NOTE

THE STATE, CORPORATE SOCIAL RESPONSIBILITY, AND GOVERNANCE: APPLICATION OF THE CHINESE EXPERIENCE TO LIBERIA

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Everybody pot boiling, my pot can't boil
The only time my pot can boil when a car kill the dog. . . .
Too much big big talk and result to negligence;
They neglected to build the country,
No development, so so embezzlement. . . .
Even the leadership did some D.I.R.T.
But only Charles Taylor in the Hague, I.C.C.[1]

I. INTRODUCTION

The hit Liberian song of 2012[2] was about being unable to afford meat that is not road kill. The West African nation is one of the poorest countries in the world: gross domestic product (GDP) per capita in 2012 was $661—184th out of 187 nations surveyed by the International Monetary Fund (IMF).[3] And yet the discovery of potentially significant offshore oil reserves in early 2012[4] was met with trepidation; an opinion column titled "Liberia's Oil Boom . . . . . Blessing or Curse?" in the Liberian newspaper *Heritage* described the situation as "someday good

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1. The Pot Boiling Remix ft. Romeo Lee, JD Donzo, Luckay Buckay, Takun J, Bentman tha Don (Dec. 21, 2012), https://soundcloud.com/xpolay/pot-boiling-remix; Rebekah Schulz, *My Pot Can't Boil*, LIFE MAGNANIMOUS (Jan. 25, 2013), http://lifemagnanimous.com/2013/01/25/my-pot-cant-boil.

2. *See* Nora Rahimian, *Liberian Street Hit Stirs the Political Pot*, GUARDIAN (Jan. 9, 2013), http://www.theguardian.com/music/2013/jan/09/liberia-music-pot-boiling.

3. *World Economic Outlook Database October 2013*, INT'L MONETARY FUND, http://www.imf.org/external/pubs/ft/weo/2013/02/weodata/index.aspx (last visited Mar. 22, 2014).

4. Alphonso Toweh & Simon Akam, *New Discoveries Raise West Africa Oil Hopes*, REUTERS (Feb. 21, 2012), http://www.reuters.com/article/2012/02/21/ozabs-africanpetroleum-liberia-idAFJOE81K05920120221.

and someday bad."[5]

The cause for this ambivalence toward a potential source of much-needed wealth is fear that with the influx of oil money "a downward spiral of mismanagement could set in, entrenching patterns of corruption and cronyism and undermining the country's economy and governance," particularly in light of the weakness of government institutions and the divisions that linger from a fourteen-year civil war that ended in 2003.[6] Examples of oil-driven mismanagement are not hard to come by: twelve hundred miles east of Liberia, Nigeria is struggling with rampant corruption and persistent antigovernment violence throughout the oil-rich Niger Delta region, violence in no small part funded by oil money.[7] Many countries around the world with weak regulatory institutions and persistent, widespread poverty[8] attract more and more investment from wealthy multinational corporations (MNCs). The World Bank estimates that by 2030, investment flow into these developing countries will triple the level that existed in 2000.[9]

Regulation of these investments by foreign corporations in developing countries is difficult due to the regulatory "enforcement gap" created by the failure of the host countries to protect local communities,[10] as well as the reticence of MNCs' home countries to exercise extraterrito-

5. Kerkula G. Mulbah, *Liberia's Oil Boom . . . . . Blessing or Curse?*, HERITAGE (Monrovia) (Feb. 28, 2012), http://www.news.heritageliberia.net/index.php/columns-opinions-letters/where-we-live/1412-liberia-s-oil-boom-blessing-or-curse.

6. GLOBAL WITNESS, CURSE OR CURE? HOW OIL CAN BOOST OR BREAK LIBERIA'S POST-WAR RECOVERY 5 (2011), *available at* https://www.globalwitness.org/sites/default/files/library/curse%20or%20cure%20to%20print%20vlr_0.pdf.

7. *See, e.g.*, Tom O'Neil, *Curse of the Black Gold: Hope and Betrayal in the Niger Delta*, NAT'L GEOGRAPHIC MAG. (Feb. 2007), http://ngm.nationalgeographic.com/2007/02/nigerian-oil/oneill-text ("Nigeria has been subverted by the very thing that gave it promise—oil . . . .").

8. The question of how to refer to these countries occasionally proves difficult. The phrase "Third World" used to be common but was grounded in a now-outdated division of the globe into a "First World" of countries aligned with the United States in the Cold War; a "Second World" consisting of the Soviet Union, the People's Republic of China, and their allies; and a "Third World" of neutral or nonaligned countries. The phrase "developing countries" is currently common but suffers from the implicit assumption that the "developed countries" sit atop some sort of hierarchy of nations and are the standard by which others are judged. The alternative of using a "North-South" divide escapes that problem but is also obviously inaccurate: New Zealand is a "Northern" country, while China is "Southern." For a longer discussion, see RUMU SARKAR, DEVELOPMENT LAW AND INTERNATIONAL FINANCE 1–3 (1999). This Note will follow Sarkar in using the terms "developed" and "developing," problematic as they are, to reflect the varying issues that countries confront as economic wealth increases.

9. EMERGING GLOBAL TRENDS TEAM, WORLD BANK, GLOBAL DEVELOPMENT HORIZONS 3 (2013), *available at* http://siteresources.worldbank.org/EXTDECPROSPECTS/Resources/476882-1368197310537/CapitalForTheFuture.pdf.

10. This may result from a lack of resources for law enforcement, an unwillingness to forgo potential investment by insisting on enforcement, or a combination of the two. *See* Natalie L. Bridgeman & David B. Hunter, *Narrowing the Accountability Gap: Toward A New Foreign Investor Accountability Mechanism*, 20 GEO. INT'L ENVTL. L. REV. 187, 196 (2008).

rial jurisdiction over their actions.[11] In response to this gap, a corporate social responsibility (CSR) movement has emerged, which seeks to define corporations not simply as legal fictions meant to maximize shareholder profits but rather as "moral organism[s] with social and ethical responsibilities."[12] The CSR movements and programs in developing countries can take many forms, such as voluntary disclosure requirements,[13] solicitation of local views of projects,[14] and corporate support for basic services like water and healthcare.[15] The growth of CSR as a solution to this enforcement gap is part of a larger movement by regulatory scholars away from state-focused regulatory models and toward a model referred to as "new governance."[16] New governance focuses on the use of decentralized, collaborative "soft law"[17] processes driven by nonstate stakeholders to create regulatory compliance.[18] Proponents of this approach argue that the increasing complexity of modern society leads to problems that are difficult to solve via top-down regulation and that decentralized collaborations between stakeholders lead to better results.[19]

But the movement from government to governance creates serious challenges in ensuring that private actors who take on regulatory roles uphold the public trust.[20] How can developing countries encourage the

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11. *Id.* at 199–200. For an example of a high-profile case where a developed country refused to extend its laws to cover the actions of a multinational corporation (MNC) in a developing country, see the recent U.S. Supreme Court decision in *Kiobel v. Royal Dutch Petrol. Co.*, 133 S. Ct. 1659 (2013) (refusing to apply U.S. law to actions by Royal Dutch Petroleum in Nigeria).

12. William Bradford, *Beyond Good and Evil: The Commensurability of Corporate Profits and Human Rights*, 26 NOTRE DAME J.L. ETHICS & PUB. POL'Y 141, 148 (2012).

13. One notable example is the Liberian Extractive Industries Transparency Initiative (LEITI). *See infra* Part II.C.

14. *See* Ralph Hamann et al., *Local Governance as a Complex System*, 18 J. CORP. CITIZENSHIP 61, 69–70 (2005) (describing an example of community engagement and social service provision by a mining MNC in Mali).

