We suggest that the scope of contributions needs to be assessed in light of the extent of negative effects and externalities.

Empirically, the quality of MNC contributions to security governance at the local level in Sub-Saharan Africa varies significantly. We suggest that the restraint of statehood accounts for some of this variation. The next section hence introduces the concept of restraint of statehood and how it might be able to account for variation in the quality of companies' governance contributions.

4. Beyond limited statehood. Institutional restraints of state power and alternative accountability mechanisms

There is more to statehood than generating incentives for non-state actors to engage in governance. It has been suggested, for instance, that in certain cases in which non-state actors attempt to contribute to collective goods provision, they require the provision of some (basic) common goods, such as political stability and security, in the first place (cf. Beisheim et al. 2011). The implementation of complex tasks, such as the combat of HIV/AIDS or the provision of public security, require a basic institutional infrastructure to make governance activities of MNC and other external actors effective (Börzel et al. 2012; Schäferhoff 2012; Krasner and Risse 2012). This infrastructure is usually provided by the state. Yet, other authority structures and collective institutions might be able to provide them, too (Menkhaus 2007; Draude 2012).

Yet, this literature still tends to emphasize how statehood is used for the provision of collective goods and services. This implies the expectation that political authorities have a rational interest in the collective goods provision by non-state actors because they are too weak to do so (Börzel 2010) helping them to increase their control over a particular area in which they lack the capacities to assert their authority (Hönke 2010) or to build support from and trust among the electorate (Putnam 1993, Tsai 2011).

What is often neglected in these debates is that statehood can also undermine the provision of collective goods and services by non-state actors. Existing state capacities are not necessarily employed to cast a shadow of hierarchy over, or support, non-state actors to contribute to governance. In fact, statehood can have a negative effect on the governance contributions of non-state actors if state actors lack the political will, rather than the administrative capacities in the first place, to provide incentives or basic infrastructure.[3]

4.1. 'Dark sides' of statehood

Governments often lack autonomy from business (Evans 1989, Handley 2008) and reduce regulatory and tax requirements for firms. The other way around, they may ask for private benefits at the expense of the broader public good. At the same time, governments can (ab)use

[3] On the following see also Börzel, Hönke and Thauer 2012.

their legal authority to impose their political and economic interests on firms. They may obstruct governance contributions in particular areas, or influence, and actually narrow, the scope of a program to make it benefit a specific clientel. MNC often rely on informal political networks to receive state contracts and licenses. They then grant members of these networks personal favours (Hönke 2013b; Reno 2001). In the past, the South African government has for instance not only refused support for and tried to take control of business initiatives to fight HIV/AIDS because of normative disagreement. Local government actors sought to capture business workplace programs to enroll their own public employees in return for taking over former business employees into the public health service (Thauer 2013; Börzel et al. 2012). These different dynamics can reduce the quality and effectiveness of governance contributions by firms.

Governments may also refuse to provide companies with the necessary support for contributing to governance fearing 'agency loss' or 'agency capture' because of the inferiority of their financial resources, personnel and expertise (Stigler 1971, Hellmann et al. 2002). State actors may also prevent companies from providing a particular collective good or service and obstruct their governance contributions if these contributions address issue areas in a way not supported by government. One important factor here is legitimacy. If a company's attempt to engage in governance is considered illegitimate by a host authority, due to an incongruence of norms, states – even with very limited overall capacities to govern - can prevent such governance contributions (Hönke and Thauer 2012). In the sensitive area of security, for instance, government authorities seek to demonstrate and reinforce their claim to sovereignty – closely linked to controlling the use of force. While to some extent that can be well justified[4], it also prevents companies from providing much-needed training for police or military in areas such as conflict prevention and human rights (ibid., Hönke 2013).

To conclude, while a certain degree of statehood may be still necessary to make MNC contribute to governance, statehood can also discourage or undermine their efforts. This raises the question of scope conditions. In the remaining part of this paper, we explore whether statehood is used for inciting companies to contribute more to governance, and less against the collective goods provision of non-state actors, if statehood is restraint (Börzel 2010; Börzel, Thauer and Hönke 2013).

4.2. Institutional restraints of statehood and alternative accountability mechanisms

Limited statehood refers to the capacity of states to set and enforce collectively binding rules on the provision of collective goods and services. Restraint statehood relates to the political willingness of actors to use such capacity for public purposes. State actors do not always act in the public interest, nor do they have to be intrinsically motivated to do so. Yet, liberal institutionalists have argued that the state monopoly of coercive power needs to be limited and

[4] See the research on private security actors and the commercialisation of security provision (e.g. Singh and Kempa 2007; Leander 2005).

controlled to avoid excessive rent-seeking and non-universal allocation of public resources (Olson 1993; Fukuyama 2004; Zürn and Leibfried 2005).

