La Voz del Pueblo: Maya Consultas and the Challenge of Self-Determination for Socially Responsible Investment in the Mining Sector

by

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ABSTRACT

In Guatemala, the consulta comunitaria recently emerged as a process for local communities to resist mining and other extractive industries in the absence of government consultation. Approximately one million people in more than 76 of these plebiscites said “no” to mining or other extractive projects since 2005. This case study examines the perspectives of consulta organizers from three Maya communities in Guatemala’s western highlands who rejected the presence of Canada's Goldcorp, Inc. Interviews between May and November 2010 asked the organizers about the movement and the role of Goldcorp’s socially responsible investor (SRI), the Ethical Funds, to promote indigenous rights. Employing a critical geographic approach to examine the consultas as an exercise of power and indigenous self-determination, the analysis found that consulta organizers were motivated by the historic and ongoing exclusion of their communities from the priorities of government, the proximity of the mineral licenses to their communities and the potential negative environmental and social impacts from mining. The organizers had no knowledge of SRIs and the lack of knowledge reveals a corporate social responsibility (CSR) gap that is the product of asymmetrical information distribution between investors and affected communities. I conclude that the consultas challenge the discourse of CSR by demanding explicit respect for the right to free, prior and informed consent, and represent a boundary condition for CSR where a local action creates geographic limits on where CSR, as practiced by the mining industry, is welcome.
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GLOSSARY

Consulta = “consulta comunitaria” (community consultation)

COCODE = Consejo Comunitario de Desarrollo (Community Development Council)

CPO = Consejo del Pueblos De Occidente (Western Peoples Council)

CPP = Canadian Pension Plan

CSI = Corporate Social Irresponsibility

CSR = Corporate Social Responsibility

ESG = Environmental, Social, Governance Factors

FPIC = Free, Prior and Informed Consent

HRIA = Human Rights Impact Assessment, later known as Human Rights Assessment

IACHR = Inter-American Commission on Human Rights

ILO = International Labour Organization

INE = Instituto Nacional de Estadística (National Institute of Statistics)

Municipio = municipality

MNE = Multinational Enterprise

NCP = National Contact Point

NEI or NEI Investments = Northwest Ethical Investments

NGO = Non-Governmental Organization

OECD = Organisation for Economic Co-operation and Development

SMI = San Miguel Ixtahuacán

SRI = Socially Responsible Investor or Socially Responsible Investment

UNDRIP = United Nations Declaration on the Rights of Indigenous Peoples
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CHAPTER ONE INTRODUCTION

Introduction

On Sunday November 3, 2013, over 4,000 thousand Guatemalan immigrants gathered at ten voting stations in Los Angeles, California. Hailing from San Francisco El Alto, Totonicapán, all 4,260 Maya-Quiché participants voted ‘no’ to mining in their traditional territory, at the scale of the Guatemalan municipio (municipality) (Gómez 2013). The organizers in Los Angeles formed through the group El Consejo Francisquense de Los Ángeles, California por la Defensa de la Tierra y el Territorio y Lugares Sagrados (CFLAC) (Franciscan Council of Los Angeles in Defense of the Earth, the Territory and Sacred Sites). The municipal mayor (alcalde municipal) travelled to Los Angeles to observe and ratify the results, in addition to community leaders and Guatemalan non-governmental organization (NGO) representatives who travelled to be observers.

The historic event was Guatemala’s first consulta comunitaria (community consultation or simply “consulta”) to take place outside of the country. The Los Angeles residents from San Francisco El Alto followed their fellow community members in Guatemala, who conducted their intra-country consulta earlier in the year on September 30th. The results of the first vote were overwhelmingly against the industry: 45,593 residents opposed mining in their municipio, representing 99.9% of the participants, and 78.7% of the approximately 57,926 members of the community.¹

The extra-territorial vote was unique for Guatemala, but is one of over 76 consultas in 70 municipios since 2005 within the country to take a position against

¹ Guatemala’s municipal population estimates are based on the most recent available census statistics and the government’s statistical projections, undertaken in 2002 for the period 2008-2020 (INE 2002).
resource extraction, especially mining. The phenomenon marks a social movement mobilizing nearly a million indigenous Guatemalans asserting self-determination over their natural resources at the level of their municipality, and pushing the frontier of indigenous activism in the western highlands of the country and expanding beyond. In doing so, consultas also raise many questions: why are Guatemalans in the western highlands and beyond participating? Will the state respect the positions taken by communities? Does the movement mark a turning point in indigenous-state relationships in Guatemala?

In Vancouver, British Columbia, Goldcorp, Inc. ("Goldcorp") operates as one of Canada’s most profitable gold mining companies. Part of Goldcorp’s success are its extremely low-cost mines in Latin America, including the Marlin Mine, located in the San Marcos department of Guatemala. Eight years before the Los Angeles vote, the Marlin Mine was the focus and centre of attention of one of Guatemala’s first consultas, conducted in Sipakapa, San Marcos, on June 18, 2005. Sipakapa residents voted overwhelmingly against the opening of the gold mine partially located in their municipality. The company subsequently ignored the consulta and proceeded with the opening of the mine later the same year, but not before prompting other municipios to organize their own consultas to mobilize against the entry and expansion of the industry elsewhere.

The figures in this thesis illustrate 76 of the consultas that occurred since 2005 in 70 municipios in Guatemala. Reports exist of more than 78 consultas (CPO et al. 2013, Moore 2014) but official documentation is unavailable. The disparity between the 76 consultas and the 70 municipios results from San Rafael Las Flores, Santa Rosa, where five consultas were conducted in the same municipio, but on different dates depending on the aldea or village, and, in the two municipios of Comitancillo, San Marcos, and Ollintepeque, Quetzaltenango, the municipio-wide consultas were conducted twice.
Also in Vancouver are Goldcorp's socially responsible investors (SRIs), some of whom promote the indigenous right to free, prior and informed consent (FPIC) over extractive projects. FPIC is a principle found in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and calls for states to recognize and respect the right of indigenous communities to grant or withhold consent over any project which may affect their lands or territories (UN 2007, Article #32). One of the SRIs promoting FPIC is the Ethical Funds, who define FPIC in relation to the extractive industry, as “the right of communities to be informed about exploration, development, and closure activities on a full and timely basis, and to approve operations prior to their commencement...at the core of the FPIC standards is the acknowledgement that under certain circumstances, companies must accept that projects will not proceed” (Ethical Funds 2008, 4).

The Ethical Funds is also a Goldcorp shareholder, who uses corporate engagement, also known as shareholder activism, to engage Goldcorp to assess the impacts of the Marlin Mine and publicly endorsed Goldcorp’s measures in response. The Ethical Funds defines “corporate engagement” as “a process of using the power as a shareholder to influence corporations on particular issues or actions. It involves institutional or individual investor efforts to engage with companies through dialogue, filing shareholder resolutions, as well as active and informed proxy voting” (Ethical Funds 2014a). Yet the engagement was silent on the consultas, which present a problematic question for the mining industry and corporate socially responsible (CSR) actors like the Ethical Funds: does the industry respect the indigenous right to self-determination as articulated through FPIC?
Research Objectives and Questions

As an expression of a community’s opposition to mining in its territory, the consulta provides an opportunity to understand how power and resistance operate between predominantly indigenous municipalities in Guatemala and the boardrooms of Canadian corporations and their investors who are responding to detractors using a discourse of corporate social responsibility. Examining the relationships and connections between communities affected by third parties with subsurface land interests in their territory helps reveal the “topography of power” (Gupta and Ferguson 1997, 43) that connect the two groups. How a Maya community and a SRI understand this ‘topography,’ or the relationships that mediate their connection to each other, will affect how engagement occurs and how resistance such as a consulta translates in Canada.

As an emergent and increasingly powerful movement in Guatemala, the consultas are now receiving scholarly attention (Fulmer et al. 2008; Yagenova and Garcia 2009; Dougherty 2011; Urkidi 2011; Rasch 2012; Trentavizi and Cahuec 2012; Øveraaas 2013; Laplante and Nolin 2014), yet many questions remain about their meaning and significance. One of the key questions is how the consultas will influence relationships between communities, both indigenous and non-indigenous, and the Guatemalan government, the mining sector, and CSR actors such as the socially responsible investors, and whether each sector understands and respects the consulta as an exercise of the indigenous right to free, prior and informed consent. Based on the literature and public communications of communities who had conducted consultas, the exercise is
understood by the communities as a withholding of consent for the projects in question (e.g. mining and mineral exploration, hydroelectric projects, or oil and gas extraction).

In this case study, which employed fieldwork in Guatemala from May to November 2010, I asked consulta organizers from Sipakapa, Cabricán and Huitán what the consulta means for their future, how they understood the consulta in relation to the topic of indigenous rights and FPIC, how the consulta relates to the corporate social responsibility of Goldcorp, and through the mining company, socially responsible investors such as the Ethical Funds.

The research questions sought community perspectives on how they understand and engage CSR actors such as SRIs, and, conversely, how the Ethical Funds understand and respond to a community’s vocal opposition to mining in their land. Therefore, an objective of the case study is to create knowledge that helps to lay bare the complicated geographies that connect local indigenous communities to CSR discourse in Canada and, I hope, to engender respect for those communities’ own priorities for development. Unfortunately, the Ethical Funds refused to participate, resulting in findings and analysis based only on the perspectives of Guatemalan community organizers and supplemented by promotional products and reports from the Ethical Funds, and the literature on SRIs.

My interest in this topic was formed during my personal experience working for First Nations in British Columbia, where opposition to unwanted extractives projects has parallels between Canada and Guatemala, albeit without the extremely violent context and levels of impunity that plague the Central American country (Steidle 2008; de León 2013; ICG 2013a; Hoogeveen and McCreary 2014). My interest in SRIs was piqued by firsthand accounts of indigenous communities
engaging SRIs to seek changes in corporate behaviour, and the growing discourse around the use of ‘corporate social responsibility’ language employed by the mining industry and SRIs.

In May 2008, I participated in a University of Northern British Columbia (UNBC) Guatemalan field school co-led by Professor Catherine Nolin and Grahame Russell of Rights Action, a NGO advocating for indigenous rights in Guatemala. My experience, in particular the meetings held with Maya-Mam community members negatively affected by Goldcorp, made clear that parallels existed between conflicts in British Columbia and those in Guatemala. Exploring these parallels and the south-north connections that bind individuals like myself – a Canadian Pension Plan holder and, as a result, inadvertent Goldcorp investor – will hopefully raise awareness within Canada about how we are all connected to places that may not otherwise enter into the collective imagination of the world’s ‘leading’ mining centre.

The key research questions were:

1. How does the community understand and experience free, prior and informed consent, as expressed through the consulta? How does the community perceive the mining company, government and SRI responses to the consulta?

2. How does the community understand and experience the role of socially responsible investment in the promotion of indigenous rights? Have the activities of socially responsible investors affected the manner in which the community mobilizes in response to mining exploration? How does the community perceive the Ethical Funds’ response to their consulta?
3. How does the Vancouver-based Ethical Funds understand their role in the promotion of the indigenous right to free, prior and informed consent? How does this understanding influence their investment and engagement with Goldcorp, which is operating on indigenous land in Guatemala?

4. How has the Ethical Funds responded to a Maya community’s consulta and how do they perceive their impact on the corporate policies of Goldcorp?

I was unable to answer Questions 3 and 4 because of the Ethical Funds decision not to participate in the study. Therefore, as an outcome of the Guatemalan fieldwork, including discussions with the consulta organizers about their priorities and concerns, I added several additional research questions to focus on the consulta process more closely:

5. What issues and factors motivated the community to organize a consulta?

6. How does the community understand the consulta in relation to broader efforts to assert and protect indigenous rights, or change the status quo in Guatemala?

7. Did the community interact with Goldcorp or its subsidiaries or investors and if so, how are those experiences perceived?

My research employs a critical geographic approach to examine the phenomenon of the consultas as an exercise of power and indigenous self-determination, and to analyze how they emerge from and interact with the historic and current power imbalances in Guatemala that exist between indigenous communities, the economic elite and the mining sector. The assertions advanced by the consultas also extend beyond the territorial boundary of Guatemala to challenge the discourse of CSR in Canada.
Chapter Two provides the case study context, including indigenous rights in the Guatemalan historical context, the recent experiences of mineral extraction in the country, the emergence of consultas as a form of resistance to the mining industry, and the discourse of CSR and its use by Goldcorp and the Ethical Funds. Chapter Three provides a literature review focusing on critical geography and environmental studies, power relations, self-determination and corporate social responsibility. I connect these different fields with the concept of community voice as expressed through the consulta, and agency asserted by the community in the process. Chapter Four presents the detailed qualitative multiple methods employed, including ethical considerations and challenges. Chapter Five contributes an analysis of the data drawing directly from the voices of consulta organizers, and Chapter Six offers a discussion of the case study findings. Chapter Seven concludes with a reflection on this case study and what it contributes to our understanding of the emergence of consultas in Guatemala, the assertion of indigenous rights to resist mining, and the gap between the discourse of CSR and local indigenous communities affected by mining interests.

**Contribution to Literature**

The findings of the thesis contribute to the literature on the emergence of consultas in Guatemala by privileging local voices in the Maya-Mam context, and confirming that the consulta is a process, not just a plebiscite. This work advances the CSR literature by problematizing how CSR discourse contends with indigenous self-determination, and provides a starting point for further research on the processes and policies of socially responsible investors who promote indigenous rights. In particular, the asymmetrical information distribution between investors and communities raises
questions about whether and how a SRI can determine if the right to free, prior and informed consent is respected, and the influence of geographic and country context on respect (or lack thereof) for human rights. Lastly, the findings can be used as a bridge between Canada and Guatemala to help raise awareness in Canada about our deceptively close connection to many other places where Canadian mining companies operate with Canadian diplomatic support and deliver profits to Canadian public pensions, institutional and individual investors, and socially responsible investment funds.
CHAPTER TWO CONTEXT

Introduction

Indigenous peoples in Guatemala have a particular history that makes them more vulnerable to violence and repression (Handy 1984, 2008; Lovell 1988, 2006; CEH 1999a) and which provides important context for understanding why and how communities are resisting the entry of modern mining. The recent proliferation of consultas as a tool to respond to mining interests is therefore influenced by the forms of development promoted by colonial Spain, and largely continued by subsequent Guatemalan governments since independence.

Maya Colonial and Neocolonial Experiences

One must have a long memory to understand the historical basis for modern land and resource conflicts in Guatemala. The story goes all the way back to 1524, when the Spanish Conquistadores entered what is now the Central American country shown in Figure 2.1. The invasion was long fought, varied and nuanced - it did not happen overnight nor was it complete (Lovell 1988; McCreery 1994; Grandin 2000). While the invasion was devastating, particularly the effect of European pathogens on the Maya population, the process of colonization was resisted in particular ways that allowed a significant Maya population to persist and for unique and powerful cultural practices and languages to continue (Lovell 1988). This resistance benefited from imperial Spain’s

3 I will adopt the approach taken by Grandin (2000, 238) in the use of the word Maya while noting that there are non-Maya indigenous peoples in Guatemala, notably the Xinca and also Garifuna communities, and that the Maya are comprised of 21 language groups and thousands of communities now pertaining to separate municipios.

"Although it is clear that Indians understood themselves to be members of a larger dominated group, alternatively called naturales, indios, and indígenas, during colonial rule and, in some places, well into the twentieth century, the primary identity of Guatemala’s indigenous population revolved around their local place of residence."
ambitions focused elsewhere, resulting in a persistent albeit limited autonomy for Maya communities that lasted until the liberal reforms under the Barrios government in 1871 (Lovell 1995). Scholars also argue that Maya communities continue to exercise nuanced forms of autonomy and governance, even after 1871 (Grandin 2000).

FIGURE 2.1: Map of Guatemala
Geographer W. George Lovell (1995) argues that one particular Spanish colonizing strategy shaped Guatemala in a profound way. Known as *congregación* (congregation), the Spanish Crown attempted to gather Maya communities found scattered in rural areas into a particular municipality or township and then convert them to Christianity. While the results of this effort were mixed, *congregación* did create *pueblos de indios* (Indian towns) which persist today as *municipios* (municipalities), or townships, that anthropologists consider the key unit of Maya identity (Tax 1937; Lovell 1995). Grandin (2000, 238) notes that it was the *modus operandi* of the Spanish Crown to “establish a governing system of two ‘republics’: a *republica de españoles* and a *republica de indios*. Forcibly settled indigenous communities (*pueblos de indios*, in which no non-Indian was legally allowed to reside) were to have existed parallel to administrative and commercial centres populated by Spaniards (*ciudades de españoles*, in which no Indian was to live).”

The organization of *municipios* has important implications for the *consulta* movement in Guatemala today. Many *pueblos de indios* are now recognized *municipios* and arguably correspond to distinct Maya communities with indigenous rights that stem from their longstanding connection to the land and autonomy from neighbours (Lovell 1992, 24; Tax 1937). Sampeck (2014, 153) found that *municipio* demarcation in colonial Guatemala “involved indigenous frames of reference and negotiation to define relevance, the effects of which resulted in the departments and municipal boundaries we observe today.” Sampeck notes (2014, 154) that the process of identifying territorial boundaries evolved from written descriptions of landmarks to formal surveys, and that this process “did not erase but instead perpetuated more ancient forms of landscape organization...
within the evolving places of the colonial empire." Further, many municipios retain original land titles despite successive legal reforms that sought to alienate indigenous communities from their lands, both ejidos (communal) and private, in order to promote settlement by outsiders, increase taxes and transfer control from traditional indigenous leaders to ladino-dominated (non-indigenous) municipal authorities (McCreery 1994; Grandin 2000). Thus, the municipio is arguably analogous to a traditional territory and a relevant scale for the phenomenon of consultas, albeit with internal contradictions and rivalries that are inherited from the complicated local histories and internal relationships and the fact that the municipio was a colonial legal construct that adapted to pre-existing cultural and territorial patterns (McCreery 1994; Sampeck 2014). One of the contradictions that influence the analysis of the consultas as an exercise of indigenous rights is the fact that non-indigenous people reside within the municipio, resulting in a process that is not exclusively ‘indigenous.’ Figure 2.2 displays Guatemala’s 338 municipios.

The precarious position held by Guatemala’s Maya within a recently independent republic after 1821 was marked by an uneasy negotiation and often times a standoff between maintaining ancestral rights to ejidos and efforts by settlers and ladino authorities to usurp land (Grandin 2000). The situation was marked by conflicting land

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4 Lovell (1992, 22) summarizes the definition of ladinos as “persons of mixed Spanish and Indian descent.” For a critical discussion of the discourse of race and identity in Guatemala, and the problem of attempting to define racial identity in a post-colonial context, refer to Nelson (1999) and Watanabe and Fischer (2004). Diane Nelson (1999, 211) provides important analysis of the “highly problematic” terms of “Indian and ladino.” For Nelson (1999, 210), “race, gender, sexuality, and other discourses make bodies matter differentially in Guatemala” and thus “the terms Indian and ladino function as operative categories” (Nelson 1999, 211) that have meaning both biologically and socio-politically. I defer to Article 33 of the UN Declaration on the Rights of Indigenous Peoples (UN 2007) on identity politics: “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.” I use the words Maya and indigenous interchangeably, and ladino to refer to Guatemalans who do not self-identify as indigenous.
claims, both between ladino settlers and ancestral owners as well as between neighbouring Maya communities with long-standing rivalries (McCreery 1994). However, it was the liberal reforms and vision of progress instituted under President Justo Rufino Barrios in 1871 that resulted in marked encroachment on communal Maya lands and labour (Lovell 1995).

FIGURE 2.2: Map of Guatemala’s Municipios
The Liberal reforms of 1871 promoted export-driven capitalist development such as coffee and bananas, and subsequently produced one of the most disproportionate land distribution systems in the Americas. The system marginalized Guatemala’s indigenous majority through forced labour laws to benefit plantation owners and enabled the appropriation of indigenous title lands through legislation that put onerous and prohibitively expensive requirements on communities to demarcate title lands (Handy 1984; McCreery 1994; Lovell 1995). The legacy of the Barrios reforms continues in modern Guatemala, with an estimated 65 percent of agrarian lands held by two percent of the population (Wittman and Saldivar-Tanaka 2006, 25).

Efforts to reform the grossly unequal land tenure system by the administration of President Jacobo Árbenz Guzmán resulted in a 1954 U.S.-sponsored coup and led to a 36-year internal armed conflict that resulted in 200,000 people killed, over 1,000,000 displaced and the genocide of entire Maya communities (Jonas 1991; LaFeber 1993; CEH 1999a; Nolin 2006). Modern conflicts within the country continue to revolve around reform of the land title system and legal recognition of communal Maya lands (Jonas 1991; Sieder 2007; Granovsky-Larsen 2011).

As a result of this history, Guatemala’s Maya majority continue to suffer from uneven development, poverty, and discrimination (Galeano 1973; Lovell 1988; Jonas 1991; Escobar 1995; Smith 2008). The net effect is a country that in many regards has yet to emerge from the shadow of a brutal genocide. The lack of a functioning judicial system, endemic racism, rampant poverty amidst overwhelming wealth, and emerging powerful narco-trafficking gangs make for a volatile combination (Grandin 2000; Sieder 2007; ICG 2010; CICIG 2013; de León 2013; ICG 2013a; US Department of State 2014).
Increasingly, indigenous leaders, social movements and indigenous rights advocates are responding to the untenable status quo using the discourse of indigenous rights and local self-determination over natural resources.

**Indigenous Rights in the Guatemalan Context**

The assertion and recognition of indigenous rights have increasingly taken centre stage worldwide over the past several decades, and Guatemala is no exception. The awarding of the 1992 Nobel Peace prize to Rigoberta Menchú marked international attention to the brutal genocide of the Maya in Guatemala and foreshadowed the increasing role of indigenous peoples in Guatemalan politics, beginning with the peace negotiations that ended the internal armed conflict. The negotiations resulted in three distinct agreements and treaties promising change in the country’s relationship between the traditional ruling classes and indigenous peoples.

The agreements included the 1995 Agreement on Identity and Rights of Indigenous Peoples, the 1996 Peace Accords, and the concurrent ratification of the International Labour Organization Convention 169 (ILO 169), “Indigenous and Tribal Peoples Convention” (ILO 1989). The agreements all emphasized the importance of changing the role that Guatemala’s indigenous peoples played in the structure of the state. More recently, Guatemala endorsed the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (UN 2007), which goes even further as a non-binding set of norms about how indigenous rights should be respected, including the right to consultation and consent on decisions affecting indigenous lands and communities.

Yet the protection and integration of indigenous rights into law and political representation remain a source of conflict in Guatemala (Handy 2008; van de Sandt 2010;
The promises of the Peace Accords, international treaties, and UNDRIP ring hollow within the country as governments since 1997 failed to respond to the rising aspirations of Guatemala’s indigenous majority, highlighted by the State’s failure to recognize indigenous land titles or introduce legislation that implements the 1995 Agreement on Identity and Rights of Indigenous Peoples (UN 1995; Sieder 2007; Yagenova 2012). A mere 19 percent of the country participated in a constitutional reform referendum in 1999 to legislate the reforms. Critics raised concerns that the government did not meaningfully present the initiative, promote it, or provide the means for the many disenfranchised Maya to participate (Warren 2003; Sieder 2011).

The result of the State’s unwillingness to address indigenous rights is an increase in grassroots political organizing by Maya communities (Sieder 2007). Strong advocacy via a number of networks and inter-related social movements (Yagenova and Garcia 2009; Dougherty 2011; Urkidi 2011; Yagenova 2012) are protesting government policy and non-recognition of indigenous rights. The effort to gain increased recognition includes consultas, which have emerged as an important tool for promoting indigenous self-determination and one of the key focal points for indigenous activism in Guatemala.

