The Mechanics of Accountability: Ad Hoc Time-Specific Stakeholder Panels

Policy Analysis Exercise, Harvard Kennedy School

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Executive Summary

In recent years, mining companies have commissioned a number of groundbreaking stakeholder panels staffed by international experts to review various aspects of their social and environmental impacts. These panels were convened with a specific mandate and for a limited period of time. These complicated and extensive endeavors require a significant investment of time, resources, and energy from both companies and communities alike. That said, this study finds that there are a number of potential benefits for companies who dare to do such work.

In this report, we first look briefly at the concept of stakeholder theory in relation to the extractives industry and the emerging use of stakeholder panels. After a brief examination of several forms of stakeholder panels, we present a thorough discussion of the two endeavors that provide the subject matter for our research. Creating case studies of the Newmont Mining Community Relationships Review and the Cerrejón Coal Third Party Review we have attempted to identify the factors which most contribute to both the successes and limitations of a panel process. We chose to review both Newmont and Cerrejón because these recent examples exhibit both similarities yet distinct differences in their structures, processes, and outcomes allowing us to delve deeply into a side-by-side comparison.

Informed by this data, we then present the limitations and merits of ad hoc time-specific reviews, as illuminated by interviews with associated parties to both. Broadly, we find that with so many internal and external actors heavily invested in the outcome of a stakeholder panel, certain key principles must guide the process from start to finish: independence, transparency, and participation. Specifically, we identify six major tensions that must be navigated throughout an independent review: 1) limited specific mandate vs. broad free-ranging mandate; 2) panel runs the process vs. panel advises the process; 3) local scope vs. global scope; 4) a fully participatory process vs. a limited degree of participation; 5) realistic recommendations vs. idealistic recommendations; 6) local expertise vs. international prestige of panelists.

We conclude by recommending ways in which companies can focus on the three keys principles of these panels (independence, transparency, and participation) in order to maximize their benefits.
Introduction

In our globalized world, the business landscape has become far more complex and difficult to navigate for company leadership. As corporate entities have become truly global in size and scope many have come to operate across a multitude of international borders, including in countries whose legal and social frameworks leave much to be desired. Simultaneously, the speed and flow of information has drawn increased public attention to even the most isolated areas when concerns around social and environmental impacts arise.

The extractives industry in particular faces tremendous challenges as its firms often operate in remote areas of the developing world where poverty, poor infrastructure, corruption, and conflict are common ailments. In these particular areas, where social and environmental impacts are most in need of measure and regulation, the institutions of local and federal governments are often weakest, at times leading to civil unrest, violence, displacement of populations, and anti-company sentiment. While some international institutions have attempted to address the consequences of this gap in governance, these efforts have been limited in their scope, scale, and success – significant governance gaps remain.

Various approaches have been developed to fill these gaps, with various levels of success. Among these are multi-stakeholder initiatives creating codes of conduct and certification systems, grievance mechanisms in third-party organizations, international non-governmental organization (NGO) oversight, legal accountability in home countries of corporations, and pressure for direct international regulation by transnational bodies where local governmental systems are too weak or corrupt to function effectively. In most cases it is yet to be seen whether a particular approach is a temporary tool utilized until formal systems of regulation improve or whether the approach will become formally recognized and incorporated as a permanent feature of the landscape within which companies operate.

Key Definitions

Stakeholder = individuals or groups that affect or could be affected by an company’s activities, products or services and associated performance. Stakeholders include employees, customers, shareholders, government, NGOs, partners, the media, and local and national communities.

Shareholder = an individual or company that legally owns one or more shares of stock in a company.

Stakeholder panel = groups of experts, stakeholders or their representatives who have been brought together at the invitation of a company to examine some aspect of its policies, actions or performance and deliver a mandated output or series of outputs (for example: commentary, advice, or assurance) which the company has made a specific commitment to respond to (for example by publishing, issuing a response or acting on recommendations.)

In this report we study a particular type of stakeholder panel called the ad hoc time-specific stakeholder panel. In the case of Newmont, we call this by its official name, the independent advisory panel. In the case of Cerrejón we refer to the panel by terms used by the company and panelists, the third party review. Throughout we refer to this type of panel as stakeholder panel or panel generally.

Definitions from:
Meanwhile, companies themselves have also been attempting to address some of the gaps in governance, recognizing the risk they pose to their own operations and reputation. While the policies and practices they are developing remain voluntary in nature and cannot tackle the full range of challenges faced, they are growing in number and variety in the absence of alternative solutions.

One particular accountability tool that has emerged is the use of a stakeholder panel, the subject of this report. Generally there are two types of panel: 1) a standing, company headquarter-based panel which regularly reviews and advises on operations and impacts of the company on a broader global scale, and 2) an ad hoc, time-specific panel commissioned by a firm for the purposes of addressing a more specific problem or project with pressing implications for current operations. The latter is the focus of our research and analysis. Both types of panel are a means for companies to inform and improve their operations through independent review and assessment of their current practices.

The stakeholder panel can be used to gain understanding about the true social and environmental impacts of the firm, to better comprehend the complexities of relationships with actors outside of the company, to guide the future approach to relationship building, and to offer solutions to outstanding areas of concern between the company and external parties. Panels, if implemented properly, can be an effective tool for sustainable and responsible stakeholder engagement. It is yet to be seen whether this form of accountability tool will be permanently incorporated into the landscape, but given its growing use and popularity among corporate entities, this looks likely to be the case.

A. Stakeholder Engagement

Over the past several decades, firms have begun to incorporate measures of their social impact in addition to financial performance as a metric in judging the overall performance of the company. Historically, financial performance (in the form of profits and share price) has been seen as the sole indicator of a company’s success or failure, but in the 1960’s the notion of corporate social responsibility (CSR) began to take hold. Corporations were no longer answerable only to managers, employees, and shareholders, but to the wider public including the local communities they most directly impact.

The following 20 years were marked by a greater social awareness, followed by a period leading into the mid-1990s during which social and environmental impacts began to be addressed in earnest. From this point to the present, the most responsible companies have begun to proactively approach all aspects of their social performance from mitigating environmental impacts and creating corporate foundations to active stakeholder engagement.

There is much debate as to which stakeholders should be included in a social accounting analysis. Unfortunately, much of the stakeholder accounting literature ranks stakeholders’ importance by assessing their instrumental value, or their ability to affect the operations of the company through either the direct or indirect channels of money, influence, and access to policy and decision-makers, etc. Traditionally, companies have considered certain groups as stakeholders including: shareholders, employees, consumers, suppliers, and the environment.
As shown in Figure 1, this method incorporates only those stakeholders that have the ability and power to substantially affect the company’s operations and completely ignores the importance and needs of the stakeholders who may not have the resources to influence the company, yet who are nonetheless directly affected by its actions. This group includes communities and local civil society groups among others. Over time, awareness of the relevance and role of stakeholders whom the company actually impacts has grown (See Figure 2).

This increased attention to stakeholders impacted by the companies has resulted in the conceptualization of the “social license to operate.” According to Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises John Ruggie, “Companies are subject to what is sometimes called a social license to operate—that is, prevailing social expectations.”¹ Social license is the public acceptance of a business by a community. This is separate from legal regulations and is therefore dependent on societal expectations. Instead of a singular focus on corporate profits, companies are increasingly considering the economic and social conditions of the communities in which they work. Support from, or at least consultative and participatory interactions with, a broader range of stakeholders (such as in Figure 2) helps reduce company risk both financially and publicly.² One company defines the social license to operate as “...the acceptance and belief by society, and specifically our local communities, in the value creation of our activities.... You don’t get your social license by going to a government ministry and making an application or simply paying a fee. ... It requires far more than money to truly become part of the communities in which you operate.”³ In this view, all stakeholders matter.

In recent years, we have seen the increasing use

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³ Pierre Lassonde, former President of Newmont Mining at the 2003 Cordilleran Roundup.
of stakeholder panels by major national and transnational companies as part of a growing recognition of the need to measure the full range of those impacted by their operations and how to engage with them effectively. These panels introduce the views of stakeholders that in the past may have been deemed external to the corporate governance needs of the companies and provide a mediating space to facilitate dialogue. Stakeholder panels help companies to better understand and manage their social impacts, creating opportunity to earn an improved social license to operate. As presented in the subsequent background section, these panels often bring together experts from civil society, academia, and other organizations including, at times public critics to represent stakeholder perspectives.

This study will focus on panel efforts that are ad hoc and time-specific, commissioned on a temporary basis to address a particular issue.

**B. A Focus on the Extractives Industry**

The extractives industry faces increasingly unique and complex social challenges inherent to its operations. Given the nature of the business model, mining companies have significant direct and indirect impacts on the communities in which they operate. As such, mining companies face particular challenges in obtaining their social license to operate and rightly so. In many instances, mining operations displace communities, destroying indigenous cultural and religious sites and dislocating communities who have occupied the land for years. Mines often affect water flows and quality, relocating farming lands and polluting water used by local populations.

The impacts that mines have on social cohesion and culture are significant, although difficult to measure. Communities around mine sites often struggle with high levels of poverty and social or political exclusion. Furthermore, as mines often operate in remote areas of developing countries, they also encounter human rights violations, poor governance, and corruption. Other challenges faced by extractive companies include legacy issues, or history of conflict in the region, precarious intra-community relationships, high expectations, and in some cases, the improper use of security forces. These factors coupled with the presence of extremely valuable oil, gas, and minerals create conditions ripe for instability.

With conditions primed for potential conflict, mining companies often receive criticism from external international stakeholders and may come into conflict with local stakeholders. In the past, the mining industry often attracted negative public attention, as some corporate entities chose to ignore their social and ethical responsibilities, pursuing profits without regard for the environment, long term sustainability of the region, or the safety of the surrounding communities. Public spotlight on conflicts with local communities have portrayed some companies as the ‘bad guys’ of many a media tale. Given both the intricate links between company and community life around mines as well as public pressure to redeem their reputations, mining companies have sought a new type of engagement. Thus, in recent years, mining companies have increased the use of ad hoc time-specific stakeholder panels as an accountability mechanism.

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International Alert, which has done extensive work with regard to responsible business practices in conflict situations, identifies three levels at which extractive companies might address corporate social responsibility:

1) Compliance – Following the basic guidance of international law, companies set a basic strategy and operation course without incorporating stakeholder concerns in a meaningful way.

2) ‘Do No Harm’ – Analyzing early and often the realities on the ground and how company action will affect these realities. Companies will begin to listen to stakeholders, comply with international standards, be transparent in decision-making, publicize revenues and royalty payments, make investments in sustainable development, manage expectations, and properly train security forces.

3) Peace building – Beginning to make meaningful social investment, companies will address the real needs at a local level. They will empower communities, avoid creating a culture of dependency, be equitable, and most importantly build the foundations of civil society in the region to fight corruption at the local level, facilitating the use of royalties for the good of the entire community.

Extractive companies have begun using annual reports, separate CSR reports, website press releases, independent expert audits, and regular community engagement to enhance their community relationships and promote CSR activities. The most responsible of corporate extractive actors have incorporated CSR into their mission and given proper funding and authority to separate social engagement departments within their organizations. Still, the extractive industry faces many challenges in improving its corporate social responsibility efforts.

C. Research Methodology

To discover how extractive industry companies have utilized ad hoc time-specific stakeholder panels, we have briefly examined a range of examples within the industry, mapping the different types of panels currently in use. We then delve into two case studies to examine the details of this new type of stakeholder engagement. Cerrejón Coal’s Third Party Review and Newmont Mining’s Community Relationships Review serve as the basis of our research. A comparative analysis of these simultaneously similar and dissimilar panels provides useful insights into the merits and limitations of these panels as well as guidance as to how they can best be utilized.

Cerrejón and Newmont were chosen as they represent groundbreaking efforts by corporations in the extractives industry to undertake a new approach to stakeholder engagement. Both companies, though their panel efforts were different in design and scope, undertook unprecedented independent review processes that provided a new opportunity to explore the potential for what panels might accomplish.

Both of the panels were completed in the last two years, with Newmont finishing its report only in March of 2009. Specifically, we will look at the panels’ creation, internal workings, external communication and transparency, research and review structure, reporting, publications, and impacts. While it is difficult to measure impact as these reports and processes have only recently been completed, analyses of these issues in both cases will inform our recommendations for how panels can be used and how their benefits can be maximized as their use as accountability instruments increases.

Given its time limitations, this analysis will attempt to comment on both reports’ immediate impacts while recognizing that future impacts cannot yet be determined.

Our research efforts focused on interviewing those internally involved with the two panels as well as local stakeholders and international experts outside of the process. We relied on the following sources of information:

- **Interviews with Panelists**: Interviews were conducted with a number of panel participants in each case.
- **Interviews with Company Staff**: We conducted interviews of staff in both studies including social responsibility staff, human rights officers, and Board members.
- **Interviews with the Research Teams**: We interviewed members of the study assessment teams (including Study Directors) and consultants who carried out the research on the ground in both cases.
- **International NGO Stakeholders**: We had conversations with NGO stakeholders who had experiences with each company or community. Some of these NGOs had been interviewed by the consultant research teams and panel members, others had not.
- **Domestic NGO Stakeholders**: In a few cases, we were able to obtain interviews with domestic NGOs who had interaction with the mines and communities at the local level.
- **Local Community Members**: We were able to obtain the views of community members through personal interviews, phone interviews, and email.
- **Topical Experts**: We conducted four interviews with others unrelated to these panels who had experiences with similar work or who had expertise in these particular topics.

In total we conducted 36 interviews, 16 regarding Cerrejón (counting group interviews as 1) and 20 regarding Newmont. Given sensitivities around ongoing issues, all interviews were conducted with an understanding of confidentiality. We do not use names or comments that can be attributed to specific interviewees in this report. The majority of these interviews were conducted over the phone, though we conducted multiple interviews in person in Washington, D.C., London, Boston, Bogotá, and La Guajira, Colombia. We were able to travel to Cerrejón at the gracious invitation of the company.

**D. Limitations**

Despite our extensive interviews, our research was limited by a number of factors. Inherently, as a source of information, interviews are to a degree flawed and reflect personal opinion at a certain moment in time. Both cases will continue to evolve and impressions and impacts will change with time. Both panels have only recently concluded their reviews, and no final verdict can be reached presently regarding long-term impact. Still, implementation will continue, and behavioral changes will gain traction with time – new lessons can be learned and conclusions adjusted throughout this process.