15. *Id.*

16. The term "new governance" comes from a foundational work: R. A. W. Rhodes, *The New Governance: Governing Without Government*, 44 POL. STUD. 652 (1996). Despite the name, new-governance scholars note that collaborative non-state-driven regulation is not a novel idea, and even in developed countries, it was common until quite recently. *See, e.g.*, John Braithwaite, *Responsive Regulation and Developing Economies*, 34 WORLD DEV. 884, 889 (2006) (claiming that until the late twentieth century, accounting in the London financial markets relied on a "gentlemen's club model of regulation").

17. "Soft law" is defined in contrast to the "hard law" of binding uniform mandates. It uses "flexible norms and procedures," including voluntary public-private schemes, and generally lacks the detailed punitive schemes integral to hard law. Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT'L L. 501, 530 (2009).

18. *Id.* at 521.

19. David M. Trubek & Louise G. Trubek, *New Governance & Legal Regulation: Complementarity, Rivalry, and Transformation*, 13 COLUM. J. EUR. L. 539, 542 (2007).

20. ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 9 (2004).

use of CSR to mitigate the harmful effects of MNC activities within their borders while avoiding the pitfalls of privatized governance? It may seem quixotic to suggest that in a country like Liberia—where police demand payments from victims for transportation to crime scenes because they otherwise would not have money to pay for fuel[21]—the government should devote scarce resources toward involvement in CSR programs. However, governments of developing countries must be involved in CSR activities because such activities involve the allocation of resources for public benefit[22] and are therefore political in the sense that they concern "who gets what, when, and how."[23]

This Note will argue that the political nature of CSR implicates two problems in the context of government delegation of governance authority to foreign MNCs' CSR programs: it not only violates sovereignty but also makes those programs less effective because they are not based on the needs or priorities of local communities. Developing countries ought to create indigenous CSR policies to address both the sovereignty and effectiveness concerns, looking to China's experience with CSR as a model. A model application of this approach to a potential Liberian oil industry will be sketched out. Liberia is a particularly apt country to pursue these policies, given its history with resource extraction, existing limited engagement with CSR,[24] and its potential to serve as a "model" developing country.[25]

Part II will address the theoretical and historical background of the CSR movement and the application of CSR in developing countries. It will also address the specifics of the Chinese CSR policy and the current situation in Liberia, including the use of CSR programs in the Liberian logging industry. Part III will argue that CSR is inherently political and that governments in developing countries need to play an active role in CSR programs within their borders, discuss the ways the Chinese policy can serve as a positive and negative example, and describe the application of an adapted Chinese model to Liberia. Part IV will conclude by discussing the potential value of well-managed CSR programs to developing countries.

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21. HUMAN RIGHTS WATCH, NO MONEY, NO JUSTICE: POLICE CORRUPTION AND ABUSE IN LIBERIA 49 (2013), *available at* http://www.hrw.org/node/117959.

22. David Levy & Rami Kaplan, *Corporate Social Responsibility and Theories of Global Governance*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 432, 441 (Crane et al. eds., 2008).

23. *See* HAROLD LASSWELL, POLITICS: WHO GETS WHAT, WHEN, AND HOW (1936).

24. *See infra* Part II.C.

25. Benjamin J. Spatz, *Liberia—A Model for US Development Aid*, CHRISTIAN SCI. MONITOR (Nov. 9, 2011), http://www.csmonitor.com/Commentary/Opinion/2011/1109/Liberia-a-model-for-US-development-aid; *see also infra* notes 162–63 and accompanying text.

II. BACKGROUND

Section A of this Part presents a broad-strokes outline of the history and theory behind CSR and a discussion of some issues related to its application by resource-extraction MNCs operating in Africa. Section B describes China's CSR policy and the motivations of the Chinese government in developing that policy. Finally, Section C discusses the current use of CSR in Liberia and the role that resource extraction has played in Liberia's past conflicts.

A. *CSR Theory and Practice*

The idea that businesses have social responsibilities in addition to their economic responsibilities is not new.[26] The phrase "corporate social responsibility" was coined by the economist Howard Bowen in 1953,[27] and many firms began advocating for the use of CSR policies in the 1990s, after a series of high-profile crises such as the Exxon Valdez oil spill, Royal Dutch Shell's apparent complicity with executions in Nigeria, and Nike's involvement with sweatshops in Southeast Asia.[28] The rise of MNC activity in developing countries over the last half-century has led to a proliferation of CSR institutions[29] codifying modern expectations of business ethics and practice.[30] These institutions have two notable characteristics: they are driven by collaboration between MNCs and nongovernmental organizations (NGOs), sometimes with only modest or indirect support from states, and they are voluntary, even when promulgated with the backing of international organizations, like the United Nations, that have the capacity to create binding international law.[31]

1. The Motivation for CSR

The CSR codes were developed by NGOs, international organizations, and MNCs themselves to counteract the concerns about MNC activity in developing countries, particularly in terms of its impact on lo-

26. *See, e.g.*, Wayne Visser, *Corporate Social Responsibility in Developing Countries*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY, *supra* note 22, at 473, 480–81 (noting that corporate social responsibility (CSR) draws on traditions of "philanthropy, business ethics, and community embeddedness" found in many cultures).

27. *See* HOWARD ROTHMANN BOWEN, SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN 8 (1953).

28. Kevin T. Jackson, *Global Corporate Governance: Soft Law and Reputational Accountability*, 35 BROOK. J. INT'L L. 41, 49–51 (2010).

29. This refers to both codes of conduct for MNCs and the various organizations that encourage or oversee the use of CSR policies by MNCs.

30. Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT'L L. 389, 400–02 (2005).

31. *Id.*

cal societies and the environment.[32] Two basic conceptual models have been used to describe CSR: a "triple bottom line," adding environmental and social concerns alongside the traditional economic concerns,[33] and a "social license," the idea that corporations, in addition to purely legal documents of incorporation, also require the consent of the communities in which they operate.[34] Although the adoption of CSR policies is discretionary for companies, certain aspects are effectively mandatory for projects with large capital needs because international banks require their adoption to provide financing.[35]

Because CSR policies are largely voluntary, MNCs and banks that have adopted them believe that they increase profits.[36] The CSR policies could do so in three general ways. First, CSR may increase profits through cost savings by using resources more efficiently and imposing lower capital costs from lenders concerned about possible adverse results of MNC activities.[37] The MNCs engaged in resource extraction depend on especially large amounts of capital raised from broad project finance syndicates, many members of which adhere to one or more CSR initiatives meant to reduce the political risk to their investments.[38] The three largest initiatives used in this way are the Performance Standards on Social and Environmental Sustainability, developed by the International Finance Corporation (IFC); the World Bank's Environmental, Health, and Safety Guidelines; and the Equator Principles, developed by a group of ten global financial institutions in consultation with the IFC.[39]

Second, CSR may be a method of creating stakeholder engagement, used to generate buy-in from regulators, shareholders, consumers, and employees, thus increasing profits by promoting a friendlier environment for the MNC.[40] Certain NGOs offer standards that MNCs can use as benchmarks to evaluate and report their compliance to create a positive corporate reputation, such as Social Accountability International's SA8000 certification (focusing on labor rights) or Accountability Standards' AA1000 (focusing on accurate reporting of CSR initia-

32. *Id.*

33. John D. Feerick, *A New Model of Corporate Social Responsibility in the 21st Century*, 25 FORDHAM ENVTL. L. REV. 1, 2 (2013).

34. Bradford, *supra* note 12, at 187.

35. Kevin O'Callaghan, *Corporate Social Responsibility: A Framework for Understanding the Legal Structure*, 57 ROCKY MTN. MIN. L. INST. 17A-1, 17A-40 (2011).

36. Murphy, *supra* note 30, at 402.

37. *Id.*

38. O'Callaghan, *supra* note 35, at 17A-17.

39. *Id.* at 17A-18 to 17A-20.

