

Fostering Environmental Regulation? Corporate Social Responsibility in Countries with Weak Regulatory Capacities

The Case of South Africa

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SFB Working Paper Series N°9

¹ The paper results from the joint research project of the European University Institute Florence and the FU "Fostering regulation? CSR in countries with weak regulatory capacity" as part of the Collaborative Research Centre (SFB) 700 "Governance in areas of limited statehood". The project is supervised by Prof. Adrienne Héritier (EUI Florence) and Prof. Tanja A. Börzel (FU Berlin), research associates are Jana Hönke and Nicole Kranz (FU Berlin) and Anna Müller-Debus and Christian Thauer (EUI Florence).

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LITERATURE

List of Abbreviations

| | |
|--------------|--|
| ANC | African National Congress |
| BEE | Black Economic Empowerment |
| CBO | Community-based Organisations |
| CSI | Corporate Social Investment |
| CSR | Corporate Social Responsibility |
| DEAT | Department of Environmental Affairs and Tourism |
| DFAIT | Canadian Department of Foreign Affairs and International Trade |
| DFID | UK's Department for International Development |
| DME | Department of Minerals and Energy |
| DWAF | Department of Water Affairs and Forestry |
| EIA | Environmental Impact Assessments |
| EITI | Extractive Industries Transparency Initiative |
| EMP | Environmental Management Plans |
| FDI | Foreign Direct Investment |
| FSG | Forest Stewardship Council |
| GEAR | Growth, Employment and Redistribution Strategy |
| GMI | Global Mining Initiative |
| GRI | Global Reporting Initiative |
| ICMM | International Council on Mining & Metals |
| IRMA | Initiative for Responsible Mining Assurance |
| IUCN | International Union of Conservation |
| JSE | Johannesburg Stock Exchange |
| MMSD | Mining/Metals and Sustainable Development process |
| MNC | Multinational Company |
| MPRDA | Minerals and Petroleum Resources Development Act |
| NBI | National Business Initiative |
| NEDLAC | National Economic Development and Labour Council |
| NEMA | National Environmental Management Act |
| RDP | Reconstruction and Development Programme |
| SAB | South African Breweries |
| SAMB | South Africa Mining and Biodiversity Forum |
| SDF | Sustainable Development Framework |
| SFU | Sustainable Futures Unit |
| FTSE/JSE SRI | Social Responsibility Index of the Johannesburg Stock Exchange |
| UNCTAD | United Nations Conference on Trade and Development |
| UNDESA | United Nations Department of Economic and Social Affairs |
| UNEP | United Nations Environmental Programme |
| WSSD | World Summit on Sustainable Development |

1. Introduction²

The engagement and influence of multinational business in the developing world and in countries in transition is often highly contested. One of the core arguments of the critics of an increasingly globalized economy is that, faced with less stringent and consistent regulation in countries with weak regulatory capacity, corporations in many cases capitalize on lax enforcement with regards to social as well as environmental standards. Countries will abstain from sanctioning such behaviour in order to avoid threatening further investment, thus getting caught in a 'race to the bottom', leading to the further degradation of natural resources and the compromising of social standards for the sake of potential economic growth or rather the attraction of short-termed foreign investment (Chan/Ross 2003; Altvater/Mahnkopf 2002). While there has been ample evidence for business taking advantage of this situation and the devastating effects thereof, more recently certain efforts to counteract such tendencies have emerged. International voluntary programmes and standards promote responsible business practice and have been widely adopted by multinational business. Corporate social responsibility (CSR) is increasingly high on corporate agendas nowadays and while the comprehensiveness and the degree of compliance with CSR norms remain a critical question, they are part of an emerging global governance structure which an increasing number of large, multinational companies (MNCs) can no longer afford to ignore (Risse 2007).

The question emerging from these two observations now pertains to the effect of such standards on the areas where companies operate. While compliance with standards should certainly result in the limitation of negative impacts from business operations in the absence of adequate national legislation, our research takes a closer look at the interaction of voluntary CSR norms and state regulation. In fact, we ask a rather bold question: Do multinational businesses that are subscribing to international CSR norms also actively promote such standards in countries in which they operate? Can we detect a fostering effect on regulation driven by multinational business, for example in the health and environmental policy field, in countries with rather weak regulatory capacities?

This research³, while acknowledging the largely negative environmental impact of business in areas of limited statehood, thus seeks to identify positive examples, where spill-over effects of international CSR norms on host country environmental regulation have occurred. In a second step, we will then take a closer look at the conditions and the modes under which multinational firms contribute to the creation of public regulatory capacity and the raising of environmental and health regulation, taking into account both – factors explaining firm behaviour, and public actors' reaction. During a first research phase the project is developing a set of hypotheses capturing these interactions, varying conditions at the company, sector and policy field level in the context of a single country case study, South Africa.⁴

² We wish to thank Thomas Risse, Andreas Nölke and the participants of our paper presentation in the context of the SFB 700 as well as the CONNEX Workshop on "Private actors as norm setter" at the TU Darmstadt (1-2.07.07) for helpful comments.

³ The research is conducted as part of the DFG Collaborative Research Centre (SFB) 700 "Governance in areas of limited statehood".

⁴ For further details see the project description on www.sfb-governance.de/csr.

This paper focuses exclusively on the company perspective and is a summary of preliminary insights regarding the environmental policy field, drawing on empirical evidence from the mining and food & beverage industries.⁵ Focusing on South Africa as our first case study, we discuss the dynamics of weak public regulation and CSR against the background of a transition country which has gone through a major regime change with the abolishment of apartheid in 1994, not only redefining the political sphere, but to a great extent also the way business, national and multinational, operates in the country.

Acknowledging the specific situation in South Africa, we investigate whether and if how companies engaging in environmental self-regulation at the company level in the context of CSR, also promote forms of collective environmental regulation. In departing from the more encompassing approach of the project in the context of the SFB, which investigates regulatory changes induced by responsible company behaviour, this paper thus seeks to answer the following two questions:

- Are these companies actually engaging in fostering collective environmental regulation and under which conditions?
- Which schemes of engagement prevail in the context of weak statehood: do companies contribute to a fostering of collective regulation rather via the state, private self-regulation or in forms of public-private co-regulation?

Drawing on our first empirical results, we identify a number of factors which contribute to explain company behaviour in this regard. Our findings are based on an extensive study of the available secondary literature, a press review and primary sources such as annual reports, government documents and a number of interviews with experts, key companies and government representatives in South Africa during 2007.

In the following we first define central concepts and introduce an analytical framework to capture the range of governance actor constellations through which spill-over effects of MNCs on their regulatory environment may occur. Second, we set the empirical scene by pointing out the specific nature and challenges of the environmental policy field within CSR, the specific context of corporate environmental responsibility in a transition country with weak regulatory capacity such as South Africa and give an overview of the public regulatory environment in particular as to its capacity deficits. Against that background, we identify in a third step our set of cases, i.e. companies that qualify as “CSR-company” for the purpose of our study, and present a mapping of forms of environmental governance in which companies take part and the extent in which incidents of “fostering regulation” occur. Finally, we discuss several hypotheses that explain incidents of pro-active engagement of companies in collective environmental regulation. We conclude with comments on the challenges and limits of voluntary CSR norms as functional equivalent to hierarchical forms of steering in weak states.

⁵ See Börzel/Héritier/Müller-Debus (2007) for a similar endeavour with regard to the regulation of the HIV/AIDS pandemic.

2. Terms and references

The SFB 700 “Governance in areas of limited statehood” sets out to investigate whether and under which conditions collective goods are provided in a context in which the institutional characteristics of statehood are not fully available. For the purpose of this research endeavour, *limited statehood* is defined with regard to deficits in one or both dimensions of statehood as conceptualized by Max Weber: the legitimate monopoly on the use of force in a given territory, and the capacity of state agents to effectively enforce political decisions therein (Weber 1921/1980: 29 cited in Risse/Lehmkuhl 2005). By contrast *governance* refers to “the entirety of co-existing forms of collective regulation of societal issues” (Mayntz 2004: 66; Risse/Lehmkuhl 2005; for a discussion see Draude 2006; Risse 2007, own translation), and refers to institutionalised structures and rules which provide for the provision of collective goods. Defining limited statehood narrowly with regard to the institutional characteristics of state agencies (Milliken/Krause 2002), allows investigating a broad range of state and non-state actors and modes of collective regulation to provide collective goods.

In this context, the project ‘Fostering regulation?’ mainly investigates the contribution of private self-regulation in the form of voluntary CSR-norms on public regulation but also takes effects on collective private self-regulation into account. Private business actors’ role in public regulation is analysed under the condition of a state with *weak regulatory capacities*. By weak regulatory capacity we mean both, non-existing or minimal national regulation of negative external effects of industrial production, and non-existing or minimal administrative capacity to enforce existing regulation” (Börzel/Héritier 2005: 9). Our case selection with regard to the companies considered is therefore limited to those firms which have adopted a significant level of voluntary global standards or elaborate programs in a certain issue area that extend the requirements as mandated and enforced (!) in the host country.

In this paper, we provide a mapping of when and how firms engage in collective environmental regulation that extends their internal environmental governance efforts and attempt to explore evidence for when and how such engagement contributes to a fostering of environmental regulation. We thereby intend to test the claim that companies do seek to foster collective environmental regulation and try to identify factors from our empirical findings that contribute to such behaviour. We also analyse which scheme of collective engagement companies choose. For the latter, we draw on the governance literature to apply an analytical framework that allows for the mapping of collective regulatory activities of companies which takes the whole range of public, public-private and private self-regulation into account (Börzel 2005; Börzel/Risse 2005; Risse/Lehmkuhl 2005).

| Public Regulation | Public-Private Co-Regulation | | | Private Self-Regulation | | |
|-------------------------|------------------------------|-------------|-------------------|---------------------------------------|-------------------------------|-----------------------|
| Lobbying & Consultation | Bi-partite | Tri-partite | Multi-stakeholder | Involvement of non-state stakeholders | Through business associations | Along the value chain |

Table 1: Participation of business in collective regulation – actor constellations

The involvement of *industry in public regulation* takes place through regular and formalised stakeholder *consultations* at the national, provincial and local level. In such a framework companies

may provide their expertise as regards technical procedures. Also, companies may engage in improving administrative capacities to implement a policy. In addition we take *lobbying* through companies for a fostering of public environmental regulation into account. *Public-private co-regulation* refers to situations in which business is involved in the public policy making and implementation process as an equal partner. Business is not only consulted by public actors but engages in negotiating policies in a formalised framework or engages in public-private partnerships. Three possible actor constellations of public-private co-regulation are distinguished in this paper, *bi-partite* co-regulation by public and industry actors, *tripartite* negotiation systems which involve public actors, industry and labour, and *multi-stakeholder* arrangements composed of public, industry and not-for profit actors (NGOs, Community-based Organisations [CBOs]) as well as, optionally, trade unions. Forms of collective regulation without public involvement are referred to as *private self-regulation*. Companies may cooperate with NGOs or CBOs (*non-state stakeholder involvement*), engage in *horizontal* self-regulation via a *business association* or seek to regulate other businesses *vertically along the value chain*.