Additionally, our interviews were not comprehensive. There were many individuals who we did not interview due to language and logistical limitations. Company-community relations are inherently fraught with power dynamics. At times, this may have limited the ability of interviewees to speak freely, positively or negatively, about the processes. It is important to note that we interviewed some Cerrejón community stakeholders on Cerrejón property. Though Cerrejón officials were not present during the interviews, we were accompanied by a company consultant translator and a new staff member in training. The company arranged these interviews and provided us with transportation and lodging.
Stakeholder Panels

To better ground our discussion of the case studies, we begin by briefly highlighting past research on stakeholder panels. We will then map out the stakeholder panel models which currently exist and how past panels have operated. Because stakeholder panels can focus on a range topics and goals, for the purposes of this study we will focus the mapping on time-specific panels in the extractive industry. Building on this landscape and lessons from the literature, we will then underscore the important components of panel process.

A. Critical Friends

In March 2007, AccountAbility and Utopies put together a report entitled, Critical Friends: The Emerging Role of Stakeholder Panels in Corporate Governance, Reporting and Assurance to glean lessons from their organizations’ respective experiences in participating in and managing stakeholder panels. The report provides detail on a variety of panels across industries and reviews the possible ways panels can be utilized. Unlike most of the literature on stakeholder theory, this key report highlights actual experiences with panels and emphasizes the practical aspects of creation and implementation. AccountAbility’s formative work on this issue has informed this study by providing an account of current efforts across industries as well as a constructive framework for analyzing their components.

According to Critical Friends, stakeholder panels have increasingly become integral to corporate social responsibility obligations. Merging corporate governance with social reporting responsibilities, corporate stakeholder panels have opened up a new space for dialogue between communities and companies. Critical Friends defines these panels as groups of experts, stakeholders or their representatives who have been brought together at the invitation of a company to examine some aspect of its policies, actions or performance and deliver a mandated output or series of outputs (for example: commentary, advice, or assurance) which the company has made a specific commitment to respond to (for example by publishing, issuing a response or acting on recommendations.)

In recent years, awareness about the need to achieve sustainable development and the benefits of proactively engaging with company stakeholders has increased. Initiated by the environmental reporting movement of the 1990s, the first stakeholder panels focused on environmental issues. Following soon after were notable efforts by socially-conscious companies like the Body Shop and Ben & Jerry’s to engage in social audits. Since 2000, the use of stakeholder panels has proliferated and diversified. As the social reporting movement has grown, companies have begun to understand the benefits of a participatory process that engages stakeholders in addition to professional information gathering. As noted above, our report will focus on panels within the extractive industries, an industry which has only recently begun to utilize these panels.

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B. Three Types of Panels

Given the vast proliferation of stakeholder panels, we have created categories of three types based on their geographical focus and membership. This classification parses out panels that spotlight local issues with local players, panels that focus on local issues with international stakeholders (e.g. international NGOs, multilateral institutions, foreign experts) and panels that are based at headquarters and work in conjunction with international stakeholders. The first type of panel brings together local community members to work with the local site to review and improve relations and conditions on the ground. These local stakeholders are asked to provide their own perspective on the company as well as on the company’s engagement. The second type of panel, also the most utilized, involves a local site focus but invites international stakeholders such as international NGOs or other experts to help improve local practices. While these international stakeholders can amplify viewpoints on the ground they are also used to bring a broader perspective to local issues. Finally, the outer concentric circle of stakeholder panels involves activities or reports commissioned by headquarters which focus not on particular localities but broadly on policies, practices, and types of engagements. While outside experts engaged at this level may provide insight into specific conflicts on the ground and at times a voice for local stakeholders, they are also retained for their expertise and international experience.

This study will look briefly at a range of examples of the above types of panels and then provide more detailed case studies on two that fit into our second category – panels that center on local sites but involve international stakeholders. Throughout the report we refer to these panels as stakeholder panels, panels, ad hoc, time-specific stakeholder panels, third party review panels (in the case of Cerrejón) and independent advisory panels (in the case of Newmont).

It is important to note, that we are contrasting ad hoc, time-specific panels with standing panels woven into the corporate structure that advise companies on an on-going basis at the senior management or Board level. The panels on which we are focusing are time-specific endeavors, not standing bodies. These ad hoc efforts are formed for a specific purpose by a company, enabling them to utilize a more flexible tool to address changing needs and challenges.

C. Other Stakeholder Panel Models

As noted previously, the extractives industry has increasingly begun to utilize different types of stakeholder panels. Below we highlight paradigmatic examples from the mining sector of each of the 3 different levels of panels and map out the landscape of this emerging tool.

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9 Typology was provided through an interview with CDA Collaborative Learning Projects.
In August 2007, the Joint Investigative Group (JIG) between AngloGold Ashanti and WACAM (the Wassa Association of Communities Affected by Mining) in Ghana, was formed to address legacy and current issues of concern at the AngloGold Ashanti Obuasi mine. The JIG was mandated to focus on human rights, environmental issues, and issues relating to land and post-mining rehabilitation. Beginning in September 2007, the group visited a number of Obuasi communities, began their fact-finding work, and mapped out the terms of their engagement together. The group consists of 6 representatives - 3 from AngloGold Ashanti and 3 from WACAM. In addition, the Monitoring Advisory Group (MAG) was created. This group meets biannually and includes local chiefs, WACAM, Food First Information and Action Network (FIAN) and elected municipal representatives, led by an independent chair.

The Tangguh Independent Advisory Panel (TIAP) was established by BP to provide external advice to senior decision-makers regarding the Tangguh LNG Project. The panel was charged with advising BP regarding the project’s effects on the local community and the environment; its impact on political, economic and social conditions in Indonesia generally and Papua in particular; and providing an evaluation of Indonesia and Papua “country risk.” The Panel was led by former-Senator George Mitchell and Lord Hannay of Chiswick from the U.K., Ambassador Sabam Siagian from Jakarta and the Reverend Herman Saud from Jayapura. It was established in February 2002, and a final report is due out in 2009. This panel was convened for the length of the construction phase of the Tangguh project, and the panel issues quarterly stakeholder reports. Stakeholders can contact the panel via a direct email, and all panel reports and company responses are listed on the company website.

Sudbury is a nickel mine in Northern Ontario. In 2001 the Ontario Ministry of the Environment found unsafe levels of nickel, arsenic, lead and some other chemicals in the soil. The company then initiated the study to ask: “Do Sudbury soils containing metal and arsenic levels above the generic guidelines pose an unacceptable ecological or human health risk?” Selected by Toxicology Excellence for Risk Assessment (TERA), an independent consulting firm paid by the company, experts were chosen to sit on a panel based on their knowledge of either ecological or human health risk assessment. The panel members were responsible for reviewing documentation and coming to conclusions at a meeting in

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TERA compiled the panel discussions into meeting reports that summarized discussions and highlighted conclusions.

In addition, the study consulted with a Technical Committee (TC), comprised of both community and governmental groups: (Ontario Ministry of the Environment (MOE), the Sudbury & District Health Unit, the City of Greater Sudbury, and the First Nations and Inuit Health Branch of Health Canada) and company shareholders (Xstrata, Falconbridge Ltd. and Inco, CVRD). The assessment of the soil itself was prepared by the SARA Group, a group of environmental consulting firms and consultants. The results of the study were made public in 2008 but some community groups and NGOs disputed the results and company run process; local NGOs produced a shadow counter-report.

In May of 2008, the Regroupement pour la Responsabilité Sociale et l’Équité (RRSE) a religious group of Barrick Gold shareholders provided the company with a shareholder proposal requesting the convening of a panel of independent experts to insure that the Pascua-Lama mining project complies with industry best practices and in order to protect the right to water of local communities. The groups requested an advisory panel of independent experts to countercheck the design, execution and follow-up of all strategic components of the projects.

However the company’s CEO disputed the need for additional environmental and social oversight. At the General Meeting in May 2008, CEO Greg Wilkins responded “that he had no disagreements or concerns about the objectives of the NGOs to maintain the quality and quantity of water supplies in communities near Pascua Lama. However, he added, that he had no desire to add a third layer of oversight to the environmental enforcement and laws of the two nations who are permitting and overseeing implementation and enforcement concerning Pascua Lama.” This panel proposal was rejected and the panel was not created.

Announced in April 2008, Goldcorp Inc. reached an agreement with the Public Service Alliance of Canada (PSAC) Staff Pension Fund, The Ethical Funds Company, The First Swedish National Pension Fund and The Fourth Swedish National Pension Fund, to conduct an independent human rights impact assessment of its operations in Guatemala. Following a shareholder resolution submitted by these investors, Goldcorp signed a memorandum of understanding to complete the assessment in a year’s time, and to

12 Sudbury Soils Study: www.sudburysoilsstudy.com
form a steering committee comprised of company staff, shareholders, and other stakeholders to oversee the process.  

The steering committee selected a consulting firm to undertake the assessment on the ground but continued to provide oversight on the research methodology and field work.  

It is mandated to ensure the project’s three central values: transparency, independence and inclusivity. The objective of the assessment is stated as being “to improve the opportunities for the company to continue to operate profitably in Guatemala by ensuring that the company has in place and is implementing effectively policies and procedures designed to mitigate the risks of potential conflicts with international recognized human rights standards and norms given the context in Guatemala.”

The Goldcorp assessment is ongoing. The project has encountered resistance and protest from some local stakeholders who contest the company’s right to be on their land and has had difficulty conducting interviews on the ground. Tension between the international ethical shareholders who commissioned the report and certain community groups and certain interested NGOs has increased.

The Cerrejón Third Party Review was established by Cerrejón in Colombia in October 2007. The panel was tasked with broadly reviewing the company’s community engagement practices and writing an independent report for the company. The panel - a small team of international experts - used consultants to conduct on-the-ground research but also communicated with local communities themselves. The third party review panel published their report in March 2008. We have assigned this third party review to our second category given the panel’s (all international stakeholders) direct involvement at the site level, specifically with the communities around the mine.

The Newmont Community Relationships Review (CRR) was established by Newmont after a shareholder resolution in April 2007. The resolution requested that the company review its policies and practices with regard to addressing community opposition to its operations. The company hired a Study Director and Site Assessors to conduct the research and review and to produce a public report. An Advisory Panel was charged with advising Newmont on the review process’s methodology and site research across 5 different mining sites worldwide; providing external commentary on the final report; and providing an outside perspective on Newmont’s work generally. The panel was established in August 2007 and

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consisted of a team of international experts, including individuals from NGOs and a representative from a (non-Newmont) mining-affected community. A final report was published in March 2009.

Headquarters & International Stakeholder

Report Review: Alcoa Sustainability Report Panel

Alcoa, world leader in the production and management of primary aluminum, convened a panel of NGO experts and Alcoa senior staff in Washington, DC, in December 2007 to provide feedback regarding their 2006 sustainability report. Alcoa wanted critical voices to review the report to enable a more rigorous writing of the next report. A second meeting, held in New York City in March 2008, provided a forum for the panel to give specific feedback on the 2007 reporting. As part of their responsibilities, the external panel members wrote an independent commentary on the 2007 report that was unedited by the company and published, giving Alcoa direction for continuous improvement in their reporting process.  

Standing Body: BHP Billiton Forum on Corporate Responsibility

BHP Billiton has created their own Forum on Corporate Responsibility. This body brings together representatives of the company’s senior management team and major international NGOs (including Oxfam and the World Wildlife Fund) to discuss social and environmental matters as pertinent to the company. The company uses this body, which meets biannually, to discuss community and social issues off the record, encouraging open dialogue and learning. The company is not bound by the advice of the Forum.

The BHP Billiton Forum on Corporate Responsibility is the only standing panel we have included in this panel landscape map. It is important to include because it is an oft-cited innovation within the industry and may serve as a useful model for some of the other time-specific panels which may morph into standing panels.

Summary

In this section, we have reviewed a range of panels which illustrated the variety of purposes they can fulfill as well as a variety of shapes and structures they can take. The variation in approach demonstrates that panels can operate at corporate headquarters or local site levels. They can involve scientific experts, NGO actors, individual community members, and company staff. Also, panels can attempt to inform corporate policies, provide independent reviews of environmental or social reporting, open dialogue with community members, inform the life of one single project, report on human rights impacts, or create a standing dialogue with stakeholders. In the following section, we review the components highlighted by Critical Friends and illustrated by the panels as integral to panel creation and execution. This discussion will inform the analysis of our case studies and provide a basis for developing recommendations for panels more broadly.


D. Critical Panel Process Components

Reviewing at the above examples and insights garnered from the Critical Friends report, a number of key process components emerge:

**Scope & Objectives:** Panels have enabled companies to engage stakeholders in both advice giving and providing assurance regarding the quality of current efforts. As seen above, broadly, panels can engage on functional issues (customer care), issue-based challenges (human rights, environment, health), and organization-wide issues (reporting). Some panels focus on collecting an outside perspective on their work on a variety of issues including human rights, environmental concerns, and community relationships. Other panels provide specific advice on company policies and practice – commenting directly on reporting or community-related policies. Panels can be used for company internal learning, informing decision-making and project processes, motivating corporate culture change and strengthening CSR efforts, managing community-company conflict and crises, improving trust with communities, and developing new partnerships. In addition, panel mandates can range from very specific and local to global in scope.

**Membership:** Panel membership can vary as greatly as the panel’s scope. Critical issues include:
- selecting members with credibility
- selecting members with expertise on the appropriate issues
- members’ ability to accurately incorporate the views of particular stakeholder groups and gain legitimacy among those groups
- general balance in the panel overall.

Companies often select experts who provide an unbiased eye to their work but some companies have chosen to select experts who have campaigned against the firm, or have ties to a directly affected community. Membership selection is directly related to the objectives of the panel. Most panel participants contribute in their own individual capacity and not as representatives of their organization, avoiding a direct negotiating relationship. It is important to note that in most cases, companies select and approve the membership of the panel, retaining control over the panel creation process.

**Organization:** The logistics of setting up a panel as well as defining the scope and work plan for a group of experts can be a complicated endeavor. Balancing company needs for confidentiality and risk-management with panelists’ desires for independence and access can be difficult. It is challenging to create incentives for panelists’ participation while simultaneously ensuring an efficient and effective process. Issues to be considered:

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1) Remuneration – Given the hectic schedules and other professional responsibilities of expert panelists, payment for time and work is often provided. Some companies provide remuneration beyond direct panel expenses whereas others provide donations to a charity of choice in order to provide an indirect payment.