40. Murphy, *supra* note 30, at 402.

tives).[41]

Third, CSR may be used for "window-dressing." The MNCs use CSR activities to generate good publicity without particular regard for the effectiveness of the programs.[42] One former executive of a large oil company taking part in a U.N. sponsored CSR workshop noted that if the business case for CSR were compelling, the United Nations would not need to sponsor CSR workshops at all.[43]

Although CSR is generally created and managed by nongovernmental actors, legislatures and regulators play a role by providing an "enabling environment" via encouragement and support from government institutions.[44] The World Bank has identified four broad methods of government engagement with CSR policies.[45] The first is the effective *mandate* of CSR through traditional regulation of corporate activity, which directly sets legal standards (emissions controls, labor laws, and so forth) and imposes penalties on noncompliant actors.[46] The second is the *facilitation* of the use of CSR by incentivizing or enabling corporations to engage in CSR activity.[47] This can include mandating disclosure of certain information (e.g., annual social or environmental impact statements),[48] encouraging stock exchanges to establish voluntary CSR indices, and funding CSR training and research.[49] The third is *partnership*, wherein the government creates or participates in organizations designed to act as forums to promote increased dialogue, information sharing, and mutual understanding.[50] Fourth, government *endorsement* of CSR through public support of CSR initiatives such as though direct recognition in award schemes, endorsement in policy statements, and inclusion in public contracting standards.[51]

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41. O'Callaghan, *supra* note 35, at 17A-22.

42. *See, e.g.*, CORPORATE WATCH, CORPORATE WATCH CSR REPORT 1 (2006), ("CSR was, is and always will be about avoiding regulation, covering up the damage corporations cause to society and the environment and maintaining public co-operation with the corporate dominated system."); *see also* Jedrzej George Frynas, *The False Development Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies*, 81 INT'L AFF. 581, 585 (2005) (noting that in some extreme cases, MNCs have "publicized projects which did not exist on the ground").

43. Levy & Kaplan, *supra* note 22, at 436.

44. TOM FOX ET AL., WORLD BANK, PUBLIC SECTOR ROLES IN STRENGTHENING CORPORATE SOCIAL RESPONSIBILITY iii (2002).

45. *Id.* at 3.

46. *Id.*

47. *Id.* at 3–5.

48. Mandatory disclosure is facilitating, rather than mandating, CSR because companies are not required to engage in CSR activity, only to publicly disclose whether they have. *Id.* at 5.

49. *Id.*

50. *Id.*

51. *Id.* at 6.

2. The Practice of CSR in Developing Countries

The idea of CSR, as an object of study, has generally been looked at from the perspective of developed countries—little empirical research has been published on CSR in developing countries, either in terms of what MNCs are doing for CSR or in terms of the results of those actions.[52] With regard to CSR in African countries, the literature that does exist focuses heavily on South Africa and its efforts to reverse the economic effects of apartheid.[53] Two notable exceptions to this trend focus on CSR efforts by resource extraction companies in Africa, and both found that the CSR activities tended to be ineffective due to a lack of engagement with local governments and inattention to local priorities.[54]

In particular, the MNCs found that local governments were needed to manage and give structure to their community engagement programs to avoid "vicious cycles" of deepening conflict between the MNCs and the local communities.[55] For instance, in the Rustenburg mining region in South Africa, the informal settlements attracted by the mines grew faster than the local governments' ability to manage their development.[56] The local governments were constrained by a lack of both resources and legitimacy and viewed the mines as primarily responsible for the settlements.[57] The investments of the mining companies into community development initiatives were generally ineffective because the initiatives did not try to address the governance failures, which were the root cause of the local problems.[58] They instead competed amongst themselves to be seen as the most generous, which stifled collaboration on projects.[59] The MNCs ultimately found that "a more proactive role in moving local governance towards accountability and efficiency" was needed to effectively accomplish the goals of their CSR programs.[60]

Despite the challenges that MNCs face in trying to provide services to local communities, officials from both the World Bank and the U.S. Agency for International Development have said that they view CSR as

52. Visser, *supra* note 26, at 476.

53. *Id.* at 478–79. One review of the literature from 1995 to 2005 found that roughly fifty-seven percent of all articles about Africa published in "core CSR journals" related to South Africa. *Id.*

54. *See* Hamann et al., *supra* note 14 (detailing three case studies of provision of social services by mining companies in Mali, Zambia, and South Africa); Frynas, *supra* note 42 (describing CSR efforts by oil companies in the Gulf of Guinea region).

55. Hamann et al., *supra* note 14, at 71–72.

56. *Id.* at 67.

57. *Id.* at 68.

58. *Id.*

59. *Id.* Services that MNCs provide, or that are expected by local communities for MNCs to provide, range from water supply to electrification and public transportation. *Id.* at 70.

60. *Id.* at 70.

a "potentially long-term solution for delivering development."[61] A study of the views of oil company employees working in West Africa suggested, to the contrary, that the motives of MNCs in delivering aid through CSR programs severely constrain the ability of those programs to provide a positive impact on development.[62] In particular, the MNCs engaged in CSR for four primary reasons: to gain a competitive advantage over less-engaged companies; to maintain a stable working environment by essentially buying local community acquiescence to the MNC's business operations; to manage external perceptions by avoiding or counteracting bad publicity about the MNC; and to keep employees happy by showing them that their work in developing countries has a positive social impact.[63] These motivations lead MNCs to prefer the use of "philanthropic gestures" without trying to consult with either local communities or development specialists.[64]

B. *Overview of the Chinese Approach to CSR*

The People's Republic of China might, at first glance, seem like a poor environment for CSR, given its negative public image regarding working conditions.[65] Nevertheless, beginning in the last decade, the Chinese government has encouraged the use of CSR by companies operating in China precisely to combat this perception.[66] In 2006, the Central Committee of the Communist Party adopted President Hu Jintao's policy of creating a "harmonious society" and ordered both the central and the subnational governments in China to "strengthen CSR."[67] The central government incorporated this mandate into its 2006 revision of the Company Law, which governs business organizations in China, and now directs that corporations "undertake social responsibility."[68] The focus on a "social agenda" addressing environmental degradation and consumer and worker protection survived the 2012–2013 leadership transition from Hu to Xi Jinping and is now a component of the central government's Five-Year Plan for 2011–2015.[69]

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61. Frynas, *supra* note 42, at 582.

62. *Id.* at 583.

63. *Id.* at 583–86.

64. *Id.* at 586. These can be empty gestures in a literal sense, such as "health clinics which lacked light, running water, basic equipment or staff." *Id.* at 587.

65. Li-Wen Lin, *Corporate Social Responsibility in China: Window Dressing or Structural Change?*, 28 BERKELEY J. INT'L L. 64, 65 (2010).

66. Virginia Harper Ho, *Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China*, 46 VAND. J. TRANSNAT'L L. 375, 399 (2013).

67. *Id.*

68. Lin, *supra* note 65, at 65.

69. Ho, *supra* note 66, at 400–01. The Five-Year Plans are directions from the central government describing social and economic initiatives over the upcoming five-year period. The first

One of the most important proponents of CSR in the Chinese central government is the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC), which oversees the state-owned enterprises (SOEs).[70] In 2008, SASAC issued a Guide Opinion, proposing that SOEs in China implement five measures to further CSR, as follows:

> First, in order to promote awareness and cultivate a culture of CSR, the SOEs are encouraged to educate their employees on CSR topics and include CSR discussion in their important meetings. Second, the SOEs are encouraged to include CSR in corporate governance, development strategy, and production processes. The SOEs may also establish CSR management, auditing and evaluation systems. Third, the SOEs may issue periodic CSR reports or sustainability reports, disclosing information concerning CSR performance, measures and plans. Fourth, the SOEs may research and learn successful CSR experiences of domestic and foreign companies. Fifth, the organs of the Chinese Communist Party structured within the SOEs should promote CSR through their political resources.[71]

Like the Company Law, SASAC's Guide Opinion endorses CSR, however neither provides direct incentives for compliance, legal penalties for noncompliance, nor assistance via the creation or shaping of forums for engaging with stakeholders.