Self-determination is a right supported on many levels through international treaties and declarations, both for indigenous peoples and non-indigenous peoples. The United Nations passed several landmark core human rights instruments which emphasize self-determination, including the Universal Declaration of Human Rights (UN 1948), the International Covenant on Civil and Political Rights (UN 1966a), and the International Covenant on Economic, Social and Cultural Rights (UN 1966b).
However, the right to self-determination has special significance for indigenous peoples as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UN 2007), passed by the General Assembly after 20 years of negotiations between states and indigenous organizations. Articles #3 and #4 of UNDRIP state that self-determination provides indigenous peoples the right to “freely determine their political status and freely pursue their economic, social and cultural development” (Article #3), and, “the right to autonomy or self-government in matters relating to their internal and local affairs” (Article #4).

The implications of indigenous self-determination, and how it works within and apart from state and international law, are now contested by a number of indigenous Nations, movements, academics, and lawyers throughout the world (Anaya 2005; Imai et al. 2007). Increasingly, indigenous advocates are calling for the implementation of UNDRIP, including the right of indigenous peoples to the free, prior and informed consent (FPIC) over proposed projects which affect their lands and territories (Ward 2011). Conversely, strong resistance exists amongst state governments, transnational corporations and some academic and legal sectors opposed to the recognition that indigenous peoples are more than just ‘stakeholders’ with the right to consent (Szabowski 2010; Ward 2011). An example of such resistance is Canada’s vote in opposition to UNDRIP in 2007 at the United Nations General Assembly, based on concerns for “provisions on lands, territories and resources; on free, prior and informed consent when used as a veto…” (UN General Assembly 2007) and claims by then-Minister of Indian and Northern Affairs Canada, Chuck Strahl, that the Declaration was “inconsistent with our Constitution” and “unworkable” (Canwest News Service 2007).
After significant public pressure, Canada subsequently endorsed UNDRIP in 2010 but emphasized that the government remained opposed to certain provisions, that the Declaration was an “aspirational document” and “non-legally binding” and made it clear that the Declaration would not have legal effect in Canada (AANDC 2010).

Similarly, extractive companies have taken steps to commit themselves to working with indigenous communities and all stakeholders and seeking the ‘social license to operate,’ while conflicts continue to arise when companies proceed with projects despite opposition from indigenous communities (Doyle and Carino 2013; Hoogeveen and McCreary 2014). In response to the minimizing of rights, proponents of indigenous communities attack the concept of ‘stakeholder’ and point out that international law has acknowledged that indigenous peoples are rights-holders to territories with special protections due to the link between their ties to the land and community well-being (Anaya 2004; Place and Hanlon 2011).

One of the most explicit expressions of self-determination is the right to free, prior and informed consent (FPIC) as found in UNDRIP. FPIC was originally formulated in medical experimentation to protect the rights of patients (Magraw 2004). The principle is grounded in the recognition that the “right to self-determination of indigenous peoples is a collective right deeply connected with property rights to land and natural resources” (Crippa 2008, 127). Article #32 of UNDRIP states,

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources” (UN 2007).
Particularly controversial is the concept of *consent*. Many states now recognize the fiduciary duty to *consult* with indigenous peoples. However, FPIC takes this duty a step further, and recognizes the requirement that states not only consult with indigenous peoples when contemplating development projects, but that the collective rights of indigenous peoples require that states obtain consent prior to the approval of projects. By extension, the right includes determining the priorities and uses of land and natural resources. Professor James Anaya (2005, 6), the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples (2008-2014), explains that, “as a matter of international law, indigenous peoples have rights of property over land and natural resources arising out of their own customary land tenure systems. These property rights include collective ownership of their lands and attract all the protections attached to property generally.”

Since 2007, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, both structured within the auspices of the Organization of American States, have adopted the legal principles arising out of UNDRIP in order to safeguard the property rights of indigenous communities to their natural resources (Sieder 2011). Even the World Bank, the International Finance Corporation and some private corporations have adopted internal lending and operational standards that promote FPIC (IFC 2011), although some critics question the sincerity of these measures (Bretton Woods Project 2011; Magel 2011). The adoption and use of the language found in the Declaration helps to establish FPIC as a legal norm that is not some marginal concept but an emerging and increasingly recognized right that requires implementation by States.
Despite the increasing recognition, UNDRIP is non-binding on states, and as a result, it is difficult to enforce the Declaration's provisions, including FPIC. Despite a handful of cases where the Inter-American system ruled in favour of indigenous peoples, the difficulty to access the system or enforce rulings or legal principles at the national level means that UNDRIP and the Inter-American human rights system can fail to protect communities. Fulmer et al. (2008) highlight these challenges and limitations in reference to the case of the Marlin Mine.

A second international agreement that advocates for the right to self-determination is the International Labour Organization's *Convention 169 Concerning Indigenous and Tribal Peoples* (ILO 1989). ILO 169 is of particular relevance for the protection of indigenous rights in Guatemala, which ratified the Convention in 1996 as part of the Peace Accords and is thereby legally bound to honour its articles. Maya communities find support for their right to self-determination in Articles #6 which obliges states to “consult peoples concerned…whenever consideration is being given to legislative or administrative measures” and that “consultations [be] carried out…in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures” (ILO 1989). Further, the Convention states in Article #7 that, “the peoples concerned shall have the right to decide their own priorities for the process of development” (ILO 1989). The Convention falls short of dictating how these objectives will be achieved, but notes that national legislation should promote its implementation.

The increasing recognition of indigenous rights internationally has parallels with and connections to the emergence of *consultas* within Guatemala. Imai et al. (2007, 116)
argue that the Sipakapan consulta was a legitimate exercise of indigenous law, and “what is at stake is not whether Indigenous law exists, but how that law interacts with state law.” Consulta organizers and promoters invoke both moral authority and their right to self-determination, as demonstrated by community resistance to Goldcorp’s Marlin Mine (Holden and Jacobson 2008). In doing so, the consultas invoke rights established under Guatemala’s international obligations such as UNDRIP and ILO 169, and domestic statutes such as the Código Municipal (Municipal Code), the Ley de Consejos de Desarrollo Urbano y Rural (Urban and Rural Development Council Law), and certain provisions in the Guatemalan Constitution.

Guatemala’s Municipal Code outlines several forms of consultas, and what constitutes a valid consulta. Notably, Article 64 of the Municipal Code defines a consulta comunitaria and requires a valid consulta to have 20% participation of voting-age residents, with the majority (50% + 1) determining the result. This is in contrast to Article 65, which defines an “indigenous consultation” and requires 50% participation of the voting-age residents, using procedures based on their “own criteria based on the customs and traditions of the indigenous communities” (Government of Guatemala 2002). Following controversy over Sipakapa’s voter turnout of 45% for its consulta, Guatemalan organizations denounced the difference between the requirements as “racist” and the Constitutional Court affirmed Sipakapa’s procedures were valid with respect to the law (Fulmer et al. 2008, 100). However, in response to subsequent challenges to the legality of consultas, the Court found the consultas to be valid but not binding, citing Article 121 of the Guatemalan Constitution which declares full state ownership of the subsurface (Fulmer et al. 2008; van de Sandt 2009; Øveraaas 2013).
FPIC stands at the centre of the consulta efforts. As a result, the right to FPIC is a hotly debated issue in Guatemala, and indigenous activism and assertions of self-determination focus on the right to consent over mining and other extractive projects (ACOGUATE 2009; CSA-TUCA et al. 2010; Sieder 2011). The efforts are in contrast to the neo-liberal modernization of Guatemala’s Mining Law in the 1990’s that prioritized international investors at the expense of consultation with local and indigenous communities.

**Mineral Extraction in Guatemala**

The modern mining regime in Guatemala is a product of former President Álvaro Arzú’s neo-liberal transformation of the country’s Mining Law in 1997 and the increased attention to mineral development in Latin America by multinational mining companies (Ballard and Banks 2003; Bury 2005; Solano 2005; Moody 2007; Gordon and Webber 2008). The 1997 reform, entitled Legislative Decree 48-97, rushed to open up Guatemala to outside investors in an almost competitive fashion with other Central American countries. The “race to the bottom” for foreign investors liberalized the investment climate and made Guatemala very attractive to multinational companies (Dougherty 2011, 412; Holden and Jacobson 2008). For example, royalty rates were reduced from 6% to 1% (previously 10%) (PDH 2005, 15), exploration and mine site access was simplified in favour of companies, licenses became available without requiring any community consultation or consent, foreign ownership limits were abolished and companies were granted duty-free imports (Holden and Jacobson 2008, 329; Doan 1998).

The influx of mining interest occurred despite Guatemala’s failure to observe its commitments to indigenous rights under the Peace Accords. The country’s mineral
concessions are seen in Figure 2.3 (refer to Appendix I) and applications for concessions in Figure 2.4 (refer to Appendix I). The new Mining Law also failed to account for the country's history of repression and violence targeting communities close to mines. This history can be traced to the original entry of Canadian mining companies operating in Guatemala, with the International Nickel Company (INCO) in 1960, majority owner and operator of the EXMIBAL nickel mine near El Estor, Izabal (Nolin and Stephens 2010). The legacy of that mine included the assassination of University of San Carlos law professor Julio Camey Herrera, law professor and congressional deputy Adolfo Mijangos López (Ball et al. 1999, 18; CEH 1999b, 102-104) and attempts and threats on others who critically analyzed the negotiated deal between INCO and the state for ownership and taxation of the mine (PDH 2005, 10; Nolin and Stephens 2010, 50; NACLA 1974). In addition mine facilities were used for torture of citizens targeted during the internal armed conflict (PDH 2005, 10; Solano 2005, 38; McFarlane 1989). History appears to be repeating itself at the now re-named “Fenix” nickel mine, with lawsuits charging former Canadian owner Hudbay Minerals Inc., with responsibility for assassinations, violent attacks, and gang rape related to attempts to re-open the mine and forcibly remove local Maya-Q’eqchi (Einbinder and Nolin 2010; Rights Action 2011; Gray 2013; Klippensteins Barristers and Solicitors 2014).

**Goldcorp**

The first new major mine developed post-Peace Accords is the Marlin Mine, a gold-silver open-pit and underground operation in the communities of San Miguel Ixtahuacán (SMI) and Sipakapa, Department of San Marcos and part of Guatemala’s altiplano (western highlands). The mineral deposit, discovered in 1998 shortly after the
passing of the new Mining Law, changed hands between various companies over the course of five years. In 2003, Glamis Gold Ltd., a Nevada-based gold mining company, purchased the project via a Guatemalan subsidiary, Montana Exploradora de Guatemala, S.A. ("Montana"), and opened the mine's doors in 2005. Glamis eventually merged with Vancouver-based Goldcorp, Inc. (TSX: G, NYSE: GG) in a 2006 stock-for-stock deal with Goldcorp retaining its name and combined assets. The open pits are now exhausted, while underground mining continues, as well as interest to explore for nearby deposits that could be milled using existing infrastructure.

The Marlin Mine attracted controversy, resistance and violence from prior to its opening until today. Allegations include improper or fraudulent consultation practices by Glamis Gold and the Guatemalan government within San Miguel Ixtahuacán and Sipakapa (CAO 2005, 32; PDH 2005, 23; On Common Ground 2010, 54), intimidation and assassination of mining critics (Imai et al. 2007, 112; FREDEMI 2009, 12; On Common Ground 2010, 173-174; van de Sandt 2009; AI 2010, 2011), disputed or deceitful land acquisition (On Common Ground 2010, 133; van de Sandt 2009; Valdez 2010), damaged homes (COPAE and UUSC 2009, 48; FREDEMI 2009, 9), the depletion and contamination of scarce water resources (Bianchini 2006, 4; FREDEMI 2009, 10; Basu et al. 2010, 70; E-TECH 2010, 68) and adverse human health and other environmental impacts (Basu et al. 2010, 70; Einbinder 2008).

Serious social conflict also engulfed San Miguel Ixtahuacán and Sipakapa. In 2005, Álvaro Benigno, a Sipakapan resident critical of the Marlin Mine, was allegedly assassinated by two employees of the Golan Group, a private security company hired by Glamis Gold (Glamis Gold 2005, 1; Imai et al. 2007, 112; MiningWatch Canada 2005;
Rights Action 2005). This murder occurred shortly before the municipio of Sipakapa held their consulta opposing the opening of the mine.

Also in 2005, Guatemala’s former President Oscar Berger, defending his deployment of the military to break up a blockade of the Pan-American highway preventing the passage of materials destined for the Marlin Mine, stated that, “We have to protect the investors” (Mychalejko 2005, para 1; Nolin and Stephens 2010, 53). Hours later the military and police opened fire on the protestors, killing Raúl Castro Bocel (Imai et al. 2007, 110-111; Nolin and Stephens 2010, 53). Criminalization of local mine opponents has also been a serious issue (van de Sandt 2009; Dougherty 2011).

Controversy did not end with the opening of the mine. Opposition in San Miguel Ixtahuacán and Sipakapa continues, despite efforts by Goldcorp to re-brand itself as a more responsible corporate citizen. Nationally, Guatemala remains transfixed on the conflict at the Marlin Mine as a lesson in the negative impacts from modern mining.

Goldcorp, through its two Guatemalan subsidiaries, Montana and Entre Mares, S.A., holds numerous mineral concessions and interests throughout Guatemala. Figure 2.5 (refer to Appendix I) illustrates Goldcorp’s authorized licenses and applications for licenses as of 2011. The company is also a 40% owner in the recently constructed Escobal silver mine, operated by Tahoe Resources, Inc. (“Tahoe”). Tahoe purchased the exploration license from Goldcorp in 2010 for US $505 million. Goldcorp’s former President and CEO Kevin McArthur came out of retirement to broker the purchase and now heads Tahoe (Bouw 2010).
Consultas Comunitarias de Buena Fe

Guatemalan communities and organizations opposed to the recent expansion of mining responded through various strategies, ranging from direct action, protests, consultas comunitarias de buena fe (community consultations of good faith, hereby referred to as consultas or consultas comunitarias), marches, legal challenges, and speaking tours (Pedersen 2014). The consultas comunitarias are community referendums asking the local municipal population whether they agree to mineral exploration, extraction or other industrial development in their municipio. This type of consulta differs from a consulta popular (popular consultation) which implies a national referendum, or a consulta indígenas (indigenous consultation), which implies only the local indigenous community members can participate, excluding ladinos (Rasch 2012, 170; ACOGUA 2009). The various types of consultas are regulated within Guatemala’s Constitution and, in particular, the country’s Municipal Code, Articles 64, 65 and 66 (ACOGUA 2009, 10; Loarca 2008). For the purposes of this thesis, consulta refers to consulta comunitaria de buena fe.

What began in 2005 in several San Marcos municipios in response to the Marlin Mine and a hydroelectric project in Río Hondo, Zacapa, morphed into a country-wide movement within the space of three years. Since 2005, more than 70 municipios and nearly 1,000,000 Guatemalan citizens have rejected the presence of mining, hydroelectric projects, oil and gas extraction and cement factories (Holden and Jacobson 2008; Lucia 2008; Paley 2008; NISGUA 2010a; Laplante and Nolin 2014). This movement has mobilized approximately 7% of the entire population of Guatemala (INE 2002).
Figure 2.6 (refer to Appendix I) illustrates 70\textsuperscript{5} of the municipios which have participated in a consulta since 2005 and the types of resource extraction targeted by the plebiscite, representing approximately 22\% of the country's 338 municipios. Figure 2.7 (refer to Appendix I) and Figure 2.8 show the prevalence of 76 consultas by department, with the majority in the altiplano (western highlands) where the majority of Guatemala's indigenous Maya are located. Thirteen of Guatemala's 22 departments (provinces) have seen at least one consulta, representing approximately 60\% of the country.

Figure 2.8: Graph showing prevalence of consultas by department

Sources: ACOGUATE (2009); CSA-TUCA et al. (2010); MadreSelva (2011), Moore (2014)

The movement spread quickly in the western highlands of San Marcos and Huehuetenango, aided by their proximity to the Marlin Mine, the development of strong

\textsuperscript{5} The figures in this thesis illustrate 76 of the consultas that occurred since 2005 in 70 municipios in Guatemala. Reports exist of more than 78 consultas (CPO et al. 2013, Moore 2014) but official documentation is unavailable. The disparity between the 76 consultas and the 70 municipios results from San Rafael Las Flores, Santa Rosa, where five consultas were conducted in the same municipio, but on different dates depending on the aldea or village, and, in the two municipios of Comitancillo, San Marcos, and Olintepeque, Quetzaltenango, the municipio-wide consultas were conducted twice.
regional NGOs promoting the movement, and information exchanges between communities (van de Sandt 2009; Rasch 2012). Yet the consultas are not simply a regional phenomenon. Figure 2.9 (refer to Appendix I) illustrates the relationship between the consultas and resistance to particular industrial projects, including cement factories, hydroelectric dams, and oil and gas extraction. The movement emerged from and dominates in the western highlands, but municipios across the country have adopted the tool to resist various types of projects.

In many of the municipios, local municipal-level governance structures such as COCODES (Community Development Councils), indigenous mayors and councils, and ad-hoc citizens committees are the primary organizational driving forces of the consultas (Rasch 2012; Trentavizi and Cahuec 2012; Øveraaas 2013). Due to the scale of the municipio, local organizing groups often bring together indigenous organizations to work alongside ladino neighbours. Emerging from the collaboration are questions about the ways in which predominantly Maya communities assert indigenous land rights while working and engaging non-indigenous neighbours and fellow members of the municipio. Regional and national-level NGOs are involved in promoting consultas, enabling the sharing of information between communities and helping logistically (Øveraaas 2013). Related to the emergence of consultas is the increase in prominence of regional-level indigenous organizations, such as the Consejo del Pueblos de Occidente (Peoples Council of the West) (CPO), also referred to as Consejo del Pueblo Maya de Occidente (Western Maya Peoples Council) (van de Sandt 2009; CPO 2014).

Consulta organizers actively assert that their right to self-determination affords them the right to say ‘no’ to unwelcome development projects in their municipality,

Glamis Gold (Imai et al. 2007) sought an injunction to stop the Sipakapan consulta, resulting in a ruling from Guatemala’s Constitutional Court that the consultas are valid, but not binding (Holden and Jacobson 2008, 339). The Court cites certain clauses in the Guatemalan Constitution (in particular, Article 121) which cites that the subsurface belongs to the State and thus the full ownership and control of the minerals (Fulmer et al. 2008; Trentavizi and Cahuec 2012). Subsequent Constitutional Court decisions reaffirmed the validity of consultas and the need for engagement by the State, but have yet to declare the existing consultas binding. The same court refused to find the Mining Law unconstitutional based on the lack of consultation prior to the issuance of licenses (Montenegro 2013). Regardless of the Court’s direction, a significant proportion of Guatemalan society already participated in a consulta to say ‘no’ to mining.

After the Sipakapan consulta, Glamis Gold continued to assert to the World Bank’s Compliance Advisor Ombudsman investigation that it only required “permission of the landowners” (CAO 2005, 33), and Goldcorp ignored the consulta by continuing to operate the Marlin Mine on Sipakapan land without an agreement with the municipio. The Guatemalan government, in particular the Ministry of Energy and Mines, also continues to deny the legitimacy of consultas (Rasch 2012). In July 2013, despite a consulta that rejected its presence in San Juan Sacatepéquez, a Guatemalan company named Cementos Progreso proceeded with the ceremonial opening of construction of a cement factory, with the attendance and participation of Guatemala’s President,
notwithstanding ongoing protests from local Kaqchikel-Maya authorities (Contreras 2013; Prensa Libre 2013a).

Despite the challenges to making the consulta binding on companies and the state, the consultas changed how Maya and local communities articulate their rights and resist encroachment on their lands. Mineral exploration has been largely impeded in the altiplano (western highlands), and the consultas may herald a new chapter in Maya-state relations. The mobilization of local communities asserting the right to free, prior and informed consent marks a new form of resistance based on the exercise of indigenous and municipal authority over state law and transnational corporations. The Guatemalan government has denied the legitimacy of the consultas, but other actions belie the power yielded by the movement.

In 2011, industry organizations and government announced the development of legislation to ‘regulate’ consultas (Bolaños 2011). Organizations supportive of the movement swiftly denounced the move, and won an injunction in court to prevent the introduction of legislation without prior consultation with indigenous communities (NISGUA 2011a, 2011b). Nonetheless, the announcement is a tacit acknowledgement that the consultas are taken seriously. Guatemala’s new President, former general Otto Perez Molina, made mining a priority upon his election in late 2011 while committing to mining reform. The government promised to halt the issuance of new licenses until the reforms were complete, but not before granting an extraction license to Tahoe Resources in order to allow the opening of the Escobal Silver mine (Prensa Libre 2013b). The license was granted in the face of five local consultas which rejected the mine. The resulting violence led to a government-ordered state of siege that suspended civilian laws
in order to move soldiers in to break up protests against the project (Alvarado 2013; Jamasmie 2013; Prensa Libre 2013c).

Regardless of the legal landscape and government refusals to recognize the results, consultas are now a serious social movement in Guatemala and a discursive tool employed by predominantly indigenous communities (both Maya in the altiplano and the Xinca near the Escobal mine) to assert international human rights and local self-determination (van de Sandt 2009; Fulmer 2011; Rasch 2012; Øveraas 2013). The movement brings to the fore some fundamental questions about the future of Guatemalan society, such as the long-term significance of the consultas in preventing mining and the role of indigenous peoples in Guatemalan politics and state decision-making. The consultas also provide a valuable subject, through which the discourse of corporate social responsibility can be more closely examined, including the role of socially responsible investors in promoting free, prior and informed consent.

Sipakapa

A consulta in the municipality of Sipakapa\(^6\) in 2005 was one of the first major actions that marked something was seriously wrong at the Marlin Mine. The consulta was organized in direct response to the imminent opening of the mine despite the lack of consultation with the community of Sipakapa, and growing concerns about the impacts of this type of development on local resources and social relations (Imai et al. 2007; van de Sandt 2009; Øveraas 2013).

Sipakapense is one of Guatemala’s 21 Maya language and cultural groups, occupying a territory enclosed by its own municipio, Sipakapa, which lies between the

\(^6\) Sipakapa is also commonly written “Sipacapa.” Sipakapa is used throughout the thesis, as per Smith (2009), except in the cadastral data which originated from the Ministry of Energy and Mines.
Mam-speaking region of Huehuetenango and San Marcos, and the Quiché speaking region to the north and east. The municipio of Sipakapa was not properly consulted prior to the construction of the mine (PDH 2005, 23), despite the fact that 15% of the mine lies in Sipakapan land. The lack of consultation violated the State's duty to consult, especially in light of Sipakapa's collective land title that has been carefully safeguarded since the colonial era (Smith 2009; van de Sandt 2009). Goldcorp, through two of its subsidiaries, Montana and Entre Mares, have numerous mineral concessions in the region, and they overlap the remaining portions of Sipakapa, as demonstrated in Figure 2.10 (refer to Appendix I).

On January 24, 2005, Sipakapa's Municipal Council passed a resolution calling for a Consulta de Buena Fe, which established a commission involving village governance structures (Imai et al. 2007). The consulta was held on June 18, 2005 in each of the 13 aldeas (villages or hamlets) that comprise the municipio, and the voting consisted of local custom (both show of hands and written, depending on village). The Sipakapan people were asked: “Are you in favour of mining on the territory of the Sipakapanese people?” (Imai et al. 2007, 113) and the overwhelming majority rejected the presence of Goldcorp and the Marlin Mine as a development option (CAO 2005).

Since 2005, Sipakapa captured headlines for its role of inspiring dozens of other consultas, and for submitting a joint complaint about the mine with representatives from San Miguel Ixtahuacán to the Inter-American Commission on Human Rights (IAHCR).

**Cabricán and Huitán**

Close to the Marlin Mine are a number of neighbouring rural municipios where Goldcorp's mineral concessions extend and exploration licenses exist. Cabricán and
Huitan are two municipalities in the department of Quetzaltenango that are approximately 17 kilometres away from the Marlin Mine and have Goldcorp licenses affecting their lands. As of 2011, four mineral exploration licenses affected the two primarily agricultural-based communities (named MAQUIVIL LR-074, CALEL LEXR-828, ELUVIA LEXR-010-06, and MARINA LEXR-08-06) (NISGUA 2010b, 2010c; MEM 2011). The licenses are held by Entre Mares and Montana Exploradora. Figure 2.10 (refer to Appendix I) illustrates the communities’ proximity to the Marlin Mine and the overlapping exploration licenses in 2011. The concessions state that the local mountains have gold, copper, silver and zinc. Some of the licenses may have lapsed as of 2012 but ELUVIA LEXR-010-06 remains an active license (Fariña 2012).