2) Panel Mandate – Setting expectations of both panel members and company officials for the panel’s work will involve negotiating final products and deliverables as well as panel and company responsibilities. Many panelists will require incentives to participate ranging from a simple good faith effort to make change or publication of the panel’s report, to influence on decisions for follow-up or guarantees on implementation of their work. Related to this is the placement of the panel within the company and how the panel’s work will feature in operations divisions outside of a company’s Corporate Social Responsibility (CSR) department (through which many panels originate and communicate).

3) Access – Setting the boundaries of confidentiality and transparency is important for any company partnership. On the one hand, panelists must have access to company documents in order to gain insight into company practices, but on the other hand, some corporate information may need to be protected. Also, NGO participants who have public constituencies may face a delicate balance between communicating their actions with their constituents while still being able to work effectively under confidentiality provisions.

4) Research and Decision-Making Processes – Setting terms of reference and other logistics is important for panel facilitation. Defining a panel methodology for research and review as well as a process to make decisions among members including use of a chairperson or facilitator will promote an efficient panel process.

Impact: As noted above in the discussion of objectives, panels can have a number of goals and a number of direct and indirect impacts. In all cases, panels advance company learning and CSR efforts. An effective panel can help shift internal thinking on CSR and community issues, avert or address community-company challenges, prevent future conflicts, and cultivate trust and renew community-company relations. Impacts can focus on learning, creating innovative partnerships and engagements, or improving company performance indicators and standards. Impacts vary wildly depending on panel scope and effectiveness as well as the support they receive from the company and management.

Continuing Challenges: As a relatively new form of stakeholder engagement, panels face continuing challenges. While some are inherent in stakeholder-company relations (such as bridging community-company conflicts), some concerns are particular to panels. As highlighted by our case studies, the issues above serve as barriers or questions to be negotiated between the company and its advisors. Finding a balance between confidentiality and transparency, unbiased expertise and stakeholder representation, remuneration and independence, efficient decision-making and accurate, time-

consuming research and consensus processes, and realistic objectives with global goals requires negotiation and compromise, which may never satisfy all parties.

Defining the role of the panel and negotiating its implementation will remain the subject of differing public assessments, seen sometimes as ‘greenwashing’ and at other times as a promise of new, hopeful steps towards actual progress. Most important perhaps is the debatable lack of panel influence in directly changing company behavior, which remains the most sensitive issue among stakeholders, panelists, and company personnel alike. Bearing in mind these critical considerations, we will now delve more deeply to see whether and how these components manifest themselves in two in-depth case studies.
Case Study: Newmont Mining Corporation

A. Background

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<th>Fast Facts</th>
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<td>Founded: 1921, New York City</td>
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<td>Headquarters: Denver, Colorado</td>
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<td>Employees: 34,000 (including contractors)</td>
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<td>Gross Revenues: $5.53 billion (FY 2007)³¹</td>
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<td>CEO: Richard T O’Brien, since 2007</td>
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<td>Activities: Gold and copper production, exploration, and acquisition</td>
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<td>Stock: New York, Australia, and Toronto stock exchanges</td>
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<tr>
<td>Operations: United States, Peru, New Zealand, Australia, Indonesia, Mexico, Bolivia, Ghana³²</td>
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See Appendix 1 for details on the history of Newmont Mining Corporation and the gold mining industry in general.

B. The Panel

The Newmont review was constructed of two parallel but interconnected processes: first, a Study Director with the help of Site Assessors was to research and report on the company’s social responsibility practices at five mine sites. Simultaneously, an Advisory Panel was to provide advice on that research process and also provide a critical commentary on the Study Director report. Our analysis focuses on the second body, the Advisory Panel. Importantly, the Advisory Panel was not brought in to run the study or write the main substantive report for the company; it was brought in to be a critical voice regarding the rest of the process.³³ The Advisory Panel’s advice was non-binding but the panel was allowed to speak freely and provided constructive criticism while the review process was ongoing and a critical commentary on the final report.

The panel’s mandate was twofold:

1. To provide advice on the quality and integrity of both the research process and presentation of findings to the Board, specifically responding to the following questions:

a. Will the scope and methodology of the Working Group’s approach ensure that the needed information and data are forthcoming both from company and community sources?
b. Does the Working Group report provide an adequate basis for assessing: (1) the nature of Newmont-community relationships; and (2) the effectiveness of Newmont policies and practices related to those relationships in terms of relevance, materiality, completeness, and responsiveness?

2. To provide a report (direct and unedited by Newmont) to the Board of Directors that captures the Panel’s perspectives on the research process, its findings, and any recommendations the Panel members may have for charting a path forward.34

The Newmont Board of Directors tasked its Environmental and Social Responsibility (ESR) Committee with implementing the review and the panel reported directly to the ESR Committee. In order to carry out the research necessary for the review, Newmont employed a Study Director to manage and coordinate the process. The Study Director managed a number of Site Assessors, of whom two or three went to each of the mine sites to conduct interviews. These Site Assessors drafted site assessment reports. In the final step of the process, the Study Director drew on these reports and their own interviews with regional- and corporate-level executives to draft an overall Global Report to Newmont. The independent site assessment teams were assigned to 5 mines, which would be reviewed: in Peru, Ghana, Indonesia, New Zealand, and the United States.35 The Study Director reported to the ESR Committee of the Board but worked with the Environmental and Social Responsibility staff at corporate headquarters. The Study Director was also responsible for implementing any suggestions made by the Advisory Panel on research or methodology while the process was ongoing. In January 2008, the Study Director of the project changed from Jim Rader, Principal, Avanzar Consulting, to Foley Hoag LLP represented by Gare Smith and Dan Feldman.

The Advisory Panel itself was coordinated by a panel chair who communicated the panel’s decisions and discussions to the Board, company staff, and Study Director. All panel members participated in their personal capacity and not on the behalf of their affiliated organizations. Panel members included Cristina Echavarria, Secretary General, Association for Responsible Mining Colombia; Steve D’Esposito, President, RESOLVE, Washington, D.C. USA; R. Anthony (Tony) Hodge (Advisory Panel Chair), President, International Council on Mining and Metals, London, UK, (formerly Professor of Mining and Sustainability, Queen’s University Kingston until October 2008); Chris Jochnick, Director, Private Sector Team, Oxfam America; Caroline Rees (Vice-Chair), Director, Governance and Accountability Program, Corporate Social Responsibility Initiative, Harvard Kennedy School; Ignacio Rodriguez, Community Representative, Colorado, USA; Julie Tanner, Corporate Advocacy Coordinator Christian Brothers Investment Services.36

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36 A number of panel members changed jobs or organizations during the panel process. Chair Anthony Hodge became the president and CEO of the International Council on Mining and Metals in October 2008. Previously, Hodge was the Kinross Professor of Mining and Sustainability, Queen’s University at Kingston. After taking on the position at the International Council on Mining and metals, the panel decided he should continue as chair. In addition, the panel appointed member Caroline Rees as vice-chair in case any conflict of interest situations should arise. In
C. Impetus for the Panel

- **A New Internal Structure**
  Newmont had organized their first environmental Board of Directors committee in 1993, adding issues of health and safety in 2000. In its most recent iteration, this committee was renamed the Environmental and Social Responsibility Committee (ESR) and meets four times per year. This shift in Board structure reflected new thinking within the company about the seriousness of environmental and social issues.

- **Operational Challenges**
  As a large, publicly-held extractive company, Newmont and its operations are under constant scrutiny. This critical lens began to focus even more sharply in the early 2000s when Newmont experienced a number of troubling incidents at its operations around the world. A few notable community conflicts:

  - In 2006, at the Peruvian operation, there were protests in which a farmer was killed. During the strike, workers demanded health, education, and housing benefits in their contracts.
  - At the Ghanaian operations, three people were killed and several injured as villagers and workers denied access to their land near the mine protested over the relocation compensation.\(^{37}\)
  - In the same year, villagers burned Elang exploration camp on Sumbawa Island, Indonesia halting company production.\(^{38}\) These conflicts continued and increased in violence over time drawing company attention to their impacts and future challenges.

- **Public Pressure**
  Beginning in 2004, Jane Perlez of the *New York Times* began reporting on Newmont’s activities in Indonesia and Peru in an ongoing series following a $543 million lawsuit filed against Newmont by local villagers from Buyat Bay, on Sulawesi Island in Indonesia, which accused the company of producing waste that destroyed fishing capacity and caused human illness. The company denied the allegation.\(^{39}\)
  Furthermore, a *Denver Post* article proclaimed, “The High Cost Of Gold: Denver-Based Mining Giant

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Newmont Gleams On Wall Street. But The Company Is Tarnished By A Troubled Environmental Record. In 2005, the *Times* continued to chronicle the trial of Richard B. Ness, the President of Newmont Indonesia on the same issue. Continuing into 2007, this media attention on Newmont’s operations around the world threatened the company’s reputation.

Also starting in 2004, Oxfam and Earthworks began an advocacy campaign entitled “No Dirty Gold” which has sought to raise the human rights and environmental standards of the gold mining industry. Though not directly targeted at Newmont, the campaign tackled both the jewelry and consumer side of the issues as well as addressing industry standards. Oxfam and Earthworks as well as other smaller NGOs including the Western Shoshone Defense Fund and the Stop Newmont Mining Alliance, continued to campaign vocally against Newmont specifically. Coupled with ongoing independent media attention to Newmont’s troubles in Indonesia and Peru, these NGO campaigns and advocacy efforts created a perfect storm around Newmont’s worldwide operations.

Inspired but Risky: A Supported Shareholder Resolution

In April 2007, prompted by continued unrest at Newmont mines in Ghana and Peru, Christian Brothers Investment Services Inc (CBIS) filed a shareholder resolution at Newmont requesting that the company develop a policy of community engagement. Along with 10 other faith-based organizations, CBIS requested that the company review its stakeholder consultation policies and produce a report on community relationships for shareholders. Specifically, the shareholders requested that the report include an evaluation of the company's existing systems for environmental risks; a global review of the effectiveness of existing social and environmental guidelines, policies, and practices related to community opposition; a review of the areas most associated with community opposition; a review of best practices in the extractive industry as related to communities; and a report and implementation timeline for action to strengthen Newmont’s engagement policies.

In a groundbreaking move, the Newmont Board of Directors decided to throw their support behind the resolution and urged other shareholders to do the same. Due to that endorsement, on April 24, 2007, 91.6% of Newmont shareholders voted in favor of the resolution. Hence, the review progress commenced.

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42 No Dirty Gold Campaign: http://www.nodirtygold.org/earthworks_oxfam.cfm
44 In addition to CBIS, the shareholder resolution is supported by Catholic Health East; Sisters of Saint Joseph of Chestnut Hill, Philadelphia; Mercy Investment Program; CHRISTUS Health; General Board of Pension and Health Benefits, United Methodist Church, Presbyterian Church (USA), Missionary Oblates; Unitarian Universalist Service Committee, Evangelical Lutheran Church in America; and Catholic Healthcare West.
D. Interviewee Perspectives on the Panel

To understand and assess the means through which Newmont commissioned, structured, and utilized the Advisory Panel, we conducted interviews with a range of individuals and groups both internal and external to the process. Internal participants were those actively involved in shaping the review at some stage, either at Newmont itself or through the research study or the panel. These interviewees included panelists themselves, company representatives (including members of the corporate social responsibility team, board members and other company managers), and finally members of the research teams including both Study Directors and Site Assessors. External interviewees, while affected by Newmont and the review’s product were not involved directly in the formation of the panel, the research, or the writing of the final report. These interviewees included both local and international NGO representatives as well as individuals connected with communities at the local site level.

1. Panel Formation and Mandate

Panel Mandate

In order to meet the shareholder request within the timeframe and other strictures set by the resolution, Newmont created the mandate for the review process. The actual language of the resolution was open to broad interpretation:

Resolved: That shareholders request that a committee of independent board members be formed to conduct a global review and evaluation of the company’s policies and practices relating to existing and potential opposition from local communities and to our company’s operations and the steps taken to reduce such opposition; and that the results of that review be included in a report (omitting confidential information and prepared at reasonable cost) that is made available to shareholders prior to the 2008 annual meeting.

There were two issues that seemed unclear to some parties. First, throughout the process there seemed to be ambiguous boundaries for how the panel and company could exercise authority. In the eyes of a number of parties, the panel was extending the scope of its mandate, beyond advising the Study Director and more toward being a governing body. Meanwhile, the company was unwilling to push back against what they felt was mandate creep because they did not want to give the panel boundaries; the company was particularly concerned about perceptions of affecting the panel’s independence and thus hesitated to intervene. Indeed, the Advisory Panel’s final report notes the tension between their role as advisors who often felt the need to take on a more auditor-like role.47

Some attributed this tension to that fact that this was a new process for both the company and the panelists. Some push and pull was natural. Others suggested that the mandate could have been scoped out more clearly in the beginning such that expectations on both sides were set explicitly before the panel’s work began. It was clear to all involved that the company tried to maximize the panel’s independence by staying out of its affairs, but this resulted in a trade-off in efficiency and a heavy reliance on the guidance of the panel chair.

Secondly, a number of interviewees in different roles internal to the process had different understanding regarding the focus of the assessment: was it an assessment of the company’s community relations processes (as the company thought), or their actual community relationships (as the panel thought)? Was this an assurance panel or an advisory panel? One interviewee suggested that a review of processes would be a less risky process focused on the nuts and bolts of company policies and procedures. Some involved in the process believed that the panel would have liked it to be a broader analysis of community relationships. One interviewee suggested that this tension was also increased by panelists’ desire to make clear to their constituents that they were not compromising their own values and were not providing certification of a process that was usurped by the company. As such, the company left the mandate broad preferring that the panel arrive at its own decisions; the result was a vague and muddled mandate.

Creating Trust with Stakeholders

Given the global nature of Newmont’s review, it is difficult to generalize how stakeholders, both global and local, felt initially about the project. Naturally, community and international NGOs who have years of history campaigning against the company expressed initial suspicion about the effort. The most common concern was that the company would use the review and report for positive publicity but that communities would not experience any meaningful changes on the ground. Many felt positively about the effort initially because it originated with outside shareholders, not the company, and they believed commissioning a panel symbolized that this was a serious effort.