Although the central government has so far only endorsed CSR,[72] China's subnational governments are pursuing explicit policy initiatives to promote CSR by not only endorsing it but also facilitating it or partnering with companies in their jurisdictions.[73] Most programs focus on environmental concerns, while others emphasize labor or consumer protections.[74] They not only reinforce compliance with regulations but also

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began in 1953. *See* STEPHEN S. ROACH, CHINA'S 12TH FIVE-YEAR PLAN (2011), *available at* http://www.law.yale.edu/documents/pdf/cbl/China_12th_Five_Year_Plan.pdf (arguing that the 2011–2015 Plan represents a significant shift from an economy focused on exports to an economy focused on local consumption).

70. State-Owned Enterprises (SOEs) comprise about thirty-five percent of all business activity in China and about forty-three percent of all profits. Keith Bradsher, *China's Grip on Economy Will Test New Leaders*, N.Y. TIMES (Nov. 9, 2012), http://www.nytimes.com/2012/11/10/world/asia/state-enterprises-pose-test-for-chinas-new-leaders.html.

71. Lin, *supra* note 65, at 73 (citing STATE-OWNED ASSETS SUPERVISION AND ADMINISTRATION COMMISSION, GUANYU ZHONGYANG QIYE LUXING SHEHUI ZEREN DE ZHIDAO YIJIAN [THE GUIDE OPINION ON THE SOCIAL RESPONSIBILITY IMPLEMENTATION BY THE CENTRAL-GOVERNMENT-CONTROLLED STATE-OWNED ENTERPRISES] (2008)).

72. The importance of this endorsement should not be understated. In particular, the central government supported the development of the China Social Compliance for Textile and Apparel Industry (CSC9000T) labor standard, meant as a Chinese alternative to the SA8000 standard popular in developed countries. Paul Harpur, *New Governance and the Role of Public and Private Monitoring of Labor Conditions: Sweatshops and China Social Compliance for Textile and Apparel Industry/CSC9000T*, 38 RUTGERS L. REC. 1, 59, 62–63 (2010).

73. Ho, *supra* note 66, at 409–17.

74. *Id.* at 418.

basic business practices: "providing good customer service, improving product quality, and implementing contract management systems."[75]

The Chinese CSR is also responsive to the unique characteristics of China.[76] Human rights standards, for instance, are often expressly excised from China-specific CSR standards and programs, unlike similar programs in developed countries.[77] The Chinese CSR policy was driven by a desire to avoid control of the prevailing labor and environmental standards in China by foreign governments and MNCs.[78] Chinese authors argue that concerns about labor conditions in China are largely pretext, and the use of supplier standards by foreign MNCs is designed to erode China's comparative advantage in labor costs and protect jobs in developed countries.[79]

The absence of human rights standards may be related to larger differences in how business owners and managers in developed countries and their counterparts in China perceive CSR. A survey of 1,268 CEOs and business owners in China, conducted by the World Bank and the China Center for Economic Research at Peking University,[80] found that although there is broad overlap between the groups in their views of the goals and purpose of CSR,[81] there are significant differences. Chinese managers, unlike managers from developed countries, do not view shareholder interests or equality[82] as goals of CSR but think that increasing employment, showing good faith, and furthering social stability and progress are.[83]

The heavy reliance on the state as a driver and shaper of CSR activity distinguishes the Chinese approach from the policies of the United States and the European Union, which rely heavily on local civil society to provide some or even all impetus toward the adoption of CSR by corporations. The U.S. CSR model is "market-driven": government support is often indirect, and the primary drivers are investors and con-

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75. *Id.*

76. Lin, *supra* note 65, at 84.

77. *Id.*

78. Ho, *supra* note 66, at 398–99.

79. Harpur, *supra* note 72, at 59.

80. Shangkun Xu & Rudai Yang, *Indigenous Characteristics of Chinese Corporate Social Responsibility Conceptual Paradigm*, 93 J. BUS. ETHICS 321 (2010).

81. In particular, "Western CSR" and "Chinese CSR" share six dimensions: economic responsibility, legal responsibility, environmental protection, customer orientation, people focus, and charity. *Id.* at 328–30.

82. Referring to equality of access and opportunity for all genders, races, and underprivileged groups. *Id.* at 330.

83. *Id.* 330–31. These results do not necessarily mean that Chinese managers do not value shareholder interests or that managers from developed countries do not value increasing employment—merely that those values are not seen as integral to CSR programs in those respective business cultures.

sumers.[84] The European Union uses a "relational model" where governments facilitate and organize the use of CSR by corporations and where corporations and civil society groups share that responsibility with the government.[85] The Chinese CSR policy is "state-centric": the government not only plays a regulatory role but also acts as the most important stakeholder in Chinese companies.[86] Indeed, Chinese companies commonly place their CSR programs within their government relations departments.[87] Under the Chinese CSR model, NGOs play a much smaller role than they do in the U.S. or the E.U. systems.[88] With the exception of foreign companies and some international organizations, almost all organizations involved in CSR in China are either directly controlled by the state or linked to the Communist Party.[89] This is a natural outgrowth of the Chinese government's monopoly on political power and is meant to encourage the expression of environmental and social concerns within entities controlled by the Communist Party.[90]

C. *Liberia's Extractive Industry and CSR*

Liberia has many valuable resources, including rich deposits of iron ore, gold, and diamonds, along with vast supplies of valuable tropical hardwoods and rubber.[91] These resources were used as the means of funding the Liberian Civil Wars, which spanned from 1989 to 2003.[92] They were also a cause of the conflict: the warlords involved were at least partially motivated by a desire to seize control of profits from the resources from "a long line of oligarchic, dysfunctional, and oppressive governments" controlled by the minority Americo-Liberians.[93] To account for this, the United Nations imposed global sanctions on the Liberian timber industry in 2003.[94] These sanctions effectively halted large-scale extraction until they were lifted in 2006, following the end of the war and successful elections in 2005.[95]

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84. Ho, *supra* note 66, at 388–89.

85. *Id.* at 392–93.

86. *Id.* at 423.

87. *Id.*

88. Lin, *supra* note 65, at 95.

89. Ho, *supra* note 66, at 426.

90. Lin, *supra* note 65, at 95.

91. Luke A. Whittemore, *Intervention and Post-Conflict Natural Resource Governance: Lessons from Liberia*, 17 MINN. J. INT'L L. 387, 406–10 (2008).

92. *Id.* at 401, 410–16.

93. Michael D. Beevers, *Forest Resources and Peacebuilding: Preliminary Lessons from Liberia and Sierra Leone*, *in* HIGH-VALUE NATURAL RESOURCES AND PEACEBUILDING 367, 374 (Paivi Lujala & Siri Aas Rustad eds., 2011). Americo-Liberians are the descendants of freed slaves from the United States who settled in Liberia in the early nineteenth century.

94. S.C. Res. 1478, ¶ 17, U.N. Doc. S/RES/1478 (May 6, 2003).

95. S.C. Res. 1689, ¶ 1, U.N. Doc. S/RES/1689 (June 20, 2006).

After the 2005 elections, the new Liberian government joined the Extractive Industries Transparency Initiative, a CSR initiative supervised by governments, companies, and NGOs designed to set a global standard for transparent management of revenues from resource extraction.[96] In participating countries, annual reports detail all payments that companies claim to have made to the government in the form of taxes and royalties, as well as all the payments that the government claims to have received.[97] The goal is to escape an environment of mistrust and suspicion common in resource-rich countries, where citizens believe that companies and the government are trying to keep the wealth for themselves and the companies feel that the government and citizens often change the rules and renegotiate contracts.[98] The Liberia Extractive Industries Transparency Initiative (LEITI) was established in 2007 and in 2009, participation was made mandatory for companies operating in Liberia.[99] Its initial report in 2009 "generated contagious interest" among Liberians, who previously did not have public access to this type of information.[100] Consequently, LEITI has succeeded in bringing a degree of transparency to government revenues from resource extraction and has already helped uncover a major instance of fraud in which a company employee was pocketing the company's tax payments.[101]

Despite that success, LEITI remains limited: it provides transparency but does not have any sort of mechanism to follow through on companies failing to make payments required under their contracts with the government.[102] The Liberian government originally planned to take in about $107 million from logging concessions from 2008 to 2010, but by 2011, it had received only $24 million.[103] Companies have also tried to

96. Eddie Rich & T. Negbalee Warner, *Addressing the Roots of Liberia's Conflict Through the Extractive Industries Transparency Initiative*, 42 ENVTL. L. REP. NEWS & ANALYSIS 10529, 10530 (2012).