State actors have the *authority* to hierarchically impose common goods and services or command their provision by others. They are also endowed with privileged governance resources (Genschel/Zangl 2008: 4). Their public mandate commits them to use these resources in order to act in the public interest. In theory, this mandate also makes them politically accountable and legally liable in case of failure (Scharpf 1991: 630). Legal liability and political accountability are closely linked to the rule of law and democratic elections as the core institutional restraints on statehood. The first constrains the power of the executive by constitutional and legal norms, rules and procedures that ensure that the provision of collective goods and services is transparent, impartial and predictable. The norms, rules and procedures are reviewed and enforced by an independent judiciary. While rule of law and democracy are closely associated, authoritarian regimes, such as Prussia in the 19th century, can bind themselves by the rule of law. The second constraint is elections and elite and party competition. Citizens can vote their government out of power if they are dissatisfied with the provision of collective goods and services, particularly if they are presented with a political alternative (Gryzmala-Busse 2007).

Procedural approaches have focussed more on the quality of bureaucracy. The roots of bad state governance are too much discretion or too little autonomy of civil servants (Rauch and Evans 2000; Klitgaard 1988). Following Weber, their merit-based recruitment and promotion are to ensure the competence and independence of civil servants. New Public Management approaches emphasize market incentives to control the abuse of state power, such as the manipulation of wage scales, creating quasi-markets through a funder-provider split or contracting out, next to shortening accountability routes and increasing transparancy (Batley and Larbi 2004; Bräutigam and Knack 2004). Yet, it is questionable whether public sector reform measures work in areas of limited statehood (Grindle 2004; Schick 1998). In addition, the literature on bureaucracies, bureaucratic practice and the relationship between state administration and citizens in areas of limited statehood points to the limited heuristic usefulness of that literature (Blundo and Olivier de Sardan 2006; see also Gupta 1995).

Irrespective of whether they focus on the rule of law, democracy or the quality of bureaucracy, liberal approaches rely on formal instiutitons to restrain the predatory state or avert state capture. Yet, formal institutions are often ineffective in preventing the abuse of state power (Michael 2004, but also Migdal 1988; Mungiu-Pippidi 2013). The post-communist states in Central and Eastern Europe, which joined the European Union in 2004 and score high on democracy and the rule of law, display serious problems of decoupling. Informal practices of corruption and clientelism prevail and undermine political competition and the distribution of power between executive and judiciary as prescribed by formal institutions (Innes 2014).

The literature on social capital and civic culture presents a more society-based concept of restraints on statehood that focuses on normative rather than constitutional constraints. They identify four dimensions (cf. Rothstein 2011; Mungiu-Pippidi 2013: 103-104): a prevailing social norm of ethical universalism (*values*), a general habit of engaging in collective action (*social capital*), a dense network of voluntary associations (*civil society*), and sustained participation and political engagement (*civic culture*). All four are interconnected and deemed necessary to prevent the abuse of state power.

While the governance literature has found that strong states correlate with strong societies (Börzel 2010),[5] a more society-based conceptualization of restraints on statehood appear to be more appropriate for areas of limited statehood. We therefore understand by state restraint any political and social mechanism that circumscribe the possibility of state actors to invoke statehood, on the one hand, and that make them to justify their use of statehood in light of some public interest and face political and legal sanctions and/or a loss of legitimacy in case of abuse, on the other.

Liberal institutionalist theories associate restraints on statehood with institutional checks and balances on government. There is also some work on how civil society, such as INGOs can restrain state actors. With regards to non-state governance, the literature has dealt with how 'activists beyond borders' (Keck and Sikkink 1998) and NGOs directly address MNCs in order to convince or pressure them into more, and more inclusive, governance contributions (Spar and La Mur 2003; Yaziji and Doh 2009). It remains an open question, though, whether such societal pressure has been able to restrain state behavior, which in turn would affect the quality of companies' governance contributions in areas of limited statehood.

Yet more importantly, there is a lack of studies that look at such pressure originating at the national or local level (see e.g. Michael 2004). There might not be much because these ideas of restraint build on quite demanding preconditions that are not all useful for studying contemporary politics in many places. For our interest in business governance in areas of limited statehood, the inherent state-centrism in some of the ideas about institutional restraints has proven limiting. The same is true for a certain eurocentrism in the assumption of an autonomous private sphere that was distinct from politics or business as a profession.