Both Mam-speaking and predominantly indigenous municipios, Cabricán and Huitan responded in 2010 by conducting consultas which resoundingly rejected the exploration licenses. In its press release issued after the consulta, the organizing committee from Cabricán noted that there had been no consultation prior to the issuance of the license, and demanded the immediate cancellation of the concessions. Cabricán’s press release is found in Appendix II.

On October 20, 2010, 13,813 people participated in Cabricán’s consulta and after a full day of ballot voting, 13,610 voted against mining, 73 voted in favor, and 130 votes were voided. The votes against mining represent more than half (56%) of the approximately 24,474 inhabitants of Cabricán (INE 2002). On November 22, 2010, Huitan followed suit, when 6,758 residents of the approximately 13,633 inhabitants (INE 2002) voted against mining, representing 50% of the municipio’s entire population. Thirty individuals in Huitan voted in favour. In both communities, the municipal mayor
supported the process and the resounding rejection of mining. In the following months, delegations from the communities presented the results in Congress, a symbolic act reaffirming the consulta as a declaration made by the communities.

San Miguel Ixtahuacán

In the community most directly affected by the Marlin Mine, there is a conspicuous lack of a consulta. San Miguel Ixtahuacán is in many ways at the centre of a large storm, and the lack of early meaningful consultation (PDH 2005, 23) meant for many that it was 'too late' for more organized opposition to the mine to have an effect prior to its opening (van de Sandt 2009). Nonetheless, residents of the municipio have used various tactics to express opposition to the mine and concerns for the impacts of the operation. For some, there are serious on-the-ground problems that were unsatisfactorily addressed by Glamis Gold and Goldcorp, including grievances stemming from the land acquisition process, environmental impacts, human health impacts, social conflict and labor conflict (FREDEMI 2009).

Despite the lack of a consulta, the mine crystallized local efforts to reinvigorate traditional governance structures in the community and led to the re-establishment of an indigenous mayor's council (van de Sandt 2009). Local organizations opposed to the mine, such as the Asociación para el Desarrollo Integral de San Miguel Ixtahuacán (Association for the Integral Development of San Miguel Ixtahuacán) (ADISMI) and Frente de Defensa San Miguelense (Front in Defense of San Miguel Ixtahuacán) (FREDEMI), are also responsible for keeping the project in the headlines, for disseminating information about the impacts to other municipios and NGOs, and in doing so, influenced the spread of the consultas elsewhere.
The organizations did attempt to organize a *consulta* in 2009 but the Municipal Council-level support for the mine and the firm establishment of the mine through its various arms and agencies thwarted the organizers (Øveraas 2013). Despite this, FREDEMI partnered with Sipakapa to submit a complaint to the Inter-American Commission on Human Rights (IACHR) (van de Sandt 2009; Anaya 2010). Debates and struggles continue in San Miguel Ixtahuacán, with a more recent focus on the ongoing social conflict (Caxaj et al. 2014), and the lack of a closure bond to ensure that the government of Guatemala has the financial means to properly close the mine in case of a default by Goldcorp. At this time the long-term surety bond is only US $1 million, far less than the financial resources likely to be required to ensure long-term maintenance or monitoring, with the “potential to leave the community vulnerable to long-term impacts on human rights” (On Common Ground 2010, 82; Boyd 2012).

**Corporate Social Responsibility and Goldcorp**

Far from the conflicts generated by the Marlin Mine and other mineral concessions in Guatemala, Vancouver-based Goldcorp reported US$1.75 billion in net earnings in 2012, providing shareholders with US$438 million in dividends (Goldcorp 2013). Along with developing one of the world’s most profitable, lowest-cost mines, the company also responded to the increasing criticism and international attention by developing a platform for communicating its commitment to corporate social responsibility.

**Corporate Social Responsibility**

The discourse of corporate social responsibility (CSR) has evolved over the past four decades. Watts (2005) places the ‘modern era’ of CSR as beginning with the 1992
Earth Summit in Rio where the explicit endorsement of voluntary codes of business
codes of business conduct emerged. Since then, the increasing prominence of voluntary CSR as a language
employed by corporations, government and civil society has led to a corresponding
debate about its definition, characteristics, effectiveness and side-effects (Kuyek 2006;
Conley and Williams 2008; Crane et al. 2008; Beck et al. 2010; Sagebien and Lindsay
2011). No one is questioning that CSR is now a ‘movement’ (Conley and Williams
2008) that operates over multiple scales and with ensuing geographic problems and
contradictions.

Many within the business community quickly endorsed the concept and discourse
of CSR and, over the past 20 years, most large mining companies adopted at least a
statement or policy about their social responsibility. Many now have Directors dedicated
to the issue. The United Nations further endorsed the voluntary approach with the
corporate guidelines known as the “Global Compact,” and today a multitude of different
codes exist, including the Mining Association of Canada’s “Towards Sustainable
Mining” (Ruggie 2011; MAC 2014).

For others, CSR is pure public relations spin (Laplante and Nolin 2011).
Coumans (2010) points out that a decade of voluntary CSR frameworks and agreements
failed to resolve issues and conflicts resulting from mining multinationals, a failure
acknowledged by industry insiders (CCSRC 2009; Whittington 2009; OSC 2013). North
and Young (2013) argue that CSR codes cannot tackle the fundamental structural issues
that lie as the source of conflict and thus other solutions must be found.

Coumans (2012a) advocates for ‘home-state’ regulation and access to judicial
remedies to help compensate for the lack of access to justice in ‘host state’ countries such
as Guatemala, and argues that access to courts in Canada would improve CSR programs. The total failure by the Canadian government-initiated Office of the Extractive Sector Corporate Social Responsibility Counsellor to deal with international complaints lends weight to Coumans' position (CBC 2011; Do 2014). Advocacy from former Supreme Court Justice Ian Binnie (Binnie 2009) and legislative proposals from Liberal MP John McKay and NDP MP Peter Julian support the argument for developing a new legislative framework to hold to account multinational companies based in Canada who violate human rights abroad. On the ground, recent litigation filed in Canada against Hudbay Minerals (TSX: HBM) by Guatemalan Maya-Q’eqchi victims of rape, violence and murder at its formerly owned Fenix Mine near El Estor are pushing the envelope for whether the courts will respond in ways that governments have not.

In contrast, the multi-stakeholder dialogues are the hallmarks of CSR discourse. The *mesas de diálogo* (dialogue tables) promote negotiated settlement between the company, government and affected communities. In cases where mediation or negotiation is a reasonable means to address a grievance, then dialogue tables are potentially a good fit. However, critics warn that the tables can be one-sided public relations effort with predetermined outcomes that deny communities the opportunity to say ‘no’ (Clark and North 2006, 8; Kuyek 2006, 215-218). In cases where indigenous communities are potentially affected by a mine, the inability to exercise FPIC can seriously undermine their rights and well-being. Weitzner (2011, ii) states that, “Indigenous Peoples are not simply another stakeholder group to be consulted…They have a right to free, prior and informed consent. Their self-determination, autonomy, cultural identity and responsibilities to future generations are inextricably linked to this
right.” A pressing question that hangs over discussions of indigenous peoples and CSR is whether or not consent is required for mining projects to proceed.

In the Guatemalan context, the failure of Glamis Gold and Goldcorp to recognize Sipakapa’s consulta is not a surprise given that accepting the community’s decision potentially entailed giving up their goal of opening the mine. Instead, Goldcorp began a serious effort to promote its CSR through community initiatives, mesas de diálogo, developing its own CSR department, and engaging its ‘socially responsible investors’ (SRIs) to allow a human rights impact assessment (HRIA) of its operations at the Marlin Mine.

**Socially Responsible Investing**

Two of the beneficiaries of Goldcorp’s profits include Canadian taxpayers, with $265 million invested in Goldcorp through the Canadian Pension Plan Investment Board as of March 2013 (CPP 2013), and the socially responsible investment firm called the Ethical Funds, founded as the Ethical Growth Fund in 1986. Socially responsible investment firms (SRI) and pensions promoting SRI principles have emerged as important actors espousing corporate social responsibility (CSR) discourse. SRIs also played a role in the development of Goldcorp’s CSR policies and responses at the Marlin Mine.

Socially responsible investing has origins in religious teachings on how to invest money ethically and evolved into its modern manifestation during American antimilitarization campaigns in the 1960s and pressure against companies doing business in apartheid-era South Africa in the 1980s (Renneboog et al. 2008). By 1986, SRI began in Canada in the mutual fund market with the establishment of the Ethical Growth Fund.
Since 1986, the proportion of investments which classify as SRI has grown substantially. The 2012 Canadian Socially Responsible Investment Review states that SRI investment in Canada currently totals $600 billion, or 20% of assets under management in Canada (SIO 2013). Since 2010 this represents an increase of 16% in two years. SRIs can take the form of retail investments such as mutual funds, which are professionally managed assets (shares, bonds, etc.) and institutional funds, such as pensions and endowments.

The strategies employed by SRIs fall into three broad categories. These include selection filters or screening, shareholder activism and community investment. These methods are ideally supported by research teams, independent monitoring institutions and an Ethics Committee which oversees the choices made by the SRI. Screening involves applying ethical criteria to the selection of investments, shareholder activism involves promoting corporate policy change using direct dialogue with companies and the shareholder right to vote, and community investment refers to supporting projects considered to be giving back to the community (Muñoz-Torres et al. 2004). SRIs negatively screen investments which are deemed 'unethical,' such as corporations found complicit in human rights violations or corporations which market tobacco or weapons (Eurosif 2008). SRI is defined by the Ethical Funds (2014a) as,

"the integration of environmental, social and governance (ESG) factors into the investment decision-making process. At Ethical Funds it encompasses evaluation of companies for investment based on ESG factors as well as financial factors; corporate engagement based on dialogue with companies, shareholder resolutions; active and informed proxy voting; and policy engagement to improve ESG standards across industry sectors."

1 In 2010, the Ethical Funds (2010a) defined SRI as the “integration of environmental, social, and governance (ESG) factors into the investment decision-making process. It encompasses corporate engagement and dialogue, proxy voting, the use of exclusionary screens to eliminate specific types of companies (e.g. tobacco), and the deployment of ESG metrics to assess both the sustainability of companies and to improve investment performance.”
Despite the definitions provided by the SRI industry, what these terms mean in practice is not well researched or clear. Some guidance is found in international guidelines, such as the United Nations Principles for Responsible Investment (PRI) Initiative, developed in 2005 and 2006 under the auspices of the United Nations Environment Program Finance Initiative (UNEP FI), the UN Global Compact (Hellsten and Mallin 2006; PRI 2014), and the Equator Principles which are similar in nature to voluntary CSR guidelines for the extractive sector (Equator Principles 2013). However, the Principles are general and not specific to how SRIs should operate and therefore a major knowledge gap exists about what are good SRI practices, or the exact criteria by which SRIs engage rather than screen or divest. This knowledge gap extends to the strategies and practices that determine SRI responses to violations of indigenous rights by the extractive sector or governments (Coumans 2012b). In the case of the Ethical Funds, the SRI has both engaged and divested in different circumstances.

The Ethical Funds

The Ethical Funds was founded as Canada's first mutual fund SRI in 1986, operating as a professional management body overseeing a large portfolio of private and institutional investments in securities such as stocks, bonds and precious metals. The SRI's investments also consist of shares in the extractive industries in Canada, including mining, oil and gas. As of September 30, 2012, 2.4% of the Ethical Balanced Fund portfolio was in Goldcorp stock (Ethical Funds 2012). The Ethical Funds merged with Northwest Mutual Funds on October 26, 2009 to become Northwest and Ethical Investments L.P., also know as NEI Investments (“NEI”). The Ethical Funds continues to act as a division within NEI and the SRI-arm of the investment firm. NEI is 50%
owned by Desjardins Group and 50% by the Provincial Credit Union Centrals and is managed by an executive team and a board of directors, including representation from the Ethical Funds’ Sustainability Department (Ethical Funds 2010b, para 1; NEI 2014a). NEI’s ESG Services Team acts as “in-house socially responsible investing specialists who... provide environmental, social and governance (ESG) analysis to portfolio managers of socially responsible investments, including NEI’s own Ethical Funds” (NEI 2014a, para 3). The ESG Services Team is also responsible for publishing reports, engaging governments and promoting SRI and CSR in Canada and around the globe. Individuals who invest in the Ethical Funds rely upon the ESG Services Team and the decisions of the Board of Directors and Executive Team to ensure that the SRI’s investment choices are consistent with the firm’s policies.

Tobacco, weapons and nuclear power are screened and excluded from potential investment and subsequently an evaluation occurs prior to any other investment. The Ethical Funds (2014b, para 3) states that “before investing in any other company, we use our proprietary ESG Evaluation methodology to assess its environmental, social and governance performance. If a company fails to meet our minimum ESG standards, we exclude it from consideration. If it meets our minimum standards but is not a sector leader, we may consider it as a candidate for corporate engagement.” Regular reports, such as its 2013 Aboriginal Issues Update (Ethical Funds 2013a), its 2009 Sustainable Investing Program Annual Report (Ethical Funds 2010c) and its 2014 Corporate Engagement Focus List (Ethical Funds 2013b) provide investors with information about the SRI’s activities, corporate engagement and policies being promoted.
The Ethical Funds provides a good exemplar case of a SRI in Canada. Based on mutual fund market share (SIO 2011), the Ethical Funds is self-described as “Canada’s leader in socially responsible investing” with the “largest in-house socially responsible investment team of any mutual fund company in the country” (Ethical Funds 2014c, para 1). The SRI promotes FPIC (Ethical Funds 2008), acknowledges “the risk of ‘voice appropriation’ when advocating on Aboriginal issues” (Ethical Funds 2013a, 2), and has a Code of Conduct for Engaging External Parties (NEI 2014b, 2) explaining that “understanding the perspectives of communities impacted by corporate activity is a priority for NEI LP. To acquire this understanding, we shall prioritize and make best efforts to be in direct contact with impacted communities.” The SRI also uses shareholder activism and negotiation with corporate boards to advance its ESG agenda.

The mutual fund responded publicly to the allegations against Goldcorp using the engagement approach. As a result of ongoing concerns about Goldcorp’s Marlin Mine operation in Guatemala, the Ethical Funds and a number of other SRIs and pensions with investments in the company proposed that a Human Rights Impact Assessment (HRIA) (Goldcorp and Shareholder Group 2008) be conducted to assess the Marlin Mine. In 2010, the HRIA was released to fanfare from Goldcorp and the Ethical Funds (Ethical Funds 2010d; Goldcorp 2010) and exemplifies one CSR tool in response to conflict. Nowhere had a mining company opened up its operations to such an assessment, and the report from the assessor, On Common Ground, did not spare all criticism. The Ethical Funds (2013a, 3) described the resulting HRIA as setting “the standard for transparency and led to substantive change at the company.”
However, the Ethical Funds’ approach is controversial. The HRIA was criticized by advocacy groups such as Rights Action and MiningWatch Canada for being effectively run by Goldcorp, and in March 2009, one of the fellow SRIs participating in the HRIA (the Public Service Alliance of Canada or PSAC) opted out of the process (Law 2009; Coumans 2012b). John Gordon, PSAC’s national president, cited concerns about, “the lack of free and informed consent of the communities in regards to the HRIA, and that the interests of Goldcorp are being put before the interests of the local people” (Law 2009, para 12). On Common Ground, the consulting agency hired to conduct the assessment, noted that the refusal of local impacted groups to participate resulted in a process that was not participatory, and ultimately caused its own social conflict in the communities (On Common Ground 2010, 8-9, 13-14). The non-participation meant that an impact assessment could not be completed, with a resulting change in scope and name to *Human Rights Assessment* (still referred to as HRIA).

Since the release of the HRIA in 2010, Goldcorp has responded to the report in several updates to its shareholders (Goldcorp 2011a). Actions taken include the development of a Human Rights Policy (Goldcorp 2011b), and refraining from appropriating land titles, as was done as part of the land purchasing process for the Marlin Mine. However, the company is not bound to honour all the recommendations as there is no monitoring or enforcement mechanisms built into the process (Coumans 2012b). In many regards, the Marlin Mine continues to operate much as it did prior to the HRIA, and there is no certainty about the long-term positive impacts the HRIA will have on operations or local communities (Mandhane 2011).
There are various strategic choices about how to promote corporate social responsibility. The Ethical Funds' choice to engage Goldcorp and investigate its activities through the HRIA is one of several strategies employed that require a more in-depth understanding. The Ethical Funds' failure to divest its shares is in contrast to Jantzi Research (now Jantzi Sustainalytics), a Toronto-based SRI research consultant firm which removed Goldcorp from its 'ethical' list on April 30, 2008. The divestment was in response to "growing opposition from local indigenous communities to Goldcorp's Marlin mine in Guatemala" (Jantzi Sustainalytics 2008). The Ethical Funds also employs divestment (after engagement) and notably has sold shares in Enbridge, Inc. and Taseko Mines Ltd. in response to the controversial projects promoted by these companies (Ethical Funds 2011; Bonham 2013):

Conclusion

A lack of academic research exists which focuses on the interaction between the use of corporate social responsibility discourse by the mining sector and their socially responsible investors promoting indigenous rights, and the strong resistance embodied in Guatemalan consultas. The consultas thus provide a useful lens to problematize and examine the 'interstices' of local resistance to mining in the Guatemalan context, with recent corporate structures that have been put in place to help improve mining and, from some perspectives, justify their presence.

The Guatemalan context is one of extreme violence and repression, with a history of usurpation of indigenous lands that began with the arrival of the Spanish conquistadors and has continued in various forms until today. The lack of justice and the failure to implement the 1996 Peace Accords highlight a fragile state that prioritized foreign
mineral investment at the expense of consultation with local communities. The rush to welcome mining also meant that Guatemala did not have in place the functional institutions and policies to protect its own citizens once the investment arrived. The results are found in San Marcos, where the Marlin Mine has polarized Guatemala and made metal mining largely unwelcome in rural areas of the country.

In many ways, the responses of investors and companies to the consultas are a litmus test for the sector's willingness to implement the promises of reform and respect for indigenous rights heralded by CSR commitments. At their core, the consultas represent a discernible form of community agency that challenge the Guatemalan state and CSR discourse to meaningfully incorporate the community right to free, prior and informed consent over extractive projects. The meaning and reach of the consultas provides an opportunity to examine questions of power, self-determination, indigenous rights and corporate social responsibility, which are explored in Chapter Three. I will argue that the consultas are both a form of associational power between community members and between communities, and a form of instrumental power over the state and mining companies that has pushed the debate about mining and indigenous rights to the forefront, and challenge current trends in corporate social responsibility discourse.
CHAPTER THREE LITERATURE REVIEW

Introduction

My inquiry into conflict over mining in Guatemala employs a multidisciplinary approach drawing from critical geographic and environmental studies. The theoretical frameworks question how power relations are spatialized, with the consulta as a jumping off point to focus on how and why indigenous rights are asserted and mining interests resisted. Analysis of this conflict provides the means to examine and problematize the discourse and actors engaged in corporate social responsibility, including socially responsible investors.

The literature on critical geography and environmental studies, power relations, self-determination, corporate social responsibility and socially responsible investment provides a theoretical basis and interconnecting concepts that inform the analysis. Each of these fields is connected by the common premise that community voice, as a metaphor for community agency, lies at the heart of land and resource conflicts, including those in Guatemala. Community voices, when in total opposition to mining, become a confounding factor that creates internal contradictions in corporate social responsibility discourse, and is an important challenge faced by socially responsible investors who promote respect for indigenous rights.

Critical Geography and Critical Environmental Studies

Gregory et al. (2009, 123) define critical geography as “scholarship that seeks to unmask power, demonstrate inequality, uncover resistance and foster emancipatory politics and social change” and to “claim common-cause with movements committed to social justice.” Critical geography draws from a broad range of disciplines, including
critical environmental and development studies, political ecology, postcolonialism and feminism. The theoretical approach provides useful analytical tools to examine power relations over multiple scales (Berger 1994; Watts 2004a). Critical geography privileges communities, groups and individuals who are marginalized, underrepresented, and those resisting control by the traditional centres of power. For this reason, the theory is useful for understanding social movements across multiple scales, while acknowledging and emphasizing the importance of beginning the inquiry at the local level (Escobar 1995; Watts and Peet 2004).

The spatial sensibility of critical geography (Power 2003) lends itself to the examination of resource development since the economy of extraction employs multiple actors working across various boundaries – both geographic and discursive. Some theorists focus on the imbalance between local communities and the beneficiaries of resource extraction. Here, the globalized nature of the mining industry results in local communities and values bearing the externalities of projects – negative environmental and social impacts – while the majority of the benefits go to shareholders and executives who live far away, often in another country (Ballard and Banks 2003). Others have focused on how extractive industries change the relationships between local communities, the state and the global economy. For Michael Watts (2004a, 195), “Nigerian petro-capitalism operates through a particular sort of ‘oil complex’ (a configuration of firm, state and community) that generates or refigures differing sorts of community.” The dynamics of the relationships between the three actors determine the resulting reconfiguration and shape outcomes.
Watts (2004a, 2004b, 2005) and other critical geographers extend analysis beyond the impacts of resource extraction to how it is resisted and contested. Often the resistance is framed in terms of environmental impacts. Martinez-Alier (2002) argues there are three main approaches that underpin environmental conflicts, all of which are used by different actors in different places to frame anti-mining struggles: “cult of the wilderness,” the “gospel of eco-efficiency,” and “environmentalism of the poor.”

Comparable to “deep ecology,” “cult of the wilderness” focuses on preserving unspoiled wilderness and is actively promoted by conservationists in the Global North, while being questioned by theorists for not addressing the material needs of the Global South (Peet and Watts 2004; Walter and Martinez-Alier 2010). Sustainability is the focus of the ‘eco-efficiency’ approach and argues that the material wealth generated by environmental exploitation leads to the development of new technologies and regulations in response to adverse impacts, which eventually result in a more balanced approach. However, this theory is criticized for allowing industry to co-opt the language of efficiency and sustainable development, and in doing so, disempowering those resisting (Bridge and McManus 2000; Walter and Martinez-Alier 2010).

The third approach, “environmentalism of the poor,” questions the logic common to the first two approaches that “the poor are too poor to be ‘green’ ” (Walter and Martinez-Alier 2010, 285; Martinez-Alier 1995). Rather, the approach hypothesizes that environmental movements in the Global South are motivated by the threat posed by resource extraction and pollution on the integrity of local environments, which are perceived as “the direct basis of material sustenance” (Walter and Martinez-Alier 2010,
285; Guha and Martinez-Alier 1997) and “not a luxury asset, something superfluous” (Walter and Martinez-Alier 2010, 286).

In a similar vein, Escobar (2006) argues that economy, ecology and culture are the three main criteria driving environmental conflicts, and that credible solutions and alternatives to a more just development path must begin at the local level: macro solutions or purely intellectual or academic exercises will fail (Escobar 1995). Escobar's approach “clashes with top-down, imposed perspectives on development and legitimizes local knowledge and institutions in decision-making processes” (Walter and Martinez-Alier 2010, 286). Within this framework, the consulta represents an important organizing step by local actors seeking to assert control over local resources and livelihoods. While this is a local community action, critical geography recognizes that the struggle and its implications reach far beyond the geographic boundaries of a municipio.

Self-Determination

Critical geography’s emphasis of local voices provides an important link between environmental conflict and concepts of territory and agency. Bebbington (2009) and Harvey (2005) describe such resistance to extractives as a resistance to “dispossession,” implying that land rights are at the heart of modern environmental conflicts. The debate around rights, territory and decision-making about local environments is also a question of the self-determination of indigenous peoples, a right closely linked to property rights and natural resources (Anaya 2005; Crippa 2008).