97. *What Is the EITI?*, EXTRACTIVE INDUS. TRANSP. INITIATIVE (EITI), http://eiti.org/eiti (last visited Mar. 22, 2014).

98. Rich & Warner, *supra* note 96, at 10529.

99. *Id.* at 10530–31. In terms of the categories of CSR engagement discussed in Part II.A, *supra*, Liberia moved from partnering to facilitating. Although compliance with LEITI is mandatory, it differs from traditional regulatory schemes in that companies comply with the law by simply publishing the information—LEITI itself does not impose penalties for companies that have made improper payments or failed to make required payments. As a form of soft law, it is designed to increase transparency of the government's collection of resource rents, not to directly ensure that those payments are made in compliance with the applicable hard law.

100. *Id.* at 10530. There was also an outreach campaign by LEITI to publicize the report, which included posters, radio programs, and street theater. *Id.*

101. *Id.* at 10531.

102. *See* GLOBAL WITNESS, *supra* note 6, at 48 (noting that increased transparency provided by LEITI has not been enough to prevent companies from bribing legislators to approve contracts).

103. GLOBAL WITNESS, SIGNING THEIR LIVES AWAY: LIBERIA'S PRIVATE USE PERMITS

avoid working with the Liberian government by signing contracts with private landowners to log on their property.[104] Those landowners are issued Private Use Permits (PUPs), which are meant to allow small-scale noncommercial logging, such as clearing land by farmers.[105] Nonetheless, the growth of commercial activity on this type of land led to a national government moratorium on logging in forests covered by PUPs in 2012.[106]

Another major CSR initiative in Liberia is the Corporate Responsibility Forum (CR Forum), which brings together over forty MNCs, Liberian businesses, international donors, and the Liberian government to discuss the Liberian CSR activities.[107] The CR Forum, inaugurated in 2010, is the result of a collaboration between the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (the German Society for International Cooperation or GIZ)[108] and ArcelorMittal.[109] It is meant to promote both good business practices and the use of CSR by businesses in Liberia.[110] ArcelorMittal Liberia's CEO has said that one of its goals is to create an entrepreneurial class in Liberia.[111]

The Liberian government has severe limitations as a regulatory authority—it has made progress since the end of the war, but the government is still widely viewed as corrupt.[112] Although there have been no confirmed oil strikes in Liberia or its waters, recent finds nearby in Ghana and Sierra Leone have led to a rush of interest from major foreign companies.[113] The National Oil Company of Liberia (NOCAL), the government body in control of the petroleum sector, auctioned exploration rights to offshore oil blocks in December 2014, during the height of the Ebola epidemic, and responded to concerns about the pro-

AND THE DESTRUCTION OF COMMUNITY-OWNED RAINFOREST (2012), *available at* http://www.globalwitness.org/sites/default/files/Signing%20their%20Lives%20away%20-%20Liberian%20Private%20Use%20Permits%20-%204%20Sept%202012.pdf.

104. *Liberian Rainforest: '60% Handed to Logging Companies'*, BBC NEWS AFR. (Sept. 4, 2013), http://www.bbc.co.uk/news/world-africa-19469571.

105. *Id.*

106. *Id.*

107. Bridgett Milton, *CR Forum Plans Annual Meeting*, NEW DAWN (Monrovia) (Nov. 30, 2013), *available at* http://www.thenewdawnliberia.com/index.php?view=article&id=10327.

108. The *Gesellschaft für Internationale Zusammenarbeit* (GIZ) is the German government's developmental aid agency. *See Profile*, GIZ, http://www.giz.de/en/aboutgiz/profile.html (last visited Mar. 23, 2014).

109. GIZ, THE CORPORATE RESPONSIBILITY FORUM LIBERIA (2013), *available at* http://www.ccps-africa.org/dnn7/Portals/0/Downloads/CCPS%20Success%20Story_%20CRFL%20Liberia_11-11-13k.pdf.

110. *Id.*

111. *Transforming Economies*, ARCELORMITTAL, http://corporate.arcelormittal.com/news-and-media/our-stories/s20-transforming-economies (last visited Mar. 18, 2014).

112. GLOBAL WITNESS, *supra* note 6, at 6.

113. *Id.* at 5.

cess by noting the critical need for funds to respond to the crisis.[114] The existing regulatory regime is viewed as "weak and lack[ing] key accountability, environment and human rights safeguards."[115] In addition, reforms of NOCAL were delayed in September 2013 by defeat of proposed legislation in the Liberian House of Representatives, followed a week later by the sudden resignation of NOCAL's chairman, Robert Sirleaf, son of Liberian President Ellen Johnson-Sirleaf, amidst allegations of corruption and nepotism.[116] A law meant to increase transparency in the oil sector was passed concurrently with the December 2014 auction, but corruption scandals continue to unfold, including a mysterious payment to a Liberian senator the same day he voted to ratify the results of the auction and the death of a lawyer who had been working with the Liberian Anti-Corruption Commission.[117]

III. Analysis

Although CSR programs by foreign MNCs may seem benign, if not entirely altruistic, the governments of developing countries need to involve themselves with programs inside their borders to ensure that their citizens have a voice in decisions concerning the distribution of public resources. This involvement will make the CSR programs more effective because governments can give needed structure to the process and highlight the priorities of local communities. Section A discusses CSR activity as privatized governance and the problems that can result due to lack of local involvement for both host countries and MNCs. Section B describes how China's CSR policy can serve as a model for other developing countries to increase their involvement in CSR. Section C outlines possible applications of this policy to Liberia.

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114. *Recent Oil Deal Represents Risk for Liberia*, DAILY OBSERVER (Monrovia) (Mar. 1, 2015), http://www.liberianobserver.com/development/recent-oil-deal-represents-risk-liberia.

115. GLOBAL WITNESS, *supra* note 6, at 9.

116. *See* Robbie Corey-Boulet, *Liberia Considers Reforms Before Oil Flows*, VOICE AM. (Oct. 3, 2013), http://www.voanews.com/content/liberia-considers-reforms-before-the-oil-flows/1762123.html; James Butty, *Liberian President's Son Resigns Government Post*, VOICE AM. (Sept. 18, 2013), http://www.voanews.com/content/liberian-presidents-son-resigns/1751939.html.

117. Press Release, Global Witness, Liberia Has Burned the Furniture to Warm the House (Feb. 27, 2015), *available at* https://www.globalwitness.org/campaigns/liberia/liberia-has-burned-furniture-warm-house. The lawyer, known as Michael Allison, was found apparently drowned on a beach in Monrovia. The government claims that two autopsies revealed no indication of foul play but that it found several passports indicating that Allison was an American citizen living under an assumed identity. Alvin Worzi, *Government Demands DNA Test from Allison Family to Claim Body*, DAILY OBSERVER (Monrovia) (Mar. 19, 2015), *available at* http://www.liberianobserver.com/news-politics/gov%E2%80%99t-demands-dna-test-allison-family-claim-body.