We therefore also consider specific societal mechanisms that work at the local level. Of particular relevance is the embeddedness of state representatives in local social institutions that incorporate shared norms of public interest. Social norms are not only institutionalized at the international level or at the level of the state. They are also enshrined in social institutions of societies and communities. Using comparative case studies of public goods provision in rural China, Lily Tsai (2007) has shown how such local institutions can prevent exclusive practices that benefit only the clientel of government officials. If local politicians are embedded in such social institutions they will strive for more inclusive governance outcomes. Hence, the provision of collective goods and services tends to be better in localities in which local institutions effectively

[5] Arguably, the literature rather refers to strong but democratically restraint states than strong authoritarian states.

embed local state authorities inducing their engagement in the provision of collective goods and services, on the one hand, and limiting predatory and rent-seeking behavior, on the other.

A similar mechanism can be at work in company – state – community relations. Strong community institutions, especially in localities with high levels of community cohesion, (Börzel and Risse 2010), might incite state officials to put pressure on a company to contribute to collective goods and service provision. It might also prevent local officials from predatory appropriation of company programs. Sometimes, such programs are meant to be inclusive, but then ended up being very restricted in scope because of such exclusive appropriation. Societies and communities often do have standards of what would be considered in the public interest, even in cases where the government might not reflect and uphold such standards. While some African governments prefer not to enforce compliance with labour and human rights standards by companies, local communities might do. Where governments defend a minimalist approach to corporate social responsibilities, communities often have different expectations (Hönke 2013) and might incite local politicians to put pressure on firms to abide to these. Particularly when central state institutions are considered too weak to govern or lack accountability, communities tend to expect even more from companies, but also from local politicians.

However, in cases of „administrative usurpation“ (Boone 2003), for instance, where state representatives are dispatched from the national level, they are less likely to be embedded in local social institutions. In many other cases, there are simply no such strong social institutions as the religious institutions studied by Tsai in rural China. In more fragmented communities, strong collective institutions might be more difficult to achieve. In short, in many contexts, societal restraint by way of socializing government officials into local norms and/or societal institutions with the enforcement mechanisms to make them abide to the collective good is often not an option. However, in these cases another form of societal restraint might be relevant.

Well organized subgroups at local level may use direct pressure to restrain the ways in which local state representatives use statehood. We know that such local pressure adresses firms directly, inciting them to engage in, and improve the quality of, governance contributions at the local level (e.g. Frynas 2000, Hönke and Kranz 2013, Hönke 2013, Bray and Thauer).[6] Apart from reputational concerns, protest, such as blockades, marches and destruction of infrastructure, can be used to put direct pressure on firms to contribute to governance by imposing costs through sabotage, destruction of equipment and forced site closure (Hönke and Kranz 2013; Hönke 2013). Such community protest can also address local state administration in order to demand the use of statehood for collective goods provision, such as observed in South Africa and Guinea. It might exercise pressure on government officials to use statehood for putting pressure on firms to improve local governance contributions. It might also prevent state actors from exclusive appropriation of company programs.

6 Such pressure on companies has been proven particularly successful where communities are well connected to transnational advocacy networks (for these mechanisms see Keck and Sikkink 1998; Börzel and Thauer 2013). We know less about the effectiveness of local pressure if not linked to transnational shaming advocacy much.

In the following we will explore whether these different mechanisms of restraining statehood can account for different qualities of governance contributions by companies in areas of limited statehood.

5. Mining companies and the quality of contributions to security governance in Sub-Saharan Africa

We look at localities in Sub-Saharan Africa in which multinational mining companies operate. For the broader project of which this paper is part, we look at localities from four different countries that vary with respect to the overall limitation and restraint of statehood: South Africa, Tanzania, Guinea and the DRC. These cases were initially selected according to variation of formal, institutional restraint of statehood.

Statehood	**less limited**	**more limited**
more restrained	South Africa	Tanzania
less restrained	Guinea (pre-2006)	Guinea post-2006 DRC

With regards to overall variation of these factors at the national level, South Africa can be considered as a case with relatively less limited and highly restrained statehood, as compared to other African countries. Tanzania is characterized by a lower degree of limited and a moderate degree of formally restraint statehood. Guinea until about 2006 is a case of an authoritarian regime hardly restraint by formal institutions in the use of statehood. At the same time, the government had the capacity to control the use of force and, where political will was given, some capacity to implement and enforce policies. After political transition in 2006/07, the country held its first democratic elections in 2010. Democratic checks and balances have increased to at least some extent, yet the legacies of the authoritarian past bear heavily on society. While formal restraints of statehood are still very limited, state capacity has eroded substantially. Finally, the DRC is a case in which statehood is limited to the extent that the government does not control the legitimate use of force in the country. In addition to two wars since the mid-1990s, conflict has gone on in the eastern part of the country since. Throughout Congolese history, state administration never covered the vast territory of the country and remained dysfunctional or absent in many parts. In addition to severely limited statehood, despite the formal transition to a democratic system in 2006, formal checks and balances on the use of statehood are extremely weak.