Postcolonial theories inform critical geography here to question the “mask of neutrality” of development and the material and discursive legacies of colonization,
legacies that are very evident in Guatemala (Power 2003, 87; Said 1978; Lovell 1988; Escobar 1995; Young 2001; Nolin and Stephens 2010). Such an approach is required given that the municipio is a relic of the geographic and political structures resulting from the entry of colonial Spain and yet now employed by indigenous communities as the scale at which traditional territory is asserted and extractive industries resisted. The geographic scale of the municipio appears appropriate for the consulta because the municipality is considered the key unit of indigenous identity in Guatemala (Tax 1937; Lovell 1992) and consistent with indigenous political territories at the time of Spain’s arrival (Sampeck 2014). The adoption of the municipio as a territory is consistent with what Nancy Farriss (1983, 34) describes as “strategic acculturation,” interpreted by W. George Lovell (1988) as the process by which indigenous peoples make certain changes in order to preserve what is essential. Such an approach helps to explain how the consulta remains an exercise of indigenous rights, despite the fact that ladinos live in the municipio and participate in the consulta alongside their Maya neighbours. For Maya organizers in communities where the population is overwhelmingly indigenous, including ladinos is a strategic decision to promote unity and respect for all residents, and avoid re-creating a politics of exclusion at the local level.

The postcolonial field also acknowledges that we live in a “colonial present” (Gregory 2004) where the global North continues to dominate over the South. The lens is apt to examine relationships between actors from Guatemala and the centre of global mining power – Canada. Interestingly, the physical distance between Vancouver and Guatemala is less than that to St. John’s, Newfoundland, yet the discursive distance between Canada and Guatemala, for most Canadians at least, could not be greater. Power
(2003, 130) notes that, “postcoloniality is partly about negotiating identities and power relations that histories of colonialism have bequeathed, leading to a whole variety of hybrid cultural and political forms.” The consulta may be seen as such a hybrid form. How far the voices of the consulta carry – how the exercise in local self-determination exerts power within and beyond the spatial boundaries of a Guatemalan municipio, is an important question of this research.

**Power**

Self-determination asserted at the local level corresponds to controlling a territory, and for scholars, “territorial concepts imply the exercise of power” (Watts 1992, 117; Foucault 1972; Sack 1986). As a result, consultas can be examined as an exercise in power over a territory with resulting implications beyond that boundary. For Marcus Power (2003), examining the spatial aspects of power, governance and resistance is a priority for critical geographers.

John Allen utilizes a geographic approach to conceptualizing power. According to Allen (2003, 193), rather than a thing or network, power is a product of relations, or “tangled arrangements” between actors that transform across different spatial scales. Instrumental power is “power over” and associational power is “power with.” The two modes are useful for examining the nuances witnessed in the consulta, which has its own set of meanings and tangled arrangements at the level of the municipio, another set nationally in Guatemala, and yet another set for the mining industry, their socially responsible investors and the discourse of corporate social responsibility. I argue that the consulta can be understood as embodying both arrangements of power. Of particular relevance for my examination of Goldcorp’s socially responsible investors and corporate
social responsibility is how the *consulta* may change the "topography of power" (Gupta and Ferguson 1997, 43) that connects Maya communities to Canadian boardrooms where decisions are made that can have dramatic effects on communities thousands of kilometres away.

Critical geography's examination of power relations also entails reflecting on historical power imbalances. Such a reflection is important in the context of Guatemala, where extreme historical disparities within society are important factors in determining how social movements operate and disenfranchised communities exercise power. Guatemalan social movements must operate within an environment where the country's indigenous majority is largely excluded from political life and a small oligarchy remains in financial control (Casaús 2007). The result is extremely uneven development and asymmetrical power relations (Galeano 1973; Handy 1984; Escobar 1995; Smith 2008) that remain in place today (Handy 2008).

Despite the concentration of power and wealth in Guatemala within the hands of a few, the Maya are not powerless and in fact played important roles in shaping the course of colonial history. Grandin (2000, 5) notes that in the context of the city of Xela (Quetzaltenango), "the astute ways in which K'iche' elders reconfigured communal relations and meanings so as to retain their social and cultural authority had a profound effect on the formation of the Guatemalan state and nation." Grandin (2000, 15) argues that it is a mistake to assume a passive role for Guatemala's indigenous peoples: they are neither "autonomous nor powerless in the face of economic and political transformation; they are not the heroic redeemers of history, the silent victims of colonialism and capitalism, nor the autonomous bearers of precapitalist and prestate traditions." Grandin
(2000, 231) also describes the recent Peace Accords and other legislation and international treaties as “mechanisms for the reestablishment of local forms of power and autonomy” and utilized by Maya activists to create “space” to rebuild political and economic relations destroyed in the internal armed conflict.

The consultas exemplify the complicated re-emergence of Maya activism post-Peace Accords and parallel indigenous political struggles elsewhere. Canel et al. (2010, 20) note that indigenous activism is evident in the recent recognition from the mining industry of local communities as “stakeholders.” The re-emergence is also found in the increasingly accepted assertion by indigenous peoples within international law that they are more than just stakeholders, but rights-holders with decision-making authority over traditional lands (Anaya 2005; Weitzner 2011). From this re-emergence an important question arises: does the space created by local resistance, the assertion and recognition of indigenous rights, the ‘seat at the table,’ alter the “power asymmetries” (Szablowski 2010; Walter and Martinez-Alier 2010) that historically excluded indigenous voices?

Power, territory and identity are closely linked concepts that emerge from conflict between indigenous communities and the extractive industries. Ali (2003, 161) reveals that, “the primary issue at stake for contemporary indigenous communities in the planning process is a reassertion of their sovereignty... ultimately, tribes decide whether to go ahead with a mining project or to resist it on environmental grounds based on which of the two options is a greater threat to their sense of sovereignty.” In Guatemala, the national crisis around mining can be viewed as an emergent reconfiguring of Maya identity through the assertion of the indigenous right to self-determination, and a modern turning point in how local communities are engaging the State. Such assertions of
community and indigenous voice may be the fruition of the resurgent pan-Maya movement documented by Warren (1998) and Wilson (1995), and conversely, the consultas may be supporting current pan-Maya efforts. Complicating the picture is the fact that the consultas include all members of a municipio, whether or not they are indigenous. The collaborations between indigenous and non-indigenous neighbours in the process of the consulta therefore have the potential to reconfigure local relationships and to build bridges between cultures at the level of the municipio.

How the discourse of corporate social responsibility (CSR) ‘digests’ the resurgence of Maya identity and the assertion of indigenous and local self-determination is slowly emerging. However, examining the response is complicated by the lack of a clear definition of just what CSR is. Again, the role of voice is an important subject and for whom CSR speaks an important theoretical consideration when examining how the discourse of CSR responds to the exercise of power vis-à-vis a consulta.

**Corporate Social Responsibility**

Despite its recognition as a veritable movement and a form of discourse (Conley and Williams 2008), there is in fact an absence of agreement on the basic definition of corporate social responsibility (CSR). The only consensus is the lack of it (Crane et al. 2008, 569) and acknowledgement that as a “field of inquiry, corporate social responsibility is still in the embryonic stage” (Crane et al. 2008, 568).

Part of the challenge to define CSR is the multitude of perspectives from different actors, all with unique interests. For Watts (2005), CSR emerged from the 1992 Rio Summit where the concept of voluntary corporate codes defeated calls for legal reforms and mandatory international standards of corporate behaviour. For multinational
corporate actors engaged in ‘CSR,’ the discourse is transforming how business is conducted and can range from a set of written policies to corporate goodwill that shares a portion of the profits with local communities.

At one end of the spectrum is the concept that corporations do not have any social responsibilities at all. Milton Friedman (1962) pegged corporate profits as the only social responsibility of business, beyond obeying laws. Beginning from a very different starting place, but with similar conclusions, Reich (2008, 42) questions whether voluntary corporate codes address the public policies and laws which may be at the root of an issue, and if corporate executives are in a position to make “moral calculations” about the impacts of their business activities.

CSR’s multitude of definitions impedes the ability to define it while allowing different actors to apply their own set of boundaries and conditions. The result is problematic and under increasing scrutiny. Visser (2010, 21) goes so far as to argue that “CSR is dead.” For critics of CSR as delivered by the mining industry, the discourse is considered an elaborate exercise in public relations, or at the very least a means to avoid criminal and legal consequences for corporate misdeeds and to avoid structural reform that would create more accountability and legal liability (Coumans 2010). In between the two extremes are a whole range of complicated relationships and dynamics, many which are external to CSR discourse itself, but have important implications for how effective, if at all, CSR programs are. In response, Sagebien and Lindsay (2011, 2) call for “new analytical models that can capture system-wide dynamics and put CSR into context within a broader governance system.”
Others critical of CSR recently coined the concept of ‘*corporate social irresponsibility*’ (CSI) as a means to examine the discourse (Tench et al. 2012) and to reframe the debate about what CSR is and what it is not. Tench et al. (2012, 5) argue that CSR is “empty” without its counterpart CSI, and that the two are logically inseparable. The basis for this argument is the concept that CSR has no ‘limit’ as to how ‘socially responsible’ a company can be, while CSI can have a very refined definition. The authors define CSI as that which is “illegal” or “legal but severely unsustainable and/or unethical and thus totally socially unacceptable” (Tench et al. 2012, 9). From there the definition of CSR is not static but on a continuum, with activities which are “minor unsustainable and/or unethical” falling into a range that may not be socially acceptable, up to and including “sustainable” and “socially acceptable.”

Management professionals and academics have turned a particular focus on the social acceptance of mines and extractive projects. The ‘social license to operate’ is described by Nelsen (2006, 161) “as ‘the language of choice’ by industry and stakeholders” and notes that this metric is being assessed alongside other factors, such as commodity prices, because “if a community does not support the development of a mine, commodity prices, no matter how high, will not generate a positive production/development decision.” Lee (2014) reports that “while the concept of social licence has gained traction in the forestry, mining and heavy oil sectors, the concept is on the cusp of exploding into a new industry in its own right.”

Like CSR, the social license to operate is also a vague concept with varying definitions depending on point of view. With respect to indigenous peoples, the World Bank (2003, 21) Extractive Industries Review concluded that:
"indigenous peoples and other affected parties do have the right to participate in decision-making and to give their free, prior and informed consent throughout each phase of a project cycle. This consent should be seen as the principal determinant of whether there is a "social license to operate" and hence is a major tool for deciding whether to support an operation."

Other research reveals that despite the World Bank's definition that equates social license to FPIC, the mining industry generally avoids making this link in its communications and CSR policies, and that the criteria defining a social license remains "relatively murky" and varies from company to company (Bice 2014, 63). Pmo and Slocombe (2012, 346) consider the social license to exist "when a mining project is seen as having the ongoing approval and broad acceptance of society to conduct its activities."

However, scholars generally acknowledge that the concept is "inherently complex and can be characterized by dynamic terms, intangibility, and multi-faceted interactions with its broader setting" (Pmo and Slocombe 2012, 348). Other researchers are wary of the term "social license" and view it "as an industry response to opposition and a mechanism to ensure the viability of the sector" (Owen and Kemp 2013, 29).

While there are many linkages and parallels between the social license to operate and CSR, Bice (2014, 63) notes that they are distinct concepts with the social license best understood "as one means of operationalizing or realizing commitments to corporate social responsibility which embody particular principles, philosophies and practices."

Pmo and Slocombe (2012) note that one of the differences is that FPIC is viewed as a duty of the state, while the social license to operate is the purview of industry, and that the social license to operate has a more long-term view and must be renewed on an ongoing basis as projects proceed. Regardless of conceptual differences, both the free, prior and informed consent of communities and the social license to operate are
objectives of a company’s CSR activities, which can be understood as a set of tools for obtaining consent or a social license.

An examination of why CSR emerged as a common tool utilized by corporations helps reveal why the range of definitions exist. For many scholars, CSR emerged as a response to increasingly effective activism connecting across geographic boundaries and targeting the bottom lines of corporations involved in irresponsible business practices. Michael Watts and others describe CSR as both a response to control negative reputational damage but also a response to avoid addressing major structural issues that allow for corporate irresponsibility (Laufer 2003; Conley and Williams 2005; Watts 2005; Welker 2009; Coumans 2010; Keenan 2010).

In his landmark report to the United Nations, “Protect, Respect and Remedy” (Ruggie 2008), the UN Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations entrenched the idea a “governance gap” exists which permits multinational corporations to get away with murder (literally in some cases). The gap is the result of transnational corporations operating with impunity because their businesses extend across multiple jurisdictions, some of which are corrupt, and the world’s legal systems are slow to reform international law to cope with a modern globalized economy.

CSR appears then as the ultimate fix, a “way to plug the ‘governance gaps’ left by weak, corrupt, or under-resourced governments that fail to adequately provide various social services (housing, roads, electricity, health care, education, etc.)” (Visser 2008, 483). Yet the realities belie such promise. Coumans (2010) notes that over a decade of the “soft promise” of voluntary CSR (Studnicki-Gilbert and Bazo 2013) has not softened
the effects of the neoliberal retreat of state regulation, reduced the number of conflicts arising from mining operations, or eliminated the impunity with which many mining companies operate overseas.

CSR can also have its own side-effects. Welker (2009) found in the Indonesian context that CSR programs at a mine reconfigured community relationships in a way that did not solve issues of violence and, instead, resulted in violence between community members. In this case, CSR transferred problems instead of solving them. Some of the side-effects of CSR are structural. For Hanlon (2008, 157), “CSR represents a further embedding of capitalist social relations and a deeper opening up of social life to the dictates of the marketplace...not a driving force of change but rather an outcome of changes brought on by other forces.” One of the challenges within the discourse is that asymmetrical power relations continue to influence corporate-community engagement, even under the auspices of CSR. The problem includes “information asymmetry” because “CSR practices and product features are not always totally transparent and observable to the consumer and other stakeholders” (Crane et al. 2008, 573).

The other potential side effect is the company town syndrome. Visser (2008, 484) notes that there are “serious questions about the dependencies this governance gap approach to CSR creates, especially where communities become reliant for their social services on companies whose primary accountability is to their shareholder.” Nowhere is this potential effect more evident than in the Global South. Moon and Vogel (2008, 319) note that in “failed states plagued by violence, civil war, and ethnic strife, corporate community building programs are likely to be ineffective. Perhaps most importantly,
private sector efforts to reduce corruption are likely to fail unless developing country
governments improve their own governance.”

The implication of Moon and Vogel’s argument is that CSR has an inherent
geographic nature. At the local level, Coumans (2011) describes CSR actors as filling a
“space created by conflict” and questions the legitimacy of socially responsible investors
or other CSR actors who replace the community to negotiate compromise. The space is
not just discursive – CSR changes across boundaries and means different things in
different countries.

Idemudia (2010, 142) found that government commitment to CSR played a
significant role in the effectiveness of the measures and in the context of Nigeria, the lack
of commitment means that the potential of CSR is the Niger Delta is “at best marginal.”
Idemudia (2010, 137) argues that “taken alone, CSR efforts cannot transform political
and economic structures that create the conditions in which inequalities and injustices
persist.” In the context of Ghana, where a long history of CSR activity exists, Dashwood
and Puplampu (2010, 182) argue that “there are limits as to what CSR can accomplish”
and that corporations “cannot guarantee sustainable development; they cannot, nor should
they, take on the role of government.” Ofori (2007, 67) notes that there is a gap in our
understanding of CSR interventions in Ghana and that these activities are often
“haphazard.” For Visser (2008, 479), “CSR in Latin America is the least covered of the
developing country regions.”

An under-examined side effect of CSR is how voluntary corporate activities
impact community voice and agency. Coumans (2010, 35) describes how CSR may “be
strategically employed to undermine community agency, particularly in situations where
community interests are in opposition to mining company interests. In such situations of conflict, power relations play an important role because they influence how information about the conflict is transmitted to and from the local community, including how potential project impacts are presented and determined to be acceptable, and how companies present the outcomes of negotiations (or lack thereof) to their investors.

The question of voice and agency directly relates to my research because *consultas* are used to communicate an outright rejection of not just mining activity, but also a rejection of the CSR promises that accompany the entry of a mining company. These can include environmental policies, the sharing of royalties with local communities, funding for community development projects, contracts and employment. What remains unclear in the literature is how CSR discourse responds to such a rejection, including how SRIs respond. Therefore, this case study presents an opportunity to examine the geographic nature of CSR discourse, how local community members respond to the CSR promises that accompany proposed projects in Guatemala, and how companies portray resistance to those promises. The responses to the *consultas* by both the Guatemalan state and the mining industry are useful then to determine if companies espousing the discourse of CSR are also incorporating respect for indigenous rights in the form of free, prior and informed consent over mining projects. Despite the decision of the Ethical Funds not to participate in this study, my research advances this field of inquiry by providing community perspectives on CSR, and examining the literature on CSR, including products created by Goldcorp and the Ethical Funds.
Socially Responsible Investment

Two aspects of SRI that have received limited scholarly attention include the impact of SRI on corporate social responsibility, and the role socially responsible investors have to promote indigenous rights. Most of the literature relies solely upon theoretical debates around corporate governance, developing methods for encouraging 'corporate social responsibility' and questioning the ability of corporations to act 'ethically' (Heinkel et al. 2001; Renneboog et al. 2008; Devinney 2009; Sadler and Lloyd 2009). The majority of the business-oriented literature on SRIs focuses on how they can remain economically competitive with their peers that do not screen or monitor ESG performance (Mill 2006; Lo 2009).

Hellsten and Mallin (2006, 395) suggest that SRIs offer an alternative to the "narrow-minded pursuit of money to the exclusion of all other considerations and obligations." However, they acknowledge the difficulty of measuring social responsibility (Hellsten and Mallin 2006, 398) as well as the unexplored question of "whether the idea of ethical investment is merely market rhetoric rather than a sign of serious commitment to social responsibility in business and finance" (Hellsten and Mallin 2006, 403). Limited research has shown positive results due to SRI. Heinkel et al. (2001) argue, using an economics model, that the exclusionary screening of corporations can affect their stock value and thereby promote corporate change. However, they do not provide any examples of this impact in the real world. Michael Smith (1996) argues that institutional shareholder activism can promote corporate policy changes, using case study examples of shareholder campaigns by the California Public Employees' Retirement System. Dhir (2009) examines the potential of
investor activism using a governance and reflexive law approach. He proposes that increasing corporate ‘social disclosure’ will empower socially responsible investors to engage corporations and change their behaviour. However, this assertion has only been debated theoretically and detailed case studies of SRIs are largely absent from the literature (Hellsten and Mallin 2006; Renneboog et al. 2008), excluding limited attention to the lack of participation by affected communities in the Ethical Funds’ engagement of Goldcorp and the conduct of the Human Rights Assessment at the Marlin mine (Coumans 2012b).

The role of indigenous rights in shaping SRI policy is also a relatively unexplored field of research. SRI public documents and a limited amount of research provide some insight into how SRIs understand indigenous rights. Two reports by the Experts in Responsible Investment Solutions (EIRIS) and the Centre for Australian Ethical Research (CAER) highlight trends with respect to corporate social responsibility and indigenous rights, and the responses of companies to indigenous rights (EIRIS and CAER 2007, 2009). Corporate policies that respect FPIC are required by EIRIS in order to achieve “good or advanced management response grade” (EIRIS and CAER 2009, 2). The Ethical Funds also articulated its policies on FPIC. A 2008 report from the firm promotes FPIC as ‘good practice’ and an ‘emerging standard,’ but nowhere is this standard mandatory for its investments (Ethical Funds 2008). The SRI more recently re-affirmed its commitment to promoting FPIC in its role on the Boreal Leadership Council (BLC), a group of signatories to the Boreal Forest Conservation Framework and comprised of “leading conservation groups, Aboriginal groups, resource companies, and financial institutions” (BLC 2012, 2). As a participating member, the Ethical Funds helped release
the BLC’s report entitled, “Free, Prior and Informed Consent in Canada” with the objective of expressing “multi-stakeholder support, in the form of the BLC, for the concept of free, prior and informed consent.” (BLC 2012, 3).

**Conclusion**

The field of critical geography provides analytical tools to examine power relations over multiple scales, including the assertion of self-determination by indigenous communities. Within this framework, power can be understood not as a thing but as “tangled arrangements” (Allen 2003) that differ across spatial boundaries, can be “instrumental” or “associational,” and be distributed asymmetrically. The consulta is both instrumental and associational. They are associational when viewed as a process that unites community members to express one voice, and instrumental when viewed as a means to resist the Guatemalan state’s imposition of mining without their consent, and the entry of the mining company.

The impact of consultas as an instrumental form of power is complicated. Projects have proceeded despite the consultas and some scholars question whether the movement can in fact alter the power asymmetries in Guatemala (Fulmer et al. 2008). Despite this, the consultas have created a national debate about the disparity between Guatemala’s human and indigenous rights obligations and its failure to honour them in practice. Government promises of reform to the Mining Law to improve consultation indicate that the consultas are in fact having a serious impact, despite the uphill battle.

The asymmetry of power is an important focus of critical geography, and a relevant lens for a case study examining power relations in Guatemala, where a small economic elite continue to dominate politics. Critical geography prioritizes local and
marginalized groups while extending analysis onto the global economic and political structures that have implications for local actors. Such an approach is fitting for understanding the consulta as an exercise in local self-determination that adopts the discourse of indigenous rights to reject the presence of a multinational mining company.

CSR emerged as a movement and a discourse to self-regulate corporate behaviour in the face of mounting criticism and activism calling for the structural reform of transnational business. The discourse carries its own set of power and information asymmetries that impact how companies respond to conflict and local communities. The movement also led to a host of 'intermediary' CSR actors who occupy the "spaces of conflict" (Coumans 2011) resulting from the entry of mining or other extractives in a local community. Socially responsible investors (SRIs) are one such CSR actor. An under-examined question is how these other voices operate in support of, or instead of, local community voice.

My exploratory case study on how Guatemalan consultas are understood and translate into the discourse of CSR and socially responsible investing is informed by critical geography’s focus on power relations across multiple boundaries and scales. In particular, the framework supports the concept of community agency, or voice, as a form of limited instrumental power exerted through the consulta over the Guatemalan state and Canadian mining interests. I argue that the consultas are motivated by the extreme asymmetries of power in Guatemala, the historical exclusion of the Maya majority, and represent a turning point in Guatemalan politics where local communities demand a larger role in determining their future. Further, the consultas represent a serious challenge to the concept of corporate social responsibility by laying bare the
contradictions of who speaks and for whom CSR is employed. In this case study, the clearly articulated voices in opposition to mining, as acts of self-determination, preclude the typical CSR actors such as socially responsible investors, from intermediating. Whether CSR and its intermediaries support local indigenous voices in this case, or undermine those voices, could determine whether Guatemalans will accept CSR as a legitimate exercise or view it as just "corporate greenwashing" (Laufer 2003).
CHAPTER FOUR METHODS

Introduction

A multiple methods approach utilizing qualitative research tools is well suited to the examination of phenomenon that extend across multiple geographic scales (Escobar 1995; Power 2003), as with the present case which connects consultas in Guatemala to corporate and investor responses in Canada. This exploratory case study employed interviews and participant observation as the primary data sources from fieldwork between May and November 2010. Secondary source analysis was used along with other methods to triangulate the findings, and ensure validity and rigour in the analysis of what are “inherently partial” perspectives (Clifford 1986, 7; Baxter and Eyles, 1997). Flexibility in the research process was important (Hays-Mitchell 2001) because of the challenges faced in the field – both within Guatemala, and because the Ethical Funds declined to participate. As a result, the research focuses on the perspectives of the consulta organizers, leaving two of the research questions unanswered. I address this challenge in this chapter.