A. *CSR as Privatized Governance*

The CSR initiatives of MNCs in developing countries deal with distributive choices among local groups. These choices are inherently political. When they are made by MNCs, governance, defined as "a process by which outcome-based determinations are made about competing rights and responsibilities, policies and practices, resources and revenues, interest and investment,"[118] becomes privatized. When MNCs provide social and infrastructural services to local communities in developing countries, they allocate scarce resources free from the constraints of the of host country politics.[119] This transfer of governance from nation-states has been described as "dramatically troubling for democratic theory because it posits 'interests' (whether NGOs or businesses) as legitimate actors along with popularly elected governments."[120] A failure to understand the challenges that governance privatization through CSR creates in developing countries can cause difficulties for both the MNCs and the host countries. These challenges show that local governments should take a robust role in the CSR activities of MNCs operating in-country.

Externally imposed CSR policies and priorities can also infringe on the host country's sovereignty. In China, many commentators viewed the use of voluntary supply-chain standards by MNCs as a means of effecting a political goal of the home countries of those MNCs.[121] The CSR approaches imported into a developing country may be designed to respond to the priorities of consumers and NGOs in developed countries, such as consumer protection and environmental sustainability, instead of the priorities of the host country itself, such as poverty alleviation and infrastructural development.[122] The MNCs' CSR activities have essentially two "markets": the home country stakeholders and the host country stakeholders. The differing priorities of these two groups are not necessarily in conflict—infrastructure can be developed in an

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118. Surya Deva, *Sustainable Good Governance and Corporations: An Analysis of Asymmetries*, 18 GEO. INT'L ENVTL. L. REV. 707, 710 (2006).

119. Levy & Kaplan, *supra* note 22, at 441 (quoting Morten Ougaard, *Instituting the Power to Do Good?*, *in* GLOBAL CORPORATE POWER 227, 243 (Christopher May ed., 2006)).

120. John R. Bolton, *Should We Take Global Governance Seriously?*, 1 CHI. J. INT'L L. 205, 218 (2000). Indeed, Bolton links the "corporativist" reliance on civil society nongovernmental organizations to the core element of Mussolini's conception of fascism, a reliance on "interest group governance." *Id.*

121. In particular, Chinese commentators argue that by imposing stricter standards than called for in Chinese law, these MNCs could use their control of global supply chains to erode the cost advantage that China's cheap labor provides to Chinese suppliers. *See supra* notes 78–79 and accompanying text.

122. *See* Visser, *supra* note 26, at 482–83 (noting differences in priorities between CSR in developed countries and CSR in developing countries).

eco-friendly way, for instance—but they are not necessarily in sync. The conflict between the interests of the MNCs and the interests of the host country is most acute when companies divest from an area that is no longer profitable, which can cause serious issues if local governance depends on the company for social services.[123]

The MNCs also have an interest in host country involvement with their CSR programs. Although MNCs generally view their CSR activities from the perspective of home country stakeholders, who want ethically produced, eco-friendly products,[124] provision of public goods by MNCs in developing countries also furthers their business goals by preventing local unrest. The needs of host country stakeholders are therefore important. The Chinese government, for instance, is not concerned with consumer appetites in developed countries—it developed its CSR policy to maintain public order (a "harmonious society").[125] Providing public goods, however, is a complicated task. The common experience of the MNCs examined by Ralph Hamann was that "local circumstances create such complex and dynamic conditions" that implementing CSR policies was "chaos management."[126] The interaction between local communities[127] and MNCs is a complex one, and the MNCs have found that they cannot easily provide public goods through "unilateral" CSR programs.[128] Delegation of significant power to the MNCs can result in unclear lines of control, with the local population confused as to which group is responsible for providing which services.[129] Furthermore, when multiple MNCs operate in a single region, they may compete via their CSR programs to be seen as the most benevolent, without particular regard for the actual effectiveness of their programs.[130]

The MNCs want to stay out of local politics as much as they can: managers at oil companies in West Africa "tend to reject the notion that they could play a constructive role" in addressing governance failures in

123. *Id.* at 484.

124. *See, e.g.*, Murphy, *supra* note 30, at 400 (finding that adoption by MNCs of CSR codes has been driven by demand from consumers for goods produced without adverse social consequences).

125. *See supra* notes 66–69 and accompanying text.

126. Hamann et al., *supra* note 14, at 63.

127. This includes the formal government, traditional institutions such as tribal or religious leaders, and civil society groups such as unions. *See, e.g.*, NIGERIA: A COUNTRY STUDY 39 (Helen Chapin Metz ed., 5th ed. 1992) (demonstrating the range of organizations in an African local community).

128. Hamann et al., *supra* note 14, at 66–67, 71.

129. *See id.* at 71 (describing difficulties experienced by operator of a copper mine in Zambia).

130. *See id.* at 67–68 (saying that in Rustenburg area of South Africa, mining businesses viewed their CSR programs as "blood money" meant to create a positive image, not as a means to alleviate social problems at the mines).

the host country and have concerns over involvement in the political process.[131] These claims of abstention are disingenuous. Not only do MNCs already take part in the political process by lobbying for more favorable conditions and terms, but they also reap benefits from the governance failures in the host countries that lead to the enforcement gap.[132] The MNC operations in developing countries can be a significant source of revenue, and the benefits of this revenue must be distributed via appropriate local channels that take into account local interests and priorities. The effects of MNC actions in developing countries are so great that failure to engage with local government can create serious problems down the road. Economies that depend on resource extraction suffer a "resource curse" of "economic underdevelopment, military conflict, and political mismanagement."[133] Although MNCs can and do profit from this situation, extensive unrest can create long-term challenges that can seriously reduce their ability to profit from the investment.[134]

B. *Chinese CSR Policy as a Role Model*

Developing countries interact with CSR differently than governments in the United States or in the European Union. The U.S. or the E.U. "new governance" approach is based on certain assumptions about relative power levels between the corporations, governments, and civil society actors that are not reflected in developing countries.[135] For instance, only sixty percent of Liberians over the age of fifteen are literate.[136] In general, the population of a developing country that is well equipped to participate in sophisticated civil society groups is not representative of the country as a whole—indeed, "civil society participation [in developing countries] may deepen rather than mitigate social inequalities."[137] Instead, the governments of host countries[138] are the

131. Frynas, *supra* note 42, at 597.

132. *Id.*; *see also* Mia Mahmudur Rahim, *Legal Regulation of Corporate Social Responsibility: Evidence from Bangladesh*, 41 COMMON L. WORLD REV. 97, 105–06 (2012) (noting that MNCs operating in Bangladesh profit from "vulnerabilities of a highly labour-intensive and poor country").

133. Frynas, *supra* note 42, at 595.

134. *See, e.g.*, ROYAL DUTCH SHELL, ROYAL DUTCH SHELL PLC ANNUAL REPORT AND FORM 20-F FOR THE YEAR ENDED DECEMBER 31, 2013, at 28 (2014) (noting that Shell's production in Nigeria dropped from the equivalent of 365,000 barrels of oil a day in 2012 to 265,000 a day in 2013, and attributing this drop to "security issues and crude oil theft").

135. Braithwaite, *supra* note 16, at 885.

136. CENT. INTELLIGENCE AGENCY, *Liberia*, *in* THE WORLD FACTBOOK (2014), *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/li.html.

137. Kathryn Hochstetler, *Civil Society and the Regulatory State of the South: A Commentary*, 6 REG. & GOVERNANCE 362, 365 (2012).

138. This includes all levels of in-country government, from national to local. The appropri-

actors best equipped to give a voice to the priorities of their citizens. Although the governments of developing countries tend to be more corrupt and less democratic than governments in developed countries,[139] the former's participation in CSR programs is necessary because they are the only legitimate representatives of the sovereignty of host country citizens, regardless of possible shortcomings.[140] Moreover, participation in "networked governance," like collaborations with CSR programs, could potentially lead to a virtuous cycle of increasing capacity and legitimacy through the exercise of powers in an atmosphere of mutual oversight between MNCs and host country governments.[141]

1. State-Centric CSR Policy in Developing Countries

The best example of a state-centric CSR policy for a developing country is that of China. This policy is at least partially a result of Chinese antipathy toward NGOs, especially ones focusing on labor or human rights issues.[142] Although developing countries should probably try to encourage, not discourage, robust civil societies, the fact of the matter is that they do not have them.[143] The Chinese policy is also, of course, a product of that country's unique circumstances. In particular, the share of Chinese GDP from manufacturing is almost seven times larger than the share of Chinese GDP from resource extraction.[144] In Liberia, the GDP share of resource extraction is almost ten times as large as the GDP share of manufacturing.[145] The specific CSR pro-

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ate division of responsibilities between levels of government would be heavily dependent on context and is generally outside the scope of this Note.