We will use this framework to indicate in which forms of collective environmental regulation companies are involved according to our first empirical evidence from South Africa. To determine whether such involvement, as described above, actually entails a component of fostering environmental regulation, we still need to define our understanding of fostering. Generally, a fostering of regulation has occurred when either norms and procedural prescriptions improve, approaching international standards, i.e. new general or procedural norms are introduced or tightened in particular as regards precision and obligation (Abbott et al. 2000), or the implementation capacity or scope of a policy or service delivery is improved through the contribution of material, human or knowledge resources (Chayes/Chayes 1995; Jacobsen/Brown Weiss 1995). With regard to our initial definition, we need to distinguish two potential forms of fostering regulation through companies. In a narrow or strict sense any hypothesis would only be confirmed if companies are the driving force and environmental regulation is improved due to the explicit initiative and demand by companies. In a broader sense, however, we also consider the contribution of firms to an improved regulation that has been initiated by either the state or civil society.

After having set the scene of CSR in a transition country such as South Africa, in the next section, part four will map two sectors, mining and food & beverage, with regard to the engagement of "CSR firms" in schemes of collective environmental regulation.

3. Setting the Scene

3.1. Corporate Environmental Responsibility in Developing and Transition Countries

Environmental Responsibility is only one of the many aspects addressed by the concept of corporate (social) responsibility. While competing with other issue areas in managing firm-stakeholder relations, the environmental impact of a firm's operation has been a classical field of contestation between firms and the state and thus has been subject to extensive regulation in the OECD world. Corporate responses in terms of corporate environmental performance that have emerged here at the national as well as the international level include environmental management systems aiming to achieve

regulatory compliance through organisational measures, certification and monitoring schemes to monitor compliance and many other hybrid forms combining various approaches.

The track record of business in developing countries with regard to its environmental impact has been mixed at best. There is a myriad of examples of corporate malpractice leading to the exploitation of natural resources, environmental degradation and negative environmental externalities oftentimes including incidences of environmental injustice compromising the development potential of local communities. Such impacts derive from operations of domestic as well as foreign businesses. In the context of Foreign Direct Investment (FDI) the academic discussion has long been dominated by the discourse on pollution havens. This argument postulates that investors prefer to invest in countries with lower costs of complying with environmental regulations. Countries, particularly in the developing world, seeking to out-compete others for foreign investment in order to enhance economic development will set environmental standards below the socially efficient level or fail to enforce these (Neumayer 2001). Such regulatory environments would then attract foreign investment and lead to increased pollution levels.

While the pollution haven line of argument could only be validated to some extent, if only due to lack of evidence, the concept marks an important starting point for the expansion of the academic debate on the interplay of business and environmental regulation in developing and transition countries. More recent contributions call for the broadening of the concept to include not only a wider range of industry sectors and potential environmental damages beyond emissions but also “the linkages between global trade and investment and environmental regulation” (Clapp 2002: 12). Under this approach, not only the behaviour of international business in terms of locating operations is considered, but also the interaction with host governments aimed at lowering or relaxing environmental standards moves to the centre of attention. Furthermore, with the emergence of the concept of sustainable development in the 1980s, the multi-faceted role of the (international) business community in advancing development rose to attention, thus broadening the scope of analysis of firm behaviour in these contexts.

Taking into consideration the corporate as well as the regulatory dimensions, the question emerges around the ‘how’ and thus basically asks what CSR in the (South) African context should and could look like (Visser et al. 2006). Certainly, companies operating in developing countries or emerging economies are faced with a set of challenges which is fundamentally different from those in the ‘developed world’, as one finds different production and operating conditions in the context of political boundary conditions often characterised by the blending of formal and informal institutions and a weak shadow of hierarchy (Börzel 2007; Draude 2006; Engelbrekt 2002; Schlichte 1999).

3.2. CSR in the South African context

The present day discourse on corporate responsibility and the interplay of various actors in the South African context is closely related to the role of business during the apartheid era. Dominated by white Afrikaner business, the South African corporate sector during apartheid was based on an exploitative as well as highly segregate system of forced labour, which initially was supported by foreign investment and later subject to trade sanctions in the wake of South African isolationism. Concerning the role of business in the democratisation and reconciliation period, conflicting interpretations exist.

More liberal writers claim that business through admitting black workers into semi-skilled positions, the removal of workplace segregation and the support of urban reform contributed to the process of overcoming apartheid. This claim is supported for a small group of companies in a recent publication by Lynham et al. (2006), in which they speak of “remarkably progressive actions of a few business leaders in helping to bring about South Africa’s transformation to democracy”. Other research indicates that through its very own behaviour, business - in pursuit of stabilizing existing regimes to provide for a reliable operating environment and due to its deep entrenchment with the political elites by way of subsidies and tax-payments as well as other linkages - has been a powerful conservative force for the apartheid regime (Fig 2005).

During the time of transition, business was extremely apprehensive to anything which might bring about substantial or radical economic change, such as large-scale redistribution schemes, and was closely monitoring and lobbying the transitory and new government to refrain from such measures. The example of the two successive macro-economic strategies issued by the new democratic government, which were shifted to an approach more favourable of business interests (reflected in the GEAR [Growth, Employment and Redistribution] programme of 1996 as opposed to the Reconstruction and Development Programme RDP of 1994) might be an indication for this.

Albeit continuing to carefully monitor the new developments, business has come to view the operating environment as much more favourable than during apartheid. It should be noted that business was never truly held responsible for complicity in human rights abuses or any other malpractice under the official reconciliation process. This historical background sets the scene for the notion of corporate responsibility among South African businesses today (Bezuidenhout et al. 2007; Fig 2005). In many instances the population’s perception of large corporations is dominated by mistrust and suspicion due to their entrenchment with the apartheid regime.⁶

Isolated from the global economy before, only since the end of the 1990s a trend towards a more proactive engagement of companies to reduce their negative environmental impact has taken on momentum. On the one hand, the opening of the South African market has led to an increase in FDI. Also, the major South African conglomerates reintegrated into the global economy and expanded their operations to other countries which exposed the industry to transnational environmental standards and CSR norms. On the other hand, the African National Congress (ANC) government, in its attempt to re-enter the international community, developed an elaborated environmental legislation companies were confronted with.

In contrast to many other African countries, South African companies and academics engage in a profound discourse on CSR and related issues, which is comparable to those of the international business community in Europe and North America (Hayes 2006). A 2005 study by KPMG on all 154 companies listed on the Johannesburg Stock Exchange (JSE) shows that South African companies are ‘global leaders on CSR’, in terms of reporting regarding social issues, although they tend to be less advanced in relation to environmental matters. This progressive image is emphasized by the launch of the so-called King Report on Corporate Governance (King II). This document was issued in

⁶ Interview with Director/Centre for Sustainability in Mining and Industry, Johannesburg, South Africa, 16.03.2007; Interview with Environmental Adviser/Chamber of Mines, Johannesburg, South Africa, 16.03.2007.

2002 by the Institute of Directors, which is an association of top management executives providing training and other support services (King Committee 2002).

For the past years, the South African approach to CSR has been dominated by activities referred to as corporate social investment (CSI). This term relates to charitable projects that are mostly external to the core business activity and in most cases serve the purpose of creating a positive image of the company among stakeholders. The term furthermore conveys that willingness among business to address malpractices committed during the apartheid era, and offer redress to victims, e.g. of human rights violations, is quite limited. When considering corporate spending for development purposes as a popular tool for deflecting possible criticism, recently conducted surveys for South Africa showed that the overall amount spent on CSI projects is considerably low, thus demonstrating the gap between what companies claim to do and their actual practices (Hamann/Kapelus 2004). In general, environmental issues are relatively low on any CSI or CSR agendas of South African businesses (Hayes 2006).

However, widely advocated and accepted practices in environmental management such as a full life cycle approach, i.e. the consideration of environmental impacts during the entire value chain, are currently applied by a number of transnational corporations operating in South Africa and are increasingly adopted by a number of South African companies as well. Alternatively, companies have engaged in the introduction of environmental management systems, for example in the framework of the international ISO 14001 standard series, which aid in documenting a company's environmental performance over the entire production process. Others refer to best practice guidelines for improved environmental management developed for a specific industry, which are mostly issued by the respective government department in charge.

Among the main proponents and forerunners in the establishment of such management practices have been those companies with international links, i.e. subsidiaries of western MNCs and South African global players⁷ or so-called depatriated companies⁸ which chose to be listed at foreign stock exchanges. These companies are faced with the need to comply with global reporting standards and to meet requirements from the international investors' community. Global initiatives such as the Global Compact (Eskom and Sasol) or the Global Reporting Initiative (GRI) are currently receiving heightened attention by the corporate community. The South African King report endorses the Global Sullivan Principles and the ISO 14001; Forest Stewardship Council (FSC) certification as well as the Responsible Care Initiative of the chemical industry are also popular among South African businesses.

South African businesses are increasingly engaging in associations and initiatives, which aim at advancing responsible practices in the private sector. These do not exclusively address environmental management practises, but in many cases cater to the full range of ethical business behaviour. One of the more visible associations is the Sustainable Futures Unit (SFU) of the National Business Initiative (NBI). One of SFU's projects is for example targeted at mitigating the effects of climate change through working on energy-efficiency programmes with industry. The Social Responsibility Index of the

⁷ Examples here are Sasol (petrochemicals), which has spread into Europe, the US and the Gulf region; Sappi and Mondi (pulp and paper), which are active in the US and Europe; and Eskom (utility) and MTN (mobile telephony), which are more oriented towards investment in Africa.

⁸ Examples are SA Breweries (SAB Miller), Anglo American, BHPBilliton, Dimension Data, Old Mutual and Liberty Life.