While it may have been useful to consult stakeholders on the scoping of the research, the company felt there was not enough time to engage in such a process given the short time frame the shareholder resolution gave them to produce a report. Local NGOs continued to voice concern that while they were sometimes interviewed, they were not consulted before the project or solicited for feedback during the process. In its final report, the panel had a similar take on this suggesting that there be a subsequent feedback loop to take the site report to the communities and ask whether the report reflected their reality.48

2. Member Selection

Selection Process

Given the lack of precedent for panel processes, panelists were chosen in a relatively ad hoc manner. Newmont discussed criteria for member selection including qualities of fairness, business and topical understanding, and professionalism. Tony Hodge, a professor and expert on mining sustainability, was a known entity to corporate social responsibility staff given his past work on these issues and was recruited to chair the panel. With the Newmont corporate social responsibility staff, Hodge drafted a list of potential participants and criteria for selection, including familiarity with mining company community interactions, possessing a useful set of skills or knowledge base, lack of a conflict of interest (it could not include someone who received work from Newmont previously). Hodge personally approached the panelists to solicit their professional participation. Terms and principles of their participation were later worked out at the first meeting.

Panel Membership

With Newmont’s support, Hodge invited international experts on mining and CSR as well as a number of individuals who, while acting in their individual capacity, came from activist organizations that had campaigned against the company. Community stakeholders often stated that they trusted Oxfam and Earthworks and felt that including members of those organizations meant this was “clearly not a rubber-stamp panel.”

The panelists themselves initially felt there was a gap in the panel’s membership: a community perspective – someone who had experienced the impacts of mining first hand but who had also thought about these issues globally. Panelists wrote to Newmont requesting a new member that could bring a community perspective, though not someone from a community affected by a Newmont mine, given that this would present a conflict of interest. Through the corporate social responsibility department, the company responded positively and gave the panel permission to select a new member.

Although panel members brought a variety of experience with local communities from around the world and their organizations’ expertise on issues of participation, gender, and empowerment to the table, all panelists brought a generally Western, international perspective to the group. With the exception of the United States, no panelists originated from the countries studied. However, panelists suggested that given their prior individual experiences on the ground with local or indigenous communities they were able to surmise what these viewpoints would be. Despite this, an indigenous peoples’ perspective was cited as missing given that two of the sites had affected indigenous people’s communities. (Note: Since the report was not yet published when we were conducting our interviews with local stakeholders, external interviewees were unable to comment on whether a local, historical, and contextual perspective was accurately represented in either the Study Director’s or the Advisory Panel’s report). Additionally, finding one person to represent an “indigenous perspective” is difficult given that there is not one indigenous view; it differs from locale to locale. Still, some suggested that the company underestimated the capacity of community people to participate. Panel members noted that having a member from an indigenous community or from Ghana, Indonesia, or Peru could have brought a more localized perspective to the group discussion.

Ultimately, by identifying panelists who were credible intermediaries with links to these communities, the panel membership was deemed by all interviewees as a reasonable effort to satisfy the need of finding unbiased panelists and construct a panel under tight time constraints. The panel also only had a budget to operate in English, which constrained its ability to invite local actors.

In addition, some community members suggested that the panel was missing a technical expert who could provide specific advice on the mining industry. Panelists could provide a broad perspective on the community issues but not scientific or environmental expertise on technical extractive issues. While this was not cited as a constraint on the panel overall, many outside the panel suggested that it would have been useful.
While not a focus of this study, it is interesting to note the selection of the Study Director and panel chair, and the resulting implications for the review. The original Study Director, Jim Rader, was described by interviewees as someone trusted by NGOs with a strong background in community issues. When Rader left the panel, the project was taken up by Gare Smith and Dan Feldman of Foley Hoag, a Washington, D.C.-based law firm, who had previously mediated a dispute between Newmont and a non-governmental organization. This transfer had practical as well as symbolic implications. A number of stakeholders said they had difficulty instinctively trusting the use of a corporate law firm for this type of process, despite the professionalism and qualifications of the new Study Directors. This feeling of distrust was echoed by some community members, assessment team consultants, and panel members. Fueling this perception was the structure of the review process itself – both the former and latter Study Directors were hired directly by the company – and many interviewees wondered if this damaged the perception of independence. In addition, some international stakeholders outside of the process expressed concern that Hodge remained the chair of the panel after he became President of the International Council on Mining and Metals (ICMM), an industry organization in May 2008, shortly before the end of the panel process.

- **Remuneration**

Each panel member was offered three financial compensation options: no compensation at all, payment of direct expenses, or expenses plus a payment for work. The panelists felt this structure worked well, because they could choose a payment option which met their needs in terms of maintaining a perception and position of independence while enabling them to set aside time for the project. In fact, some panelists did not accept compensation at all and their participation was funded by their own organizations. However, the panelists did not disclose which remuneration option they accepted either within the panel or publicly. Panelists themselves noted that the project took pains to identify contractual arrangements with all Study Directors to ensure their independence but did not insist on the same with the panel.

- **Motivation and Assurance**

Panelists described their motivations to participate in the Newmont process as excitement over a new way to positively affect company impacts on communities and as an opportunity to gain insight into internal company information and operations to understand more about these processes. While most panelists expressed that they undertook no serious risks by participating in this process, panelists from NGOs highlighted their sensitivity to their organizations’ credibility. Panelists with specific concerns about the perceptions of their independence, voiced their concerns before agreeing to participate and were satisfied by the conditions offered by the company.

The central assurance that panelists requested was the ability to speak freely and comment on the final report. Newmont did not require panel members to sign a confidentiality agreement. Panelists reserved the right to comment independently on the final product and were assured that their final report would be published without company censorship. Panelists believed it was unrealistic for Newmont to promise to accept all recommendations or guarantee mechanisms assuring the report was implemented, however, they did feel at most points that Newmont was committed to moving the process forward.
3. Structure and Research Process

The Newmont panel structure was unique in that the company hired a research team and Study Director independently from the Advisory Panel, which was brought in to advise the entire process. While the panel offered suggestions to the study team on methodology and research it did not directly oversee the process. Differing from the Cerrejón process, panel members wrote a separate commentary on the company’s review instead of drafting the main review report. Interviewees identified a number of challenges but also benefits of this structure.

⇒ First Effort
As a first effort, the time-specific structure of the panel received positive reviews. Most interviewees believed that setting up a standing process would be “too much too soon” for the company. Appropriately, according to those involved, this first time effort was also very directed and focused on meeting the needs of the shareholder resolution within a short time frame. The panelists and company were both under the impression that this one-time panel was the beginning of a much longer sequence of change. The company felt secure that they were able to clearly identify the risks of these types of efforts and set expectations for how the company can comfortably move forward.

Given this understanding, the majority of panelists were satisfied with the process. While all had suggestions for improvements, the consensus was that the groundbreaking effort was conducted in a fair and credible manner. The company also expressed their satisfaction with the process and believed it had provided useful advice for the Board. With few prior examples to follow, this time-specific panel garnered praise from all involved.

⇒ Independence
Given the freedom to write their own commentary, all panel members felt strongly that their process was entirely independent from the company. Panel members credited both the structure of the review process (i.e. how the panel complemented the other component parts of the process) and the panel’s mandate to write its own report and speak freely. The majority of community members were unclear about the structure of the review process but did understand that the panel provided an additional check on the process. Overall, community members believed the panel to be well-intentioned and independent while recognizing that it did not have control over the company’s behavior.

⇒ Research Design and Process
As noted in the final Advisory Panel commentary, Advisory Panel members suggested that they would have liked it if they had had greater input into the methodology used in the process early on. While
there was clear communication between the panel and the Study Director and many recommendations were incorporated, site assessment teams were unclear about how the panel was giving input into their work and felt undermined by this type of dialogue. According to the Site Assessors, this resulted in a number of adjustments mid-process and forced research teams to rewrite and do repetitive research.

As noted in the Advisory Panel report, interviewees attributed this problem primarily to the fact that the Advisory Panel was brought in after the process had begun, the Study Director, research teams, and sites selected, and the research methodology already chosen. In fact, the entire process was originally slated to take place within six months. The panel was unable to shape the early stages of the process and instead only had the opportunity to send comments to the Study Director after the research was underway. Even though the time period was later extended for an additional year, according to panelists, this late start also meant that the panel could not give input on the appropriate selection of a Study Director or on the structure of the review.

Community organizations also expressed dissatisfaction that they were not consulted about the research. NGOs suggested that the project should have been participatory from the beginning, giving communities input toward both the study design and the panel member selection. For example, as the research began in Nevada, a number of groups suggested to the company that the research scope “box didn’t fit very well and was not indicative of Newmont’s overall behavior ...limiting it (the research) to this one mine (in Nevada) was not going to be very indicative (of all the mines in the state).” This increased skepticism over the legitimacy of the project and the company’s intent, giving the impression that this was a project constructed “by Newmont for Newmont.” Debate remained on this issue. Some argued that given the time restrictions and the intention to focus on policies and not community-company incidents, a participatory process was not possible or necessary and could have resulted in the review being bogged down in minutiae from the start. According to some interviewees this disciplined and streamlined approach was “exactly the right process for what we were doing.”

- Structure of the Process

There was a general feeling that the groups involved in the process were too disparate and only connected through the company. Initially, the panel, study team, and Board were independently connected to the company but not to each other. According to one interviewee, “In the first stage we felt like Newmont wanted to keep the different groups apart.” While some of these communication barriers were inherent given the logistics of the process, panelists expressed that it was critical to bring together the four pieces in order to define the rules of the process and build trust. According to one interviewee, “Newmont felt that if the pieces were separate they could better control the agenda. If they had done the process truly multi-stakeholder from beginning, it would have been more difficult for them to control methodology and report.”

In addition, the Study Director was put in a very difficult position, forced to navigate between two bosses – the panel and the company. One interviewee believed that while the Study Director had a direct line to the Advisory Panel it was closely monitored by the company. Both panel members and assessment team members felt that the May meeting during which panelists and Site Assessors were given the opportunity to discuss the research face-to-face was the most helpful meeting. All Site Assessors and panelists said that these discussions built trust between the panelists and those carrying companies need to think about these culture issues – they can’t just have an independent panel to give advice and not give the panel tools to do this. It’s about trust.
out the research and additionally, allowed time for constructive criticism of the process from both sides through dialogue.

- **Negotiating Transparency**

Panel members had varying feelings about the transparency efforts of the panel process. Some believed that the panel was appropriately transparent and that the most important display of this would be in the final report and commentary. Others believed that transparency guidelines were vague and more information should have been available to outsiders.

In general, there was confusion about the transparency guidelines for the process. For example, while all agreed it was not necessary to report minutes of each meeting, initially the panel wanted informal summaries of their work to be posted on the Newmont website. Instead interim reports were suggested. The company pushed back on these suggestions arguing that publishing interim reports would be unhelpful to the process and misleading if left in isolation on the website. This dialogue was never resolved. Ultimately, interim reports were not available on the website until the final reports were published. While other panel information was available on the website, panelists complained that the company did not dedicate enough resources to get the website up and running in a timely manner that allowed panelists and others involved to refer stakeholders to current information. Throughout, as noted in the final report, many panelists felt that the reporting issue has not been handled in a clear and consistent way by the company.

Perhaps more important is the concern expressed over the lack of communication during the lengthy period between mine site interviews and the final report. Community stakeholders with whom the assessment teams spoke over a year ago were not updated by the company or the panel about where the process stood. Speaking prior to publication of the final reports, community NGOs indicated they had heard about the review in its early stages but had not heard anything in over a year. According to one interviewee the message sent at the local level was, “No, we’re sorry we can’t give you the report after you volunteered your time to speak on it.” Assessment team members continuously received requests from those they interviewed for the site report and expressed dismay that they were unable to get the reports out more quickly.

Also, it is interesting to note that given the unique structure of the panel’s role, the panel did not directly receive comments from outside stakeholders. Many community members had heard about the panel but were not sure if they could become involved or offer their input. While this information-receiving role was largely taken on by the Study Director and assessment teams, there was no way for stakeholders to contact the panel if they were dissatisfied with the study process.

- **Internal Panel Process**

All of the panelists were happy with making decisions on a consensus basis. One panelist described the process as long discussions until consensus was achieved at which point the chair, Hodge, would draft a memo based on the decision and solicit comments from the group. Most members were extremely pleased with the work of the chair who took it upon himself to initiate a team process and felt creating team cohesion was important. Concerns were voiced that there may have been a more efficient way to proceed, but overall members were satisfied with the process as it allowed all views to be heard and it allowed panel members to discuss issues in-depth when there were disagreements before making a decision. Many credited the personal qualities and professional experiences of the chair with the success of the panel proceedings despite the lack of formal structure.
4. The Role of the Company

- **Contact with Management**
Panel members expressed confidence in the corporate social responsibility staff both regarding their intentions and capacity. However, a number of panelists desired more contact with company personnel involved in operations activities not under the social responsibility department. Panel members expressed concern that they had minimal contact with management outside of the corporate social responsibility staff and that this lack of involvement resulted in a lack of senior management buy-in in the company. Two panelists suggested that as little as one additional meeting with the Board or top VPs would have increased understanding of the project and assured panelists that lessons from the process would be taken seriously and integrated into company operations.

- **Corporate Culture**
A vast majority of interviewees suggested that undertaking an independent advisory panel was a groundbreaking move for Newmont. However, interviewees also noted that changing corporate culture is never an instantaneous process; it is necessarily slow and adaptation is gradual. Panelists identified corporate resistance to some of their ideas as a symptom both positively – that change was happening, and negatively – that factions in the company were resisting such change.

According to one panelist, “Companies need to think about these culture issues – they can’t just have an independent panel to give advice and not give the panel tools to do this. It’s about trust.” Panelists described the corporate social responsibility team at Newmont as the mouthpiece for the company, negotiating all issues of confidentiality, panel role and process. The corporate social responsibility staff was responsible for mediating the relationship between the company and panel as well as negotiating these issues internally; panelists believed this forced them to balance the desires of the more progressive players in the company with those who were more conservative and who viewed the process as risky to the company. To panelists, the company seemed guarded. Panel members felt this internal tension contributed to confusion between the company and panel. Panelists would have preferred to learn from and interact with these dissenting voices.

One interviewee suggested that panel requests went into a “black box,” and it was unclear how they were proceeding in coming to a decision. This interviewee suggested that a more transparent conversation about pushback from company staff and how panel requests were being handled would have created more trust between the parties. Panelists recognized how difficult changing a conservative company culture could be and wished they could have had more honest discussions about how to empower the corporate social responsibility staff at Newmont.