We begin with a brief assessment of how different levels of state restraint at the national level might be linked to different degrees and quality of governance contributions by companies. We then focus on within-case variation in the quality of governance contributions by companies, using case studies from the Tanzanian gold mining areas.

5.1. Restraint of statehood and business contributions to governance across countries

There is no quantitative data on the overall contributions to governance by companies, let alone by a specific sector. However, qualitative evidence shows certain tendencies that shall be used here for our discussion. In the case of South Africa, the transition to universal democracy after 1990 led to fundamental changes in what the government expected from mining companies in terms of contributions to collective service provision. When South Africa moved to universal elections, the ANC that represented the majority, formerly repressed population, was elected. The electorate gave the new government a mandate for rapid improvement in living conditions for the formerly disadvantaged and for redistribution. Even though there was a backlash to more radical visions of redistribution, the new government set new rules for companies. For the mining industry, a mining charter was adopted that obliges all mining companies to invest two per cent of their profits into local development. Since these obligations are indeed monitored, and the issuing and renewal of mining licenses was made conditional on compliance with the charter, despite substantial challenges and problems that remain, the country overall achieved high levels of mining sector contributions to local governance (Chabane et al. 2008, Hamann and Bezuidenhuit 2007, Hönke 2013).

By contrast, in the Democratic Republic of Congo, in a context of lawlessness during the war and after, UN investigations and NGO reports provide ample evidence of how mining companies contribute to insecurity and deprivation, rather than governance as defined in this paper (UN 2002, 2003; International Alert 2010; Global Witness; Hönke 2012). Contributions by companies to governance as defined in this paper are hence much lower overall than in South Africa. This coincides with very little restraint of statehood. In the DRC, democratic presidential elections were held twice since the official end of the war in 2003. However, these were not considered free and fair. In addition, local elections have not yet taken place under the new constitution of 2006. The judicial system does not work.

However, there are many different factors that may account for that (see also discussion of functional equivalents above) and a direct link to restraints of statehood is rather difficult to establish. Apart from potential biases in available reporting and evidence, there are also very different sets of companies in both countries. The context conditions in these two cases are very different. Let's therefore compare business contributions to governance in the new South Africa to those in South Africa during the apartheid era. The evidence stands in stark contrast to the post-1990 era. On the one hand, most of those who worked on the mines under appalling conditions were not recognized as full citizens and had no right to vote – and no way to hold the government accountable. There were also no legal mechanisms to which African miners and the communities suffering from the negative effects of the industry could have turned. There was a democratic regime in place in South Africa at the time. Yet, it was restricted to a minority and based on racial segregation. The case of South Africa before 1990 therefore illustrates that the institutional checks and balances of a liberal democracy do not ensure public goods provision for all as such. Statehood in the South African past was captured by a minority that then built it further up and used it for the suppression of a majority population. There used to be no incentives for mining companies to improve working conditions, reduce violence and improve security practices, or contribute to collective goods provision in communities adjacent to the mines. Hence, they did not do much.[7]

Another point is striking, and that is with regards to the DRC case. Despite the overall bleak picture, there is evidence that a number of mining companies do make attempts to contribute to governance in the DRC (e.g. Kolk and Lefort 2012; also Hönke 2013). For instance, larger industrial mining companies in Katanga province, DRC were the first to apply and further develop the Voluntary Principles of Security and Human Rights to an unprecedented degree. The VPs are a standard for improving security governance around extractive industries (Börzel and Hönke 2012). This evidence shows that institutional restraint of statehood at the national level cannot account for whether, and in what quality, companies contribute to the provision of collective goods and services.

To conclude, it is difficult to establish a direct link between formal restraints of statehood at the national level and the quality of business contributions to governance. At the same time, there is substantial within-case variation in whether, and in what quality, companies contribute to collective goods provision in all of our cases. Hence, if and how restraint of statehood can account for variation in the extent and quality of mining companies' contributions to governance is more usefully examined at the local level. It also needs a broader conceptualization of restraint, as suggested above. It allows us to see restraint beyond where liberal institutional theories would not. Yet this is where restraint is empirically most relevant in areas of limited statehood. We will thus consider the following questions: Do mechanisms of restraint related to elections and the rule of law provide mechanisms of restraining the use of statehood at the local level in a context in which they are weak overall? To what extent do societal mechanisms of restraint affect how mining companies contribute to governance at the local level?