Johannesburg Stock Exchange (FTSE/JSE SRI), which is modelled after sustainability indices managed by the New York or London stock exchanges (Dow Jones Sustainability Index, FTSE4Good) and currently comprises about 51 companies, i.e. one third of the companies listed on JSE, is another example for industry-driven approaches.

Particularly with regards to issues of environmental injustice pressure has also been exerted by an increasingly alert activist community comprising numerous organizations and NGOs. The NGO community in South Africa is very active and effectively employs a number of different strategies, such as lobbying, campaigning, capacity-building and increasingly litigation to point to corporate malpractice. They have also been an important force in joining efforts with other civil society groups such as trade union branches and community-base organisations (Lund-Thomsen 2005). The World Summit on Sustainable Development (WSSD) 2002 in Johannesburg has been a driving force for the corporate accountability agenda, linking local with international debates and struggles (van Alstine 2007).

3.3. The public regulatory environment

The South African government has developed an ambitious and far-reaching environmental legislation since the mid-1990s. With the help of international experts, NGOs and IOs the transition period has been used by the new government to adopt world-class environmental policies, surely to be understood in the context of the attempts by the new government to reintegrate South Africa into the international community.

In the field of environmental policies, therefore, a first glance on South Africa reveals a surprisingly far-reaching and well developed environmental legislation. Recent environmental policy development in South Africa (i.e. post 1994) was shaped by national as well as international drivers. While pre 1994 policies in South Africa were not beneficial to the majority of South Africans, after 1994, considerable efforts were undertaken to provide for more equity. As a consequence, the most fundamental legal provision, the Bill of Rights, Chapter 2 of the Constitution of South Africa (No. 108 of 1996) proscribes a fair and sustainable management of South Africa's natural resources through the promotion of ownership and empowerment of the people. Specifically, Section 24 of the Bill of Rights guarantees environmental rights to all people of South Africa. These foundations have provided the starting point for the development of an encompassing environmental policy and promulgated the development of rather ambitious national policies, strategies, action and implementation plans in order to ensure compliance with international accords.

Currently, the environmental policy arena is constituted by a number of legal provisions, which for the most part evolved during the past ten years providing for guidance on a wide variety of environmental challenges and issues. The National Environmental Management Act (NEMA) (Act 107 of 1998 amended by Act 56 of 2002, Act 46 of 2003, Act 8 of 2004) is the central document in South African environmental law. It is intended to provide for a co-operative framework of environmental governance by establishing principles for environmental decision-making, defining the scope of actions of the institutions in environmental policy and advocating an integrated approach to environmental management. The Act furthermore details compliance and enforcement mechanisms, the provision of

environmental information and foresees the incorporation of international environmental instruments in the South African policy context. Other acts detail legislation in specific policy fields, such as air quality, water management or biodiversity, against the background of the NEMA. Of specific relevance for all industry sectors is legislation on environmental impact assessments (EIA) and licensing for operations.

The weakness of the South African state mainly lies in its limited capacity to effectively regulate its territory in certain policy fields, in particular in the field of environmental regulation and the combat of crime. South Africa's weak regulatory capacity pertains both, to the lack of specification of these norms, and, most of all, its capacity to implement and enforce them. Much less documented than the legislative basis, evidence for the status of implementation can be collected from several official documents and other non-governmental sources. One can observe different levels of implementation between national and provincial levels. Particularly, with regard to the issue of environmental justice, legacies from the past have not been overcome yet and many black communities remain underprivileged in terms of exposure to pollution hazards as well as inadequate access to basic services and infrastructure. In many cases, the old structures have managed to pervade new legislative approaches. To a large extent implementation deficits are mainly attributed to two factors (DEAT 2000):

1. *Vertical and horizontal fragmentation*: The confusing, complex and sometimes contradictory arrangement of institutions at the national, provincial and local levels and the allocation of responsibilities in the environmental sector to many different institutions render an effective implementation of environmental provisions very difficult. The system of co-operative governance spearheaded by the relatively weak Department of Environmental Affairs and Tourism (DEAT) does not prevent other ministries from following different strategies and also priorities with regard to environmental matters as these counteract the original priorities of their ministries. For example, the department charged with the industrialization of agriculture was also charged with regulating the use of pesticides, fertilizers and genetically modified organisms. The department in charge of the promotion of mining and cheaper energy is also supposed to minimize and regulate the environmental impacts of this sector. It has frequently been noted that companies in many industries are subject to several different pieces of legislation, which are administered by different government departments. While a radical and all-encompassing restructuring process of the DEAT and the cooperative governance mechanism was initiated in 1998, full deployment of the new systems is still underway (Lund-Thomsen 2005).
2. *Limited administrative capacity*: Institutional capacity at the national level, but even more at the provincial level is severely hampered by the loss of experienced staff, lack of budgetary support and the lack of procedures for a broader involvement of the public in environmental decision-making. Consequently, while policies are devised at the national level, they cannot be effectively applied and enforced at lower government levels (Rampedi 2006). Lack of budgetary support is prevailing at all levels of environmental governance in South Africa. By 2002 DEAT significantly reduced its budgetary allocation for pollution prevention and control,

while the budget for tourism was increased. This budget shortage is mirrored by institutions at lower levels (Lund-Thomsen 2005). Administrative procedures, such as the process leading up to an EIA is lengthy and is the joint responsibility of both, national and provincial government institutions (Groenewald 2005).

Many firms are largely reluctant to comply with legislation, as enforcement is weak. At the same time, the state has not confronted those firms due to the fear of causing job losses and disinvestment. While environmental management systems have been introduced during the past years, they have not necessarily led to a change in day-to-day business practices. For the least part, companies strive to be in compliance with regulations to the degree they are actually enforced by the government. It is claimed that the coordination of different requirements by different departments often translates into considerable costs for the companies which reduced their disposition and willingness to comply (Ashton et al. 2001).

It is however important to note that different levels of weakness prevail both with regard to specific policy fields and sub-regions. With regard to corporate spending for social development issues, South Africa is, for example, an exceptional case since companies are legally obliged to contribute to the social transformation of the country; a policy that is closely monitored and enforced by the government. Corporate spending for charitable issues has received a major boost with the introduction of Black Economic Empowerment (BEE) legislation. Increasingly under pressure to ameliorate the situation of the black majority of the country, according to this legislation, firms are required to transfer part of their capital to black-owned businesses and to make a contribution to communities of 1 % of their annual revenues in order to maintain their license to operate. In addition, BEE legislation establishes specific targets for the achievement of changes in spheres such as ownership, employment, tender and procurement processes, promotion and training opportunities, which are closely monitored in the form of detailed scorecards for a number of industries. BEE constitutes a major driver among South African businesses and its respective effects need to be carefully separated from other phenomena of CSR, especially with regard to environmental issues. These are generally underrepresented in the South African discourse on CSR due to the dominance of other issues, such as poverty alleviation. However, with environmental impacts affecting more and more communities, addressing such impacts in the context of BEE or corporate social investment might become more prevalent in the future.

This constitutes the background against which the interrelation between global environmental norms and standards, company behaviour, and national environmental regulation and implementation is to be analysed. The following sections provide for an overview of these dynamics with regard to two important sectors of the South African economy, the food & beverage and the mining industry.

4. Companies, Global Norms and National Environmental Regulation – the Case of the South African Food & Beverage and Mining Industries

4.1. Two sectors – two dynamics?

There have been empirical and theoretical reasons to choose in particular the mining and the food & beverage industry for this study. First, both sectors with their close links to agriculture, have not only

been, historically, the most important industries with regard to their contribution to the GDP, but also in terms of their political weight. South Africa has been built on its mineral wealth. The country owns some of the world's richest reserves of diamonds, gold, coal, and later on iron ore, platinum, chrome, and other minerals. The mining sector's relative importance to the GDP was overturned by manufacturing only in the 1950s and has afterwards been steadily decreasing. However, with a share of about 40% mining remains a major contributor to South Africa's export earnings (Malherbe 2000). The food & beverage sector in South Africa is of considerable relevance for the overall economy. It constitutes the third largest manufacturing sector by gross value of production (18 % after metals and petrol refining).

Second, together with energy producer Eskom and the chemical industry both sectors have the highest negative impact on the South African environment, and therefore pose particular challenges for sustainable development. The mining industry causes large-scale destructions of landscapes which include erosions, siltation, deforestation and desertification. The use of toxic chemicals entails the pollution of soils and rivers, while air pollution is generated by the dust from bulldozing and tailing dams. Toxic waste management and the rehabilitation schemes for old mines are crucial regulatory issues. Especially in water-scarce South Africa the industry's enormous consumption of water as well as the phenomenon of acid water drainage are further critical issues. These negative environmental effects combine with issues of social inequality. The South African mining industry has a bad record of low environmental and social standards, because its economic strategy is labour intensive and has been built on the supply of extremely cheap migrant labour, supported by the apartheid regime⁹. During the apartheid era, polluting industries such as mining and petro-chemicals were set-up near black townships and "homelands". Also, migrant workers' settlements were located near the mines, so that the poor and discriminated population has been particularly exposed to environmental pollution.

While the food & beverage sector probably does not match the mining sector in terms of the intensity of the impacts, there are still a few distinct challenges facing the sector. With the industrialization and commodification of food production, which has taken place in South Africa over the past years, the impact of these production processes on natural resources has increased substantially. Such developments have led and will further contribute to a serious degradation and over-utilization of soil and water resources. If continued at current levels, water use in the agricultural sector will aggravate the problem of water-scarcity in the drought-prone regions of South Africa. The increased deployment of fertilizers and pesticides in high-intensity agriculture is expected to further impair the quality of water and soil resources. While these are impacts related more directly to the agricultural sector, food processing companies are increasingly forced to show responsibility for these impacts as well. Due to its dependency on the agricultural sector the food manufacturing sector is extremely vulnerable to changing climate conditions, droughts and water shortages.

Introduction of Hypotheses

Both characteristics make the mining and food & beverage industry particularly important case studies because they are key to understand the interplay of global CSR norms, corporate environmental

⁹ Interview with Director/Centre for Sustainability in Mining and Industry, Johannesburg, South Africa, 16.03.2007.

governance and national environmental regulation in transition economies such as South Africa. While both sectors have a significant presence of large international companies they have significantly different backgrounds and operate in a distinctive environment as regards the structure of each industry. The two sectors vary significantly with regard to the sector structure, the number of foreign MNCs versus South African expatriated companies, the strength of organised business interests, and the awareness of local and international civil society and public actors as regards negative environmental impacts per sector. These variations have provided for a number of theoretically deducted reasons for case selection. Here we will restrict ourselves to introduce but two that have mainly guided our selection of cases. We assume that sector characteristics such as the sector structure and the strength of business associations play a decisive role in explaining *in what scheme of collective regulation* companies engage and whether a demand for a fostering of public regulation is to be expected.