139. Braithwaite, *supra* note 16, at 896.

140. *See* Levy & Kaplan, *supra* note 22, at 444 (arguing that states are "immensely powerful source[s] of authority" that are needed for any effective constraints on corporate behavior).

141. This virtuous cycle depends on at least some interest of the host country government in representing its citizens. As mentioned previously, Liberia was chosen as the model application because its government is widely perceived as interested in pursuing democratic development strategies. *See infra* notes 162–63 and accompanying text. Extensive government involvement in a country like Equatorial Guinea, described by Freedom House as one of the most repressive and corrupt countries in the world, FREEDOM HOUSE, WORST OF THE WORST 2012: THE WORLD'S MOST REPRESSIVE SOCIETIES 14 (2012), would likely not result in an improved situation.

142. *See supra* notes 89–90 and accompanying text.

143. *Cf.* Hochstetler, *supra* note 137, at 363–64, 365.

144. In 2013, roughly 32% of Chinese gross domestic product was from manufacturing, *World Development Indicators: Structure of Output*, WORLD BANK, http://wdi.worldbank.org/table/4.2 (last visited Apr. 19, 2015), and in 2013, about 4.6% was from resource extraction. *World Development Indicators: Contribution of Natural Resources to Gross Domestic Product*, WORLD BANK, http://wdi.worldbank.org/table/3.15 (last visited Apr. 19, 2015).

145. In 2013, Liberia's manufacturing sector produced 3% of its gross domestic product, *World Development Indicators: Structure of Output*, *supra* note 144, while resource extraction produced 29.6%. *World Development Indicators: Contribution of Natural Resources to Gross Domestic Product*, *supra* note 144.

grams used in China are likely too specific to the context of an economy based on manufacturing by companies directly or indirectly controlled by the government to be useful in a country like Liberia, where the government seeks to regulate and oversee the operations of foreign corporations engaged in resource extraction.

Beyond the specifics, the Chinese experience with CSR is relevant because it points to a policy model in which a government can use CSR to focus companies on the priorities of host country stakeholders without relying on a civil society that may not be able to exercise an oversight function of its own. The significant differences between the views of Chinese managers and managers from developed countries about the proper goals of CSR show that importation of CSR policies from developed countries would not be responsive to the particular needs and perspectives of Liberians. To clarify, the point is not that Liberians share the perspectives of Chinese managers about CSR—for instance, they may or may not view increased employment as an appropriate goal for CSR programs or agree that equality is not an appropriate goal of such programs—rather, the point is that Liberian interests in CSR are different than those held by MNCs from developed countries.

Additionally, the state-centric model of CSR policy is especially appropriate for countries with economies focused on resource extraction. For example, the Chinese CSR policy relies on the importance of SOEs in the Chinese economy to give force to the ostensibly advisory language of SASAC's Guide Opinion and the Company Law.[146] Similarly, resource extraction MNCs are usually bound by concessionary agreements with the host country,[147] and the host country governments can use these agreements to give force to their own CSR policies. Use of a state-centric CSR policy allows a developing country to interject its unique interests into the activities of MNCs and ensure that they are accounted for.

2. The Benefits and Drawbacks of the Chinese Policy Model

The Chinese model has three main benefits. First, state participation integrates CSR into policymaking and governance. This prevents the difficulties seen in the cases examined by Hamann; by providing a clear

146. *See supra* notes 68–71 and accompanying text.

147. Concessions are a common type of contract between resource extraction companies and governments. Typically, they involve the company receiving exclusive rights to extract a resource in a certain area for a fixed period in exchange for payments to the government. *See* Christoph Ohler, *Concessions*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, http://opil.ouplaw.com/home/epil (last updated Feb. 2013). Concession payments are a major source of revenue for the Liberian government. Mark B. Newa, *Liberia: Natural Resource Concessions Drive Economy—NBC Chairman Declares*, NEW REPUBLIC LIBERIA (Monrovia) (Aug. 21, 2013), http://allafrica.com/stories/201308211355.html.

role for both the government and the MNCs, it avoids a vicious cycle of escalating demands by community representatives striving to gain local influence by extracting concessions from companies.[148] Second, devolution of CSR management to provincial and municipal governments allows for flexibility and experimentation in application. The Chinese model was developed at least in part in reaction to the refusal of foreign MNCs to localize their standards,[149] and implementation varies in China between provinces based on the ability of companies in the area to bear increased costs.[150] Third, creation of indigenous codes of conduct increases the legitimacy of the norms reflected in those codes. People are often more compliant with the law when they exist in a regulatory environment "in which multiple incentive structures are convergent and mutually reinforcing."[151] The use of state-backed CSR programs creates such an environment through the coordination of external legal regulations and internal corporate regulations.[152]

Still, the Chinese model is not without drawbacks. One motive of the Chinese government in promoting CSR is to provide a channel for redress of social and environmental problems though mechanisms controlled by the state, thereby preserving the state's political monopoly.[153] The absence of a human rights component in this model may increase the risk of abuse of employees or local communities and implicitly signal that such issues are not appropriate for public discourse.[154] Another drawback is that reliance on the state as the primary actor provides greater leeway to corrupt officials; as discussed above,[155] this drawback is ameliorated to the extent that government legitimacy is improved by operating in an atmosphere of mutual oversight. In China, for instance, local governments seeking to improve a perceived legitimacy deficit "borrow legitimacy" by contracting with third-party auditors to provide oversight.[156]

Finally, extensive government involvement in CSR can exacerbate conflicts between CSR standards and formal laws, leading to regulatory cherry-picking where MNCs choose between CSR and legal stand-

148. See Hamann et al., *supra* note 14, at 69–70, for a description of such a cycle at a gold mine in Mali.

149. Lin, *supra* note 65, at 90.

150. Ho, *supra* note 66, at 432.

151. *Id.* at 429.

152. *Id.*

153. Lin, *supra* note 65, at 93.

154. *See id.* at 95 (suggesting that state-led CSR in China may act to "delimit the boundary of CSR issues permitted").

155. *See supra* notes 138–41 and accompanying text.

156. Ho, *supra* note 66, at 437.

ards.[157] For example, certain CSR guidelines in China set a lower standard than what is required by law—although still higher than common practice.[158] Careful design of CSR guidelines can avoid this problem by stressing compliance with legal requirements and not providing a lesser standard than the law. Furthermore, CSR policy in China is part of a larger process of creating social norms that reinforce compliance with regulatory standards, and the gap between the law as-written and the law as-applied is expected to shrink.[159]

C. *State-Centric CSR in Liberia*

The use of CSR programs by foreign MNCs is problematic both because such programs can violate norms of sovereignty and because they are often ineffective due to their failure to consider the priorities of local communities over those of MNC stakeholders in developed countries.[160] The Chinese model, although not necessarily directly applicable to the circumstances in other developing countries, shows methods of local involvement with CSR that do not depend on assumptions about local civil society that may not be true outside of the developed countries.[161] This Section proposes several means by which the Liberian government can apply these conclusions to its specific circumstances, building on its experiences with LEITI and the CR Forum. Liberia is used as a case study, despite the challenges that it faces, because Liberia has made significant progress in building institutional capacity since the end of its civil war[162] and its political leadership is internationally viewed as maintaining a commitment to democratic development.[163]

Liberia should focus on developing CSR codes and policies that improve national and local oversight with the explicit goal of using them to foster a culture of regulatory compliance. LEITI represents a positive movement but is limited in scope to transparency about payments from

157. *Id.* at 435–36.