5.2. Local mechanisms of restraint and local governance contributions: The case of gold mining companies in Tanzania[8]

For this paper, we zoom in on one of our case studies, Tanzania. Significant industrial gold production in Tanzania (re)started in the 1990s. Especially Canadian company Barrick and South African company Anglogold Ashanti made important investments in the main gold mining region of the country, the Victoria Lake region.

The Tanzanian state is characterised by medium-level capacities to set and enforce rules accross the country.[9] Interviews suggest that there is, in addition, a lack of political will to improve the

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7 Some companies who sought to change were even stopped by the National Party government from doing so (add reference).

8 We would like to thank Esther Thomas for her input of empirical information to this case study. Most of the interviews cited in this section were conducted by her as a research associate of the SFB700 project.

delivery of collective goods and services – for instance, by way of inciting companies to contribute more – in mining areas. In terms of the restraint of statehood, Tanzania shows medium-level rankings, too.[10] The former single party, and now ruling party, Chama Cha Mapinduzi (CCM), is still dominant, despite increasingly outspoken major opposition party Chadema. The October 2010 presidential and legislative elections were considered the most competitive and legitimate in Tanzania's history. While the CCM retained a majority, the opposition secured its largest representation in parliament. In the past few years, however, democratic procedures have shown weakness such as allegations of fraud during recent elections to ensure CCM victory. The ruling party CCM politics and government affairs are also closely interlinked, which delimits accountability of members of parliament to local constituency. The media has picked up on mining issues yet remains only semi-free.

At the local level, the position of local-level elected councilors is weak. Decentralization seems to have increased electoral and civic participation, brought down corruption, more trust in local governments, and improved service delivery, especially in education, and greater access to information (Tideman and Msani 2011). However, many of our interviewees stated that local council staff does not take local people's concern seriously. The dominance of the ruling party CCM in local elections might indicate that the state and the party have not yet fully separated at the local level.

Activating the potential of institutional restraints: MP initiating national mining review commission

The relationships between the local population in the Victoria Lake region, on the one hand, and multinational gold mining companies and the government, on the other, did not start well. The so-called „Bulyanhulu incident" illustrates this. When one of the first foreign mining companies was to take up its concession in the Victoria Lake region, villages were relocated and thousands of artisanal miners were evicted without proper procedures. In the process, some 54 miners at Bulyanhulu died in a mineshafts sealed by bulldozers. Allegedly responsible was the government of Tanzania and the company.[11] While this was an exceptional event, it nevertheless illustrates the government's position in favor of industrial mining and, in addition to not involving local communities in these policies, its readiness to enforce companies' mining licenses with force.

However, despite a climate hostile to critique of government's pro-industrial mining policies and of mining companies, and despite CCM dominance, a member of parliament used the potential institutions for restraining government and changed national mining policies. The MP from the

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9 The World Bank governance indicators ranked government effectiveness between 36.6 -43.4 (out of 100) over the last 10 years.

10 With Freedom House Tanzania scored 3 (out of 7) for political rights and civil liberty and Transparency International measures 46% (out of 100) for voice and accountability.

11 See Tundu Lissu's case study on Bulyuanhulu on the website of the Environmental Law Institute, http://www.eli.org/pdf/advocacytoolscasestudies/casestudy.tanzania.final.pdf (last accessed March 20 2013), also http://www.leat.or.tz/activities/buly.

Lake zone mining area made history with regards to mining policies in the country.[12] Africa Barrick Gold signed a contract with the Tanzanian government over the Buzwagi mine, which was in the MP's constituency, in early 2007, despite the fact that the Tanzanian Mining Act was under review at the time and no new contracts were supposed to be made before its revision. When he learnt that a new mining deal was signed, he moved in a private motion into the parliament. He first got suspended but, as he recalls the events:

> "that suspension changed the whole political landscape in Tanzania, because Tanzanians were very furious, we organized demonstrations and rallies all over the country, in Dar es Salaam more than 200.000 people attended a rally that I addressed with other political leaders to condemn the decision of parliament to suspend me and also on not discussing the. So Buzwagi [the mine] became very popular, it became a catchword for all bad and poor contracts that the government has entered. And this precipitated into the president forming a mining review commission".[13]

The presidential commission that was subsequently formed to review the old mining act was called the Bomani commission. It proposed that companies pay 3% royalties, within which 20% should go directly to the locality where the mine is operating.

The new mining act was adopted by the government in 2010 and incorporated some reforms that had been proposed by the commission. However, other demands that societal actors from the mining areas had brought in were not fully addressed, such as transparency issues, corporate social responsibility and retrocession of taxes. Yet despite this somewhat limited impact on the final mining act, this case shows that despite the overall limited restraint of statehood, the potential of institutions such as of parliament, can still get used and have an important affect on government policy, which eventually affects the governance contributions of mining companies.