The literature on associative corporate self-regulation (Ronit/Schneider 2000) has pointed out that organizing in business associations is an important precondition for a possible commitment to self-regulation. Associations help solve the collective action problems faced by individual firms. The temptation for an individual firm to take advantage of the regulatory requirements of its competitors to obtain an advantage in the market is considerable. This temptation is attenuated by the discipline imposed by associations (Ronit/Schneider 1999). If international business associations mobilize advocacy support for corporate self-regulation, success is not only much more likely (Kell/Ruggie 1999: 3). Associations can also help mitigate the free-rider problem. In the absence of associations that monitor compliance with corporate regulatory standards, firms may seek public regulation resorting to legal enforcement mechanisms. From these considerations on associations and self-regulation, we derive and empirically explore the following claim: *In sectors with weak associations and low associative membership of firms at the international, national and sub-national level, MNCs will be more likely to seek state regulation conforming to international standards. Strong associative structures, on the contrary, support private self-regulation.*¹⁰

These claims are interrelated with an argument brought forward in the same literature with regard to sector structure. It argues that a high level of self-regulation is more likely in sectors with a limited number of producers. Under these conditions, free-riding and nonconformity with self-imposed (associational) rules, can be more easily observed (Ronit/Schneider 1999). Individual firms have an incentive to monitor competitors and to sanction non-compliance with associational rules. In contrast, in a sector with many market actors, non-compliance with regulatory codes would more easily go unobserved. *In sectors with few players, MNCs have fewer incentives to promote corporate regulatory standards to be turned into state regulation and rather turn to self-regulation, whereas they are more likely to seek public legal standards in sectors with many players.*

However, theories on the behaviour of organised business interest suggest that strong business associations do not exclusively lead to self-regulation but can work both ways resulting in state regulation via neo-corporatist or tripartite arrangements.¹¹ Often companies decide to organize

¹⁰ See also Börzel/Héritier/Müller-Debus (2007) forthcoming for a discussion of this argument.

¹¹ The following line of argument is drawn from a project background paper by Christian Thauer (2006).

collectively and found a business association for the task of lobbying government to achieve the twofold advantage of saving costs and gaining effectiveness through collective action (see Schmitter/Streek 1981). Still it has to be explained why companies would accept a loss of autonomy and allow a business association to exercise power over them in collective self-regulation. The key argument of Streek/Schmitter (1981) in this regard is that the strength of business associations and hence their capacity to effectively engage in self-regulation depends on their access to external resources which they are able to provide to their individual members. This is the case if the respective business association is involved in tripartite modes of decision-making (see Streeck/Kenworthy 2003). From this line of argument, we modify the first part of the hypothesis introduced above: *In sectors with strong associative structures, companies will engage via business associations in both shaping state regulation and through collective private self-regulation.*

Both factors, sector structure and the strength of business associations, have been varied in the following investigation. The mining sector consists of only a few large market participants and displays strong associative structures. Mining is an oligopolistic industry due to high entry barriers set by high initial investment requirements. In the context of the apartheid regime a monopolistic economic structure, dominated by seven mining houses, emerged. After international sanctions against the apartheid regime were imposed in 1974, cutting off South African companies from international markets, these mining houses evolved into diversified conglomerations that dominated large parts of the isolated, import-substituting South African economy (Feinstein 2005; Fine/Rustomjee 1996). After the transition to democracy in 1994, the industry underwent a comprehensive restructuring process. Re-entering global markets companies concentrated on mining as their core business. Today, the South African mining sector is made up of some of the world's largest transnational mining corporations, many of which have their origin in South Africa. Amongst them are those of South African origin such as Anglo American, AngloGold Ashanti, DeBeers and Gold Fields. Other global heavy-weights operate in South Africa such as the Australian corporate Rio Tinto, the Canadian company Barrick Gold and the Anglo-Australian BHP Billiton. Besides these large companies, a number of highly specialized exploration and mining companies often providing services to larger operations exist. In addition, an increasing number of smaller BEE firms have emerged, such as African Rainbow Minerals or Exxaro (Malherbe 2000).

The food & beverage sector, by contrast, displays a considerable heterogeneity and variability in terms of firm size and type. The industry reflects the country's manifold agricultural activities, and is often characterized as typical for an emerging market economy as there exists a 'smallish First World economy in a larger Third World one' (Mbendi 2007). The food & beverage sector is characterized by a large number of firms of different sizes, a high degree of market fragmentation and weak associative structures across the different sub-sectors. Within its various subsectors, it is highly concentrated, with several large listed companies controlling both production capacity and sales in most food categories (Hill 2000; Fig 2004). While the estimated number of companies in the industry amounts to 1,800 there is a clear dominance by the top ten companies, which are responsible for 68% of the industry's turnover.

Concentration is a consequence of both apartheid agricultural marketing legislation and the technological barriers to entry into the food processing market. By introducing limited licensing on food processing operations the apartheid regime intended to safeguard white farmers' income (Vink/Kirsten 2002). As a consequence regional monopolies could be created for some products (e.g. dairy processing). In addition technological barriers also prevented a further diversification. As a result, the sector is characterized by 'extreme levels' of concentration across the subdivisions of the sector (Mather 2005).

After 1960, the development in the food sector could hence be characterized by a further concentration and fragmentation, two seemingly antagonistic trends, which were equally boosted by the liberalization of agricultural markets starting in the late 1980s. In some sub-sectors, this led to the emergence of new market actors, mostly smaller processors and thus an expansive growth of the number of companies. Other sub-sectors have reacted with intensive restructuring processes involving several mergers and acquisitions and thus a further concentration of production capacity (Mather 2005). Until today, this development has rendered a sector, characterized by a high market share and influence of a few large companies which are at the same time increasingly challenged by a growing number of smaller market entrants and competition from companies entering the market from countries such as India and Brazil (COSATU 2004).

Who are the "Potential Suspects"

Which companies have we been looking at? In both sectors predominantly the large and globally integrated MNCs have increasingly adopted CSR norms. The large mining companies have figured prominently in debates on corporate citizenship and sustainable development and engaged in environmental self-regulation. In terms of public information and disclosure all major mining companies have adopted the CSR discourse, having elaborated websites which inform about the companies CSR engagement and producing sustainability or social reports in addition to their annual reporting. By 2006, these companies report according to the standards of the GRI, taking the principles of the South African King Report into account. In a recent accountability ranking of the biggest 52 companies listed at the JSE, five out of eight mining companies scored among the top ten (McNulty 2006).¹² Those who are listed at the JSE all appear on its Social Responsibility Index. Anglo American and BHP Billiton are amongst the top five; these global leaders of the industry are followed by a number of large South Africa based companies, such as AngloGold Ashanti, Gold Fields, Impala Platinum and Harmony (Jenkins 2006; List et al. 1995). Moreover, most of them have acquired ISO 14001 certification for their environmental management systems.¹³ What is particular to the mining industry (as to oil and chemicals) is the prominent role of sector-specific voluntary initiatives at the global level which coordinate the discourse and approach of the industry's global players towards issues such as sustainability, human rights or social development.¹⁴

¹² The ranking was conducted by the Centre for Corporate Citizenship/UNISA collaborating with the UK based NGO "Accountability" by using its accountability standards as measurement.

¹³ This information has been drawn from the respective company websites.

¹⁴ Voluntary Principles on Security and Human Rights (2007), Kimberly Process Certification Scheme (KPCS 2007), Extractive Industries Transparency Initiative (EITI 2007), Initiative for Responsible Mining Assurance (IRMA 2007), International Council on Mining & Metals (ICMM 2007).

Reflecting the heterogeneity of the food & beverage sector, there is also a multitude of different approaches towards corporate social and environmental responsibility to be found throughout the sector. In reflecting the policies of their mother companies, subsidiaries of international companies (examples are Unilever and Coca-Cola) have developed their own codes of conduct with regard to their social and environmental performance. These codes usually do not follow any agreed rules or guidelines and mostly aim at defining a company's ideal behaviour towards CSR issues, such as product responsibility, interaction with and consultation of stakeholders, supply chain relations etc. Other companies have chosen to join business associations for promoting CSR, both locally in South Africa and abroad (mostly for companies listed in the UK, US). Others have aligned themselves with externally-derived sets of principles, such as the Global Compact, the GRI, the Global Sullivan Principles as well as the Accountability Standards AA1000. Companies have also used King II to align their sustainability strategies (King Committee 2002). CSR among many South African food & beverage companies currently seems to evolve around charitable activities of corporations oftentimes undertaken by public relations or external affairs departments with the goal of extending brand recognition and reputation management (Fig 2004). Local CSR programmes are also vigorously pursued by international players, while they also apply mixed strategies addressing local communities as well as running country-wide programs (e.g. Unilever). A hint towards the role of external standards and their effect on the conduct of South African companies is provided by the de-patriation of South African Breweries (SAB) which after being listed at the London Stock Exchange reacted to more stringent standards for corporate reporting on corporate responsibility issued in Europe by establishing an accordingly demanding reporting scheme and enforcing compliance within all its operations, including those in South Africa (Fig 2005).

Comparing the two industries, the awareness and discourse with regard to CSR differs according to the size and geographical reach, major markets as well as the origin of companies. While large global companies such as BHP Billiton or Unilever take the lead in rankings such as the Social Responsibility Index of the JSE, smaller companies of South African origin are 'followers' at best, and even smaller enterprises are not participating in the discourse at all¹⁵. The mining sector is a good example for this, with an increasing number of medium and small mining enterprises having emerged in the course of the industry's restructuring process. They are mostly subcontracting firms supplying technical assistance and machinery or exploratory services to larger companies. They usually do not have the historical legacy, are much less visible and follow a more risk-friendly business strategy. Hence the business case to engage in voluntary CSR initiatives is rather limited. In addition smaller companies do not have the profit margins to afford extensive CSR measures (Szablowski 2007: 79; Malherbe 2000).¹⁶ In the food & beverage sector, there is a significant difference in the rigour and depth of CSR programmes and policies maintained by multinationals, such as Coca-Cola, Unilever and Nestlé and local South African food companies, such as Pioneer Foods. While the former are to some extent even driving the international discourse on social responsibility, the latter are currently catching up and

¹⁵ Interview with Environmental Manager/BHP Billiton, Witbank, South Africa, 26.11.2007.