5. Reporting

The Advisory Panel’s final report was published in early March after the majority of our interviews were completed. Importantly, given that our study will be published in April 2009, we can only comment in a limited capacity on the company’s response and follow-up as well as the panel’s impacts more broadly. Still, the stated intentions of the company, panel recommendations, and the responses of the Board of Directors provide a basis to assess the intended next steps.

- **Report Publication**
In March 2009, the company made public on its website: (1) the Global Summary Report, written by the Study Directors, including material from the five site reports done by the Site Assessors, 2) Building
Effective Community Relationships: Final Report of the Advisory Panel to Newmont’s Community Relationships Review, written by the Advisory Panel, providing their commentary on the process and overarching recommendations on substance, and 3) the Report of the Environmental and Social Responsibility Committee of the Board of Directors, written by the Board for the shareholders, reflecting their views on and response to the whole process. These three reports – from the study team, the Advisory Panel, and Board of Directors – were published in English, Spanish, and Bahasa Indonesian. The Advisory Panel’s commentary was unedited by the company.

The final study team report, Global Summary Report, was compiled by the Study Directors incorporating material from the site reports written by the Site Assessors at each location, and attaching those reports in full. The first draft was reviewed in July 2008 and the draft finalized in December 2008. The Advisory Panel began its review of the report in draft form in mid-2008 and began to prepare its response, Building Effective Community Relationships, to the report and panel commentary in December/January 2009.

According to the panel’s own report, the Study Directors’ Global Report “is a very good report with clear language and a tone that is frank and honest; represents a significant contribution to understanding mine-community relationships across the Newmont system and across the industry in general; and provides a very strong basis for Newmont to move forward in its community relationships.”

Similarly pleased, the Board commented: “The CRR, while revealing gaps in our community relationship, policies and program execution that have limited the Company’s past effectiveness in managing conflict and fostering good community relationships, provides us with a roadmap toward a more effective approach.” According to CEO Richard O’Brien, “This transparent process provides a robust and independent analysis of how we manage our community relationships as a company...while we have strong and responsible company policies in place, we clearly have work to do to ensure our implementation is reliable, consistent and accountable.”

Recommendations, Response, Follow-up, and Impact

The Global Summary Report’s and the Advisory Panel’s recommendations are extensive. The Global Summary Report itself recognizes eight lessons for Newmont and provides more specific recommendations for the future under each lesson. The Advisory Panel document offers seven recommendations to the company. The recommendations cover a wide range of issues and suggest changes in the company’s social responsibility efforts.

The Board of Directors responded directly to these reports releasing their own outline for how the company will move forward. The Board has directed the management to develop and execute an Action

Plan to address the recommendations. The Board suggests this Action Plan include engagement with impacted communities about the report, convening forums globally and locally to discuss report findings, and revise the company’s three year strategic environmental and social responsibility plan, among other suggestions.

As noted above, given that these reports were published two weeks before the completion of this study, their actual impact remains yet to be determined. Portending continued implementation and follow-up by the company, CEO Richard O’Brien stated: “Successful execution of the CRR's lessons will help Newmont become an industry leader, while ensuring we continue to create sustainable value and opportunity for our shareholders, employees and host communities. I am personally committed to following through on the CRR so that we and all of our stakeholders benefit from its insight and recommendations.”

Newmont Community Relationships Review

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Vulnerabilities</th>
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<tbody>
<tr>
<td>• Panel prestige inspired confidence in independence</td>
<td>• Confusing mandate</td>
</tr>
<tr>
<td>• Panel was representative of most stakeholders perspectives</td>
<td>• Limited community input into design</td>
</tr>
<tr>
<td>• Fiercely independent from company</td>
<td>• Late start of Advisory Panel</td>
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<tr>
<td>• Strong first effort</td>
<td>• Difficult task of Study Director</td>
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<tr>
<td>• Strong panel chair</td>
<td>• Confusion about transparency guidelines</td>
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<tr>
<td>• Effective use of consensus decision-making</td>
<td>• Lack of regular communication and updates with communities at the field sites</td>
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<tr>
<td>• A new look at corporate culture</td>
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Case Study: Carbones Del Cerrejón, a.k.a. Cerrejón Coal

A. Background

<table>
<thead>
<tr>
<th>Fast Facts</th>
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<tr>
<td>Founded: 1976, La Guajira, Colombia</td>
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<tr>
<td>Headquarters: Bogotá, Colombia</td>
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<tr>
<td>Employees: 10,400 (48% contractors)</td>
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<tr>
<td>Gross Revenues: $2.3 billion USD (FY 2008)</td>
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<tr>
<td>CEO: Leon Teicher, since May 2006</td>
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<td>Activities: Coal production, exploration, and extraction</td>
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<td>Operations: La Guajira, Colombia</td>
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See Appendix 2 for details regarding Cerrejón’s history and the coal industry in general.

B. The Panel

The Cerrejón panel was constructed as a third party panel that would manage a review of Cerrejón’s social engagement practices and write an independent report as a result of that research and review. Unlike the Newmont panel, which kept its Advisory Panel separate from the process to use as a critical voice to improve the process, Cerrejón set up the third party panel to design, run, and write the entire review.

Given the scattered locations of the panelists (Canada, Chile, Colombia, England), the limited amount of time they would be able to spend on the ground in La Guajira, and the vast amounts of research necessary in order to conduct a comprehensive review, a consulting organization, Social Capital Group (SCG), was hired to do much of the legwork. It was agreed that Cerrejón would pay the consultant fees, but that the consultants would in fact serve at the panel’s request and answer directly to them. The consulting firm had no substantive contact with Cerrejón management outside of their research and interviews.

Consultants met with members of the local Wayúu indigenous communities, as well as the communities previously relocated and those scheduled for future resettlement. They also met with labor leaders, senior company managers, and members of the international NGO community. Panel members, with and without representatives from SCG, also met with a wide cross-section of constituencies, including community leaders from Tamaquito, the union, Sintracarbon, the communities of Puerto Bolivar, Rio Hacha, Roche, Chancleta, and Albania, among others.

54 Cerrejón Coal: http://www.Cerrejóncoal.com
For some of these groups, this was the first time the company or its representatives had reached out to them. The panel and consultants were given unrestricted access to communities, Cerrejón employees, and Cerrejón records. Given the security realities on the ground near the mine and the port, Cerrejón often provided security and transportation for those doing research and conducting meetings, but the interviews themselves were conducted outside of the presence of Cerrejón employees in most instances.

SCG’s research and findings were summarized in a final report provided directly to the panel. The panel digested this research and then wrote their own review for Cerrejón and the shareholders. This comprehensive report included recommendations on current and future community engagement practices, including those addressing legacy issues. In the end, the entire report was published in March 2008 on Cerrejón’s website, as well as on the websites of their corporate shareholders. Cerrejón subsequently prepared and released a detailed response to the panel’s report in April 2008.\(^5\) At this point, there was agreement that there would be some follow-up effort and a potential future visit by the panel.

In order to assure the independence of the Advisory Panel, it was agreed that no members of the panel would have business connections to Cerrejón or its shareholders. The third party review panel was chaired by Dr John Harker, President of Cape Breton University in Canada and included Nick Killick of conflict prevention NGO, International Alert; Salomón Kalmanovitz, Dean of Economics and Business Administration at Jorge Tadeo Lozano University in Colombia and Elena Serrano of the Chilean NGO, Casa de la Paz Foundation.\(^5\) The members of the panel, while not requiring that Cerrejón be bound by their recommendations, did seek assurance prior to beginning the review that they be given unrestricted access to all information requested and stakeholder groups as a precondition for participation. Cerrejón was completely supportive of this request. As such, the panel was given full access to the company’s records and resources.

\(^5\) Anglo American, BHP Billiton and Xstrata Coal made the following joint statement in response to the report: “As shareholders in Cerrejón, each of our companies welcomes the generally favourable observations made by the Panel. Its recommendations for areas of improvement provide a robust and credible platform from which Cerrejón can address legacy issues and continue to improve its social engagement practices, in line with its vision to be a ‘company of exemplary ethical behaviour, respectful of human rights and that contributes to the welfare and development of the communities where it operates. Cerrejón’s management team and its shareholders are committed to carrying forward the Panel’s recommendations with vigour and we look forward to the publication of Cerrejón’s detailed response and action plan at the end of this month. It is particularly pleasing that the Independent Review Panel and Social Capital Group have consulted a very broad range of stakeholders through this process. We fully support the Panel’s recommendation that all interested parties should now work constructively together to address the outstanding issues identified by the report.’”\(^5\)

C. Impetus for the Panel

- **New Leadership**

Once Leon Teicher took over Cerrejón as President in May 2006 he began to address the issues of social engagement directly, opening up communications with members of the international community. He expressed a desire to move the company in the direction of internationally accepted best practices. He subsequently expanded the social engagement department, brought in several new managers to lead this piece of the organization, and focused the company on improving their own CSR efforts to be more in line with international standards and expectations. With his full support, in addition to that of all three shareholders of Cerrejón, it was announced in August 2007 that a third party review panel would be jointly commissioned to independently review the company’s social engagement practices and outstanding community issues.

The final report notes that Teicher felt the social review would allow the company to “benefit from an independent assessment of our social engagement to date and to gain strategic guidance to enhance Cerrejón’s future performance”. Essentially, the objective was for an independent entity to work with all stakeholders to identify community priorities, assess current programs, and highlight areas of good performance or outstanding issues of concern. It was suggested by several within Cerrejón that this review was partly commissioned to legitimize Teicher’s culture change efforts and to provide him with the political power within Cerrejón to facilitate difficult adaptation.

- **New Shareholders and New Management**

The operation of the Cerrejón mine under its previous management (from 1976 to 2002) including CarboCol, Intercor, and ExxonMobil, left much to be desired according to most accounts (See Figure 10 for Ownership Timeline). Media and outside stakeholders claimed that while major disruptions to the local communities and indigenous in the form of land acquisition and relocations had been conducted within the guiding boundaries of Colombian law, the company had often done the bare minimum with regard to compensation and community engagement. There were also accusations of violence against community members during resettlement. Cerrejón’s social responsibility staff largely agreed with this

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(Cerrejón) will benefit from an independent assessment of our social engagement to date and to gain strategic guidance to enhance Cerrejón’s future performance.

-CEO Leon Teicher

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criticism of past practices.

After a series of complex changes beginning in 1976, Cerrejón’s ownership structure eventually reached the current arrangement of equal shareholder ownership under AngloAmerican, BHP Billiton, and Xstrata in 2002. These shareholders inherited a mine with a complicated history filled with significant lingering complaints related to relocation and human rights. Discussions with various stakeholders including community members, panelists, and employees of the social engagement department reveal that the shareholders began to address internally the prior methods through which management and workers related to outside stakeholders soon after the change in ownership. The beginning of a true shift in corporate culture, however, seems to be more directly the result of the changing views of Cerrejón leadership.

**Lingering Relocation Issues**

Cerrejón operates the largest open pit coal mine in the world. Continued extraction requires further expansion in the direction of the coal seams, which has in the past resulted in the relocation of local communities. The relocation of the town of Tabaco has been the most contentious case to date:

- In 1997, Intercor and Carbocol announced their intentions to acquire the land around and upon which Tabaco was built.
- International NGOs become involved applying pressure to halt the relocation.
- Tabaco was destroyed between August 2001 and April 2002. The community was divided and some members unwilling to leave voluntarily had their property expropriated according to Colombian law.
- Two separate groups of prior Tabaco residents formed – one that tried to work with Cerrejón, the Red Tabaco, and one group that did not and which was led by former resident Jose Julio Perez.  
- In 2006, a complaint was filed with the OECD against Cerrejón with regard to the Tabaco resettlement (details below).
- In December 2008 (post-third party review), Cerrejón and the Tabaco Relocation Committee reached a final agreement to settle outstanding relocation grievances.

The company has noted that relocation will necessarily continue to be part of Cerrejón's business in the future. On going mine operations, for example, have led to the resettlement of the communities of Roche, Chancleta, Patilla, and Tamaquito."

**Public Pressure**

Prior to the individual relocation of Tabaco community members, members of the international community began to speak up on behalf of its residents. Several international NGOs, including groups like Pressure Point, mounted a public relations campaign against Intercor. Delegations to La Guajira led by Aviva Chomsky of Salem State University and Garry Leech of Cape Breton University among others brought additional attention to the region during the period of 2005 to 2008. They met with company representatives, including President Leon Teicher.

In addition, in June 2007, Armando Pérez (solicitor), Jose Julio Pérez (former Tabaco resident) and the Colectivo de Abogados Jose Alvear Restrepo, a Colombian NGO, filed a complaint against BHP Billiton in regard to Cerrejón for allegedly violating the OECD Guidelines for Multinational Enterprises with the Australian National Contact Point. The UK and Swiss National Contact Points (NCP) were also involved. According to the complaint, Cerrejón destroyed the township-pueblo of Tabaco and forced the expulsion of the remaining population. According to the complaint, this ‘estrangulación’ (strangulation) is designed to make living unviable in the area and drive the population out. On October 2007, a meeting of UK, Australian, and Swiss NCPs and the local Cerrejón Coal management took place. It was at this meeting that a third party review was discussed by Cerrejón Coal and accepted by the NCP as an appropriate response for the complaint. Accordingly, the OECD complaint was suspended until the third party review published its report in March 2008.

The ongoing conflict between Cerrejón and members of the displaced Tabaco community, filing of an OECD complaint, and the historical lack of social engagement created conditions ripe for the new President to commission a third party review of Cerrejón’s corporate social responsibility efforts. According to shareholder representatives, the idea for the review came from discussion between the three shareholders, AngloAmerican, BHP Billiton, and Xstrata. It was viewed as an opportunity to capitalize on the new ownership and management structure, with the aim of creating a new approach moving forward as the mine planned to expand further.

D. Interviewee Perspectives on the Panel

As with Newmont, in the case of Cerrejón we conducted interviews with a range of individuals and groups both internal and external to the review process in order to gain insight into the means through which the company commissioned, structured, and utilized the third party review and how it was perceived. As noted, internal participants were directly involved in shaping the review at some stage. This group of interviewees included panelists themselves, company representatives (including members of the social responsibility staff and other company managers), and finally, members of the Social Capital Group, which was the consultancy tasked with conducting the majority of the panel’s research. External interviewees, while directly impacted by the review were not involved directly in the formation of the panel, the research, or the writing of the final report. These interviewees included both local and international NGO representatives, labor leaders, and community members who had been displaced by Cerrejón mine expansion.