Restraint of statehood and company contributions to local governance in North Mara and Buzwagi

Most of our interviews in the gold mining area indicate that Tanzanian citizens feel rather powerless and do not see many possibilities to influence state policies and practice. The state is perceived by many as protecting company interests in the first place. Companies are seen as not contributing, or at least not sufficiently, to improving local security and development. Instead, people empasise the substantial new problems (negative externalities) they cause, such as reducing access to fertile land or depriving people from income from artisanal mining. As concerns the institutional context, the political system and the administration remain highly centralized and largely controlled by the CCM. While the administration of other sectors has been devolved to district level; mining is an exception and continues to be run centrally from Dar-Es-Salaam. Furthermore, district commissioners, district executive directors and also executive officers at ward and village level are appointed by the government. In addition, most

12 The next two paragraphs draw much on the summary report of material collected during field research in Tanzania in 2012, prepared by Esther Thomas.

13 Interview MoP2.36.

elected positions, such as district chairmen, village heads and ward councilors are CCM – partly due to an electoral system that requires nomination of candidates for local elections by the national leadership of political parties. The top-down prevalence of the state makes it very difficult for information travelling from the bottom-up: the lack of capacity, autonomy, but also will of government authorities to improve the situation for the local population make people feel neglected. Besides, the central government can overrule local government concerning the allocation of staff and fiscal issues. As Miniwasa and Shauri states: "local authorities are nothing more than bureaucratic instruments for the central government and do not generate alternative values, preferences or aspirations" (Mniwasa and Shauri 2001: 23).

However, party competition does play a role in the local arena. The Chadema party is a vocal opposition party, who made the mining issue very popular by organizing meetings focusing on specific development, corruption and circumventing the law issues linked to the presence of multinational mining companies on the Tanzanian territory. When it comes to the ward councilors, elected village heads and district councilors, criticism of mining companies has become politicized and picked up in electoral politics in some regions.[14]

Yet, overall, there is a climate of imposed calm. Part of this is due to the central state's control of local areas. Some of it might also be due the companies themselves. For example, according to an interviewee, Barrick has possibly put pressure on NGOs to stop initiatives of training people to learn how to advocate for themselves.[15]

In this overall context, let us consider two cases, the Buzwagi and the North Mara operations of African Barrick Gold (ABG), which are characterized by different quality of company contributions to local governance. We will explore how mechanisms of restraint might account for these differences at the local level. ABG is a Canadian multinational company with operations all over the world. ABG's North Mara mine is the one with the most visibility in the Tanzanian media. Incidents between security and local artisanal miners are very frequent and the status of Tarime district (where the mine is located) as a special police zone complicates the field of security in the area. This site shows less quality of governance contributions than the Buzwagi site, especially if net sums are compared to the inclusiveness, negative indirect effects and severe negative externalities of company activities. In Buzwagi, ABG received its mining license on the basis of the old Mining Act, which did not commit companies to contribute to local development. However, since the company started operations in 2009, it has invested in community programs. These have been fairly inclusive, and effectively compensated for negative externalities caused by the mine. They are of higher quality than those in North Mara.

At both sites, ABG pays a fixed annual royalty payment of 200 000$ to the district. In North Mara one per cent is redistributed to villages that had once owned mining rights in the area,

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14 Press Review research project D2/SFB700; Interviews JOU2.1, NGO2.5, 2.10, 3.62; other interviews in Lake District.

15 Interview NGO2.31. There are other information about companies funding election campaigns of politicians with which they are aligned. Yet these information need further verification.

and got into an agreement with Barrick's predecessor over these royalty payments.[16] In Buzwagi, ABG pays on top of the fixed royalty some money to the village heads, as stipulated by a Memorandum of Understanding reached with local authorities.[17] In both localities it is claimed that the money gets spend equally between villages, according to a development plan or according to a scheme for the redistribution of the money to localities. Contradicting information have been given, however, especially in the North Mara case. In addition to contradictory claims and observations in the area, it is unclear to what extent company contributions have already been done by Barrick's predecessor in the area, Placer Dome, or by Barrick. Some of what has been in place has allegedly been stopped by ABG.

While it is difficult to determine clearly that neighbouring communities in Buzwagy would receive more contributions to collective goods provision than those in North Mara, it would also be too simple to compare net contributions. The variation in the quality of governance contributions between the two cases becomes much clearer when looking at the inclusiveness, indirect effects of contributions, and the way contributions reduce or at least compensate for the negative externalities of business operations.