¹⁶ Interview with Deputy Directors Environment/DME, Pretoria, South Africa, 27.03.2007; Interview with Consultant and Lecturer/School of Mining Engineering at the University of the Witwatersrand, Johannesburg, South Africa, 20.03.2007.

looking for the larger companies for suitable approaches, which they then intend to adapt to their own needs and capabilities.¹⁷

4.2. Modes of Interaction

Multinational companies operate in a complex national and international, legislative and normative regulatory environment that determines and shapes their environmental policies. In the following we are not investigating individual environmental programmes at the company level, but provide a mapping of how firms are involved in collective environmental regulation at the national and local level. We ask when, and if, where they contribute to foster collective environmental regulation. Do we observe a diffusion of global standards into collective national and local governance through companies? Do firms seek collective solutions through the state, as our initial question suggests, or do they prefer other forms of regulating and implementing collective policies in the environmental field?

Involvement in Public Regulation

During the last couple of years, developments at the global level have driven the national environmental agendas of governments and business to a significant degree. Emerging economies and above all extractive industries have received particular attention and as a result mining companies are involved in a number of publicly initiated policy forums and multi-stakeholder processes.

In the aftermath of the WSSD 2002 in Johannesburg, South Africa has taken part in the Intergovernmental Forum on Mining and Sustainable Development, initiated by United Nations Conference on Trade and Development (UNCTAD) and United Nations Department of Economic and Social Affairs (UNDESA), UK's Department for International Development (DFID) and the Canadian Department of Foreign Affairs and International Trade (DFAIT), to encourage member states to implement the relevant mining clauses of the Johannesburg Plan of Implementation. To address these issues, the South African Department of Minerals and Energy (DME) developed an implementation strategy for the mining-relevant part of the Johannesburg Plan and initiated a national Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, consisting of government departments, the mining industry, labour and non-governmental organisations (Burger 2005: 456).

At the national level, MNCs participate in a range of consultation forums which are prescribed by the South African legislation with regard to environmental legislation. In the context of the propagated "co-operative government" approach by the ANC government, the major pieces of environmental legislation have extensive consultative procedures in place. Besides old-grown informal lobby channels between these important industries and the respective state administration, a range of formal consultation forums exists. While for example EIAs as proscribed by the NEMA require comprehensive stakeholder participation forums, the key legislation in mining, the Minerals and Petroleum Resources Development Act (MPRDA), provides for the establishment of a multi-stakeholder board which includes a number of departments, industry, labour and civil society with the task to advise the minister and is made up of different stakeholders in mining regulation and promotion. At the operation level, integrated environmental management plans (EMPs) are required that have to assure an adequate

¹⁷ Interview with Manager Corporate Affairs/Pioneer Foods, Paarl, South Africa, 02.04.2007.

coordination with local government. Further examples for such consultations are national hearings on the new waste management legislation in the in the food & beverage sector, which was initiated in early 2007.

Participation in such consultations, of course, can be used either way: to prevent stricter regulation or to contribute to a fostering of environmental standards and their implementation, where this is congruent with company interests. While it is difficult to track negotiations within such forums comprehensively, some conclusions can be drawn. Even though environmental legislation in South Africa is predominantly driven by the state there are a few examples which can be used to indicate when and under which conditions companies actually contributed to a fostering of state regulatory capacity through their participation in these forums.

In the food & beverage industry companies have participated in consultative processes particularly on the issue of packaging. Interestingly these activities are closely related to previous self-governing advances around packaging e.g. on the issue of recycling of packaging material. In this case companies seem to have anticipated the upcoming waste management regulation by developing their own recycling system. Government legislation appears to be the last step in establishing industry positions in official legislation. After engaging with peers and other stakeholders, bringing the approaches developed by industry to fruition will ensure that competitors within the sector and beyond will have to follow similar strategies and thus possibly incur costs. A similar example is the looming regulation on mine closure. In the process of developing the act, government consulted with AngloGold Ashanti to adopt parts of its mine closure policy as a blueprint, which will actually raise the requirements for other companies with less comprehensive mine closure provisions.¹⁸ Both cases, however, rather provide evidence for the broad hypothesis with regard to the role of companies in fostering regulation. The looming shadow of hierarchy of an upcoming public regulation in these issue areas has initiated private engagement.

Another area of fostering occasionally occurs with regard to weak administrative capacities, especially at the provincial and local tier of state administration. In a number of cases companies engage in capacity-building of local administration. In South Africa companies are for example required by law to integrate their local policies within the framework of Integrated Development Plans of municipalities. This is not enforced and there are many examples of companies ignoring or circumventing ineffective state agencies. However, there are counterexamples of companies engaging in supporting the development and implementation of these plans and related environmental policies.¹⁹ Food companies have become active with regards to capacity-building of local administration in the area of good farming practices as well as food quality issues.²⁰ Variance in company behaviour between different municipalities will be studied more closely in the next phase of our research.

¹⁸ Interview with Public Affairs Manager and Environmental Manager/AngloGold Ashanti, Johannesburg, South Africa, 20.03.2007.

¹⁹ AngloGold Ashanti claims to have adopted extensive mechanisms to engage with local administrations to improve their governance capacities and thereby serve the companies' long-term interest of having a capable public authority delivering public services, Interview with Public Affairs Manager/AngloGold Ashanti, Johannesburg, South Africa, 20.03.2007.

²⁰ Interview with Environmental Manager/Clover, Roodeport, South Africa, 23.03.2007.

Difficulties in implementing the elaborated South African Water Act provide another example. The act requires companies to reapply for new water licenses, which requires them to go through a complex procedure involving a comprehensive EIA. The departments' own capacities have proven to be weak in dealing with the large number of applications combined with the ambitious requirement of the act itself. Due to the slow bureaucratic procedures and the lack of monitoring and enforcement capacities of government, mines use to operate without having a water license. Even though the claim of the Chamber of Mines that large companies were in danger of disqualification from ISO 14001 seems to be exaggerated²¹, the issue of legal compliance is a recurrent issue of debate during ISO audits.²² The Department has recognised capacity problems and is cooperating with the industry in a number of issues. According to the Chamber of Mines, training programmes for staff have been offered and the department agreed to commission consultants with processing parts of the application and registration workload. This is an illustration of how a transnational voluntary standard such as the ISO 14001 certificate motivates companies to engage in capacity building support to implement national environmental legislation.

Public-Private Co-Regulation

The South African government is the driving agent to engage stakeholders including business actors from all sectors in policy formulation and implementation. There are ample general and issue-specific multi-stakeholder forums which are proscribed in the national legislation or which are initiated by national or local government when specific problems arise.

Public-private co-regulation between government and industry is understood as the equal participation of both partners in rule setting and/or implementation. Such an approach has been successfully used by government in the area of social transformation of the country, as provided for by the government's BEE program. Sector-specific charters have been negotiated between industry and government that set industry-specific targets with regard to black ownership of companies, social spending and health and which are monitored through a scorecard system (MPRDA 2002). Introducing labour standards as well as spending for social and community issues around their operations as a legal requirement, makes South Africa an exceptional case of a country in which CSR is partly required by law. Environmental issues, however, have not (yet) played a prominent role.

In the environmental field one example of co-regulation initiated by business has taken place in the field of energy efficiency. Spearheaded by the Sustainable Futures Unit of the NBI, voluntary energy efficiency targets have been transformed into a sector-specific energy efficiency accord adopted by the DME and mining companies in which both partners agreed on targets to reduce energy consumption.²³ To date, the project has culminated in 31 companies and industry associations signing a voluntary Energy Efficiency Accord with the DME to reduce their energy consumption. Owing to the fact that besides this highly visible initiative, similar initiatives could not be identified, we assume that this form of interaction is not a very common form of engagement.

²¹ Interview with Environmental Adviser/Chamber of Mines, Johannesburg, South Africa, 16.03.2007.

²² Interview with Environmental Manager, BHP Billiton, Witbank, South Africa, 26.11.2007; Interview with Manager Sustainable Development/AngloPlatinum, Johannesburg, South Africa, 20.11.2007 amongst others.

²³ Interview with Environmental Adviser/Chamber of Mines, Johannesburg, South Africa, 16.11.2007.

Companies also engage in multi-stakeholder initiatives either at the transnational level, or initiated by companies within the local context of their operations. At the transnational level a number of multi-stakeholder initiatives have emerged that engage in the development of transnational voluntary standards and codes of conducts. The voluntary international Cyanide Management Code which was developed by UNEP, NGOs and the International Council on Mining & Metals (ICMM) is a case where a transnational sector-specific standard has trickled down into national legislation. Having been adopted by nine of the largest gold producers in the world in 2005, the South African Chamber of Mines initiated a multi-stakeholder process which adopted a national voluntary guideline. Drawing on these two documents, the state's Mines Safety and Health Inspectorate has approved a mandatory guideline of good practice. Companies which do not comply with it may be charged with an administrative fine.

A similar spill over effect from the transnational to the national level takes place with regard to a sector-specific initiative on biodiversity. Inspired by a joint initiative of the International Union of Conservation (IUCN) and the ICMM at the transnational level, the South African IUCN-branch and the South African Chamber of Mines have initiated the establishment of a formal multi-stakeholder forum to deal with the improvement of biodiversity management as related to mining. While legislation is blocked between the environmental and the mining department, the South Africa Mining and Biodiversity Forum (SAMB) provides a platform of discussion which involves the Chamber of Mines South Africa, conservation groups and the government departments concerned (DEAT, DME, and Department of Water Affairs and Forestry/DWAF).

At the local level, a number of multi-stakeholder initiatives exist that are either part of companies' stakeholder management policies or address issue-specific concerns such as the delivery of particular services or collective action problems with regard to an environmental problem in an area. Beverage companies have increasingly engaged in multi-stakeholder initiatives to address water governance issues at the sub-national level. In some cases, this has resulted in very concrete collaboration with distinct communities on water management or other environmental issues. In other cases activities were organised around the beverage value chain, involving not only the companies involved in the value chain, but also the respective stakeholder groups.²⁴ Other such local coalitions are initiated by companies when a concrete urge to solve an environmental problem surfaces, either because of public attention and protest or the direct cost effect of a problem.²⁵ In response to civil society pressure the gold-mining company Harmony is for example liaising with both the municipality and the Randfontein Environmental Action Group to reduce fugitive dust from its slime dams around Randfontein (Harmony 2006: 60).²⁶ Unilever has initiated a forum to discuss environmental impacts and natural resources management at its Boksburg site. The forum is intended to bring together stakeholders concerned with or affected by deteriorating environmental quality in the area, which to some extent is due to Unilever's operations there. Unilever funds the manager of the forum, while keeping it open for participation by a wide range of stakeholders, including other industries. The work

²⁴ Interview with Corporate Sustainability Manager/SAB Miller, Johannesburg, South Africa, 16.03.2007.