1. Panel Formation and Mandate

   ➢ Commissioning the Review

   The stated objective of the third party review was for an independent entity to work with all

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60 The Organization for Economic Co-Operation and Development Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. These voluntary principles and standards for responsible business conduct cover a range of topics including employment, human rights, consumer interests, and environmental issues among others. Governments and countries who chose to participate in the guidelines are responsible for promoting them. One way in which they do this is through the National Contact Point, the government office responsible for encouraging the observance and understanding of the Guidelines. When an issue with a company arises, any person may approach the National Contact Point to help resolve it. More details are available at: www.oecd.org/dae/investment/guidelines

61 “Colombian Communities vs. BHP Billiton.” OECD Watch. June 26, 2007: http://oecdwatch.org/cases/Case_121/?searchterm=Cerrejón
Communication with Stakeholders

Community members in La Guajira communicated that to them the purpose of the panel compared to other efforts was unclear. Assumptions about the panel among communities ran the gamut: some felt this was an opportunity for the company to bring ‘experts’ in to give them the green light to continue as they had in the past, while others felt it was an opportunity for their voices to be heard. According to one panelist, “The community had a lot of expectations. They thought the panel was a part of a solution and they were keen to talk as they were not used to being listened to.” Still, others thought the purpose was related to an international certification or other NGO efforts of some sort. Finally, some of the community members we interviewed had not heard of the panel.

Furthermore, local community members who had been involved in the process expressed concern about its focus and were unclear why they were not consulted in its creation. According to one community member who was pleased with the study but not consulted about it, “The radius of the study was very focused on Tabaco, and not on problems that are broader and more intangible.”

2. Member Selection

Selection Process

According to those involved in the panel’s creation, once the idea for the time-specific stakeholder panel had been circulated and agreed upon by shareholders, individuals had to be chosen to staff the panel. Conversations with their executives reveal that the process was ad hoc, taking shape over a series of emails and phone conversations. In the end, it was agreed that each shareholder and Cerrejón itself would be responsible for supplying names of individuals or organizations from which members should be selected. Those involved with the process described a series of talks between shareholders suggesting specific organizations/individuals. In some instances, the individuals within organizations that shareholders had in mind were not available and recommended others within the organization that could also fill the role. According to one of the panel creators, throughout the process shareholders were aware that the panel would require local economic and cultural expertise, knowledge of the extractive industry generally, experience in conflict resolution, and human rights expertise.

Conversations with shareholder representatives suggest that they believed panel members should not represent particular interests, but more appropriately build on their experience and knowledge to objectively report on the situation and make recommendations for improvement. While certain groups of stakeholders would have valued one of their own on the panel, this would have most likely upset the objectivity of the panel. Some panelists suggested that their prior engagement with either an individual company staff member or the company more generally is what led to their name being put forward.

**Panel Members**

The stature and credentials that the panel’s chair brought were recognized immediately by communities; many indicated that they felt his experience coupled with first impressions created an immediate air of trust. According to one community member, “(I) thought the panelists were very serious people though I felt to an extent that the company was paying them, I felt they would give a real and true picture.” The vast majority of community members and NGO players interviewed expressed a genuine feeling of trust in the panel, given their outsider status and international reputations.

**Panelist’s Perception of their Role**

Panel members indicated that they felt their role was not to advocate on behalf of any particular group or stakeholder, but to objectively gather as much information as possible, report on their findings, and make appropriate recommendations for change that would have a reasonable chance of being implemented. Given this perception, members said they felt no risk regarding their professional reputations as long as they reported objectively, even if the company decided not to follow through with any recommendations that might come out of the review.

**Compensation**

One panelist indicated that they had been “compensated handsomely” and that they had in turn donated a significant portion of this to a nonprofit entity. Other indicated that a few was paid to their respective institution precisely to avoid perception that panelists were being paid by Cerrejon. According to those involved in the panel, SCG was also paid directly by the company. Community members interviewed did not believe this created a perception of compromised independence of the research.

3. Structure and Research Process

**A Time-Specific Review**

According to company staff, it was decided up front that the Cerrejón review would take the form of a one-time review versus a standing panel with regular oversight and assessment. Shareholder representatives indicated that the idea of a standing panel had never been considered, while some Cerrejón employees and panelists mentioned that in their minds a standing panel may have eroded the powerful statement of a one-time review. To these staff members, a window of opportunity and urgency was opened by the third
party review panel that would have lost its momentum were the review to be a regular drawn out process lasting for years as opposed to months.

➢ **Decision-Making Process**

On the panel itself, no formal authority or decision-making structure existed outside of John Harker’s chair position. Panelists felt that they had equal opportunity to contribute but believed that much seemed to be left to luck and chemistry. Panelists indicated their surprise and pleasure at how well the process unfolded while recognizing just how much of their success as a group was left to fate and their own ability to negotiate.

➢ **Communication to Outsiders**

One complaint that echoed among community members and international NGOs, was that a regular, formal communication strategy between the panel and stakeholders did not exist. As consultants and members of the third party review met with communities and NGOs, they provided updates on the process or explained their mission, but community members suggested that there was not a concerted effort to keep all parties informed at every stage of the process. While community members indicated that they felt as if they were being heard and that the panel was addressing their concerns, they did not always feel connected or well-informed. For example, some did not know if and when the panel was returning or what the company was doing with the report.

4. The Role of the Company

As previously mentioned, the members of the third party review panel felt they enjoyed full support not only from Cerrejón’s shareholders, but from the company’s senior management, most notably President Leon Teicher. Coming in, panelists expressed confidence that their research and recommendations would be fully supported and perhaps implemented; all panelists felt strongly that it was not going to be an exercise in futility. Others suggested that the investment of Anglo, BHP, and Xstrata – major international mining companies who are viewed as leading the industry with their own social engagement practices – also ensured that this was taken with utmost seriousness at the company and shareholder level.

➢ **Strategic CSR Reorganization**

Teicher’s efforts to strengthen the social engagement capacity of the company through recent hires and reorganization played an important role both from the perspective of outsiders as well as insiders. Externally, his actions created confidence in the process. His willingness as perceived by local and international stakeholders to engage in conversation with NGOs and communities directly lent credibility to the claim that this process was intended to serve as a genuine review. For example, when asked if the review panel had changed anything, community members suggested that change had already started at Cerrejón and that these changes had given them more faith in the review process.

It was pointed out by Cerrejón employees that Cerrejón is going to undergo a major generational change over the next few years as many lifetime employees retire. Approximately 40% of Cerrejón’s workforce has been with the company for 20+ years. Social engagement managers at Cerrejón noted that the significant change in culture and approach to social engagement that they are seeking (nicknamed “The Cerrejón Way”) will only truly take hold as these employees move on and younger employees fill their
shoes. This change in culture was cited by both company officials and community members as opening space within the company to conduct such a review and a reason to hope the review’s recommendations will be implemented.

Furthermore, Cerrejón staff expressed that this panel was essential to empowering them to initiate corporate culture change. One employee commented that “The TPR (third party review) ‘spirit’ is the most important, not the literal words, but the sense of the whole text.” As such, they indicated that the report itself opened up new dialogue within the company and empowered those in new positions to pursue these issues at different levels. Though dissent and disinterest in these efforts persists in some areas, the report was useful in catalyzing a rethinking of the “Cerrejón Way” – a way that now embodies the spirit of the report. According to one staff member, “It is easier for an outsider to say fresh words, they say things you already know but they get heads to pay attention.”

Access

According to both panelists and consultants, Cerrejón management provided unrestricted access to its employees, records, and resources throughout the review process. To panelists, this signaled that the company was serious about examining their social responsibility practices, even if there were risks involved for the firm. Senior social responsibility managers noted that communicating the importance of this review below the second or third level of managers, down to the average worker and contractor on the ground, remained difficult. These internal advocates suggested that the “Cerrejón Way” culture change that Teicher envisioned will not be achieved overnight, but open access to company materials and continuing conversations internally and externally have allowed the panel to be an influential part of the process.

5. Reporting, Implementation, and Controlling Expectations

Report Publication

Near the end of the process John Harker took the lead on putting together a draft report at which point the panel came together in Miami and “locked themselves in a hotel room together for several days” to discuss the look, format, and to hammer out a final version of the report, panelists noted. Panelists described how they shared this with the consulting firm, SCG, to be sure that their findings and recommendations were in line with what the consultants were hearing on the ground in the communities and with other stakeholder groups. Once the report was finalized, panelists presented the final version to Cerrejón management. The report remained unaltered and was published on the websites of Cerrejón and its shareholders in early March 2008. Both the panelists and company expressed their satisfaction with the report. Interestingly, community members expressed ambivalence about the report and were more impressed by the company’s recent behavior change and less concerned about the actual report itself.
Panelists commented that, amongst themselves, the most debate about the report centered on the recommendations. Panel members suggested that their own perception of their role resulted in the panel holding back from making idealistic or overly ambitious suggestions. Because they felt they ought to be objective in their reporting and give practical recommendations, panelists proposed strategies that they thought the company could actually implement. In some ways though, panelists worried that this may have limited how hard the panel pushed the company to improve its practices.

In addition, some panelists and community members noted that some of the recommendations were inappropriate for the local cultural context. For example, the panel urges the company to recognize and memorialize previous generations of Wayúu, the main local indigenous group. The report recommends, “First, the company could work with the Wayúu to organize ceremonies which would recognize the burial sites along the railway line or the fact of them. Second, acting in co-operation with the appropriate public authorities, the road could be renamed and signed as the Wayúu Memorial Highway, following a practice not uncommon in North America today.” While the first suggestion is incredibly important, the second recommendation was cited by those both on and not on the panel as clearly off the mark culturally.

In addition, some company officials and even community members expressed concern that the report was too focused on Tabaco and did not give enough attention to communities who will be affected by Cerrejón in the future. While specific recommendations were helpful in some places, company staff and community members worried that Tabaco-specific recommendations did not paint a big enough picture to demonstrate how the company should approach other communities. Panelists suggested that it was only natural that the panel focus on the most pressing local problem, the ongoing Tabaco conflict, especially because they felt the Tabaco issues were preventing the company from improving community relations more widely. Still, community members were concerned that the panel’s recommendations had limited usefulness. Even Tabaco community members themselves suggest that Cerrejón’s efforts have been focused too exclusively on their outstanding issues, and wonder if there are any lessons that have been learned that Cerrejón management will apply to other communities. They indicate that the other communities are often in the dark regarding timelines, options, and future plans. With regard to other communities, the company has said that it recognizes it can be more proactive and communicative.

Although sporadic follow-up with community members occurred after the publishing of the panel’s report, some community members and international NGOs who work in the area felt there was not a concerted effort to reach out to all invested stakeholders, most notably those who would have limited access to the internet and online press releases. The company did publish a progress report in October 2008 which was widely disseminated by Business and Human Rights through its newsletter. Some international NGOs commented that disclosing such level of detailed information was uncommon and was a positive practice.

After the report was published, panelists themselves presented the report to shareholders, Cerrejón
management, and to a cross-section of the communities in La Guajira. While community members, expressed trust for the panelists and appreciated their independent follow-up, separate from the company, now that the panel was gone community members expressed frustration that the company did not have any particular incentive or guarantee to follow through with the recommendations in the panel’s report. To be clear, confidence and satisfaction expressed by community members was directed at the outside third party review but not toward the company-only follow-up. This is an issue that still reverberates with community members nearly one year after the original publication of the third party review’s report.

Cerrejón management produced a response to the panel’s report soon after its release outlining their own position, practices, and intentions with regard to the recommendations. International and local stakeholders felt that much of the commentary was vague, but signaled good intentions moving forward. The vast majority of those interviewed believed that overall the third party review was positive and welcoming of constructive criticism. Since that time, Cerrejón management said they have created a series of timelines with regard to the additional relocation projects, as well as produced their first progress report in October 2008 on the company’s social engagement commitments. A second progress report is scheduled for April 2009. The company has also hired SCG back to complete an independent assessment of progress. Conversations with community members indicate that they are mostly unaware of specific steps the company is taking to follow through with the recommendations separate from Tabaco.

6. Impact

- An Agreement

A significant portion of the independent review was focused on the issues relating to the relocation of Tabaco and their divided community. According to all involved, one concretely positive result of the review was the announcement on December 12, 2008 that Cerrejón and the Tabaco Relocation Committee (TRC) had reached an agreement bringing all outstanding resettlement issues to a close. Since this process had been contentious and ongoing, the panel’s report placed great importance on settling these issues in a fair and timely manner. John Harker, chair of the panel, in fact continued to be involved in these negotiations long after the conclusion of his official duties. The community members expressed continued faith in Harker’s capacity to serve as an independent outsider and requested that he function as a mediator in their negotiations with Cerrejón. While no one interviewed believed that Harker’s unique role could be replicated easily by others in the future or that he could continue to be involved in company negotiations, all interviewees were impressed with Harker’s personal dedication to resolving the conflict and, at the time of our interviews, the vast majority of those interviewed were pleased with the final agreement.

Cerrejón Coal: An Independent Third Party Review

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<th>Strengths</th>
<th>Vulnerabilities</th>
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<td>• Impressive reputations of panel membership</td>
<td>• Lack of clarity in panel’s role</td>
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<td>• Panelists had backgrounds that complemented each other</td>
<td>• Lack of early and systematic communication with local stakeholders</td>
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<td>• Empowered existing corporate social responsibility efforts</td>
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<td>• Strong company and management support</td>
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<td>• Clear written response to report by company</td>
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<td>• Unique followup in Tabaco Agreement</td>
<td>• Recommendations provided general guidance but not specific direction on future issues</td>
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Merits & Limitations of Ad Hoc Time-Specific Stakeholder Panels

In the final sections of our report, we will draw on our two case studies to extract conclusions on the merits and limitations of these ad hoc, time-specific stakeholder panels with international experts operating at a site level. Drawing on our two case studies, our literature review, and panel mapping, we will draw preliminary lessons learned that can be applied to future panel efforts.

A. Merits

Panels are often convened when a company desires to make a break from the status quo and engage in more socially responsible practices. While panels cannot erase years of conflict and distrust, they can be an indicator of positive intent. Commissioning an independent panel can demonstrate a serious commitment to change and a different type of engagement. Panel members’ stature and expertise can lend gravitas to these efforts, and approaching stakeholders to participate in the process can open new space for dialogue. A panel can signal a new start.