Case Study Selection

With the objective of exploring the spaces that connect Guatemalan communities and Canadian mining and investor boardrooms, this exploratory case study sought the perspectives of two study populations – first, Maya communities who had undertaken a consulta in an area where a mining license is held by Goldcorp or one of its subsidiaries, and the Ethical Funds, which is a Canadian-based mutual fund and SRI with shares in Goldcorp.
In order to address the challenge of ensuring a sufficient understanding of the case, I have adopted the approach recommended by Robert E. Stake. Stake (2005, 443) suggests case study design “to optimize understanding of the case rather than to generalize beyond it.” To achieve this, I have focused on ensuring that the analysis is based on a “thick description” (Geertz 1973, 3) and that study population qualify for what Bryman (2008, 56) calls an “exemplifying” rather than representative case. By “exemplifying,” I refer to the fact that my case study selection fits within a broad category of similar cases, but is not an attempt to generalize to all communities that have held consultas. Criteria for choosing the study sites in Guatemala are discussed below, and helped to ensure that the ‘exemplifying’ cases were chosen.

Despite the limitations inherent in trying to generalize beyond this case, the emergence of consultas as an increasing phenomenon in Guatemala signify that the findings from the three study sites may have relevance for the other approximately 67 municipios that have held consultas in Guatemala since 2005 (Yin 2003). In turn, the Ethical Funds is described as “Canada’s leader in socially responsible investing (SRI) for 25 years” (SIO 2011; Ethical Funds 2014c) and self-described as “pioneers for socially responsible investing” and “a catalyst for profound change in the way society thinks about investing” (Ethical Funds 2014c). The mutual fund is a Goldcorp shareholder despite having policies pertaining to free, prior and informed consent. The Ethical Funds responded to the violence and controversies embroiling the Marlin Mine via engagement with Goldcorp and helped initiate the Human Rights Impact Assessment of the mine that was completed in 2010.
Study Populations

Guatemala

Consulta organizers, direct supporters and community members from four municipios affected by Goldcorp licenses in Guatemala’s western highlands participated in the study. Figure 4.1 illustrates the four municipalities of Sipakapa, Cabricán, Huitán, and San Miguel Ixtahuacán. These four communities are predominantly indigenous, with very small minority ladino populations. Two of the company’s wholly-owned subsidiaries, Montana Exploradora and Entre Mares, have mining and exploration licenses in the municipios.

Goldcorp’s operating Marlin Mine lies mostly in San Miguel Ixtahuacán and partially in the municipality of Sipakapa, which held one of Guatemala’s first consultas in 2005 to voice their opposition to the mine. At the time of the interviews, Cabricán and Huitán were in the final stages of organizing their consultas in response to Goldcorp’s exploration licenses in their communities. I was fortunate to participate as an international observer in the Cabricán consulta on October 20, 2010. The Huitán consulta was held on November 22, 2010, shortly after the field work was completed. These study sites qualified for selection based on two criteria: first, they had held or were actively organizing a consulta, and; second, the Guatemalan government issued mining rights to Goldcorp or a Goldcorp subsidiary. Figure 2.10 (refer to Appendix I) illustrates the three municipalities and the mining licenses.

In 2010, I was introduced to the three community’s consulta organizers by Guatemalan NGOs working on issues of justice and the promotion of respect for the consultas. The safe introduction was an important step in ensuring trust, and was the
Figure 4.1 – Municipalities within Scope of Study

- Marlin Mine
- Panamerican Highway
- Municipalities of Study Area
- Lake and River
- Departament
- Guatemala

Projection:
Universal Transverse Mercator
Datum: NAD 1927
Source Data:
Ministerio de Medio Ambiente y
Recursos Naturales (2012)
(Ministry of Environment and
Natural Resources)
result of participating as a Commissioner in the consulta organizing committee in Santa Cruz del Quiché, Quiché, working to bring international and national observers for the day of the referendum held on October 22, 2010. Interviews were not held in Santa Cruz since it did not have Goldcorp licenses in its territory and thus did not meet the criteria for site selection. However, this experience provided a good basis for observing the regional and national context within which the consultas were organized and carried out.

The consulta organizing committees (in the case of Cabricán and Huitán), or by individuals who organized and supported the Sipakapan consulta, reviewed my research description and consent form. The committees agreed to participate on condition of anonymity of the individual participants, while reflecting the names of the communities and organizations involved in the process.

An 'outlier' set of two interviews conducted in San Miguel Ixtahuacán (SMI) did not meet the formal criteria for site selection because the municipality has not held a formal consulta, despite being the epicentre of impacts from Goldcorp’s Marlin Mine. These interviews provide useful context and are discussed; however, they do not formally meet the selection criteria.

Goldcorp

I chose municipios where Goldcorp holds mining licenses for two reasons. First, Goldcorp is the largest and most visible mining company in Guatemala, and one of the largest Canadian mining companies in the world with a market capitalization of $21.6 billion on the Toronto Stock Exchange (Yahoo Canada 2014). Goldcorp’s Marlin Mine represents Guatemala’s re-entry into the modern mining era and one of the largest extractive projects ever undertaken in the country. The company operates in Guatemala
through its subsidiaries Montana Exploradora and Entre Mares, which own mineral exploration and extraction concessions across the country (Goldcorp 2014), illustrated in Figure 2.5 (refer to Appendix I).

Second, the Marlin Mine is also a lightning rod for increasing opposition to metal mining in Guatemala, placing this Canadian company at the centre of national and international debates about the mine’s impacts, legal reform in Guatemala and Canada, and indigenous rights. As a result of the controversy, Goldcorp now actively employs the language and tools of CSR to engage its detractors. The response includes adopting a Human Rights Policy and commissioning one of the first examples of a Human Rights Impact Assessment at its Marlin Mine.

The Ethical Funds

The Ethical Funds, in turn, are a good exemplifying case of a Canadian SRI that uses corporate engagement and shareholder actions as the primary methods to respond to concerns about its investments, including shares in Goldcorp. Examining the Ethical Funds and its connections vis-à-vis Goldcorp to communities who reject the company’s presence provides a means to explore the role of SRI’s within the discourse of CSR.

After I completed the field work in Guatemala, I contacted the Ethical Funds via an e-mail to request their participation in the case study. The research description and consent form were provided. The Ethical Funds declined to participate, citing time constraints, and concerns with the chosen methodology, indicating a preference for a professionally organized “multi-stakeholder” process. The Ethical Funds also expressed concerns that they were not contacted prior to the Guatemalan fieldwork or involved in the case study design (Walker 2010). A subsequent interaction with Ethical Funds
representatives occurred over the course of several months, resulting in potential interest to participate but with some conditions including requests for portions of my interview transcripts with Guatemalan participants. As a result, I did not conduct interviews with the Ethical Funds because of my own concerns with maintaining my commitment to the confidentiality of the interviews with Guatemalan participants. As a result of the request of the Ethical Funds to include their reasons for declining to participate, I have attached the original e-mail request for interviews, and the subsequent e-mail exchange with Bob Walker, Vice-President of Sustainability for Northwest and Ethical Investments, L.P. (refer to Appendix III). The Ethical Funds’ request for excerpts of the transcripts is not included in Appendix III because it resulted from later interactions based on a renewed request for interviews with a different Ethical Funds representative.

I did not contact the Ethical Funds prior to the Guatemalan field work because of a concern with gaining the confidence and trust of community members who live in a country that remains violent and politically charged despite the Peace Accords (Ball et al. 1999; de León 2013; ICG 2013a; US Department of State 2014). Nolin (2006, 22) found that safe introductions through gatekeepers (Burgess 1984; Bailey 2007; Miller and Bell 2012) were critical to gaining confidence of participants in the Guatemalan context and in turn ensure trustworthiness of the interviews. My experience in the country confirmed that prior engagement with the Ethical Funds or Goldcorp would have made engagement difficult or perhaps impossible; questions of trust and “for whom” the research was undertaken were central questions in the communities. In an unexpected but instructive lesson for future engagement with the SRI industry, the approach created similar concerns for the Ethical Funds.
Two of the original research questions (#3 and #4) are not answerable as a result of the non-participation of the Ethical Funds. This is unfortunate for limiting the findings to one perspective (consulta organizers and supporters) on the topic of consultas in the interview portion of the fieldwork. However, the strength of the findings from the first two research questions, as well as the significant information already available from Goldcorp's and the Ethical Funds' policy and public statements, provides sufficient data to begin a discussion about CSR and SRI, and develop recommendations for future research that can seek to answer the final two questions.

**Sampling**

Purposeful sampling identified as 'key informants' (Hay 2000) consulta organizing committee members and direct supporters from Cabricán and Huitán, and in the case of Sipakapa, a community organizer and an active supporter involved in promoting the results of the 2005 consulta. Snowball sampling (Bradshaw and Stratford 2005, 72; Nolin 2006, 22) allowed the consulta organizing committees to identify other key informants in the communities, resulting in interviews from a wide range of sectors who were supporting the consulta or participating as organizing committee members.

The snowball sampling resulted exclusively in interviews with individuals who supported the consulta, but was not an impediment to obtaining a diversity of views. As listed in more detail below, the interviews included a clergy member, two school officials, a reporter, a former politician, a lawyer supporting or representing the communities, two broadcasters, a librarian, a youth, several farmers (many of the participants or their families cultivated crops and raised animals), three members from indigenous rights organizations, and several non-indigenous (ladino) community...
members (who self-identified during the interviews or outside of the interview, because
the question of self-identity was not explicitly asked during the interviews). Individually,
their priorities were nuanced and reflected a broad segment of their communities;
sometimes with competing interests (e.g. both Catholic and Evangelical Churches
supported the consultas). Importantly, the safe introductions ensured trust and made
further interviews possible (Nolin Hanlon and Shankar 2000).

I also attended a Cabricán Municipal Council meeting where the consulta
organizing committee petitioned the elected Municipal Mayor and Council to support the
consulta – both officially and financially. My attendance at this presentation and
committee meetings provided testimonio of their efforts to have a consulta, reflecting
both private and collective priorities (Nolin Hanlon and Shankar 2000; Nolin 2006). Key
themes emerged through the interviews and participant observation.

I was introduced by consulta supporters to the “Frente de Defensa Miguelense,
San Miguel Ixtahuacán” (Front in Defense of San Miguel Ixtahuacán) or FREDEMI, an
outspoken community organization opposed to the presence of the Marlin Mine that
initiated complaints about the Marlin Mine’s impacts through Canada’s National Contact
Point (NCP) and the Inter-American Commission of Human Rights (IACHR).8 I
conducted two interviews regardless of the ‘outlier’ status of SMI because FREDEMI has
direct experience of the Human Rights Impact Assessment commissioned by Goldcorp.

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8 Canada’s National Contact Point (NCP) is “an interdepartmental committee chaired by the Department of
Foreign Affairs and International Trade. The role of the NCP is to promote awareness of the OECD
Guidelines for MNEs (updated in 2011) as it relates to the social, economic and environmental impact of
their activities on the societies in which they work” (DFAIT 2014). The OECD Guidelines for MNEs
“provide non-binding principles and standards for responsible business conduct in a global context” and
“express the shared values of the governments of countries from which a large share of international direct
investment originates” (OECD 2011, 3). Canada is one of 46 countries signed on to promoting the
voluntary standards.
which was the result of the Ethical Funds engagement with the company. However, I did not seek more interviews because the community had not conducted a consulta.

Data Collection

Ten qualitative, in-depth and semi-structured interviews with 21 participants formed the primary data collection in Cabricán, Huitán and Sipakapa. Three of the interviews were group interviews, the other seven were individual. Two additional individual interviews were conducted in San Miguel Ixtahuacán, but for the reasons discussed related to site selection, are considered ‘outliers’ and are noted as such in the results, analysis and discussion.

My community interview guide included 15 questions (Appendix IV). The interviews were informal and participants freely elaborated and expanded on themes deemed important. I digitally recorded the interviews conducted in Spanish, and employed a professional transcriber. Several new research questions and themes emerged as a result of the informal interviews, including what motivated the community to hold the consulta and what the consulta meant in the political context of Guatemala.

In Cabricán and Huitán, I interviewed the consulta organizing committees. In Cabricán, this was the “Comisión por la Conservación del Medio Ambiente y la Defensa del Territorio de Cabricán” (Cabricán Commission for the Conservation of the Environment and the Defense of the Territory). Collectively, this committee’s participants came from a wide range of other civil society, religious and political institutions and organizations. These groups included the local Consejo Comunitario de Desarrollo (Community Development Council) or COCODE, which is a civic council structure intended to coordinate public participation in regional planning processes, as
well as the Catholic Church, the local Evangelical Church, the local youth group, the 
Asociación Cultural Mam (Mam Cultural Association, which is the traditional Maya 
culture in Cabricán) or ACUMAM, the local radio station, and the local schools.

In Huitán, the organizing committee is simply called the “Comisión de Consulta” 
(Consulta Commission). This committee represents a wide range of organizations within 
Huitán, including the Consejo Mam (Mam Council, the traditional Maya culture in 
Huitán and regional organization with representatives from each municipio), a women’s 
organization, a midwife association, a youth group called Jóvenes de Derechos Humanos 
(Youth for Human Rights), the local health centre, the schoolteachers association, the 
local Catholic church, the local Evangelical church, a representative from the municipal 
organization, and the COCODE.

Participant observation is an important source for validation of interview results 
(Angrosino and Mays de Perez 2003, 108; Adler and Adler 1994). I used both formal 
and informal participant observation to triangulate and fact-check. Formally, I attended 
the consulta in Cabricán as an international observer, delegated to one of the aldeas 
(hamlets comprising the municipality) for their vote, observing the proceedings and 
filling out a survey used to affirm the process. Observation included the ballot process 
and the counting of the ballots. Observers then returned to Cabricán’s municipal hall for 
the final tally and announcement. The interviews were conducted in various places – 
town libraries, school offices, homes, parish centres, radio stations, coffee shops, and 
local NGO (non-governmental organization) offices. The different environments 
provided an opportunity to observe how different institutions were participating in the 
planning process.
Prior to the *consulta*, I was invited to attend a meeting with the Mayor of Cabricán, where the committee requested the Municipal Council’s formal support for the *consulta* and financial resources to cover a portion of the costs related to the vote and its preparation. At the meeting, the Council agreed to formally support the *consulta*, to consider providing financial support, and debated the merits of the *consulta* process with the committee. Two points of debate included whether the vote would be by ballot or hands, and whether youth under the legal voting age or adults without identification would be allowed to participate. Ultimately, the vote was held by secret ballot and school-aged children and adults without identification participated. The committee’s presentation to the Municipal Council helped refine my understanding of the interview results.

Informal discussions with interview participants and non-participants added context and helped me to validate emergent themes from the interviews, including the importance of the Guatemalan context and local renewable resources such as the *cerro* (hill/mountain) where Cabricán and Huitán obtained their water. I was also a *consulta* Commissioner in Santa Cruz del Quiché, helping to bring international observers to its *consulta* that occurred on October 22, 2013. The experience provided an invaluable opportunity to observe the organizing process and Guatemala’s first *consulta* in a major departmental (‘provincial’) capital as well as urban centre. Combined, my experiences as an ‘observer-as-participant’ (Kearns 2005, 196) ensured that I was able to observe and incorporate unexpected sharing of knowledge into my analysis.
Data Analysis

I analyzed the transcripts after a professional transcribed the digital recordings. I coded the themes after carefully reading and re-reading the transcripts and my journal entries, and I tabulated the results to help identify emergent themes and determine which "bibbits" were related to broader categories (Kirby and McKenna 1989; Ryan and Bernard 2003; Peräkylä 2005). Some of the themes supported concepts identified in the literature review and early research, and in some cases the interview results did not support themes identified early in the research process. In one individual interview, the perspective was such a marked departure from the general consensus that the alternative perspective merited inclusion as a unique result. After careful review of the findings, I combined some themes under a broader category, with the original themes becoming sub-themes. Cross-referencing between my observation journals and the transcripts was an important part of carrying out the triangulation (Kirby and McKenna 1989; Dunn 2005) and resulted in four main themes and a number of sub-themes.

The interviews and the transcripts were in Spanish, and as a result I coded the interviews in Spanish as well. I chose direct quotes from the transcripts that best represented the emergent themes and concepts, and I then translated these into English for inclusion in the results chapter. The professional transcriber was also a translator and reviewed the translation and grammar.

Secondary source analysis provided important background and contextual information, and assisted in the triangulation of the themes (Stake 2005; Bryman 2008). Content analysis of key documents such as public statements and news releases from

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9 A "bibbit" (Kirby and McKenna 1989, 135) is a "passage from a transcript, a piece of information from field notes, a section of a document or snippet of conversation recorded on a scrap of paper that can stand on its own but, when necessary, can be relocated in its original context."
consulta organizers was used to better understand the interviews. I carried out content analysis of key documents and public statements by Goldcorp and the Ethical Funds to better understand their perspectives on consultas, the rights of indigenous peoples, and corporate social responsibility.

Safeguarding Rigour

The mixed methods and multiple sources of information permitted triangulation and fact-checking (Baxter and Eyles 1997, 514; Morse et al. 2002). In particular, the multiple data sources assisted in determining the trustworthiness of my results by revealing the partiality of each particular method and source (Bradshaw and Stratford 2005; Stake 2005). This approach to triangulation ensured that themes emerging from the interviews were also identified from other sources of information, and thus sufficiently supported to make statements and draw analysis (Kirby and McKenna 1989, 138).

The ability to interpret and represent findings (Clifford 1986; Marcus and Fischer 1986) is one of the challenges faced by any researcher seeking to ensure rigour while employing qualitative methods. The inherent “partiality of truths” (Clifford 1986) was balanced by self-reflection drawing from my own ‘positionality’ in relation to the research objectives and outcomes. Therefore, I recognized the importance of locating “ourselves in our work and to reflect on how our location influences the questions we ask, how we conduct our research, and how we write our research” (England 1994, 87). As someone actively participating as an observer in two consultas in Guatemala, I might be considered a “partial insider,” which is “not to say that my subjects are part of my project, but that I am part of theirs” (Kobayashi 1994, 78). This approach was successful.
in that my support for the consulta process itself was vital to establishing trust and therefore truthfulness in the interview process (Bailey et al. 1999; Nolin Hanlon and Shankar 2000; Nolin 2006).

Limited participant-checking, as an additional source of triangulation and fact-checking (Baxter and Eyles 1997), was attempted with some success in reaching the participants. Unfortunately, not all could be contacted as a result of difficulties in communicating with rural Guatemala from Canada. Supervisor-checking was important in ensuring that the themes developed from the interviews, observation journals, and secondary sources provide enough data to sufficiently answer my research questions and link the results to existing theoretical debates.

Ethical Considerations

In July 2010 the University of Northern British Columbia Research Ethics Board approved the research plan (refer to Appendix V). Priorities focused on ensuring the safety of human participants in the research. These included informed consent from the participants, confidentiality, and the ability to withdraw from the investigation. To address these points, consent forms were signed by all participants, their rights as participants were explained at the outset of each interview, and participants had my contact information if they wished to withdraw up until analysis was complete. The University of Northern British Columbia's Research Ethics Board adheres to the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (2nd Edition) (TCPS2) (CIHR et al. 2010) which includes an entire chapter addressing ethical considerations for researchers working with indigenous peoples.
While meeting these minimum standards, I was committed to employing additional measures to ensure that the research was beneficial as a "social project" and "culturally safe" (Smith 1999, 184; Irwin 1994). This decision was especially important in Guatemala, where continuing high levels of violence are often directed at indigenous rights and social justice advocates (Benson et al. 2008; Handy 2008; de León 2013; US Department of State 2014). Therefore, I sought advice from the committees and my supervisor about how to best to ensure the safety of the participants.

I offered to develop formal research agreements with each community. Instead, participants requested informal but nevertheless important commitments: to help find international observers to attend the two consultas (in Cabricán and Huitán), to keep individual names anonymous, to produce a Spanish popular version of the thesis after the project, and to return to present and provide copies of the thesis and summary. The request for anonymity was based on the committees' concern for potential violence or retribution targeted against those who participated in the interviews (despite some individuals' willingness to share their names).

An important ethical consideration is the power inequalities that can exist between researchers and participating communities and individuals. This point is especially true in the context of Maya communities in Guatemala, where Smith's (1999, 16) observation was affirmed that "the old colonial adage that knowledge is power is taken seriously in indigenous communities." A priority question in the communities was why I was conducting the research and to whose benefit. In response, I found support in maintaining a focus on Canada: first, to raise awareness about how people in Canada could support the consultas, and second, to raise awareness about the role of Canadian
institutions and investment which directly affects their lives, and in their opinion, threatened them. Howitt and Stevens (2005, 41) support this latter approach by pointing out that for researchers working with indigenous communities, it is the "capacity to explain how the institutions, values and practices of non-Aboriginal society work that is their greatest value for Aboriginal people – not their expertise in cross-cultural matters."

Challenges

The fact that challenges arose during the course of the fieldwork and afterwards was not a surprise. Flexibility was identified early as an important requirement to ensure safety, as well as successfully answering the research questions. One obvious challenge is the language barrier that existed between the participants and myself. Fortunately, I had five months in Guatemala studying Spanish, and working with organizations before I began interviews. The five months of immersion gave me confidence that my Spanish was sufficient for the purposes of the interviews. As a result, I chose not to contract a professional translator to help with interviews. But professional transcription services helped to ensure that the digital recordings were accuracy transcribed. I translated the direct quotes and the professional transcriber and translator reviewed my work.

Scholars have problematized the challenges posed by the language barrier and the representation of participants (Smith 1996; Hays-Mitchell 2001; Veeck 2001; Nolin 2006). The literature supports an approach of viewing the research as a bridge between two languages and allowing for better cross-cultural understandings. This approach is apt for an investigation that is seeking to understand the connections between the communities and Canada.
A second challenge was the Ethical Funds' decision to not share their perspectives on the consulta and socially responsible investors. Their refusal to participate meant that two of the four research questions were not answered, placing a limitation on the ability to analyze a SRI’s perspective on consulta and resulting in an emphasis on participants strongly critical of Goldcorp’s corporate behaviour (except for one ‘outlier’ who believed that the company’s behaviour had improved since 2005).

While focusing on the perspectives of consulta organizers and supporters may limit the generalizability of the case, their insight into the potential of CSR initiatives such as socially responsible investment is unique and of value to the theoretical debate about whether and how corporations act ‘ethically’ and ‘socially responsible.’ In fact, the perspectives of ‘for whom’ CSR and SRI activities occur is sorely missing from the discourse, providing further reason why this case study remains a valuable contribution to the literature. These perspectives also provide a basis to develop recommendations for further research which is discussed in Chapter Six and Chapter Seven.

**Conclusion**

Participants did not ask me to ‘analyze’ their perspective. Rather, they asked me to share their voices with Canadians and the Ethical Funds. Therefore, their voices are prioritized in the next chapter, and often through the inclusion of lengthy direct quotes. More than anything, participants requested that their voices be listened to, and that investors re-consider their role in the lives of Cabricán, Huitán and Sipakapa, and all Guatemalans affected by Canadian mining investment.
CHAPTER FIVE ANALYSIS

Introduction

Analysis of the interviews, participant observation, and the literature review has identified four key themes. Priority was given to the voices of the participants through the use of direct quotes from interviews. These findings reflect the first two research questions, as well as emergent themes and priorities from the interviews.

The four key themes: self-determination; exploitation and exclusion in the Guatemalan context; impacts from mining; and corporate social responsibility. Each of these themes had a number of sub-themes that are explored under each heading.

Importantly, all three communities – Cabricán, Huitán and Sipakapa – voted overwhelmingly against having mining activity in their municipality and, in particular, the presence of Goldcorp. The broad community consensus revealed through the consultas is important to reflect upon as the results are analyzed.

Self-Determination

1. Indigenous Rights

The importance of the rights of indigenous peoples and communities, and in some cases, simply ‘human rights,’ was an important sub-theme in the interviews. The sub-theme reflects participants’ unwavering belief in the community’s right to conduct the consulta, and about the status quo in Guatemala, which they feel does not respect or enforce the rights of indigenous peoples. The research questions which prompted the discussion of indigenous rights included how the community understands and
experiences free, prior and informed consent, and what motivated the community to organize a consulta.