²⁵ For the latter see project article on HIV/AIDS regulation Börzel/Héritier/Müller-Debus (2007) forthcoming.

²⁶ Interview with Environmental Manager and Manager of Corporate Affairs/Harmony Gold, Randfontein, South Africa, 02.10.2007.

in the stakeholder forum is intended to result in concrete suggestions for the clean-up of the Boksburg lake.²⁷

Collective Private Self-Regulation

While there are a number of examples for a fostering of environmental regulation in a broader sense, there is little evidence of a fostering of public environmental regulation which was initiated by companies as a response to requirements deriving from transnational environmental CSR standards. We are now turning to the area of private initiatives of environmental self-regulation which we would expect to prevail in the mining sector as opposed to no such activities in the food & beverage industry.

The mining industry has faced extensive criticism for its impact on the environment and operational practices, especially in developing countries. In order to counter increasing public pressure, the industry came up with a number of initiatives, not only at the company level but also in the form of collective business response at a transnational level.²⁸ In 1999 nine of the largest mining companies closed ranks to form the Global Mining Initiative (GMI) presenting the industry as committed to environmental principles and standards. In preparation of the WSSD in Johannesburg 2002, a comprehensive consultation and research program was initiated, the Mining/Metals and Sustainable Development process (MMSD). For a period of two years a comprehensive consultation and research effort was undertaken to come up with a state of the art of sustainability policies within the industry in the Southern African region. As a result, the ICMM was established and mandated to develop a common global reporting standard for the industry, the Sustainable Development Framework (SDF).²⁹ Membership in the ICMM implies to report according to the SDF framework. Working groups on critical issues with regard to mining and sustainable development meet regularly and guidelines on sustainability issues which are crucial to the global agenda are developed. Even though its membership has increased from six major companies and three industry associations in 2004 (Prakash 2005) to 15 of the largest global mining companies and 24 national and transnational commodity associations in 2007, buy-in from industry peers has been rather limited (Szablowski 2007: 85). The extent to which any effects have materialised on the impact side is doubtful and there are a number of critical voices. Advocates however claim that these processes have served as important channels to exchange information and thereby raise awareness within the industry which will eventually lead to behavioural change (Szablowski 2007).³⁰ And indeed, interviews with the major players of the mining industry frequently referred to the ICMM as providing orientation and blueprints for new policies and best practice examples at the national level.³¹

At the national level, all larger mining companies are part of the South African Chamber of Mines, which acts as the major spokes body for the big mining companies vis-à-vis the South African government. The national body of the mining industry, the South African Chamber of Mines, has traditionally been a powerful industry body which represents about 90% of the industry. While its

²⁷ Interview with Corporate Sustainability Manager/Unilever, Durban, South Africa, 04.11.2007.

²⁸ Based on Prakash (2005), Szablowski (2007) and own research.

²⁹ Following the MMSD process, the former transnational mining association ICME was transformed into the ICMM, charged with carrying forward the GMI agenda. See www.icmm.com for further details.

³⁰ Interview with Consultant and Lecturer/School of Mining Engineering at the University of the Witwatersrand, Johannesburg, South Africa, 20.03.2007.

influence has diminished with the end of apartheid it still serves as the main coordination body of the large mining houses. With regard to environmental policies, its environmental advisor provides background information, facilitates exchange, the development of common industry positions and guidelines on key environmental issues. There is an environmental working group made up of technical staff of member companies, and an environmental committee at the management level. As its largest members, Anglo American and BHP Billiton, the Chamber of Mines is a member of the ICMM. Currently efforts are made to establish an industry-wide voluntary reporting scheme. The board of the Chamber of Mines has adopted a decision that a common reporting standard of CSR should be put forward that will require members of the Chamber to report the CSR performance of their South African operations to the chamber (instead of providing a global report). To raise the profile of the South African industry these are planned to be integrated into an industry-wide CSR report issued by the Chamber of Mines.

Within the industry, benchmarking, peer pressure and reputation seem to be the major mechanisms of fostering environmental regulation and performance horizontally across companies.³² Indeed, companies which engage in CSR compete with their peers in best practice, reputation gains being the major driving force in this context. At the same time smaller companies which do not engage in CSR were frequently referred to as a major problem for global corporates. Even though companies claim that only government should regulate the environmental performance of these smaller players³³, there are attempts to involve smaller competitors into environmental forums and processes. While AngloGold Ashanti mentioned capacity building efforts towards them, Gold Fields referred to particular problems of water pollution in the West Rand area. Being the biggest companies in the area they are blamed for pollution even though it might have been caused by smaller mines downstream. Trying to improve the environmental performance of companies in the region they both attempt to engage them in regional consultations within the framework of a regional water forum. At the same time the company is closely cooperating with DWAF including capacity building support for the regulator.³⁴

While sector-specific forums and reporting standards, which trickle down from the transnational level into national private initiatives prevail in mining, collective private self-regulation in the food & beverage industry is more fragmented. Lacking the existence of a similar process as the mining sector at the national as well as the international level, corporate private self-regulation mostly takes place on a less firmly institutionalised level (Fig 2004). Business associations are weak and fragmented and exist for the individual product categories or sub-sectors in the food sector. They have, however, so far not developed a strong record on environmental or CSR issues in general. Associative activities do not necessarily emerge in the context of specific subsectors but are often related to a management issue, such as recycling. As an example, Coca-Cola has joined forces with other beverage producers as well

³¹ Interview with Environmental Adviser/Chamber of Mines, Johannesburg, South Africa, 16.03.2007; Interview with Environmental Manager and Public Affairs Manager/Anglogold Ashanti, Johannesburg, South Africa, 28.03.2007.

³² Interview with Environmental Adviser/Chamber of Mines, Johannesburg, South Africa, 16.03.2007; Interview with Public Affairs Manager/AngloGold Ashanti, Johannesburg, South Africa, 20.03.2007.

³³ Interview with Environment Principal/DeBeers, Cape Town, South Africa, 29.03.2007; Interview with Public Affairs Manager and Environmental Manager/AngloGold Ashanti, Johannesburg, South Africa, 20.03.2007; Interview with Senior Vice President and Head of Corporate Affairs and Sustainable Development/Goldfields, Johannesburg, South Africa, 28.11.2007.

³⁴ Interview with Public Affairs Manager and Environmental Manager/AngloGold Ashanti, Johannesburg, South Africa, 20.03.2007.

as other players along the supply chain to establish best practices for bottle recycling in anticipation of upcoming waste management legislation in South Africa. Similarly SAB has worked with other businesses to develop a glass recycling scheme. These two cases demonstrate that business has become active in areas where national legislation is still pending in order to make use of the window of opportunity to shape legislation according to their own standards which might have been established on the international level.

Outside these national initiatives, particularly larger firms relate to international approaches, e.g. in the area of reporting, in their CSR or environmental management strategies. Oftentimes, larger corporations serve as a model for smaller, South Africa based firms. While it is mostly acknowledged that not the full range of issues can be addressed, there is a general tendency to be observed to follow industry leaders on several issues.³⁵

Vertical supply chain regulation is another important mechanism of transferring global standards via MNCs onto local companies. Upstream supply chain management in mining does rarely take place; what is mostly presented as supply chain standards are CSI activities with regard to local business promotion beyond the company's core business or it refers to local suppliers of food to the mine.³⁶ In the food & beverage sector, however, regulation along the supply chain is much more widespread. Several bigger companies, such as SAB and Nestlé, employ environmental management systems to monitor environmental compliance along their supply chain. Also larger South African corporations, such as National Brands assign responsibilities for sound procurement practices to various actors within their supply chain. Such regulation however seems to be limited to the larger players in the industry. Smaller firms, such as Premier Foods, do not exert any pressure along their supply chain and rather rely on intermediary players to control upstream parts of the supply chain. Issues such as food packaging have only emerged as an issue among some of the producers, e.g. in the milk industry³⁷. In many cases supply chain regulation reaches to the production of the raw material at the farm level. Particularly large breweries as well as bulk food producers, and most prominently companies, such as Nestlé and Unilever have initiated programmes to propagate more sustainable practices among farmers and raw material producers. In some cases certification schemes developed by the larger firms based on international environmental systems are applied to monitor performance along the supply chain as well. This aspect is expected to gain in importance over the next year with increasing demand for organic food from export markets. In the beverage sector, larger corporations, for example Coca-Cola, work closely together with their bottlers and distributors on propagating standards through these channels for the downstream part of their value chain.³⁸

A third area of private self-initiatives refers to partnerships between private for-profit actors, i.e. business and private not-for profit organisations. They are found in both industry sectors investigated. IRMA was initiated in 2005 and brings together a group of large mining companies, major retailers

³⁵ Interview with Corporate Sustainability Manager/SAB Miller, Johannesburg, South Africa, 16.03.2007.

³⁶ An attempt to integrate the supply chain is De Beers procurement guidelines for local suppliers of food and fuel; Interview with CSR Specialist/DeBeers, Johannesburg, South Africa, 19.03.2007.

³⁷ Interview with Environmental Manager/Clover, Roodeport, South Africa, 23.03.2007.

³⁸ Interview with Corporate Responsibility Manager/Coca-Cola Southern Africa, Johannesburg, South Africa, 26.03.2007.

such as Tiffany & Co and Wal-Mart, and environmental NGOs such as Earthworks and the WWF³⁹ to develop a number of voluntary, non-binding standards on a number of issues. The initiative is of particular interest for its innovative approach. Learning from the experience of the diamond market and the Kimberley certification scheme, the initiative targets the value chain up to the global retailers of jewellery.

At the local level we find activities involving sponsorship for NGOs and community projects. Such partnerships have evolved out of business cases for CSR as well as following the CSR obligations involved in the BEE legislation, as explained above (Frynas 2005). An example is AngloAmerican's sponsorship of a wetland conservation project. Partnering with a South African non-governmental organisation, Working for Wetlands, local people are trained in rehabilitation skills and care for off-site wetlands to compensate for those lost on site owing to mining (AngloAmerican 2005: 40). In the food & beverage sector, there are examples in the sugar and sweets industry, where companies have turned to conservation societies, such as the WWF to assist them with the development of standards to improve and monitor the performance along their supply chain.⁴⁰ In other cases, companies have sought to engage with local community groups to support the monitoring of their environmental issues at the local level.⁴¹ Often such partnerships are used mainly for public relation purposes and do not relate directly to reducing negative environmental impacts of a company's operations.