In the case of Buzwagi, ABG operates in an area in which most people lived on agriculture and other activities before the arrival of the mine. Apart from environmental externalities, the major negative impact was that people had to be relocated from their land. Apart from some individual discontent, most people report that they were properly compensated by the company. In Buzwagi, contributions matched the degree of negative externalities to an important extent. In terms of indirect effects of company programs, these are largely positive. In this sub-region, Barrick entered into a formal agreement with local authorities at ward level on employment opportunities for the local population, especially for local youth. Apart from other initiatives, the company also turned to employing local sungusungu for the protection of the site**.** Sungusungu is a non-state system of justice including village level policing and court organization. It was legitimized by the state and incorporated in the formal judicial system, but own sanction mechanism were kept in place (Paciotti and Mulder 2004). In Buzwagi, village heads apparently manage to rotate access to this employment in a way that the scheme benefits more or less every household in the area.[18] In addition, ABG's training for sungusungu – on polcing methods, prevention and human rights - is also reported to having had positive affects on security in the area. Crime rates dropped but also the use of violence by non-state police.[19] Taken these criteria together, ABG at Buzwagi does much better than in North Mara.

In North Mara, the company has a much larger negative effect on local livelhoods, to begin with. Apart from the relocation of villages, many people in this area used to live from artisanal mining on the site, and lost their main source of income when ABG occupied the concession. For most of them, alternative sources of income are hardly available in this area. In addition, five out of

16 Interview LGOV 3.28, AMag 3.?

17 Interview VCh 3.52.

18 Interviews VLea 3.xx.

19 Interview Sung 3.53, VCh 3.52.

seven neighbouring villages used to hold customary mining rights in the area. It seems that the original agreement they concluded with Placer Dome in the 1990s, when they gave away these rights, never got properly implemented.[20] ABG gets a lot of intruders and contestation in the area, and many of the participants are people not satisfied with the negative externalities of industiral mining and the in their eyes insufficient compensation for their loss in income and livelyhood. While in 2009, when ABG set up operations in North Mara, a 2.9millionUSD project to help ASM in seven villages had been discussed, the project has still not been implemented.[21] While this might change with a new management coming into office in ABG, the important point here is that so far, ABG's governance contributions fail to address one of the major negative externalities caused by the company. Hence, they are of less quality than those in Buzwagi.

A factor that adds to this picture is that, in order to address security issues that result from this conflictive situation in North Mara, ABG might have influenced the government's decision to declare the area a special policie zone. As a consequence, more state security forces have been stationed in the area. The effect of this initiative on security in neighbouring villages has been negative. There are more negative effects of another security initiative by ABG. Similarly to Buzwagi, the mine in North Mara decided to cooperate with local villages and employ local guards. However, the program here does less well. It only focuses on beefing up security for the mining site. The program is also not built on existing Sungusungu structures, which do exist in the area but were bypassed. Instead, the company made a deal with local administration.[22] This has spurred suspicion with sungusungu. The program here has no positive side effects on local security and policing.

We argue that part of these differences in ABG's governance contributions go back to differences in the mechanisms of restraining statehood available and mobilized in the two localities.[23]

The Buzwagi case shows how strong and cohesive social institutions at the local level, in which the local state administration are embedded (Tsai 2007), can effectively hold local authorities accountable. It also facilitates the creation and implementation of non-state governance programs in an equal and inclusive manner. Not only is a non-state security structure in place in the locality. The Sungusungu is also integrated in other institutions at the village level, such as the village administration. The village executive officer, Sungusungu leaders and the ward executive officer often discuss in meetings at the ward level and have a democratic process of dealing with the Memorandum of Understanding that villages have with ABG. Accountable to the collective good of the area, they found a way to make each household benefit from the security contract that ABG concluded with the Sungusungu structures.[24] Strong societal

20 Interviews EO 3.30, KEW 3.34.

21 27.10.09 Daily News. Interview JOU 2.18; GOV 2.44.

22 Interview VEO 3.37.

23 For how corporate culture might account for the conflictiveness of company-community relations in North Mara, see the paper by Esther Thomas.

24 Interview Sung 3.53, other interviews.

institutions, in which politicians and state administrators are embedded, seem to be particularly effective in preventing local authorities from predatory and rent-seeking behavior. They also affect the quality of what is written in the Memorandum of Understanding, the main contract that regulates direct company – community relations, and the quality of its implementation.

However, this case suggest that they are less successful in overcoming the general divide between central state and national and provincial admininstation, on the one hand, and the local population, local elected authorities and to some extent local administration, on the other. Local government remains overall powerless, yet complaints at the district level are often ignored.[25] Overall, people in Buzwagi also stated that they did not see how they could sanction government for its lack of accountability to local constituencies and lack of use of statehood for improving local governance.[26]

At this point, we cannot exclude that political competition and, hence, electoral politics contributed to better non-state governance in this case. Community protest in the area in the past was, according to some, spurred by the opposition party Chadema mobilizing local votes by criticizing the mines and teaming up with the local population.[27] This might have contributed to the willingness of local state authorities and societal institutions to set up the relatively inclusive Sungusungu and youth employment program in order to calm the criticism in the area.