Regarding the low or non-existent priority the state places on protecting indigenous peoples' rights, one Mam participant (1-3-a), someone working for the Consejo Mam and with the CPO (Western Peoples Council) to help Huitán and Cabricán organize their consultas, explained:

“For a long time these types [international human and indigenous rights treaties and conventions] of legal instruments have not been applied across the board in the country. They are applied in issues convenient to government sectors linked to capital, but in the case of the rights of indigenous peoples, very few are put into practice. It's the same as I told you – in practice they [government] are violating rights established under international treaties and conventions.”

Many participants linked the consultas to broader issues related to self-determination and the rights of communities to make their own priorities. The neoliberalized 1997 Mining Law in Guatemala was considered unlawful and discriminatory by the participants, and was a particularly provoking issue that the consultas are fighting against. Linking this issue to the state's role in protecting indigenous land rights, one consulta organizer from Huitán (1-1-b) expressed:

“The subsurface is ours. The point is that they [government] have misinterpreted some articles of the Constitution of the Republic, because they interpret that the State is solely the Government. For example, when the Mayor says, “I am the Mayor, I am the Municipality”; but the Municipality is not the Mayor, but all the Municipality, all of its components. So they have made the very laws to suit themselves, for their convenience; so we have to keep an eye on how the laws are interpreted.”

A consulta organizer (2-5-a) from Cabricán explicitly discussed self-determination in terms of the rights of communities to make decisions about their land and their future. This participant reflected on the role of the consultas in pressuring the state to respect local decisions and priorities:
"Before I authorize a license [mining/exploration license], I am going to ask, "are you [the people] in agreement?" The government never did this, therefore we can tell the Government that it has trampled our rights to this consulta, it has trodden our constitutional rights that we have as human beings, and that we are calling a halt here. Mr. President, we put you there, you are there because of our votes, but you don’t decide about our life, you don’t decide about our land, about our future. So with the consulta we are saying "stop" to the President and all the governments which are giving mining licenses."

The importance of the consulta as an exercise in self-determination and a mechanism to advance indigenous rights was a theme in nearly all of the interviews. Participants expressed how their rights had been too long ignored and that the consulta was important for changing how their rights get respected by governments and corporations. A Cabricán consulta organizer (2-1-d) elaborated on this concept, saying:

"It is a right of the people to say yes or no. What has happened in other examples in Guatemala is that the people have not been taken into account, they [government] have not listened to their voice, and the people are not given the opportunity to decide. Because Guatemala has good written laws, but they are sometimes not in favour of the Maya people. Therefore, we believe that the consulta of the people is exercising for the first time that right."

Others placed this exercise of rights within a historical and pre-colonial context. The consulta supporter (1-3-a) working with the Consejo Mam explained:

"Consultas are not a new practice, rather a very old custom among the Maya peoples, an ancestral practice in the sense of respecting the decision of the majority, respecting the decision of the assembly, in this case. Then it [the consulta] has been a practice recovered in recent months, recent years, so that the people can come forward or take a position about their collective rights, in this case the rights over the land. There are two general considerations: that it is an ancestral practice, and that it is now protected by laws, and therefore the communities are using it as an instrument, a mechanism, to defend their rights and to protest against these types of projects."

The consulta was often described as a 'mechanism' or 'instrument.' A consulta organizer from Huitán (1-1-c) framed the consulta in terms of enforcing the community’s rights:
"...more than ever the people are coming together. And not just Huitán is in this fight, various departments are involved and together we will enforce our rights. After the consulta, obviously Huitán will make its position known to the world, and other communities will join us. And the fight is not just the mine, in this case, rather the fight is much more than that."

This description was related both to the rights of the communities, but also to the next sub-theme, which took this point further, describing the consulta as the "voice of the people" and affirming the importance of the consulta process, not just the plebiscite.

2. "Voz del Pueblo" (Voice of the People)

Related to indigenous rights, but often expressed in terms not explicitly about legal norms, a sub-theme common to almost all of the interviews was the ‘voz del pueblo’ (voice of the people). The consulta was understood as an expression of the community’s wishes that should be respected for moral and ethical reasons, not just legal and indigenous rights reasons. A Cabricán consulta organizer (2-3-a) described this point succinctly:

“I think that the significance of the consultas is how to express the voice of the people. It is important to say, ‘we don’t want that, we want to be respected.’ A consulta can be important for the people to say no to a company. Therefore, the importance of the consulta is that perhaps one voice can’t speak, but the consulta is the voice of all the represented people.”

Another Cabricán consulta organizer (2-4-a) elaborated on this theme, putting the consulta both in a historical context, but also as a means for indigenous communities to participate in the workings of state decision-making:

“The consultas must first be placed within the history of our indigenous peoples of Guatemala. Since the conquest, since the colonial era, our indigenous peoples have had expressions of resistance, expressions rejecting the policies in the colonial era, in the liberal reform, in the independence era, even in the 36-year armed conflict. As well it [the consulta] is an expression of resistance to everything about the situation in which we live. The desire to improve the conditions of life, the desire to have a more democratic country, not only in word but in substance, so that the people share in the power of decisions of the state. Therefore, the consulta is an expression, a
manifestation, of not just the rejection of mining, but to tell the Government, the State: “we want to participate in the decisions of government, in the decisions of the state, that do not take us into account.”

A Sipakapan consulta organizer (3-2-a) described the consultas as a ‘light’ pointing the way to meaningful change in how the Guatemalan state takes indigenous communities into account. This participant noted the increasing number of consultas since 2005:

“We believe that with the consulta we have struck not a blow, but a light for all sectors, from the justice sector to the social sector, the executive sector, the government sector, they [the consultas] are totally changing the thinking. Right now in the nation’s Congress, and everywhere, they are always talking about a consulta, so I believe that it was an extremely interesting movement and that at this point is impossible to stop the current. In summary, it is a way to make known the voice of the people, the voice of the community, the voice of the people who are most remote, excluded, as one of the collective rights that exist.”

As an expression of a community’s priorities regarding mineral exploration and extraction, participants were very careful to explain how the consulta was far more than a simple plebiscite and that they conformed to international law. A consulta supporter (3-1-a) who worked with Sipakapa and FREDEMI outlined how the consulta was a process:

“They [consultas] correctly conform to international law, they are not plebiscites, they are plebiscites only as a small part, and what we are saying is that the consulta is this entire process that has taken years, and that in the final moment of voting in the communal assemblies, is where consent materializes. It is not a simple plebiscite. What it is saying is, “I grant my consent freely and informed, or I do not grant it.” It is ‘prior’ or it isn’t – it will be prior if the government has respected [the law], but if they have already issued the license it can’t be prior. But that is not my responsibility, it is the responsibility of the government, who already violated the law.”

Several participants described the importance of being informed, and how the consulta process began with information gathering. Some of the information gathering occurred prior to the decision to hold a consulta, and continued afterwards. In Cabricán, a consulta organizer (2-3-a) explained, “[t]he consulta requires a process. As a principle,
we and everyone have the right to inform ourselves.” Information-gathering was described as an important step in their preparation for what was communicated to their community members, in particular, the potential benefits and impacts of mining to their own community.

In Cabricán and Huitán, the organizing committees sought to ensure they could explain both sides of the story. Their information-gathering began on a fact-finding trip to San Miguel Ixtahuacán, to first visit the Marlin Mine as the guests of Goldcorp at the behest of a former local politician, then on a subsequent visit, to the aldeas (villages or hamlets which form part of the municipality) which are closest to the mine. This process was very important for them as it was the basis for their decision to organize a consulta.

A Huitán consulta organizer (1-2-a) explained:

“When we heard that there were licenses authorized, we met, and then went on an exchange in San Miguel Ixtahuacán. We went to see how they work, what damaged has been caused. There we became more focused.”

A Cabricán consulta organizer (2-1-d) elaborated on the visits to San Miguel Ixtahuacán and the discrepancies between what they heard from mine management and those living nearby:

“It was not possible [to send] everyone, but on this occasion we came together, there were 30 brothers or neighbours from Huitán, the other municipality that is close to here, and from here [Cabricán] 36 went, representatives from these organizations. We went there [the communities close to the Marlin Mine] to see the other side of the coin, because when we went to the Marlin Mine they told us that mining is good, that it is development, all that, right? But that makes sense because people who want to sell their product have to say it is good, right? So we said, “That is not all the information. Let’s look at the other side of the question.” And we went to walk around all of the perimetre of the mine, and so we came to understand that one thing is said inside and another reality is lived outside – that houses are cracked, the people are sick, leaders are persecuted, some leaders are persecuted, as well, there are threats, there are groups of women who have organized, because at the start they gave jobs to the people living near this company, but when their job was done they were fired.”
Interestingly, several of the organizers stressed the importance that while they were personally opposed to allowing metal mining in their community for a variety of reasons, that they did not want to tell the communities exactly what to decide. While this was tempered with the fact that the consultas were being generally organized to voice their discontent with mining licenses, and some participants were much more adamant that their objective was to encourage the community to vote ‘no’ to mining, other participants wanted to ensure that their communities were informed of the issues and the decision was made without coercion. A series of public outreach and information-sharing sessions in individual aldeas were organized over the course of months ahead of the plebiscite. At these assemblies, the committee’s representatives presented the issues to community members, shared their experiences at the Marlin Mine and outside the mine, and promoted the consulta. The assemblies were an opportunity to debate whether mining was in their community’s best interest. A Cabricán consulta organizer (2-1-d) described their approach as follows:

“We are not going to tell the people that they have to say ‘no’ to mining, rather take notice that we have already been to see this experience [the mine visit], and this experience [the mine perimetre visit], and what do they think? We already finished one round of awareness-raising, acquaint them with what mining is, because we are not going to come and say “say no to mining” if they don’t know what mining is. So we took on the task of planning a series of awareness-raising meetings. We have the community consulta planned for October 20. So we said to the people, ‘this is what mining is, these are the consequences, analyze this yourselves and we will return later, you will say ‘yes or no,’ because we can’t [make] you say yes or no; rather you are the ones that analyze, who know the future that we want for our people. And then they decide, right? We will return October 20th, and then it will be the voice of the people. Whether it be yes or no, we have done our duty, at least, raising awareness. These are the steps we have taken until now, and there is much more. I know this is only a summary of what we have done. All this has required a process of a year of work, of struggle. And somehow it goes on, because it does not end with raising awareness, it does not end with the consulta, there are steps to follow.”
This quote connects the two aspects examined under the sub-theme of *Voz del Pueblo* — the fact that the *consultas* are much more than a plebiscite, and that the outcomes of the *consulta* are an instrument of the community’s voice, and form of instrumental power, in which the community can communicate to the Guatemalan government and others such as Goldcorp.

3. Power

A sub-theme of self-determination that was touched upon by many of the participants, but using a variety of terms, was the issue of power. Control over one’s territory, corruption of government by powerful private sectors, and the power to make decisions about mining projects were themes that connected most of the participants.

A supporter of the Sipakapan *consulta* (3-1-a) spoke directly of the connection between self-determination and the *consulta* as a form of power held by the communities:

“What are the rights to self-determination? That I as a people can have my own model of development, that is to say, Mr. State, you are saying that the natural resources must be exploited, but note that I cannot do that because I survive on those resources; furthermore, spiritually, I am one more element in the ecosystem of my natural resources. So self-determination is that you will therefore consult me so that we can begin a discussion, whether I let you in or not, and if I let you in, which is a possibility, it has to be under my conditions. Otherwise, what is my right to political status? That I decide to let you in, I decide to proceed freely. That is the right to self-determination of a people. So the *consulta* has to be conducted in a balance of power — it is the *consulta* that permits the balance of power to be able to have a consultation, to obtain or not consent.”

The same participant elaborated on the importance of free, prior and informed consent as an essential element to meaningful consultation and ‘balancing power’ between indigenous communities and the powerful sectors in Guatemala:

“the *consulta* is inseparable from consent, they are two sides of the same coin. You can’t have consent without a *consulta*, or a *consulta* without consent, because to separate them implies manipulation. So there are those who say, “Companies that didn’t consult but do have consent,” for example, or they say, “you know what? I
don't have to obtain consent, but I did consult.” They said, “I unilaterally decided to push the project, I don't need consent, it is sufficient to consult.” So separating them is a trap. If they are separated, it is manipulated; it can be manipulated, by the companies and the government. Together [consultas and consent] they create precisely the balancing of power, because the powerful sectors that administer the State and the companies say, “Ok, I am obligated to consult but also obligated to obtain consent.” This is what permits the balance, because I know that my project must ask their permission, and if they don't give me the permission, this may signify a serious conflict, from bloodshed to everything. So the balance of power is therefore fundamental in the interpretation of the two rights having to go together - not just two sides [of the coin] but the same, and that is what balances. So this is where the communities gain equal footing, because if I have the right to a veto, and that is what they don't like, but that's what it is. If they don't authorize the right to veto, it won't happen [balancing of power], it's a lie – 50 years will pass, 300 more years, signing conventions, but it won't happen, it's false.”

Another participant from Huitán (1-1-f) elaborated on how power is not something simply held by an elected official, but by the people that the elected official represents:

“The people have the right, not the President of the Republic. In Huitán the Mayor does not have it, the Mayor does not have the power, the people have the power. In our country the President of the Republic does not have the power, the people themselves have the power.”

An element of the sub-theme of power was the concept that the communities were united. Participants referenced both the power that stemmed from that unity, but also how their common cause – the fight against the unwanted intrusion into their community – had been a force that united. A Huitán consulta organizer (1-1-f) explained this concept as:

“Maybe it’s a community that for many is insignificant, but we are people, we are humans, we need to have freedom, to be left alone to act as we are, persons, not to be treated as they say. That time has passed. Here, in Huitán, the majority are indigenous people, maybe 98% are indigenous. But thanks to God, I feel, because maybe we are not all, but the truth is that we have not had problems, we are united in that, in this problem with the mining company we are united to fight against it.”
The reference to indigenous and non-indigenous people being united around this issue in Huitán was an unexpected theme that emerged in Cabricán as well. A Cabricán consulta organizer (2-2-a) talked directly about the diversity of those participating in the consulta:

“Kids, youth, adolescents, women, men, everyone will be participating in this community consulta of faith to be able to state our rejection of this mining activity that they are thinking of doing here in Cabricán.”

In Cabricán, one of the consulta organizers spoke on the radio after the consulta results had been announced on October 20, 2010. A non-indigenous participant, she emphasized that the consulta was important for bringing both the Mam community and the ladino (non-indigenous) community together and that she hoped it would continue. This striking statement opened up new questions that are beyond the scope of this case study, including whether the municipio is the appropriate governance structure to be asserting indigenous rights given its colonial aspects and the inclusion of a small minority of non-indigenous participants.

The organizers recognized that this unity was a source of power for them, and that something in their relationship with the state of Guatemala had shifted. A Cabricán consulta organizer (2-1-f) alluded to this shift when saying, “today, this day that we are already organizing, seeing what’s happening in Guatemala, because we will not let it be as it has been, that we continue to be under the rich.” Therefore, participants saw power emanating not only from their actions and the consulta, but also from their unified position on the issue, and understood this as a shift in the relationship they had with the state. There was a general belief that there was no turning back – that the shift had happened and they were prepared to defend that shift in power.
4. Future Generations

The importance of future generations and youth was stressed by the majority of participants. One aspect of the sub-theme concerned what the community was doing to protect its inheritance – what would be left behind for future generations. Most often this was a concern tied to protecting their environment and health. A Cabricán organizer (2-2-b) explained that, “We want the people from this municipality, the youth, our children that are the future, we want them to really have a healthy life.” Another organizer from Cabricán (2-2-a) spoke directly to the issue of ‘inheritance’:

“To be able to protect the environment for future generations, because truly there are persons who haven’t even been born yet, and how could we leave them the inheritance of an environment already destroyed?”

Several participants connected their concern for future generations with the ‘riches’ that they had – both as an element of their renewable natural resources that they utilize, such as water, as well as non-renewable resources under the ground. A Cabricán organizer (2-1-e) explained:

“What we want is that these children or grandchildren who come after us, what can we leave for them? If we don’t oppose this situation about which we are speaking [metal mining], then they will come to take our riches from our community of Cabricán.”

Similarly, a Huitán organizer (1-1-a) explained the community’s concern about mining as a concern about future generations:

“One year ago we toured the communities, raising awareness among the people, and we realized that there has been a lot of participation of the people in understanding the negative things that could come with mining, a lot of issues. As well people have partially understood that if it is not good, then it can affect children as they grow up in the future.”

The concern for future generations and young people also motivated the communities of Cabricán and Huitán to promote and include youth in the consulta. A
Cabricán organizer (2-2-a) connected the participation of youth in the \textit{consulta} commission with concern for what they would have in the future:

"I was telling the young people recently that if we are on this Commission, it is because we are completely convinced that we need to look after our environment, we need to analyze the time that we give [to dedicate to the issue], what environment we will bequeath to our future generations."

Speaking about the participation of young people in the \textit{consulta}, a Cabricán organizer (2-1-d) extended the rationale to that of a right that the young people of their community held, despite their ineligibility to vote in normal elections because they were not yet 18 years of age:

"We include the youth, because many times the children are not taken into account, and during the outreach campaign we included them. In addition to the outreach, we will also include them in the \textit{consulta} because they have a voice and the right to life, so the youth are a part of it [the \textit{consulta}]. It's true that legally they are not of age [e.g. to vote in elections], but they are children of the same Creator and being a human they have rights, so they will participate. So this type of \textit{consulta} that we are conducting will include everyone, not just those who are 18 and over, but all those here who are alive. Only because the animals don't speak, the plants don't speak [they don't participate], but they are important as well for us, and we speak for them because we think holistically."

Inclusion of the whole community in the \textit{consulta} process, and the participants' common belief in the \textit{consulta} as \textit{la voz del pueblo}, support the idea that the \textit{consulta} is a response to the extreme power imbalance in Guatemala where local communities have had little say in the development of their territories. The assertion of self-determination via indigenous rights is therefore a useful means to fight the status quo, which emerged as an important theme in itself and a clear motivating factor in the organizing of the \textit{consulta}.

\footnote{I did not observe infants and very young children participating in the consulta, though I did observe school-aged children participating.}
Exploitation and Exclusion in the Guatemalan Context

1. Guatemalan Context

An important theme that emerged both from the interviews and observation was the context in which mining is being proposed in Guatemala, and in particular, the ongoing levels of exploitation and exclusion that result from having one of the world’s most disparate gaps between rich and poor, with a Gini Index\(^ {11} \) of 53.7 (UN WFP 2014). Participants shared at length their complete lack of faith in the structure of the Guatemalan state and economy to have mining activities that could be equitable, or that the industry could be regulated.

In addition, many questioned whether this type of activity would actually bring ‘development’ to their community as promised by Goldcorp’s promotional materials. Some of the participants based their skepticism on their experiences in San Miguel Ixtahuacán. Others believed that with fundamental issues unaddressed, mining is simply repeating and worsening the exploitation, discrimination and exclusion that are predominant features of the country’s various economic phases including the plantation economies such as coffee, bananas, cotton, and more recently African palm.

A Cabricán organizer (2-4-a) explained his lack of faith in the state to take care of its citizens:

“The poverty, the underdevelopment, the dependency, everything we endure in Guatemala is the product of exclusion, because we have an excluding state, a state that doesn’t care about indigenous peoples, a state that doesn’t care about the destruction of our ecosystem, rather a capitalist state that is only interested in capital, interested in investment, exploitation.”

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\(^{11}\) The Gini Index is a measure of income inequality based on a mathematical measure of statistical dispersion called the Gini coefficient. The World Bank (2014, para 1) defines the Index as “the extent to which the distribution of income or consumption expenditure among individuals or households within an economy deviates from a perfectly equal distribution.” The World Food Program (UN WFP 2014, para 1) explains that Guatemala, with a Gini Index of 53.7, “is one of the most unequal countries in the world.”
Another Cabricán organizer (2-1-f) linked the entry of mining as a new invasion that echoes previous eras in Guatemala, and in particular, forced removals of indigenous peoples from their territories:

“All that's happening now, I see this mining...this has come from more than 500 years, since when the invaders entered the territory of Guatemala, with Pedro de Alvarado and all that. What happened there? They entered to dispossess our brothers, our ancestors; they took the lands of our grandfathers from us in the past, and what happened from there, right? Later they began to exploit coffee, banana, all that. This happened many years ago. After all that happened, now what is happening to us – they want to take our land away from us again, right?”

Many participants pointed to the Mining Law reform of 1997 as evidence that the economic elite of the country are in control, and that State laws are manipulated to benefit a few and exclude the interests of general society. The reduction of the royalty rates for mines in 1997 was often cited as an example of this issue. A Cabricán participant (2-2-a) talked directly about the royalties:

“They are also leaving very few benefits, because it's one Quetzal that they are leaving for 100 quetzales [the royalty rate is 1%] – they are leaving one quetzal, and they take good pieces of gold. How many dollars, Euros, does a piece of gold cost, and for every 100 quetzales they only leave one quetzal? This quetzal is divided – 50% to the government [federal], the other 25% to the department [provincial] government, and the other 25%, barely, comes from one Quetzal. So they are exploiting the country economically.”

Other participants explained that the consulta is a direct response and fight against the historic and ongoing exclusion of indigenous communities and their interests from state structures and decision-making. The lack of community consultation prior to mineral exploration or exploitation (in the case of Sipakapa and SMI) was also cited as an example of the historical context repeating itself with a new industry, as a supporter of Sipakapa and SMI (3-1-a) made clear:

12 The royalty regime in Guatemala directs 50% to the federal government, 25% to the department and 25% to the municipio. Based on the 1997 Mining Law royalty rate of 1%, the municipio receives 0.25%.
“It's a kind of farce, that the government has to go: “I’m going to consult [e.g. a community] on the project, we are going to dialogue...,” this doesn’t exist in a capitalist model where the priority is to exploit natural resources with powerful sectors, and communities that have been historically dominated.”

The same participant further linked the general context in Guatemala to the broader issue about whether indigenous communities have access to ‘self-determination’:

“It is important to approach these cases in terms of class conflict, first, second, discrimination, that’s to say racism, and third, gender oppression. These three problems are fundamental in determining whether communities really have the right to their own development, and two, the right to political status, which are the two rights that together make self-determination, as stated in the Declaration [UN Declaration of the Rights of Indigenous Peoples].”

Many participants also reflected on the consultas as an instrument to change the status quo in Guatemala. The exercise of participatory democracy at the local level was seen as significant beyond just a question about a mining license. For many it represented for the first time that local, and in particular, indigenous interests, are promoted and prioritized – even if the Guatemalan government and the mining company tried to ignore the community’s position.

The supporter of the Sipakapan consulta and FREDEMI in SMI saw the consultas as the beginning of something very significant for Guatemala, despite the ‘chaos’ in the country. This participant (3-1-a) understood the consulta movement as a fight between the powerful sectors and the majority of Guatemalans:

“By now there have already been almost 50 consultas, there will be already about 700,000 persons [who participated in consultas]. So this social movement for consultation is a social movement that can be the political alternative for this country. Why doesn’t the government see this? What the political parties are doing is trying to co-opt the movement for their benefit, and so make it fail. Democracy? Not here. Rule of law? There is none. Legal safeguards? There are none. So it’s chaos.”

A participant from Sipakapa (3-2-a) took a more cautious approach, saying:
"It will take a lot of time to change the colonial thinking of all of the authorities, of everyone who have run the state for the last 500 years, so to change in the three years that we have been here, it isn't possible, but it is possible to raise awareness, maybe in ten or 15 or 20 years, but it is a movement that has begun, and if there is a consulta tomorrow over there, that is good, because the people each time see more. So this is the first step that is being taken, let's see what happens ten years from now."

The exclusive economic context must also be understood as an outstanding grievance from the internal armed conflict, where extreme state violence targeted indigenous communities in order to maintain an exploitative status quo. The violence now targeting community leaders resisting mining bears many of the hallmarks of the war and has further entrenched the polarization and mistrust of the state to protect its own citizens.