4.3. Explaining modes and motivations for fostering environmental regulation

Understanding fostering in a broader sense, a variety of such activities is entertained by corporate actors as regards environmental regulation in South Africa. This section will provide for a first interpretation of the empirical findings in the light of the previously introduced hypotheses. In addition, we will derive further explanatory variables as they are suggested by our observations.

Table 2. Schemes of MNE engagement that foster environmental regulation in a broad sense

| | | Mining | Food & Beverage |
|-------------------------------------|---|--------|-----------------|
| Public Regulation | | | |
| Public-Private Co-Regulation | <i>Bi-partite</i> | | |
| | <i>Tri-partite</i> | | |
| | <i>Multi-stakeholder</i> | | |
| Private Self-Regulation | <i>Involving non-state stakeholders</i> | | |
| | <i>Through business association</i> | | |
| | <i>Along the value chain</i> | | |

³⁹ Companies: AngloGold-Ashanti, BHP-Billiton, DeBeers Group, Falconbridge, Newmont, Rio Tinto, Xstrata ; jewellery retailers: Tiffany & Co., Wal-Mart/Sam's Club ; B.A.s: Council for Responsible Jewellery Practices, International Copper Association, ICMM, Jewelers of America, the Nickel Institute ; NGOs: Canadian Boreal Initiative, Center for Science in Public Participation, Conservation International, EARTHWORKS, Great Basin Minewatch, Oxfam America, Pembina Institute, Renewable Resources Coalition, WWF.
⁴⁰ Interview with Corporate Responsibility Manager/Cadbury, Johannesburg, South Africa, 18.10.2007.
⁴¹ Interview with Corporate Responsibility Manager/Unilever SA, Durban, South Africa, 05.11.2007.

Based on qualitative research, comprising desk research and interviews with a non-representative sample of experts, companies, government representatives and civil society, Table 2 represents our empirical findings. The intensity of the colour shading roughly depicts the abundance and preference for the respective form of interaction in the two industry sectors.

Summarizing our findings [see table 2], business is involved in public regulation in a variety of forms. As government is partly overcoming widespread hostility and suspicion against “white big business”, especially at the middle and lower administrative levels, companies are actively approached to contribute to policy formulation and implementation in the context of institutionalized multi-stakeholder forums. While companies are involved in a large number of consultation forums at the national level, we have however rarely seen them actively seeking state regulation. Even though we would still need to analyze these processes of policy formation more in depth, as a general trend, we have found little evidence that companies were pushing for improved environmental state regulation in order to approach international standards. This might also be related to the fact that many international standards have already found entry to the legislative framework in South Africa. Business is rather faced with the implementation gap and is therefore taking on a more active role in this stage of the policy cycle. With regard to co-regulation, companies are involved in a number of institutionalized national tri-partite (mining) and multi-stakeholder negotiations (NEDLAC, all sectors nationally). These, however, rarely pertain to environmental issues which are generally not high on the national CSR agenda. Particularly at the local level of implementation, however, we have found a cluster of fostering initiatives in both sectors in the form of multi-stakeholder initiatives and partnerships. Taking a closer look at various forms of collective regulation initiated by the private sector, companies contribute to environmental initiatives and programs at the local level by either participating in such government-initiated multi-stakeholder partnerships or by starting local initiatives with communities and NGOs. While similar approaches to collective regulation can be found in both sectors as regards local level multi-stakeholder and private-stakeholder initiatives, business associations play a much less prominent role in the food & beverage sector than in the mining industry. While in the latter, companies attempt to foster environmental standards through information exchange, peer pressure and other modes of non-hierarchical steering facilitated by the Chamber of Mines, in the former, we do not find such attempts among peers. Rather, passing on regulation along the supply chain is of relevance, particularly in the context of production clusters for certain products.

How do we explain why companies have engaged in collective environmental regulation as in the case of the multi-stakeholder biodiversity forum, the public-private energy efficiency targets, and joint CSR reports at the level of a business association or in capacity-building measures for government departments? When and how do companies that have adopted voluntary transnational standards engage in the fostering of collective environmental regulation in a context where a significant misfit exists either between their standards and public regulation and/or with regard to the performance of their industry peers?

From a rational choice perspective, companies basically choose to engage in self- as well as in collective regulation efforts because they are driven by the rationale to reduce actual costs or to avoid

future ones. From a constructivist point of view, they may do so because it is appropriate to follow a respective norm either with regard to the transnational CSR discourse or to social norms at the local level. With the exception of two sector variables, the paper has not systematically tested such claims but takes a more inductive, exploratory approach. Drawing on our mapping presented above, a preliminary set of factors is proposed that contributes to explaining either *under which conditions* “CSR-firms” are interested in fostering collective regulation, or how companies engage; i.e. *which scheme* of engagement companies chose to foster environmental regulation: collective private self-regulation, co-regulation or state regulation.

With regard to the *sector variables* proposed, the empirical evidence so far has confirmed that the structure of an industry with regard to the number and size of companies as well as the existence or absence of a strong business association, respectively, have an influence on the schemes of collective regulation companies engage in. Companies in the mining industry have engaged in sector-specific collective private self regulation at the transnational and the national level, using the respective business association (ICMM/Chamber of Mines/joint reporting standard). At the same time the Chamber of Mines represents the industry in a number of government-driven tripartite and multi-stakeholder fora constituting a major vehicle of companies within the sector to engage with the government. Firms sometimes foster regulation at the state level by providing advice and expertise, which will lead to advanced regulation such as in the case of the new mine closure legislation. In the food & beverage sector, the picture is somewhat different. Due to the fragmented associative structure of the sector, collective private self-regulation via business association is not found to be of similar relevance and does only occur with regard to some issues, but is not institutionalized for the entire sector. Also, these business associations then only engage in consultative processes offered by government in their specific area of expertise. On the contrary, collective regulation along the supply chain is rather prevalent in this sector, complementing government policies in some cases as well. However, the large players in the food & beverage sector also maintain close relations to the government and actively contribute to consultative processes either as an individual company or as part of a business association.

The empirical evidence from the food & beverage sector suggests that in a sector with many players and weak business associations, we do not find collective self-regulation via business associations. On the contrary, evidence from the mining industry shows that international companies which have adopted CSR standards, engage in a fostering of regulation via the sector’s strong business association. While this explains when companies engage in private self-regulation with their peers, the strength of business associations and the structure of the sector do not explain whether companies seek for state regulation. Hence, our evidence so far disconfirms the first part of our initial hypothesis with regard to business associations: *In sectors with few players, MNCs have fewer incentives to promote corporate regulatory standards to be turned into state regulation and rather turn to self-regulation, whereas they are more likely to seek public legal standards in sectors with many players.* It has been shown, however, that in both sectors, large companies engage with public actors. Therefore the modified hypothesis as regards strong business associations is more plausible: *In sectors with strong associative structures, companies will engage via business associations in both shaping state regulation and through collective private self-regulation.* Further research, first, has to clarify whether

companies seek a fostering of public regulation and public regulatory capacities, and second, to specify conditions which explain when companies do so.

While this first test helps to explain company motivations to some extent, initial interviews conducted revealed a number of other explanatory variables. In the following section we present some of these variables, which were derived from the empirical samples in an inductive way. At the same time, these hypotheses are also strongly related to and partly inspired by hypotheses developed in the wider context of the project.

Emerging prominently, *reputation* constitutes a main driver of firm behaviour as a major intangible business asset. Reputation is considered an important component of successful business relations and thus the sustainability of business operations in general. As a firm's reputation is a deflection of activities and records incurred in the past by the firm as an entity, it also directly relates to the firm's future legitimacy to operate (see for example Reinhardt 1999). Thus, regarding collective regulation, several mechanisms, which are implicitly linked to reputation management, can be identified. They relate to different drivers exerting pressure on a company from the perspective of brand protection.

Particularly those companies, which maintain a brandname/branded company image or mostly sell branded products, which is very often the case in the food & beverages sector, have a strong interest in protecting these brandnames as one of their key assets. This becomes very obvious in the case of Coca-Cola South Africa, which is basically a brand management company and has mostly out-sourced or delegated all other aspects of its operations.⁴² In the mining sector a comparable case is probably the diamond producer DeBeers, who is selling diamonds as a branded mining product. As a family-owned business they are largely independent from shareholder pressures of other listed companies; but still they maintain high CSR standards, motivated by brandname protection. Thus, brandname protection has in many cases initiated firms to pay more attention to aligning internal management processes to CSR principles. At the same time, they also have a heightened motivation to engage in collective regulation, as this allows them to streamline and control the behaviour of other actors, which are conducive to maintaining brand credibility. These mechanisms often apply to managing certain actors in the supply chain, which cannot be reached via direct supply chain mechanisms. Such considerations are slowly gaining in relevance in the food & beverage sector, while detailed knowledge about supply chain contexts is only readily available among the larger companies.

Furthermore, collective regulation might be the strategy of choice in cases where a brandname firm is faced with intense scrutiny through NGO or community-based networks. In such cases, brandname firms might choose to enter into collective arrangements with these stakeholder groups or seek for other forms of collective regulation in order to control potential reputational risks from contestation (see Hamann 2004; v. Alstine 2007). In this context reputation management is directly related to the visibility of the individual company. Examples here are Nestlé and Unilever, which as multinationals active in South Africa are among the first targets of NGOs when critical issues come up. As a consequence they have chosen to engage in proactive relations with stakeholder groups. They also

⁴² Interview with Community Affairs Manager/Coca-Cola South Africa, Johannesburg, South Africa, 26.03.2007.

maintain such a strategy with government by way of maintaining close relations to government officials and following a highly anticipatory approach towards new government proposals and strategies.⁴³

Similar considerations also apply with regards to the role of international financial markets and investors (King/Lenox 2001). Multinational operations are largely dependent on capital flow from those sources and therefore directly influenced by investors' evaluation of their company performance. Especially if listed at stock exchanges outside South Africa, they are subject to extensive reporting requirements on firm performance with regards to social, environmental and also corporate governance aspects⁴⁴ (Bezuidenhout et al. 2007). Shareholder activism is becoming a widespread phenomenon at the world's most important stock exchanges in New York and London. The first motivation of firms for seeking collective regulation in this context then derives from the necessity to control risks in potentially risk-prone places, such as developing and transition countries. This is most probably one of the motivations to seek for collective regulation and to actively engage with government for the major players in the food & beverage sector. As interviewees noted the perception of the firm in international financial context is of utmost importance and thus influences the strategy at the country level, specifically the interaction with the host government.⁴⁵

On the other hand the phenomenon of collective reputation plays a role in the mining industry. According to an interviewee the industry is "only as good as the performance of the weakest performers".⁴⁶ Reputation in the mining industry is not company or brand specific but a collective issue (Szablowski 2007; Prakash 2005). As smaller companies can free-ride on the positive image produced by CSR-activities of senior companies, all companies in the sector suffer reputation damage when any mining company in any country is criticized. This damage in many instances materializes as a decline in credibility in the financial markets.