In the case of North Mara, a lack of effective mechanisms of restraining statehood accounts for parts of the relatively low quality of ABG's governance contributions in the area. There are some strong social institutions in the area. A non-state Sungusungu security system is in place, and the level of collective action by people from five to seven villages in the area also indicates that such structures exist. Parts of the local population are also very effective in organizing collective action, such as invading the mining compound and mining site. People communicate across the five to seven neighbouring villages. In fact, in order to mobilize several hundred people to attack, a certain degree of institutionalized organizational structure is necessary. However, these societal structures do not seem to be effective in restraining the use of statehood in a way that would be more conducive to the public good as perceived by the local population. It has failed so far to improve the quality of ABG's governance contributions.

Why is this so? There has been lots of in-migration due to mining activities and some might argue that therefore the area lack the social cohesion and societal institutions that could effectively hold authorities accountable to some public good, and in turn, the company. But in-migration is the case in any mining area, including Buzwagi, and we have pointed to the high degree of societal organization in the area. There is also some exclusionary discourse from the five villages with former mining rights against two other villages who did not have such rights, but are now also negatively affected by ABG. However, that seems to be less relevant for the overall outcome – little quality of ABG's convernance in the area. What is strinking in this case is

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25 Interview VCM 2.41.

26 Interview VCM 2.41., 2.40, other interviews in area.

27 Interview BUZ 2.33; OC 3.44.

that the societal institutions in place are largely separate from local state institutions. For instance, the local, societal security structure is not involved at all in the management of the security contract between ABG and village authority.[28] The embeddedness of local state authorities, appointed as well as elected, is very low to inexistent.

Thus, the social institutions in place are not able to embedd and thereby restrain how local administrators use statehood. At the same time, the central state dominates interactions with the company. Not only is mining still administered from Dar-es-Salam, also is security since the area was declared a special security zone. Local people think local government has no power in front of the central government.[29] Until 2011, ABG North Mara only interacted straight with the District Commissioner. The central authorities in turn, did not involve local elected representatives and the local population more broadly.[30] Some go as far as to claim that local representatives up to the district level have allegedly been put in place with the help of Barrick Gold.[31] Especially opposition leaders suspect the company to finance political campaigns[32.] in order to have local authorities on their side to calm down tensions. While some of these details need further verification, the overall picture suggests that a narrow coalition of the local management of ABG in North Mara and political authorities to some extent suppresses democratic procedures and local mechanisms of accountability (see also Hönke, with Thomas, 2012). They block possible contestation and mechanisms of restraint, to a degree that is absent in Buzwagi.

6. Conclusion

This paper explored whether and in what quality companies contribute to local governance in areas of limited statehood. Based on distinguishing different qualities of business contributions, it explored to what variation in quality depends on the limitation, and more importantly, on the restraint of statehood. We have argued that degrees of limited statehood cannot account for the variation in the quality of business contributions we observe. Rather, restraint of statehood is a key explanatory factor. It provides an important scope condition under which statehood is rather used for improving company contributions to governance, and less against the provision of collective goods and services by non-state actors.

In addition to institutional restraints drawn from liberal state and democratic theory, such as the rule of law, democratic elections and autonomous civil society groups, we have introduced societal mechanisms of statehood restraint at the local level. We have shown that formal mechanisms of restraint, such as elections and the rule of law, are difficult to link to the quality

[28] Interview Sung 3.36.

[29] Interviews VIL 2.14-2.17, conversations in local area.

[30] Ibid., also interviews JOU 2.18, 2.19.

[31] Interview NGO 1.24; see also Hönke, with Thomas (2012).

[32] Interview POL 2.22.

of non-state governance. In areas of limited statehood they are, in addition, empirically not the most relevant mechanisms. Instead, we have highlighted a broader understanding of restraints that goes beyond the assumptions of liberal institutionalism and takes local societal restraints into account. Where formal restraints are not in place, dysfunctional or weak, such local social mechanisms can be crucial in holding state authorities – and companies – accountable to the public good. Our case studies from gold mining in Tanzania, which features medium-levels of limited and formally restraint statehood, have shown that the quality of governance by companies improves if local authorities are embedded in strong social institutions. Where there are such institutions but authorities are disconnected from them, the opposite outcome has been found. Even high levels of community pressure remained ineffective in this case.

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