2. Respect

A common sub-theme in the Guatemalan context was the lack of respect that the mining company and the Guatemalan government had for their communities and other communities affected by mining. A Cabricán organizer (2-2-a) cited respect as a fundamental element to their culture:

"In all cultures the first thing that exists is respect. So they [the mining company] are interrupting this conduct, aren't they? They have no respect, because they are not respecting the right to life, they are taking away the right to life of human beings, living beings, existing, natural, because the trees, even if they are big, are leafy and thick, they come and remove them, so from the start they don't have respect. Responsibility as well, at no time are they taking responsibility, because they are not really analyzing the contamination, the consequences that result from their attitude of taking the gold and all the metals from the earth. So they are not being responsible."

Many participants were angry about the mining companies' lack of respect, because they understood this value to be a universal human quality. A participant from Cabricán (2-3-a) explained:

"They have disrespected them, like the lady said, they did not listen when they were spoken to, they do not listen to the voice of the peoples. I believe this is a lack of
respect, because like I said before, everyone has the right to work, but it is necessary to respect the rights of the indigenous people, it’s not just that racism has always existed, and many things, but we are all human beings, these people as well are humans and are suffering, they are crying out and no one is listening.”

The failure to respect the priorities and rights of the communities was often cited as a systemic issue that affected everyone in Guatemala. This concern often focused on how the government failed to enforce the already-existing laws. A Cabricán organizer (2-3-a) explained this concern succinctly:

“‘They can have a lot of articles where they say “we support the community consultas, we support the people,” everything can be really good, but the problem is that there is no respect. The laws can be really good, they can be well written, but they are not respected.’”

Not surprisingly, seeking more respect was also cited as a motivating factor and an element of the consultas, as noted by a participant in Cabricán (2-5-a):

“‘To get them to respect the life of the communities, to get them to respect the territory where we live, and especially that they respect the life of each human being, that is what we want to do. That is, with the consulta what we wanted was respect for our rights, and that the government isn’t anyone to decide for us, even parents at home, they can still decide for their little children, of course, but everything that is for their benefit, not for their destruction.”

Participants identified the government as the main culprit in not respecting the rights of the community. The behaviour of the government both during the internal armed conflict and since the Peace Accords emerged as an important motivation in the organizing of the consulta.

3. Government Behaviour

The Guatemalan government’s failure to act in the best interests of the communities was an important element to the Guatemalan context and a sub-theme that often connected to a variety of issues – corporate unaccountability, failure to regulate private interests, lack of prior consultation, and failure to respect the rights of indigenous
peoples. Participants had little or no faith in the role of the government to protect or care about their interests. There was a strong belief that the country was in a crisis because the government did not represent the interests of the majority, and in fact broke its own laws in advancing the interests of multinational companies and the country’s economic elite.

This sub-theme was also a strong motivating factor in the community’s decision to ‘take matters into its own hands’ and organize a consulta. At a broad level, several participants spoke of the ‘rule of law,’ or the lack of it. A participant from Cabricán (2-4-a) said, “They [the state and the mining company] are searching for ways, or legal means, so they can say ‘we are acting within the framework of the law.’ They speak of the framework of the rule of law, but the state (itself) also violates our rights, the state violates the rule of law.”

Extensive government and judicial corruption were also cited as a serious problem in Guatemala that affected how the state regulated mineral activity and exploration. A participant from Sipakapa (3-2-a) spoke extensively about how he felt that government corruption resulted in the lack of enforcement of environmental regulations at the Marlin Mine:

“There is a delegate from the Ministry of the Environment that is permanently at the mine, he is called the ‘resident delegate.’ He lives at the mine, the miners feed him, the miners give him lodgings, and they fly him here in a plane early on Mondays, and they fly him home on Friday afternoon. So what is he going to report if he has everything, living like a king at the mine? So he won’t be making any negative reports if he’s with the Ministry of Environment and Natural Resources. He lives there, he is called the resident delegate, he’s a young guy. So you realize, it’s the government that is failing, not the company.”

A consulta organizer from Cabricán (2-1-a) cited corruption in the Guatemalan judiciary as evidence of the systemic corruption that they were fighting against. The
participant referred to legal actions by representatives of San Miguel Ixtahuacán against
the then-President of Guatemala's Supreme Court of Justice, Érick Álvarez (who still acts
as a magistrate in the Supreme Court). The basis was Mr. Álvarez's former role as
counsel for Peridot, S.A., the Goldcorp subsidiary accused of illegally transferring
community title lands to Goldcorp's other subsidiary, Montana, without due process for
consultation on the underlying communal colonial titles still held by Sipakapa and SMI
(Galeano 2010; Valdez 2010). The participant explained that this same lawyer who
worked for Goldcorp was a judge influencing cases ruling on the company's interests:

"We know that it is forbidden, the law that prohibits a public official, say in this case
the man from the Supreme Court, from helping a company, when he is a public
official. So he is taking advantage of his job (position) to do business, and that isn't
good, right? So we don't agree with all these things. We want to say now: enough
already with these situations, where a few enrich themselves at the detriment of
others, they take advantage of their time up there [in government or the judiciary] to
pull off big deals, and that isn't right."

The failure to have any kind of consultation prior to the issuance of the mining
exploration licenses was a common example shared that demonstrated for the participants
the government's failure to protect their interests. The participants pointed to various
Guatemalan laws and international treaties which bound the government to consult, and
that the failure to consult prior to issuing the mineral rights was a clear violation of their
rights. A Cabricán participant (2-5-a) stated that the government had yet to consult,
despite the community requesting and receiving the information regarding the mining
licenses in their community:

"The government hasn't said anything. We do not have any information from the
government. What’s more, from the moment they made the request, because it was at
a meeting where they [municipal authorities] found out, they brought the paper with
the licenses already granted, when they went, because the Mayor went with other
members of the COCODES, if I remember correctly, or COMUDES, which is the
Community Council or Municipal Council, they requested a copy from the
government and yes, it was given. However, they say no, the license is already granted and you as the population can only accept it. The government does nothing, there isn’t even information, nor do they say, look sirs, we have already authorized a license for this municipality, therefore you have to obey the order. No, the government never said anything to us, never came to ask us here if we wanted the mine to work in Cabricán, not yet has the government said or done anything.”

In Huitán, participants described the tactics employed by a representative of the Ministry of Energy and Mines to pressure them into accepting Goldcorp’s mining licenses in a public meeting presenting the already-issued concession. One participant (1-1-d) explained:

“He [Ministry of Energy and Mines official] told us that it [mining] was development, that it was not a defeat for the people, nor was it harmful. He didn’t say what mining is going to cause. He said that it is an improvement for the town, that it’s development. Something he was saying, the representative of the [Ministry of] Energy and Mining, in his case he said that if we are not in agreement with mining, it would require a reform of the Constitution, which means that we would have to create a movement like in Bolivia, that’s the way. But while the laws are like they are right now in Guatemala and with the type of government there is in Guatemala, our fights are not feasible, that our fight was in vain. He also said that if we didn’t accept that agreement, they would change their contributions [public tax transfers]...that if we didn’t accept this commitment, or a deal, then they would take away projects [public works projects]. He made it a condition on us that if we did not accept then the project wasn’t going to happen, no roads or anything. So they pressured us, maybe indirectly, but they pressured us.”

In the same interview, another participant (1-1-b) added to his indignation at the government official’s threat:

“...and as for the official pressure saying that there would be no projects, that is totally false, because the projects are done with funds from the government, and it’s money that has to come whether or not there is exploration. But they used this as a basis for tricking [us]...”

An outlier interview in San Miguel Ixtahuacán provided special insight into the government’s response to the Inter-American Commission of Human Rights’ (IACHR) May 20, 2010 precautionary measures order (PM- 260-07) to the Guatemalan government that the mine be temporarily shut down while the case brought by the 18
closest communities be heard (IACHR 2010). The precautionary measure from the Organization of American States’ body was in response to impacts from the project on water quality and quantity, and risks to human health. The order called for a temporary shutdown during which time studies would be undertaken to assess the mine’s health and environmental impacts that the plaintiffs from Sipakapa and SMI had presented to the IACHR. In response, the government initially committed to complying with the order (Anderson 2010), began a process of engagement with Goldcorp and the municipal Mayors, but ultimately never complied. Over a year later, under pressure from Guatemala and Goldcorp, the IACHR modified the order to remove the measure to shut down the mine (IACHR 2011), despite criticisms from local communities that the evidence presented by the state of Guatemala on water quality impacts was not credible (Ramírez 2011).

The SMI community leader (4-2-a), speaking prior to the Court’s about-face, spoke of the Guatemalan government’s failure to respect the shut down order or to acknowledge the studies undertaken on behalf of residents which documented contamination:

“Because of the situation itself, that the government is not interested in the people’s lives, most of all that is why it has been so difficult, it is so difficult, for example, (to secure) the temporary closure of the mine, we know. But since the miners are there, and I consider that’s how it is because money can make everything happen. That, more than anything, is what we have come to, to our way of thinking, money can make everything happen. The government says, according to the laws, that no, what they say is that we don’t have proof of contamination. That is what they say, while elsewhere it has been published, proof of contamination, that there is contamination.”

An important aspect of the participants’ lack of faith in the government was the belief that the government effectively acted as an agent of elite and foreign economic interests. This belief is highlighted by the discussion of government corruption, the
development of laws that favour industry, and the failure to enforce laws protective of community interests. The consulta was therefore considered an important strategy because the process did not rely on those sectors of government deemed corrupt. In doing so, the consulta was a means to assert opposition to mining, and at the same time to protest the failure of the government to prioritize community interests ahead of mining interests.

4. Company Behaviour

Based on the interviews and observation, concerns about the behaviour of Goldcorp (usually vis-à-vis its subsidiary, Montana Exploradora), was a consistent sub-theme that was a strong motivating factor in the decision to hold a consulta. Participants did not believe the company was responding in good faith to concerns raised by communities near the Marlin Mine, including calls to temporarily shut down the mine. Participants believed that the company was directly and indirectly responsible for assassinations and attacks on community leaders, criminalization of its critics, the contamination of water sources, human health and livestock health problems, water shortages, and social conflicts. Keeping the company and others like them out of their own communities was a primary motivating factor behind the consultas.

Participants pointed to the lack of consultation in San Miguel Ixtahuacán and Sipakapa as evidence of the company’s bad track record. The Sipakapa and FREDEMI supporter (3-1-a) described Goldcorp’s failure to obtain consent in terms of ethics and corporate responsibility:

“For me in terms of ethics and social responsibility, the responsible ethics of companies must imply that in the face of an exercise of this magnitude, they should stop. Ethically, it seems to me that the first reaction is to stop, the suspension of a company, because a company that believes it is operating with the consent of a
community, and suddenly the municipality, which means we are not even talking about the surrounding communities; the municipality, the majority stand up with the principal tool that we know of in western democratic culture, and say to them, look, we are all opposed, the vast majority; they [the company] would have to stop and say, ok, here, in good faith, we understand in good faith, the person would have to say, it seems there is something wrong here, let’s stop, evaluate what’s happening. That is what Montana should have done in 2005.”

The same participant also described fraudulent land purchases by Goldcorp’s subsidiary as one of the failures in the consultation:

“Montana comes and creates Peridot, because it is always the strategy to create various companies, for tax reasons, for avoiding criminal and civil liabilities, so they create Peridot, and Peridot is made responsible for buying the land, because since Montana is doing the exploring and mining, to buy the land does not appear the best, so we better create another company to buy the land and transfer it to us. So there begins the fraudulent mechanisms, because they do not respect either of the two legal systems, I will explain to you. First, they do not respect the Maya legal system, because we’ve already seen that there is original colonial title duly registered, and there are internal processes about how to transfer property rights, right of use, land possession, and this process for a third party to enter into has to be conducted through a general consulta.”

In Cabricán, a participant (2-2-a) also had ethical concerns with the company. The organizer’s concern had to do with ‘solidarity’:

“We could also say that another of the values very important in our municipality, solidarity, is a very important ethical value, but they [mining companies] are not at any point in solidarity, because solidarity is the help that we give to each other. They come, take out 100 Quetzales, leave...take 99, and leave one Quetzal, so they are not in solidarity with the population where they are working. They are not practicing solidarity, yes, there are multinationals, they are opening roads, but only where their vehicles pass and no more, not where all of the community would benefit, no, only them and only them alone. Ok, they build an airport, yes, but it’s only where their planes are going to land.”

The Sipakapan and FREDEMI supporter (3-1-a) also spoke in terms of ethics:

“They actively worked against the consulta, which is a proper mechanism of democratic culture, of western culture. So their activities, which include delegitimizing the process of the consulta, are already unethical. The other thing, this comes from the hand that has criminalized those who have shown opposition. The right to freedom of expression of the community leaders has been criminalized, the arrest warrant for the eight women, this as well is unethical.”
One Sipakapan participant (3-2-a) defended the company to a certain degree.

“There are prospects, yes, that are two different things. There has been prospecting of some possible places which could have minerals in the territory of Sipakapa, but prospecting is another thing. There has not been exploration, there has not been and there isn’t.”

This participant cited the lack of exploration as evidence that the company was respecting the Sipakapan consulta, although reports exist (CAO 2005) that Goldcorp continued to be active in Sipakapa after the 2005 consulta. This perspective was unique amongst the participants, but is worth noting for its exceptionality. The participants’ perspective on Goldcorp’s behaviour will be further explored under the theme of corporate social responsibility.

All of the participants had concerns about the environmental impacts of mining, and the majority had no trust in the environmental assessment and monitoring that the company conducted. A Cabrican consulta organizer (2-5-a) rationalized why they believe the company would not admit to contamination:

“About the environmental impact assessments we have seen, of the contamination, Montana has done its studies, and I respect that as well. However they turn out studies in their own favour. They are not going to say, “the water is contaminated here, and it’s contaminated because of the mine.””

Another unique perspective came from a community leader in SMI (4-2-a). This outlier interview was particularly relevant in this regard because Cabricán and Huitán had limited direct experience about Goldcorp’s conduct in SMI and Sipakapa. The participant spoke directly about the company’s refusal to acknowledge water contamination:

“They say they don’t have any…that the water is not contaminated, all that…“We have our water treatment plant to purify the water again, it’s there.” But we don’t believe that…so we asked the managers that were there, “Ok, can we wash our
hands?” But they refuse, say “no.” “Can we wash our face?” They say “no.” “Can we drink some of this water, if it’s treated?” They say, “no, you cannot,” “so why not? If you say it’s treated? And why can’t we drink it then?” So this is suspicious, it’s somewhat suspicious. So we don’t believe them, until now, we don’t believe. Maybe some of the people believe that the water is not contaminated, but we’ve now realized that later on…we are going to suffer the consequences.”

Perceptions of the company’s behaviour generally focused on whether and how Goldcorp acknowledged and responded to the impacts of its operations. Participants generally believed that the mine had negatively impacted the environment and social relations in San Miguel Ixtahuacán and Sipakapa and that the company could not be relied upon to meaningfully acknowledge or address those impacts.

Impacts from Mining

1. Environmental Impacts

Participant concerns with the adverse environmental impacts from mining formed a common and strong basis for opposition to the activity and a motivation to hold the consulta. The main environmental impact of concern cited by almost all of the participants included impacts to water quantity and quality. Many participants also pointed to deforestation from open pit mining operations like the Marlin Mine, impacts to human and animal health, air quality, and concern for how modern metal mining did not conform to the Maya cosmovision and respect for Mother Earth. Concerns about water in the communities of Cabricán and Huitán were a very explicit reason to oppose mining: Goldcorp’s concessions covered the major source of water for both the communities, as well as San Carlos Sija, a neighbouring community that on July 21, 2013 held its own consulta rejecting mining (Curruchich 2013).
The site-specific nature of the mining concession which covered the cerro (hill or small mountain) and which was also their only water source was a significant concern for participants from Cabricán and Huitán. The following participant from Cabricán (2-1-d) reasoned that “this hill is water.” The quote also highlights their sophisticated understanding that ‘it’s only a hill that they see’ – a comment on the limited ability for a mining company to actually share their level of concern with protecting their ‘cultural wealth’:

“We realize that it’s precisely a hill that can be seen, back over there [points to the hill]...it is the hill that is threatened by them. We call this hill a ‘water bank,’ it’s a lung, it’s wealth, because there are trees there, water, oxygen, it’s all cultural wealth. And most of the villages and communities of Cabricán get their water from there. There are various, maybe I can say some 60 springs, where there are good streams, some four-inches, some two-inches, some three-inches, that flow this way. But Huitán, the adjacent municipality, the water flows there also; even if it’s not drinking water, it’s still piped water they use. Calel, which is on the other side [of the hill], part of San Carlos Sija, gets its vital liquid from there also. In conclusion, this is a hill of water.”

In Huitán, participants also spoke at length about the cerro as their water source.

One organizer (1-1-d) explained:

“Another thing that makes us upset is that really the majority of the sources of water are from the place where they already explored [the cerro]. And exploring or mining will affect the water. And from where will we get our water? All of the water that is supplied [to Huitán] is from this mountain, which goes to all of the people of Huitán. So that’s what makes you think then. How are we going to let someone affect our drinking water?”

The participant further explained that their water was their ‘municipal heritage’:

“What we want is that they don’t touch our municipal heritage, principally our water source, that is what we want. We don’t want to change that, like to throw it [water] into the hands of a company.”

Another participant in Huitán (1-1-b) compared the mountain to a ‘lung,’ as it was one of the few areas they had that still had forests:
“In Huitán, that part [the cerro] is the lung, it is the town’s respiratory system, and circulatory system, because from there comes the air, the oxygen from these mountains of Txemuj and of Paxoc, and from there comes the water that feeds us.”

In Cabricán, a participant (2-2-a) spoke at length about the connection between their water supply and human and animal health:

“We are not in agreement with contamination of surface water, and especially groundwater. In the place where there’s going to be mining, that already has been given the concession, that’s Cabricán’s water supply, but we don’t want our children to drink contaminated water.”

Notably, the same participant also spoke of the use of cyanide. The chemical is part of the extraction process at the Marlin Mine (Moran 2005), and was one of the heavy metals that the organizers were concerned with:

“From what they call “el Corral Grande” is where we are supplied with piped water for all of the municipality of Cabricán as well as part of the municipality of Huitán. So to come and explore there is to lose the sources of water for our municipality. As well to protect human health, and the animals,’ because like I was saying before, if there is going to be mining, with that cyanide they talk about, that contaminates, and even the water underground is going to be contaminated, then even wells will be of no use, we won’t have water to live.”

The proximity between the concession, the water sources and the communities implied a very direct impact on the people. An organizer from Cabricán (2-5-a) commented on this geographic ‘closeness’ that was a basis for the conflict between the mining interests and their interest to protect their water resource:

“For us Cabricánecos this place [el cerro] is very sacred, because of the fact that all the springs that supply water to all of the communities are there. This means that if we agree to let the company come and work in Cabricán, then we will be left without water and without trees and without this hill which has covered us for years. So we would be affected directly.”

The organizer from Cabricán echoed what was a common sentiment amongst many participants: that their land and water, and in particular, the cerro, are sacred. A member of the Huitán organizing committee (1-1-c) discussed the Earth in terms of a
Maya cosmovision, a perspective shared by many of the participants, including non-indigenous participants who still mentioned the Earth as a gift from "God":

“They [Goldcorp] are sure that their company does not make any damage, but we are palpably sure that for us the Earth is not a business, but a source, like a mother. In the cosmovision that we are taught, it is a mother that breastfeeds her children, and that the children must take care of that mother...for them [Goldcorp], in the plan that they have, it is cash, it is gold, it is not life.”

The Maya perspective on the interconnectedness of the land, water and people is a good introduction to the next sub-theme, the social impacts of mining. For the participants, mining was a destructive activity environmentally, and their close proximity to the land and water (both spatially and figuratively) meant that this invariably had an impact on the cohesiveness of their community.

2. Social Impacts

While not the primary concern like the environmental impacts of mining, the negative social impact was a common sub-theme that formed a reason to oppose metal mining and motivate them to organize the consulta. Some of the quotes already shared mention the social conflict issue. Participants pointed to the tense and unhealthy social situation that gripped San Miguel Ixtahuacán as a result of the Marlin Mine. A Cabricán organizer (2-3-a) referenced their fact-finding visit to SMI as proof of the impacts of mining on social cohesion in a community:

"It was really painful to see the situation of the women [in San Miguel Ixtahuacán]. One woman commented to us that she was being intimidated, they kicked her out of her home when she had just given birth, I don't know how many days before, with her baby. So it was really painful, it made me really sad and the manner in which our own people are being treated really impacted me, because I believe that we all deserve respect. And as much as they work, people also have the right to live tranquilly, in peace. You can see the tension in which they live there...because they also told us there were conflicts: fathers who had disowned their children because of the land...others had moved away to other places, maybe sold their land but they left,
and they are not affected. Many people have had their water taken away; there were many things they explained that were impactful in that moment.”

A motivating factor behind a consulta was to avoid social conflict in their communities. The same organizer from Cabricán emphasized concerns about environmental impacts, but made it clear that they wished to ‘keep’ the relative social cohesion that their community enjoyed:

“The reasons to say no to mining here in Cabricán: first, because we have a hill that provides water to everyone, I believe that not every place has this water resource they can count on. Here is the “Cerro El Corral,” that’s called “Cerro El Corral,” which gives water to all the people. So that would be the first reason to say no. Second, because of contamination. We don’t want contamination in our municipality. Neither do we want conflict; the majority of the people here get along well. No to division. But principally it’s because of the water, for us water is extremely important. For the communities to live without water is not to live, right? Living without water is like not living.”

Participants who visited the Marlin Mine and San Miguel Ixtahuacán observed conflicts within the community and even between family members. Concerns about social conflicts arising from the entry of mining in Cabricán led one participant to reflect on the broader theme of ‘development’ and to question Goldcorp’s efforts to respond to its critics, including those that would qualify for ‘corporate social responsibility’ initiatives. The organizer from Cabricán (2-1-a) said:

“This is a lying company, because they have spoken to us of development, of many nice things, but we see the opposite. Yes, there was development, but of illnesses, of negative things, that really has developed. That is to say, if they see this as development, that is what is going on. Now, we understand that development, well, we see it in a positive light, the good things, but there [San Miguel Ixtahuacán] it’s the opposite, it’s illnesses, social problems, injustice, and we already reached agreement with the rest of the communities that there is no negotiation, our response is categorical: no to mining.”

This strong rejection of the “nice things” in favour of avoiding the “illnesses, the social problems, injustice,” is a useful precursor to the next theme of corporate social
responsibility. For many participants, the environmental and social impacts, as well as the context in which the Guatemalan state fails to protect the rights of their communities, were sufficient reasons to reject or be suspicious of industry efforts to become ‘responsible.’

Corporate Social Responsibility

1. Lack of Knowledge

A major theme of the investigation is the lack of knowledge about the economic and legal structures in place outside of Guatemala which impact communities affected by mining exploration and extraction. Only a portion of the participants were aware that the company had ‘shareholders’ and that some of these shareholders were known as ‘socially responsible investors.’ The lack of knowledge resulted in interviews focusing on Goldcorp and its subsidiaries, and in general terms about corporate social responsibility.

Despite the general lack of knowledge about the economic structures that connect North American capital markets to the affected communities, several participants did share strong views about their concerns with those structures. An organizer from Cabricán (2-4-a) turned the ‘lack of knowledge’ prevalent in Guatemala back on itself, questioning the levels of awareness and knowledge in Canada and elsewhere about Guatemala:

“Who are the owners of Montana? They are the shareholders, Goldcorp, los gringos, the Europeans. They are anonymous, we don’t know each other, but they are causing us harm, they are killing us slowly.”

This perspective was observed outside of the interviews as well. Individuals often asked why strangers would take actions which could harm others they do not know. The
participant (1-3-a) who worked for the Consejo Mam and supported the Huitán and Cabricán consultas called on investors to be more ‘vigilant’:

“I believe the duty is on those who have funds there [in Canada] to be vigilant as well, to be vigilant that their investments don’t cause death or violations of human rights in other places. I believe as well that this instance must guarantee that those who invest funds there have sufficient information about what is done with those funds.”