A panel’s central purpose is to provide an independent view on issues related to a company’s social and/or environmental impacts. Providing an independent, outside perspective on company activities is essential for companies that are trying to adjust their policies and practices. An experienced and balanced panel that follows a rigorous process can produce influential work. This learning can be used to inform company practices, provide a fresh perspective on the issues, inform and engage outside stakeholders in a transparent way, and contribute to internal changes.

Panels can be part of the toolkit for instigating a corporate culture change. Initiating a panel can bring social issues to the attention of board members, senior managers, and site operators. A panel report can empower a CSR team to make internal change by providing support from a legitimate outside source. Though we have not yet seen this, in theory a transparent panel and report can serve as a conduit and advocacy tool for those stakeholders affected by company behavior. A panel can catalyze a long-term push for corporate culture change and more socially responsible stakeholder engagement.

B. Limitations

Merits aside, the ad hoc time-specific stakeholder panel cannot alone repair years of damaging distrust. Company and community relationships are not mended by a research and review process itself. A
participatory process that builds trust with community members and encourages partnership can ameliorate soured community-company relationships but these processes take time. Panels can generate a new environment to open the forum for discussion, but the heavy lifting must be done through sustained engagement by the company. A panel can start this adaptive work but it cannot finish it.

Furthermore, reports are only useful when they lead to positive changes on the ground. This depends on company commitment, process execution, and most importantly impactful and serious follow-up. While useful for catalyzing change, much of the benefit from independent assessments and recommendations is dependent on dedicated company implementation over the long-term. Panels are not tasked with implementation, nor should they be (though dedicated follow-up is highly recommended). Companies are responsible for making the CSR words meaningful.
Central Tensions of Ad Hoc Time-Specific Stakeholder Panels

Defining the purpose and scope of an independent advisory panel is the first and most important task of the process. Yet, there are serious trade-offs in having a specific mandate scoped by the company and having a less well-defined research scope that allows the panel to explore issues without boundaries. If there are agreed boundaries for the process there will be less conflict. A broad mandate will allow a panel to investigate a more comprehensive range of company issues but may allow the panel to test company comfort-levels and potentially waste time. In both the Cerrejón and Newmont cases, we discovered a tension between what the company versus the panel thought was necessary. In the Cerrejón case, the panelists felt they had a broad mandate but given their freedom to scope the work, pursued pressing specific issues. In the Newmont case, the company intentionally left the mandate broad and this triggered a number of long discussions about what the panel should and should not address. These trade-offs make it very important for companies and panelists to negotiate the scope of the work transparently at the beginning of the process.

The most obvious difference between the Newmont and Cerrejón processes was the way the role of the panel was structured. The Cerrejón third party review was setup for the panel to run the research process and write the sole review report. The panelists retained and directed the consultants and even conducted some interviews themselves. The panelists took this information and drafted their own report which was the only report produced. Conversely, the Newmont panel sat apart from the research process. The Study Director and Site Assessors conducted the research and wrote the global report for the company. The panel provided advice on the methodology and published their own critical response to the global report, providing an extra outside check on the process. Both structures have their benefits. We felt in many places that the Cerrejón process ran more smoothly; but we admired the critical eye the Newmont panel as outsiders brought to the research and report. At times we heard that with greater panel influence the Newmont review could have produced a more rigorous report; yet, we also noted that producing such a global research review would be a full time job for a panel. Being outside of the process allowed the panel to push the company further.

Choices about panel structure are best made after considering the scope and objectives of the panel. Still, our recommendations argue that the panel should have a decisive say into the process over consultant selection and methodology.
A central difference between the Newmont and Cerrejón processes was the scope. Cerrejón focused on their one location whereas Newmont constructed a company-wide review, which meant analyzing 5 sites in different countries. Both processes started out as broad reviews of community engagement practices though Cerrejón’s smaller scope allowed that panel to focus more closely on community issues. Indeed, Cerrejón’s panel went somewhat narrower still, tending to focus on one specific community around the mine site, namely Tabaco. Newmont’s larger review introduced logistical and coordination complications into their process and kept it focused necessarily at a higher level. Not only did Newmont have to collect information at each site and learn more about local issues, it needed to collate all of this information to draw larger lessons learned from each location.

In a local review, it may be possible to address specific community-mine conflicts. In a global review, broader lessons can be gleaned about company practices through comparison across sites with disparate challenges. A specific, local site focus compared to a larger view of company impact is an inherent trade-off in how a review is scoped.

A central decision for company and panelists is to what degree the process should and can be participatory. There are a number of options for participation which range from minimally participatory to full stakeholder and community engagement. For example, a panel could ask stakeholders to shape the review process alongside the company or a company could simply solicit comments from the stakeholders during the research process. We believe when making trade-offs in time and efficiency, companies should err on the side of a more participatory process. Both Newmont and Cerrejón struggled with this issue. Neither panel involved communities in scoping the work and both struggled with maintaining regular communication with local stakeholders and communities who had been interviewed. For both companies, this resulted in a degree of skepticism from local communities and local NGOs about the intent and legitimacy of the reviews.

Given the worldwide reach of the Newmont review and its focus on company practices and policies, the company felt it was not appropriate to reach out to communities outside of their site assessment research. Conducting a participatory process with this scope would have involved more time and more financial resources. However, community members and other panels’ experiences suggest that the review could have reached out to local and international stakeholder in simple ways such as having an email directly forwarded to the panel, communication regularly about the reports, and simply checking in with communities before the review began to consider their concerns. Moving forward, the Newmont Board recognized the necessity of a participatory process and has committed to taking the report results back to stakeholders, local communities and globally, for discussion and dialogue.
In the Cerrejón process, the panelists and consultants were in close contact with communities which increased trust in the panel’s work. Community members stated that they trusted the panel, had spoken freely with them, and hoped they would continue to engage. Still, community members reiterated that they wanted this dialogue to continue apart from the panel and were concerned about the company’s (apart from the panel’s) follow-up. Participation with communities before the process began and more directly after the process concluded would have struck a better, more stable balance between the trade-offs inherent in deciding levels of participation.

In the Cerrejón panel, panelists mentioned a tension between their responsibilities to produce a report that had practical recommendations that the company could follow through on without too much difficulty, but also recommendations that pushed the company to do better. Unlike the Newmont Advisory Panel, which with its parallel role could push the company further, the Cerrejón third party review made the only recommendations to the company. Cerrejón panelists had to set the limits of their recommendations themselves forcing them to determine what the company could and would follow up on. Realistic recommendations may be useful to companies in the short-term but more progressive recommendations may have helped move the company further along in their CSR efforts. In the Newmont case, the panelists did not have to moderate their writings to the same degree because there were recommendations from the Study Directors’ global report as well as their own. Their role was to push the company harder to gain as much as it could from this report; this allowed them to be more forward thinking, more ambitious, and more straightforward in their comments. This trade-off must be negotiated by the panelists as they feel is appropriate to the context.

Local knowledge among panel members is highly valuable to understanding community-level contexts; yet, this brings in conflict of interest and bias complications. International reputation and stature is necessary to bring credibility to a panel; yet, while an expert may understand company-stakeholder issues broadly, he/she may not have the local experience to fully comprehend a local cultural context.

For example, the Cerrejón panel included internationally renowned experts and NGOs as well as a respected Colombian academic who helped interpret the complexities of the La Guajira region to other panelists. Even so, in its report the panel made a number of recommendations that were seen by some observers as inappropriate for the cultural context, including naming a roadway after the Wayúu, the
affected indigenous community. Alternatively, we heard complaints that the Newmont panel, while prestigious, was too heavily weighted with Westerners with international experience. Again the geographical breadth of the Newmont review made having a panel member from every one of the five regions covered prohibitive. While Newmont panelists believed they were able to capture the types of issues faced by affected communities with their membership, having someone from one of those countries (outside of the United States) would have strengthened the local cultural aspect of their discussions. This trade-off is inherent in choices made about panel membership. Balancing these issues will ensure a good mix of viewpoints, contextual understanding, and international credibility.

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Recommendations: How to Ensure a Successful Panel

Drawing on the preceding case studies, we have drawn the following preliminary conclusions and recommendations regarding how stakeholder panels of this type could best be constructed and utilized. Given the limitations of our case study method and the recent use of these innovative panels, our views are preliminary and will benefit from testing against a wider body of experience as these types of efforts proliferate. In some cases, we were unable to establish generalizable recommendations for particular components of panels. In these cases, we suggest that panel creators refer to the tensions we have highlighted as they consider trade-offs inherent in panel creation and implementation.

A. Formation and Mandate

1. **Provide Basic Assurances**: Running a credible process begins with a genuine commitment to progress on social responsibility issues. Securing independent panelists is often dependent on specific company guarantees that the effort will be an impactful endeavor worth their time. While we found that committing to act on all recommendations or binding the company to a course of action is unrealistic, there are a few small steps companies can take to demonstrate genuine commitment to the task ahead.
   a. Primarily, companies should commit to publishing the findings of the panel. This is a good starting point and can reassure panelists.
   b. As a second step, companies should commit to provide a response to the panel’s work. A company response should comment on recommendations and detail why the company is or is not responding to each recommendation.
   c. While companies can signal their intent to follow-up or make a public statement, they must gradually earn the trust of the community through sustained engagement.

2. **Establish the Parameters of the Panel’s Mandate Upfront**: Establishing clear rules in a number of areas is essential to having an efficient and effective process. Importantly, the panel mandate should explicitly specify how and what the panel will review. Guidelines are needed around sensitive issues such as the areas of research, lines of authority and relationships with the company, public communications, and transparency. Specifically:
   a. **Access**: Provide full access to company officials, policies, management incidence reports and memos, and practices reasonably connected to the scope of the review.
   b. **Scope of Research**: A clear mandate will enable both company and panel members to determine the scope of the research. This should be discussed with panelists before the panel begins though should err on the side of an expansive review. Whether the scope is local or global or focuses on policies or actual incidences, the scope of the review should be spelled out in detail before the process begins.
   c. **Communication and Transparency**: To maximize the benefits of the panel, a commitment to and schedule for regular and open communication should be negotiated and agreed upon before the panel begins.

3. **Participatory Formation for Trust Building and Legitimacy**: A participatory approach to independent advisory panels is essential for signaling a new approach to social responsibility. Without community input, panels run the risk of being deemed illegitimate from the start. Companies interested in maximizing the potential of a time-specific stakeholder panel should
begin by consulting communities on the design and scope of the work. Incorporating the interests of stakeholders at the beginning of the process will lend credibility to the research, legitimacy to the process, and facilitate trust in the relationship.

It is important to note, however, that a participatory approach involves a serious commitment of time and money by a company. A thorough participatory process that touches all stakeholders is likely unrealistic and may unnecessarily stir-up contentious issues at the beginning of the process. Given the strictures of panel members’ time and deadlines under which these efforts are commissioned, this may not always be possible. If time is short, reaching out to key leaders of stakeholder groups for a minimum level of input during the initial stages of the process should enable the company to gain insights on their perspective.

B. Panel Membership

1. **Pick Reputable People:** As obvious as it sounds, picking panel members who garner respect from stakeholders is an essential ingredient to a successful, rigorous panel. Having a track record of working independently on community and industry issues makes a panelist particularly trusted by both parties. Focusing on participants with an NGO affiliation or academic reputation and shying away from members who work for industry organizations seemed particularly helpful to building trust with communities. Most importantly, individuals with international stature either as advocates or experts will lend credence to the panel’s research and reporting.

2. **Create a Balance of Perspectives:** Creating a balance of expertise and viewpoints is essential in building a comprehensive panel perspective, enriched by the diversity of backgrounds that contributed to it. The panels evaluated had international and national academics, international and domestic NGO staff, and consultants. Clearly, every individual has a personal perspective on the issues being addressed, but the goal is to balance these opinions to create equilibrium of views on the panel in order to achieve a coherent view within the panel. Panelists with extreme biases, anti-company activists, and individuals affected by the company directly, or company staff, harbor strong biases and individual incentives to advocate for particular issues, which may lead the panel astray.

3. **Utilize Participatory Membership Selection:** Neither panel studied incorporated community input into their panel creation process. Communities were often confused about why they were not consulted and why members from their community were not on the panel. While not appropriate to have a local panel member given issues of bias, community input on international and domestic NGOs could increase community trust and participation in the process. Communities should be asked to indicate trusted individuals or organizations which, if involved, would enhance their faith in the panel as a whole. While community members may not be aware of many individuals with requisite expertise or the diversity of perspectives that is needed, the suggestions from the community should be considered seriously and a reason should be given for not selecting their recommended panelists.

4. **Avoid Conflicts of Interest:** Some conflict of interest issues are obvious. In order to ensure the independence of a panel, companies should not invite employees, current consultants, or groups they fund directly to sit on the panel. However, other conflicts are less clear.
a. Primarily, while it is unadvisable to have someone who is seemingly pro-company on the panel, it is also not advisable to have a panelist who is directly affected by a company or anti-company.

b. Picking panel members who are biased or have noteworthy history, either positive or negative, with the company creates a potential positive or negative bias, either of which may negatively affect the panel’s discussion.

c. Other secondary conflicts to be aware of include shareholders who may have too big a stake in changing governance issues of the company or have a public reputation and company connection that community members are not comfortable with.

5. **Local Knowledge is Needed:** Throughout our research, we heard critiques echoed that panels were both too international and lacked background in the local context. There are both pros and cons to having a panelist with relevant local experience. Primarily, understanding the cultural and historical context of any community or conflict is essential to providing useful recommendations for the future. Jumping into a region, particularly one with a complex history, may breed suspicion, not trust, with locals and require a steep learning curve even for issue experts. However, local connection can bring its own entanglements whereas an international expert may be seen as more independent.

Overall we found that having panel members or consultants with understanding of a country or region is essential. Someone involved in the process must have a deep understanding of the history and culture of the region in order to interpret its complexities for the larger group and ensure relevant final recommendations. Finding someone with these qualities but who is not so deeply invested in local issues or relationships thus creating the potential for bias, is very difficult. In a worldwide review this is particularly complicated, thus creative ways must be sought to increase understanding of the local context.