158. For instance, Chinese employers are legally obligated to provide social insurance fees for all employees. In practice, some companies give only a third of their employees such fees; the CSR guidelines in the city of Wenzhou award a pass to companies that cover at least eighty-five percent of their employees. *Id.*

159. *See id.* at 418 (noting that CSR programs in China are meant to move companies toward legal compliance).

160. *See supra* Part III.A.

161. *See supra* Part III.B.

162. U.N. DEVELOPMENT PROGRAM, LIBERIA 2011 ANNUAL REPORT 17 (2012).

163. For instance, the current president, Ellen Johnson-Sirleaf, won the 2011 Nobel Peace Prize for her contributions to "securing peace in Liberia, to promoting economic and social development, and to strengthening the position of women." Press Release, The Norwegian Nobel Committee, The Nobel Peace Prize for 2011 to Ellen Johnson Sirleaf, Leymah Gbowee and Tawakkul Karman (Oct. 7, 2011), *available at* http://www.nobelprize.org/nobel_prizes/peace/laureates/2011/press.html.

MNCs to the Liberian government—oversight of MNCs requires ensuring not only profit-sharing with the national and local governments but also compliance with environmental and labor regulations.[164] Moreover, CSR activities should address the unique interests of Liberian communities. Liberia should increase its involvement in CSR in at least three areas. First, it should support interactions between local communities and MNCs by providing not only structured forums for such dialogue but also support to local community representatives that take part in the dialogue. Second, it should encourage programs to give technical and business education to Liberians. Third, it should issue CSR progress reports to reinforce social norms of compliance for MNCs operating in Liberia.

One area in particular that has received little attention under the current Liberian Petroleum Law is protection of the rights and interests of communities potentially affected by a concession, especially fishermen.[165] The government can address this either by mandating that concessionaires interact with communities to hear and address their concerns, or by facilitating such interaction by providing more favorable concession terms to companies that voluntarily engage. Unlike citizens in developed countries, however, rural Liberians have low levels of literacy, limited experience negotiating with large companies, and little access to civil society actors who can bridge the gap.[166] These challenges have undermined the effectiveness of community engagement efforts by MNCs elsewhere.[167] Consultations by oil companies with communities in the Niger Delta, for instance, have been "superficial and grossly inadequate" because representatives from the companies appear infrequently, meet with only a few people, and leave quickly, leading to local representatives only asking for "obvious amenities such as electricity, a school or a hospital without proper consideration" of the costs or benefits of such projects.[168]

The Liberian government should take a stronger role in the consultative process by partnering with MNCs and local civil society groups to create structured forums for these interactions. Such forums should encourage routine, on-going interaction. Liberia should also take steps to ensure that community representatives involved at these forums are trained in how to effectively present their concerns to the concessionaires. This would help ensure that the concessionaires do not manipulate the local communities and that the communities have a predictable

164. GLOBAL WITNESS, *supra* note 6, at 48.

165. *Id.* at 50, 56.

166. *Id.*

167. *See supra* notes 54–64 and accompanying text.

168. Frynas, *supra* note 42, at 589–90.

method of airing their concerns. This method would provide concessionaires access to a process with well-defined roles and responsibilities, increasing its effectiveness in reducing potential local opposition.

Another area where the Liberian government can guide in-country CSR activities is through partnering with MNCs to form organizations that promote the transfer of technical knowledge from MNC engineers and technicians to Liberians. NOCAL does not have the "technical capacity to operate effectively as an oil company," and few Liberians are trained in the skills needed for oil exploration.[169] Although limited programs exist to encourage employment of skilled Liberians and to fund local training,[170] the Liberian government should strengthen these programs by working with MNCs to provide training to Liberians, either through apprenticeship programs or by organization of means for MNCs to fund scholarships for Liberians to study abroad and return to work in Liberia. Such programs, similar to community involvement, could also be facilitated by giving more favorable terms to concessionaires who commit to providing training to Liberians.

Furthermore, many MNCs have staff dedicated to CSR activities and with experience providing social services in a variety of countries. In addition to partnering with MNCs and facilitating the provision of training in the technical aspects of resource extraction, the Liberian government should take steps to strengthen the CR Forum so that MNC staff share the CSR best practices with each other and with local communities and civil society groups. In particular, the government could encourage oil concessionaires to take part in the Forum and also take steps to incorporate local nongovernmental civil society groups into the Forum's workshops. This would not only potentially increase the quality of in-country CSR programs, but it would also encourage development and awareness of the unique characteristics of CSR in Liberia and promote its indigenous civil society.

Finally, the Liberian government should explicitly endorse the use of CSR by companies and follow the example of some provincial governments in China by issuing CSR progress reports and recognizing CSR leaders.[171] The MNCs would be interested in providing resources for such reports because among their CSR goals are "to demonstrate to their own employees that the company is a positive force for development" and to reduce demoralization amongst expatriate staff.[172] These reports could have a beneficial impact for Liberian interests by signaling to

169. Global Witness, *supra* note 6, at 35, 53.
170. *Id.* at 53.
171. Ho, *supra* note 66, at 409–10.
172. Frynas, *supra* note 42, at 586.

MNCs in Liberia and their employees the importance of social norms that reinforce respect for the law.

IV. CONCLUSION

The challenges that Liberia faces are common among developing countries: it has been blessed with abundant natural resources but lacks the political infrastructure to effectively regulate their extraction. Developing and implementing a CSR policy is one step toward creating that much needed infrastructure. Although CSR is noncoercive soft law, it can provide real benefits by promoting the development of civil society and creating a cultural impetus toward legal compliance among extraction companies. Deferring to the CSR programs of foreign MNCs not only "outsources" sovereignty but also leads to the adoption of programs designed to serve the priorities of stakeholders in developed countries, not the citizens of host countries.

China's experience with CSR suggests that robust government engagement with CSR activity can ameliorate both of these faults. This conclusion should not be taken to mean that developing countries should or must replace the use of CSR with more traditional regulatory schemes. Rather, it shows that by being an active partner with MNCs, developing countries can not only ensure that resources being used within their borders go to local needs but also attract necessary foreign investment by fostering dialogue about and providing a hospitable business environment for investment.

The prospect of major oil finds in Liberian waters brings new challenges for the Liberian regulatory agencies and the serious risk of extensive corruption. At the same time, a country as poor as Liberia cannot pass up the prospect of millions of dollars of revenue sitting in the ground. One result of an increasingly globalized world is that governments face challenges involving interactions between multiple complex systems that seem to defy the tool-kit of traditional regulatory measures[173]—especially in developing countries that have fewer resources to devote to regulation.

The value of using new governance tools like CSR is that they allow governments to solicit meaningful feedback from other participants regarding regulation, and they provide an avenue to begin developing policies for situations that may well be too complex for any one institution. The risk of using new governance tools is that high-minded rhetoric about mutual cooperation is generally outclassed by the appeal of money. Despite the movement toward "governance without govern-

173. *See* Abbott & Snidal, *supra* note 17, at 577–78.

ments,"[174] states remain indispensable in managing political processes. As it has been shown, attempts to "outsource" the role of states to MNCs achieve poor results because MNCs lack the legitimacy to make political decisions for host countries and to make those decisions based on interests other than those of the local communities they are purportedly trying to help. Using China's CSR policies as a model, Liberia can shape local governance decisions and ensure that it can both reap the economic rewards of developing its resources and ensure that its citizens and environment are not exploited.

174. Virgile Perret, *Financial Globalization, "Global Governance" and the Erosion of Democracy*, *in* REGULATING GLOBALIZATION: CRITICAL APPROACHES TO GLOBAL GOVERNANCE 69, 78 (Pierre de Senarclens & Ali Kazancigil eds., 2007).