Current efforts in the beverages sector in shaping state regulation on bottle recycling might follow a different motivation. Faced with recycling standards in other regions of the world where they operate multinational beverage companies have a strong incentive for pushing South African regulations in this field so to avoid high adaptation costs.⁴⁷ While this example refers less to the quality of the product itself, it reflects the interest of multi-nationals to achieve technological uniformity across their operations worldwide. Such motivation can be captured by hypotheses on the *export orientation* of a firm and the *home country regulatory environment*, which in the case of multinational firms are closely related concepts. Both concepts denote a firm's exposure to international (home) regulatory standards, which might be higher than in the host country. In cases where such regulations affect firms' operations in host countries and compliance with these will cause major costs and thus entail competitive disadvantages, firms will seek to raise the standards in the host country accordingly. Firms that produce for markets with higher product standards have an interest to promote the introduction of similar standards in the country where they produce, i.e. South Africa in our case, in order to avoid competitive disadvantage vis-à-vis those local competitors that do not have to comply with these

⁴³ Interview with Senior Technical Advisor for Safety, Health and Environment/Nestlé South Africa, Johannesburg, South Africa, 23.03.2007.

⁴⁴ These requirements are increasingly tightened at the JSE as well.

⁴⁵ Interview with Community Affairs Manager/Coca-Cola South Africa, Johannesburg, South Africa, 26.03.2007.

⁴⁶ Interview with Public Affairs Manager/AngloGold Ashanti, Johannesburg, South Africa, 20.03.2007.

⁴⁷ Interview with Community Affairs Manager/Coca-Cola South Africa, Johannesburg, South Africa, 26.03.2007.

requirements. However, this assumption will only hold true in cases where firms incur significant costs in meeting these international standards and if they actually do compete on the host country market as well. New impulses within the food sector, which are likely to emphasize the export orientation hypothesis over the years to come, are provided by the increasing proliferation of organic food. While South Africa's target markets in Europe are increasingly demanding certified organic food, producers in South Africa will comply on an individual basis until the demand for such products will increase in the domestic market as well. In this case, more compliant producers will promote the introduction of stricter standards as well.

Following a similar line of argumentation, a *high-impact industry*, such as mining, has proved to be particularly active with regard to voluntary co- and self- regulation. This is not only motivated by collective reputational concerns but also by the *looming threat of external regulation* either at the national or with regard to areas of weak and fragile statehood, at the transnational level. Examples for threats of regulation are sector-specific programs in mining issued by transnational organizations, such as the IFC or national governments (e.g. Canada and Australia), or regulation in export markets, such as the upcoming REACH regulation of the European Union. A good example for anticipatory behaviour on the side of companies is the voluntary energy-efficiency accord of the DME with private actors. These are clearly motivated by the possible consideration of South Africa under the Kyoto protocol in the post 2012-phase.⁴⁸ MNCs with experience in emission trading schemes and energy-efficiency policies anticipate similar regulation in South Africa and thus follow an early mover approach in this policy field.

5. Conclusion and Outlook

In going back to our initial question and applying the narrow definition of fostering, one would most probably struggle to find a clear example for business fostering regulation in the environmental policy field. However, corporate environmental policy in South Africa is subject to a process of constant shaping and re-shaping. There is a significant effect of private self-regulation and co-regulation in the form of global voluntary CSR norms on the national and local regulatory environment in South Africa. These standards trickle down to subsidiaries of MNCs through corporate governance mechanisms within global companies. They also influence public policy making in the environmental field. However, the major mechanism of diffusion into public policy is not through an active lobbying and engagement of companies demanding for higher standards.

According to our initial research, one can rather differentiate two dominating drivers in South African industrial environmental policy: governmental legislation and global and local proponents of environmental standards. The government has been the driving force behind South Africa's progressive environmental legislation in the first place. During the political transition the country's environmental legislation has been pushed by an international epistemic community represented through international organizations and NGOs and was along with initiatives in other policy fields used by the ANC government to re-integrate the internationally isolated country in the international community.

⁴⁸ Interview with Representative of the Sustainable Futures Unit/NBI, Johannesburg, South Africa, 19.03.2007.

However, public environmental regulation is constrained in a twofold sense. First, the market-friendly growth strategy initiated by the current administration to bring about development and the resulting dependence on FDI are in conflict with urgent demands for redistribution, social improvement and environmental concerns. This discrepancy has for example become evident during the local government elections in 2006 when civil unrest and protests highlighted the lack of public service delivery vis-à-vis business-friendly macro-economic policies. It is also reflected in the relative importance given to the different government departments, with the DWAF and the DEAT usually enjoying less clout than the DMI and the Department of Trade and Industry. It is even more visible in limited capacity of South African governmental actors to implement legislation due to a lack of resources and skills, which is more severe with regards to environmental issues than in many other portfolios.

A parallel driving force are norm setting processes with regard to environmental policies in the context of CSR-norms at the transnational level which are transmitted to the national and local level by transnational companies. The two levels of regulation, i.e. public regulation with private involvement and private or public-private co-regulation initiated at the transnational level seem often to be disconnected. For the most part, state regulation and government-driven public-private co-regulation seem to exist independently from propagated CSR activities of companies resulting in transnational or local multi-stakeholder partnerships and the extension of company self-regulation along the production chain or vis-à-vis peers. In the South African context they are rather independent, co-existing regulatory environments and debates which come together only randomly and thus do not necessarily influence each other. Both, state regulation and international voluntary standards can be driving forces to raise the bar of environmental standards. This, however, requires for companies' CSR initiatives to be more than just window-dressing to enhance the brand reputation in the short term. Only true commitment to environmental issues can then translate into effective regulatory initiative at both levels.

A very decisive driver in the environmental policy field, which has not been at the focus of this study, is clearly the active community of non-governmental organisations in South Africa. Together with community-based organisations, NGOs are continuously making a considerable contribution to the shaping and implementation of environmental policies, at the national, but more significantly at the local level. Faced with a lack of capacity on the side of government to enforce legislation effectively, civil society plays an important role in monitoring the adherence of companies to environmental regulation, thus putting pressure on government and business actors alike. In fully understanding the mechanisms shaping environmental policy in South Africa, these actors would have to be given more attention than was possible in the context of this paper.

The observation on the role of civil society closely links to a number of specific conditions identified in this paper, under which "CSR-companies" have an interest to engage in collective environmental regulation, which might then also lead to a fostering of regulatory capacity, applying the broader definition of the concept. Reputation concerns with regard to international financial markets and NGOs, firms' export markets as well as the home country regulatory environment, looming external regulation and costs incurred due to the absence of a collective regulation motivate companies to

engage in a fostering of collective regulation. The sector structure and the strength of business associations, but also historic patterns of state-business and business–civil society relations, as expressed e.g. in the level of trust between these actors, and the capacity of public actors determine, in which scheme of collective regulation companies engage.

With regards to CSR, i.e. ethical, sustainable and responsible behaviour of companies, well-known dilemmata re-appear in different dimensions, contexts and intensities, such as balancing economic growth and sustainable development, local traditions versus global standards, deciding on how far corporate responsibilities extend in providing public services and at what point this type of involvement represents an unhealthy intrusion into political processes. In addition, avoiding dependencies and entitlement in the case of community involvement as well as the issue of imposing Western values to societies with their own value sets are among the main questions. Thus, while the concept of CSR has not yet fully been understood and implemented in the developed world, a sensitive adaptation to the African context is absolutely necessary. A differentiated approach, taking into consideration the specific conditions of each country or region is mandatory for corporate responsibility (whatever the label might be attached to it) to actually make the desired contribution: giving a ‘human face’⁴⁹ to globalization and providing impulses for sustainable growth. The “business case for CSR” and hence the motivation of global business to engage in collective regulation itself determines and, in a way, delimits whether, under which conditions and in which way companies contribute to a fostering of local environmental standards which exceed the application of such standards within that single company.

When looking to the further direction of the project as a whole, in addition to the findings regarding the role of private actors in shaping environmental policies in South Africa, two factors have emerged, which require further attention in research, as they appear to be of particular relevance in the specific context of transition countries specifically and to areas of limited statehood more generally. First, the role and the level of trust among different stakeholders during different stages of the process should be considered. In South Africa, there is an enormous legacy of the apartheid system, which becomes evident not only in material inequalities but also in the mindset and habits of people. Following a negotiated transition to democracy the South African government propagated a co-operative government approach seeking legitimacy and capacity through an integration of major societal groups. In the process of establishing a sovereign, ANC-lead government in a new democratic South Africa, such co-operation and partnership has been faced with obstacles due to deeply rooted mistrust between groups in general and against (white) business in particular. This factor is of relevance once an explanatory model will have been developed which will be applied to other countries.

The second factor is the capacity of governments. Whether companies engage in the fostering of state regulatory capacity depends on the very capacity or strength of the state (Börzel 2007). The weaker the state the more we can expect companies to turn to other governance arrangements to provide for their needs of collective regulation⁵⁰. We therefore assume that depending on the capacity of the state to engage with business actors, companies will choose to either consider government as a valid counterpart over other solutions or not. Determining how much capacity is necessary on the side of

⁴⁹ Quote UN Secretary General Kofi Annan at the World Economic Forum (1998).

the state to successfully engage with business will be, among others, subject to further research efforts.⁵¹

⁵⁰ Jana Hönke's dissertation analyses patterns of corporate involvement in networks of local security governance against the background of a different nature and strength of local state and non-state authorities.

⁵¹ In her dissertation, Nicole Kranz is addressing the interaction of varying levels of state capacity and company response in the area of sustainable development.

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