C. Panel Structure and Process

1. **Transparent and Appropriate Remuneration:** Compensation of members across panels and even within panels can vary greatly. At the minimum, companies reimburse members for their expenses; at the maximum, large consulting fees can be paid to members in exchange for their time and expertise. While it is logical to appropriately compensate panelists, the issue of compensation can potentially have a negative impact on the perception of independence of the panel if such payments are not made public and left to speculation. An appropriate fee should include reimbursement for all travel and per diem expenses. Additional payments should depend on what the panel members are asked to contribute in terms of time and expertise. Panelists should not be forced to accept compensation if they find it compromising from a personal or professional standpoint. Most importantly, compensation should be clearly and publicly stated.

2. **Regular Communication with Stakeholders External to the Process:** The key to process is transparency at all stages of the review. Regular and consistent communication to all stakeholders – both internal and external – is essential for facilitating buy-in and building trust. Not only does this give those with the most at stake a sense of comfort with the process, it allows for regular feedback on the process to the company and panel from those most affected. Recommendations and implementation can only be as useful as the quality of research and stakeholder input will allow; regular communication and solicitation of feedback maximizes the
potential value to be gained. The company and panel should seek to outline to all stakeholders the steps of each stage of the process, the individuals or organizations who are contributing to the research, the purpose and goals of each stage, and the deliverables associated with those efforts.

The panel should also consider providing a means of direct communication and comment (confidential email perhaps) to stakeholders who wish to reach out directly at any stage of the process in a confidential, unsolicited manner.

3. **Panels Should Consider Working with Consultants**: The use of outside consultancies will often be necessary given the massive amounts of legwork and research required for a thorough review. (Note: this will very much depend on the purpose and composition of the panel.) There is a tension between having panels run the research process and write the report or simply provide advice and commentary from the outside. While it may not be necessary for the panel to write the report, companies should look carefully at what they are trying to achieve and the trade-offs inherent in the process. Whether the panel runs the review or advises it we suggest:

   a. **The Panel should Select the Consultants**: The panel must take responsibility for soliciting proposals from consulting firms and selecting the final firm. As with the other aspects of the process, it is essential that the consulting entity be viewed as truly independent of the company, even though they are on the company’s payroll. The panel should consider consultants who have familiarity with local history, customs, and peoples and meet the needs of the company’s review. Even if the panel does not run the process, by hiring the consultants the panel will increase the independence of the process.

   b. **The Panel should Communicate Regularly with Consultants**: Regular face-to-face meetings between the consultants and panel must take place to ensure that the research goals are being met. Ideally, panelists will accompany consultants on at least some visits with stakeholders.

   c. **The Consultants should Provide their Unedited Research to the Panel**: In both cases - either directing or advising - research and findings should be provided in an unaltered, uncensored form to the panel. Ideally, there should exist a partnership between the panel and consultancy crosschecking findings against recommendations in the final report. In any case, the panel should be able to see the unfiltered research results.

4. **Use Consensus Style Decision-Making**: In both panels we found that consensus models of decision-making were effective in helping the panel work together. While this method is often more time-consuming, the trade-off is better panel cohesion and deeper understanding and debate around issues. The informality of the decision-making structure does raise the need for extended time for discussion and conscious effort not to rush the process. Given the desire to balance the panel and ensure that all voices are heard, making decisions by consensus is one suggested way to run an advisory panel process.

   A strong chair who can dedicate significant time to the project, remain independent from the company while coordinating logistics and communication with it, and project integrity and independence on the process is also essential.

5. **Remember Panel Process is an Art**: Given the early stages of third party reviews as a corporate social responsibility tool in the extractive industry, we learn new lessons with each new
undertaking. As much as companies and stakeholders would like to boil this process down to a step-by-step guide to achieving better social engagement, a significant portion of the result is shaped by luck.

Panelists are short-listed, membership juggled, and in the end, nobody knows how the chemistry of a panel will exhibit itself. Despite best efforts, do community members feel secure enough to thoroughly express their true concerns? Will the company be receptive to recommendations and make a good-faith effort to follow through?

But even as an art, companies can do many things to increase the chances of achieving the panel’s objective! While luck is an important element in panel success, a genuine desire to review social engagement practices and make adjustments to procedure and culture are necessary to maximize a panel’s benefits. Particularly when one cannot rely on generalized rules, to maximize success a panel creator should:

a. At every stage keep in mind transparency, independence, and participation factors.

b. Keep in mind the key tensions of panels as decisions are made and the process unfolds.

D. Next Steps: Reporting, Implementation, and Change

1. **Publish an Uncensored Report:** As the final report represents the entire process boiled down to its most summary form, expectations of the affected parties are bound to run high. It is essential to get this right. Publish the report in its entirety without company censorship. Follow up with stakeholders to be sure that all parties have received copies in appropriate languages. If the panel is an outside advisory panel, like Newmont, their report and comments should not be constrained and should be published next to the report without censorship.

2. **Respond to Each Recommendation:** Once the report has been released and recommendations are on the table, expectations for action will be immediate. It is best if the company formulates a proper response to the panel’s findings that also begins to outline how and when they intend to act on the proposed recommendations, if at all. A company’s response should be clear. Each recommendation should be responded to. It may be appropriate to dispute certain panel findings, where there is reason, but evidence should be given as to why this is the case. If a company will not implement a recommendation it should give justification. Where the company intends to act, the corporation should communicate its intended response, a timeline, the goals of the intervention, and suggestions of how stakeholders might participate if appropriate. A participatory approach is recommended.

Implementing panel recommendations will be a long process and in order to maximize the benefits of the panel, the company must commit a serious amount of resources and leadership to this effort and publicize what they are doing. Finally, companies should approach stakeholders with open communication about the issues and create lasting dialogue between them and the company. This final step has the potential to be the lasting benefit of the panel.

3. **Use as a Tool for Corporate Culture Change:** A third party review can be an opportunity for senior management and/or social engagement managers to open a dialogue within the company between those with differing opinions on how best to approach interactions with stakeholders, specifically communities. In order to maximize a panel’s benefit, companies should use the panel to open dialogue within the company about social responsibility. From
operations to senior management, using the panel and its report to discuss who stakeholders are and why this is important to the company is essential to ensuring that the panel’s recommendations are met. Embracing the spirit of the panel and bringing its lessons to the company will capitalize on its benefits.

4. **Do Not Misrepresent, Overpromise, or Under-deliver:** Given the high stakes and anticipation present at the end of the process, it is important to manage the expectations of stakeholders. Panel members should communicate their findings and recommendations to the invested parties, and the company should be clear about their intentions. Inaction could lead to worse problems than before, while an unfocused attempt to fix everything at once could lead to inefficiency, mismanagement, and a sense of betrayal for stakeholders.

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### Recommendations for a Successful Panel

**Formation and Mandate**
- Provide basic assurance
- Establish rules of the mandate upfront
- Use a participatory formation process

**Membership**
- Pick reputable people
- Create a balance of views
- Utilize participatory member selection
- Avoid conflicts of interests
- Include local knowledge

**Structure and Process**
- Select consultants
- Be transparent about remuneration
- Communicate regularly
- Use consensus
- Remember key principles

**Reporting and Impact**
- Publish uncensored report
- Balance recommendations
- Respond to each recommendation
- Use as a corporate culture change tool
- Do not over-promise
Conclusion

This paper has reviewed a range of types of ad hoc stakeholder panel, and through an analysis of two particular recent panels has drawn some preliminary recommendations as to how to make this kind of panel successful in practice.

It is important to remember that the ad hoc time-specific stakeholder panel process represents a renewed interest in positive progress – a new path forward. It is a starting point for all parties. Only through collaboration, communication, transparent action, and most importantly respect for even those with the least amount of influence, can a mutually beneficial partnership be formed. Communities rely on companies for employment, royalties, and development as much as companies rely on them for labor, land, and security. It is in the interest of all parties to find a mutually beneficial and peaceful path forward that recognizes and reflects all the interests at stake. Stakeholder panels can provide an important tool for companies and their stakeholders as they travel down that path.
Appendices

Appendix 1: Newmont History

About Gold

From the ancient pharaohs to the capped teeth and jewelry of the nuevo rich, gold as been a prized commodity across time. In addition to its luxury status, gold has significant industrial and every day uses. Eleven percent of the gold demand comes from industry and other uses include dentistry, as an electricity conductor, and in car braking systems.66

Gold mining can be either underground mines (vertical shaft with horizontal extensions to transport laborers and ore) or open pit/ surface mines (removing topsoil and sock to access the gold reef). Once gold is identified and extracted it then must be processed and refined before its final sale.67 Given high refining costs, until recently with the advent of new trucks and refining methods, low-grade ore deposit have not been economical to mine. Large scale mining remains very capital intensive including investment of several years to build the mine site as well as investments in heavy specialized machinery and local infrastructure.68 Like the extractive industries generally, gold mining has significant impacts on surrounding communities both positive in terms of infrastructure creation, employment and economic opportunity, and negative, in terms of community relocation and disruption.

Company History

Founded in 1921, Newmont began producing gold in 1929 in California. Newmont became a mining company with its first gold production by acquiring California's Empire Star Mine. In the following decades, Newmont operated both gold and oil production facilities in North America. In 1962 at Carlin, Nevada, Newmont (then Carlin Gold Mining Co.) made the largest gold discovery in North American of the past 100 years.

In 1986, the company adopted its current name and went public, moving its headquarters to Denver. Soon after, Newmont restructured its debt and divested from all other interests except gold. In the 1990s and 2000s, Newmont merged and acquired Santa Fe Pacific Gold Corp. and Battle Mountain Gold Company, Normandy Mining Limited, and Franco-Nevada Mining Corporation Limited, to become the world’s largest gold producer.69

67 World Gold Council: http://www.trustingold.com/content/view/28/47/
Appendix 2: Cerrejón History

About Coal

Coal is the world’s most utilized fossil fuel for the generation of electrical power. Composed primarily of Carbon and Hydrogen, coal forms slowly over millions of years as increasing temperature and pressure convert massive amounts of buried plant life into underground seams of concentrated energy.

Coal is classified primarily as a sedimentary rock and is excavated through either underground mining or open pit (surface) mining. Underground mining is far less environmentally degrading, though significantly more dangerous and costly to undergo. Vertical shafts are dug from the surface to the buried coal seams (which can be as deep as 500 meters), at which point lifts and other devices are installed. Machines then travel horizontally along the seams, extracting the coal as they move. Measures must be taken to ensure that tunnels remain structurally intact throughout the mining process. Surface mining incorporates a repeating series of soil, rock, and coal layer removal over an area of hundreds or thousands of acres. Top soil is removed and sometimes stored for rehabilitation of the mine after extraction is complete (a practice of Cerrejón). Next, blasting is used to loosen dirt and rock below which lay the coal seams. Digging proceeds in a downward spiral forming an amphitheater of sorts, which allows the large trucks to travel from the bottom of the pit where coal is loaded to the surface where it is sorted, crushed, and processed for shipping.  

Cerrejón utilizes the open pit mining method. The coal is extracted, processed, and loaded onto a train which runs from the mine approximately 150 kilometers through the countryside to Puerto Bolívar, where it stored and loaded on to ships for export. Exports are divided in the following manner: Europe (64%), North America (20%), Latin America and Asia (16%). In 2008, Cerrejón extracted and exported over 30 million tons of coal for revenues of 2.3 billion USD. The company is engaged in long-term contracts which have smoothed out the volatility in prices and revenue over the past few years, but more generally bituminous coal prices have radically fluxed from $47 per ton in June of 2006 to a high of $168 per ton in July of 2008. According to the most up to date figures on the company’s website, in 2007 Cerrejón exported 29.8 million tons of coal, brought in 1.5 billion USD in revenue, and generated 126 million USD in royalties for the Colombian government.

Company & Regional History

Cerrejón’s operations are concentrated in four areas (North, Central, South Zones, and Patilla) in the volatile northern state of La Guajira, Colombia. Jointly owned by AngloAmerican, BHP Billiton, and Xstrata since 2002, Cerrejón has a history dating back to 1976 with a complex series of ownership transitions. In December 1976, an Association Contract was signed between Carbocol S.A., a state owned Coal Company, and Intercor, an ExxonMobil affiliate, for the development of Cerrejón North Zone. The contract consists of three phases: Exploration (1977-1980), Construction (1981-1986) and Production (1986-2009). In January of 1999, an agreement with the Government of Colombia extended the production phase until 2034.

In November of 2000, the Colombian Government sold Carbocol S.A. (50%) participation in Cerrejón North Zone Association Contract, to a consortium, whose members were subsidiaries of BHP Billiton plc, AngloAmerican plc and Glencore International AG. Later, Glencore sold its share to Xstrata plc. In February of 2002, this consortium acquired from Intercor the other 50%, owned by ExxonMobil, thus becoming the sole owner of the Cerrejón north, central, and south zones, each with one-third share. In November of 2002, the merger between Intercor and Carbones del Cerrejón S.A was legalized and Intercor’s name was changed to Carbones del Cerrejón Limited.  

**Cerrejón Ownership Timeline**

![Cerrejón Ownership Timeline](image)

**The History of La Guajira**

La Guajira is the Northeastern most region of Colombia, a portion of which is coastline, and a portion of which shares a border with Venezuela. Mostly arid plains, the area is largely undeveloped, one of the poorest in Colombia, and inhabited primarily by the Wayúu and other indigenous communities (44.9% according to Colombian 2005 census) that have been living in the region since pre-Spanish settlement. During the 1700s, the Wayúu and the Spaniards were in a permanent state of war for decades, and this people alone adopted the use of horses and firearms to defend themselves against the Spanish. From this period on, the region remained a state untamed by the rule of law.

During the late twentieth century, La Guajira became infamous for its problems involving armed revolutionaries and the drug trade. Over the past few decades some members of the Wayúu in the region have become incredibly adept at building a smuggling network used primarily for the transportation of narcotics. Simultaneously, the Colombian Armed Conflict, which has existed since the mid-1960s has contributed to the violence and lawlessness of the area with members of the Revolutionary Armed Forces of Colombia (FARC), National Liberation Army (ELN), and various paramilitary groups operating largely unchecked. Kidnappings, political executions, and attacks on Cerrejón assets (most often bombings of the coal transport train which runs through La Guajira to Puerto Bolívar) happen on a fairly regular basis. For this reason, according to company managers, Cerrejón employs over one thousand private security personnel and coordinates their efforts with the local arm of the Colombian army.

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71 Cerrejón Coal: http://www.Cerrejóncoal.com
72 Provided by Cerrejón management
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