Interestingly, the issue of corporate disclosure highlighted by this participant is a theoretical question that is beginning to be explored by scholars (Laufer 2003; Dhir 2008). The lack of knowledge that investors have about the impacts of their investments is an emerging theme that mirrors the lack of knowledge the community organizers had with regards to socially responsible investing and capital markets.

In one of the ‘outlier’ interviews from San Miguel Ixtahuacán, the member of FREDEMI (4-1-a) objected to the idea that the profits from the Marlin Mine might be considered ‘ethical’:

“They have to admit that the profit they obtain over there, and all the funds that come in are funds that are damaging a country that is poor. And they must admit that the profits they obtain are profits that are not ethical, it’s a profit, let’s say, a wealth that they come into but causes problems to poor people in many ways. And that it’s taking advantage of them, of the situation of the laws, that here in Guatemala there is a lot of impunity, there is lots of corruption. So they must be aware that this is bad money, really, it isn’t being gained lawfully, but rather we could say that it’s money that they are making, it’s wealth they are gaining in an illegal manner.”

While the majority of the participants did not have any experience or knowledge of ‘socially responsible investing,’ they did have strong opinions about what is or is not a ‘responsible’ company, and often by inference, spoke of what would be in their opinion ‘responsible’ investment.
2. El Engaño: “No one is going to speak badly of their own house”

A sub-theme that emerged was the concept that ‘people do not criticize their own house.’ Participants used the metaphor of a ‘house’ to depict Goldcorp’s operations, and questioned the company’s various responses to issues as self-serving and not genuine. A Cabricán organizer (2-5-a) used a NGO created and funded by Goldcorp to conduct “independent community-based environmental monitoring” (Goldcorp 2012a) as an example of the common concern:

“Here is the independent organization [Asociación de Monitoreo Ambiental Comunitario (AMAC) – the NGO]. Here is Montana. They have their group of investigators here, ah, but no, because if we do it, they are not going to believe us, so let’s have this institution do it. But they are on the same side. No one is going to speak badly of their own farm, no one is going to speak badly of their own house. We are all going to say it’s good, we’re going to say it even though in the house there are a lot of problems going on. We will never show them, always we are going to say, “no, everything is good, we are happy,” even if we are fighting all the time in the house.”

This participant and many others rejected the independence of AMAC and believed that the company tightly controlled the process of environmental monitoring and the public access to the results, in order to avoid acknowledging the environmental effects and legal liabilities from the mine impacts. Similarly, they believed that the company tightly controlled its employees, contractors, the government and supposedly independent NGOs to ensure that there was no public criticism of the mine, regardless of the topic. The metaphor likened Goldcorp’s operations and the situation in San Miguel Ixtahuacán as a ‘house’ that Goldcorp portrayed to the outside world as a model form of development and prosperity, meanwhile denying the deep social conflict and environmental impacts that affected the community.
One of the ‘outlier’ participants (4-2-a) in San Miguel Ixtahuacán questioned the company’s claims of bringing development to their community, using a word that was used repeatedly by various participants, “mentira” (lie):

“Very few people [from SMI], for example, are working there up until now. They have employment, but [it’s] a minority. Meanwhile, the company says that all of San Miguel has development. That is a lie.”

The participant (1-3-a) who worked with the Consejo Mam supporting the Huitán and Cabricán consultas also rejected Goldcorp’s claims of bringing ‘development’ to SMI, using the word “engaño” (trick), another common term in the interviews:

“It is simply their strategy to trick the communities, because they talk of development but in reality it’s not seen. If we go to San Miguel, they have said that they have invested millions of Quetzales, but their streets, their education levels, their health indicators, continue to be the same. We see many children in the community still barefoot, they are surrounded by environmental damage, the hills are gone. In the media, they say a lot about how much they have invested in development, but in reality that is not the case. Only based on the fact that they leave 1% of their profits to the government and even that does not reach the communities. They even use that money to continue tricking the people in order to take advantage of all these situations.”

The supporter (3-1-a) of the Sipakapan consulta and of FREDEMI had a similarly bleak outlook on the outcomes of Goldcorp’s CSR activities in San Miguel Ixtahuacán:

“The company becomes a totalitarian mechanism where it operates. The company contracts teachers, but fires them as well. The teachers in San Miguel and Sipakapa have been forbidden to teach the science class, and any teacher that teaches science is fired from the job. It is they [the company] who guarantee the right to work, the right to health. The government removes itself from all of its constitutional duties, its obligation to protect, according to international law.”

One Sipakapan participant (3-2-a) stood out because of the exceptionality of their perspective on Goldcorp’s behaviour in San Miguel Ixtahuacán and Sipakapa, which was unique amongst the participants. It may also be reflective of the participants’ support for the announcement in late 2010 (after this interview was conducted) that the Sipakapense
and San Miguelense Mayors had entered negotiations ("mesa de diálogo" or "dialogue table") with the government and Goldcorp to develop an out-of-court settlement. The participant was close to the negotiations that had the objective of avoiding the temporary closure of the Marlin Mine as ordered by the IACHR in May 2010 and close the case entirely. Sipakapa’s participation may have been influenced by reports that Goldcorp had offered royalties to Sipakapa over and above what was mandated by the government (Rigalt 2011). The change in strategy on the part of Sipakapa’s Municipal Council has been met by protests in the community calling for respect for their 2005 consulta, escalating in 2013 in legal action against the new exploration licenses and civil disobedience on the Pan-American Highway (Boyd 2012; Castillo 2013; CPO 2013; Rivera 2013). Regardless of the internal conflict, the participant’s perspective has relevance for the Ethical Funds because of the Human Rights Assessment mentioned in the quote by this Sipakapan participant:

“Obviously the behaviour of the people of Montana was very different when they first arrived. There was conflict as if some enemies had arrived. For the same reason, when the consulta [in Sipakapa in 2005] was held, they reacted. There were claims in the courts against the consulta, there were insults, there was persecution against the leaders, but bit by bit they began to understand. We consider that the behaviour of everyone, principally the executives of Montana now, already is totally different. Maybe not for Ethical Funds, but you know the report on the impact on human rights? That brought to light that it was said that, yes, Montana violated many rights, violated the rights of the communities, violated the rights when they bought the land, violated rights when they assumed they had consulted, let’s say, with the matter of the response so that they would be given the loan with the Fund, the World Bank, specifically the IFC, but really those that came to conduct the study said that it is not exactly a consultation that was done, but simply a data register of the talks they gave, not a consulta. So this study says that there were several violations, so I believe that the company is interested in changing, under these circumstances they are very eager to change their attitude, to change their relations with the communities, with the authorities. I see this as totally different. It has been much better, they have totally improved.”

13 In December 2010 the mayors “began negotiations with the government and the miner for a friendly solution and to close the case before the IACHR” (Rigalt 2011).
The same participant then extended his observation to the Ethical Funds and the concept of socially responsible investors:

“But if they [The Ethical Funds] are investing in the mine, maybe they are a little mistaken, right, because then they made a bad investment, in the sense that the company is causing damage anyway, they violate human rights, generate violence, and a lot of things they have generated here, destroying the environment, and the whole question, a mining company. So in this sense maybe it’s a bad investment that the fund [Ethical Funds] has there, because if they don’t want to invest in tobacco, in alcohol, they shouldn’t invest in mining either, because alcohol and mining are just as damaging, it also damages the environment, causes health problems, but more, perhaps the most serious problem mining causes is contamination, environmental contamination, destroying ecosystems, so it is definitely not correct to invest in a company from that sector. But like I said, I have no further opinion because I don’t know exactly what it is about.”

This participant’s final statement is indicative of the general lack of awareness about SRIs by all of the participants. This major finding points to a wide gap between SRIs and communities affected by their investments. Yet the lack of awareness about SRIs and their modus operandi did not stop several participants from sharing perspectives on the Ethical Funds’ ‘preferred approach’ – to engage corporations in negotiations or shareholder resolutions to leverage change.

Some participants outright rejected the idea of socially responsible investors in metal mining because of the history of Goldcorp’s behaviour at the Marlin Mine. A Cabricán organizer (2-1-a) explained:

“Yes, because when one sees that the Ethical Funds are for a responsible company, then what we are living is totally the opposite, because a company that says it is ethical cannot persecute persons because they protest for their life. They cannot do that, and we see that in San Marcos, there are persons that have arrest warrants.”

14 James Anaya (2010, 3), the UN Special Rapporteur on the Rights of Indigenous Peoples and the Human Rights Assessment by On Common Ground (2010, 188) have raised concerns about the “criminalization of social protest” including 15 cases of Montana initiating legal proceedings in relation to actions or protests against Montana, some resulting in arrest warrants and incarcerations.
Another organizer from Cabricán (2-5-a) responded to the Human Rights Assessment in a different manner from the previous quote. The concern here is useful for looking forward to the discussion of the role of CSR, because it asks whether the study is simply ‘justification’ to continue with the status quo:

“It is sad that the Ethical Funds conducts the studies knowing the negative social impact that it is causing. But since here everything is a question of excuses, of justification, that “we are working, no, we already did that study, we already made another study, and look, everything is fine.” Where does it say that it’s bad?“15

Participants were interested in the idea of ‘socially responsible investing,’ and asked if this concept provided funds for community projects and other types of humanitarian efforts. The same organizer from Cabricán went on to say:

“Ask the Ethical Funds to dedicate themselves to more humanitarian help, to dedicate themselves to help more with the question of poverty here, but not to help poverty increase, but rather to help to improve living conditions. Because the fact that they are investors in Goldcorp, which is the owner of Montana Exploradora, what they are doing is watching people die slowly.”

This final statement demonstrates the polarization and mistrust on the issue of mining in Guatemala, and fairly sums up the majority of the opinions, when participants ventured to share an opinion about this unfamiliar topic. Based on the interviews and observation, the history of the mining industry in Guatemala has created a fierce opposition to metal mining, and for those actively promoting the consultas, modern metal mining is ‘irresponsible’ and therefore not worthy of socially responsible investors. Only time will reveal if the CSR efforts by Goldcorp and the industry will change these perceptions, but at a minimum, the participants would demand that ‘responsible’ mining could only happen where the company had the free, prior and informed consent of the community for a project.

15 The Ethical Funds was not directly involved in the On Common Ground Human Rights Assessment, but was involved in negotiating with Goldcorp to develop the terms of reference for the study.
Conclusion

Four main themes emerged from the interviews, literature review and participant observation, including self-determination, exploitation and exclusion in the Guatemalan context, impacts from mining, and corporate social responsibility. For the consulta organizers and supporters, the consulta was an important exercise in local self-determination and an affirmation of indigenous rights. Many described the consulta as la voz del pueblo (voice of the people) and believed that this voice could no longer be ignored. The organizers sought to protect their municipal inheritance, which for them was an intact environment for their children and grandchildren.

The context in which mining is proposed in Guatemala played a significant role in motivating the organizers. This context included the extreme exclusion of indigenous communities from political decision-making, the historic and ongoing exploitation of rural communities for the benefit of a small group of economic interests, the lack of respect in which mining investment re-entered the country in the late 1990s, and the behaviour of Goldcorp and the government. Values that the organizers sought to protect included the environmental integrity of local lands and waters that lay in close proximity to their community and sustained people through agricultural production. Participants in Cabricán and Huitán also sought to protect the relative social cohesion in their communities, including relationships forged through the consulta organizing between indigenous and non-indigenous community members. There was a lack of knowledge about socially responsible investing and limited knowledge about corporate social responsibility discourse, but general skepticism about any actions or words coming from Goldcorp, the mining industry and the Guatemalan government.
The research findings reveal that the consulta is a re-invigoration of collective decision-making at the local level, and for community members an important process to assert their rights under domestic and international law. The collective voice expressed through the consulta was considered by them binding on Goldcorp (or any mining company) and the government, and to ignore this voice would be considered a profound disrespect for the community. In light of the context of violence and impunity in Guatemala, to ignore this voice also risks reproducing the conditions that led to enormous social conflict in San Miguel Ixtahuacán and Sipakapa.
CHAPTER SIX DISCUSSION

Introduction

The analysis reveals that the extreme exclusion and exploitation of indigenous and rural peoples in Guatemala and the importance of local renewable resources have led community members from Cabricán, Huitán and Sipakapa to adopt consultas as a strategy to reject modern metal mining and assert self-determination at a local level. The consulta movement is a reaction to the controversies surrounding Goldcorp’s Marlin Mine and a defensive measure to block similar projects from being developed in other municipalities. In addition, the analysis found that consulta organizers from Cabricán, Huitán and Sipakapa were unaware of the concept of ‘socially responsible investment’ but based on their experiences, rejected in principle the idea that metal mining was a socially responsible activity.

The consulta organizers from these municipalities rejected metal mining in their community as a result of a state that excludes them from decision-making, minimizes or denies their rights and priorities, and has been unable to protect communities affected by negative impacts from the entry of large modern extractive projects. Further, the organizers understand the consultas to be contributing to a transformation of the political landscape in Guatemala. Beyond being a question about mining, consultas have become a conscious assertion of the community’s self-determination and an emerging strategy to re-negotiate an asymmetric power imbalance that has existed since colonial times.

The consultas are one of multiple strategies employed by communities to resist the entry of mineral interests. Elsewhere in the country mineral investment has generated controversy and opposition but not always leading to a consulta. The factors that
determine where consultas emerge are beyond the scope of this thesis but likely include the presence of mineral or other extractive industry tenures and proposed projects, the proximity of the proposed project to important local communities and their sources of water and sustenance, the percentage of the community that is indigenous, the makeup of local governance structures, as well as the organizational strength of local and regional NGOs to facilitate learning from other communities. Factors that may impede the organizing of consultas could include the risk of violence against organizers, the presence of other more imminent threats to local livelihoods such as palm oil development and longstanding land disputes and displaced communities that limit the capacity to organize.

In the midst of the increasingly powerful consulta movement and the continued protests against Goldcorp's Marlin Mine, the Ethical Funds has 'staked' ground intermediating between a vilified company and local communities affected by its operations and mineral concessions. While the consulta organizers had no knowledge of SRIs or the Ethical Funds, the indirect connection between the SRI and the communities provides an opportunity to problematize corporate social responsibility (CSR) discourse. The findings reveal that a wide gulf and information vacuum exists between the CSR debates in Canada and the on-the-ground impacts of mining operations in Guatemala.

The analysis indicates that voluntary corporate commitments in Canada mean very little to Guatemalan consulta organizers, and that free, prior and informed consent is considered a minimum screening standard if projects and companies are to avoid the violence and continuing protests that have plagued the Marlin Mine. Based on Guatemala's history and the context within which mining is promoted there, this 'standard' may never emerge in Guatemala unless legal reforms occur that legislate
respect for the rights of local communities, including the right to consent for both mines and mineral concessions. Thus, the potential of voluntary CSR and SRI activities have inherent limits that are openly contested by a social movement advancing the self-determination of local communities.

*Consultas and the Unfinished Business of the Peace Accords*

Social movements can be understood from multiple scales, and an important perspective is found at the local scale (Escobar 1995; Watts and Peet 2004). As a social movement (Urkidi 2011), *consultas* are local phenomenon at the scale of the Guatemalan municipality with implications and networks that are regional, national and international. Trentavizi and Cahuec (2012, 43) describes *consultas* as a “local response to a collective problem.” A December 2013 Constitutional Court ruling that reaffirmed the position that *consultas* are valid yet non-binding signals that the movement has increasing clout and legitimacy in a country that ten years prior had not heard of such an act of resistance (Montenegro 2013).

The transformation of the *consultas* as a phenomenon found predominantly in Guatemala’s western highlands into a movement that has appeared in more than half of Guatemala’s departments, is complicated by history, geography, geology, and local and regional politics. The analysis reveals that the *consultas* emerged as a tool quickly taken up by communities in Huehuetenango and San Marcos, but soon adopted across the country where municipios are resisting controversial mining, hydroelectric and oil projects. The importance of the site visits to the Marlin Mine and the affected communities in San Miguel Ixtahuacán for the Cabricán and Huitán organizers reveals
that sharing of information played a significant role in motivating communities to organize against mineral exploration and not to wait for a proposed mine.

The context from which the *consultas* and public opposition to metal mining and other extractive projects emerged is an important element of the movement, and helps explains the appearance of *consultas* in places where there are no imminent mine or hydroelectric proposals. The underlying issues that bred the brutal 36-year internal armed conflict (CEH 1999a) continue despite the promise of reform from the 1996 Peace Accords. In particular for indigenous peoples, the legal recognition of communal Maya lands, the integration of indigenous rights into law, discrimination in the application of existing laws, unequal access to justice and a more equitable economy remain substantive challenges in a post-Peace Accord Guatemala (Jonas 1991; Sieder 2007; Granovsky-Larsen 2011). Grandin (2000, 8) describes the post-conflict status quo as a non-inclusive “national project” that continues to exclude the indigenous majority from the structures of power and decision-making.

The analysis reveals that Goldcorp and its Guatemalan subsidiaries have emerged as emblematic symbols for bad corporate behaviour in Guatemala. Their role is the product of the rushed 1997 neo-liberalized Mining Law and the violent history that mires the Marlin Mine. The fact that nearly one million Guatemalans voted against metal mining in their municipality in the last decade is a testament to the public relations disaster that the Marlin Mine represents for Goldcorp and the Guatemalan government. The mine is the country’s first experience with the mining industry post-Peace Accords and has transformed what was potentially neutral public opinion in 1997 into a strong anti-mining sentiment. The protracted and violent conflict in San Miguel Ixtahuacán and
Sipakapa, and the failure for the Guatemalan government to protect and prioritize its own citizens over the interests of foreign multinationals fuelled the movement.

The findings of my research affirm that extremely uneven development (Galeano 1973; Handy 1984; Escobar 1995; Smith 2008) and the exclusion of indigenous and rural non-indigenous Guatemalans from the priorities of government was a motivating factor for consulta organizers. Most of my participants regarded mining as the next exploitative industry trying to rob them of their natural resources and dispossess them of their lands. Community members described the extreme poverty found in Guatemala as a “product of exclusion, because we have an excluding state, a state that doesn’t care about indigenous peoples, a state that doesn’t care about the destruction of our ecosystem” (Fabricán organizer 2-4-a). The same participant described the consulta as an “expression of resistance to everything about the situation in which we live,” and emphasized that the protection of natural resources, especially water, was a main concern, in addition to striving for a more democratic and equitable country. References to the first invasion and subsequent plantation economies (e.g. coffee, bananas, cotton and so forth) further emphasized that mining was just the next form of exploitation to arrive, described by Nolin and Stephens (2010) as the 4th invasion. Community members cited corruption and a state that did not care about their interests as a reason why decision-making about resource extraction should be made at a local level. The decision to organize the consulta was not about separation from the Guatemalan state, but obtaining a meaningful role in the decisions of the state.

The findings also suggest a general lack of faith in government promises to improve the mining regime in response to the growing opposition. Community members
pointed to numerous reasons for their skepticism, including a government corrupted by party politics, conflict of interest in the judiciary, and the lack of independence in the regulatory oversight of industrial projects. Most important for the organizers was the failure of the government to consult or get consent prior to the issuance of mineral exploration or extraction licenses. The report of a government representative threatening Huitán to accept the mining license or lose public works funding was understood as evidence for why the community must protect its own interests and proceed with the consulta.

The organizers understood that the industry, as a matter of marketing, must promote its ‘products’ – that is, to sell the idea of mining – but that this marketing was only part of the picture. All but one participant had a negative view of Goldcorp’s corporate behaviour in Guatemala, and saw the consulta as a preventative measure to keep the company or others like them out. In Cabricán, Huitán and Sipakapa, Goldcorp had exploration licenses. Elsewhere, consultas have been held where mining licenses have yet to be issued – further evidence of the ‘preventative’ aspect of the movement. Figure 6.1 illustrates the broad support for the consultas at the local level. Here a Santa Cruz del Quiché motorcycle-taxi driver affirms his associations’ stance against mining.

In many respects the conflict has only begun. Trentavizi and Cahuec (2012) note that for participants in San Juan Ixcoy, Huehuetenango, and Santa María Cunén, Quiché, the consulta serve a “symbolic” function, an historical act upon which to base future decisions, and that the government declaration that consultas are non-binding only further creates a sense of exclusion from the state. My findings confirm that these government responses further invigorate the movement. The government’s refusal to recognize the
results of the *consultas* and moves to regulate without consultation with affected communities reinforced the belief that the *consultas* are a rejection of not just mining but the entire system which excluded the vast majority of the citizens of Guatemala. In this sentiment, *consultas* are a strategy to help complete the unfinished business of the Peace Accords and a new front in a 500 year old story.

**Figure 6.1: Santa Cruz del Quiché Motorcycle-Taxi Driver**

"The Association of Motorcycle-Taxis is against Mining"
Source: Author (2010)

**Impacts of Mining and Proximity of Local Resources**

Martinez-Alier (2002) argues that contemporary environmentalism has competing dominant concepts and perspectives. One of the common concepts is “environmentalism of the poor,” where local livelihoods are dependent on local resources and thus the local
environment takes on a role as providing for the necessities of life (Guha and Martinez-Alier 1997). Therefore the integrity of the local environment is worth defending against resource extraction and pollution. Walter and Martinez-Alier (2010, 285) describe this perspective as “the defence of local livelihoods against the impacts and risks of economic growth.”

My analysis supports the “environmentalism of the poor” approach. The importance and proximity of local renewable resources and the perceived impacts of mining on those resources were strong factors in the consulta participants’ rejection of mining. During the first interview in Cabricán, one of the participants insisted that we pause for a moment, to stand outside and observe the cerro (hill or mountain) called “El Corral Grande” or “El Cerro Corral,” pictured in Figure 6.2, was the community’s main source of water and had dominated the discussion for the previous five minutes.

Participants in Cabricán and Huitán all commented on the importance of their local water sources, which they felt were threatened by the exploration licenses granted to Goldcorp. The consulta organizers were concerned with the quantities of water used in a mine, water pollution from the use of cyanide in the process, and the need for the construction of tailings ponds. The fact that one could see Cabricán’s or Huitán’s water source from any second story building in town affirmed the proximity between el cerro and their community. Access to clean water emerged as their single most important resource, understood as a direct determinant of the communities’ well-being and described in terms of wealth. “El Corral Grande” was described on numerous occasions as a “water bank,” and “cultural wealth” (Cabricán organizer 2-1-d). Many emphasized the importance of maintaining an intact environment for future generations, and thus the
consulta as an action protecting their “municipal inheritance” (Cabricán organizer 2-2-a).

Based on these findings, I believe that the consulta organizers’ actions are better
described as “environmentalism of the culturally rich.”

Figure 6.2: “El Corral Grande”

Source: Author (2010)

Escobar (2006) identifies three interrelated categories to environmental conflicts:
economy, ecology and culture. My analysis reveals that for consulta organizers, the three
categories played a role in understanding their opposition to mining. The primary factor
described was ecology, but the rationale for the priority placed on the local environment
revealed that the local economy and culture played an inter-related role. First, many of
the residents directly depended on raising animals and crops as a primary or supplemental
income. If they were not primarily employed in agricultural-related activities, then they were surrounded by others who are. Second, Maya cosmology emphasizes the sacredness and importance of the Earth, and the responsibilities that the Maya have to protect it. The ever-present *maize* (corn) was a reminder that Guatemala is known as *Ixim Ulew* (Land of Corn) (Smith 2009) and the sacred food pervades all aspects of peoples' lives, including identity, culture and the responsibility to protect the agricultural capacity of the land.

The organizers understood metal mining as a threat to the ecological integrity of their communities, and by extension, a threat to their livelihoods and culture. Interestingly, in Cabricán, several participants emphasized that they were not opposed to all mining, as they had an historic *cal* (lime) mine that had operated and employed many locally. However, it no longer operated as a result of dwindling timber supplies (used to fire the furnace). Others in town had concerns related to the deforestation which led to the shuttering of the historic mine. The nuanced support for some mining but not for metal mining reveals that these residents analyzed the potential benefits and impacts of different types of mining in the course of taking a position. However, the *consulta* question (by ballot) in Cabricán did not reflect this distinction, as can be seen in Figure 6.3.

In addition to the three factors cited by Escobar (2006), participants in Cabricán and Huitán emphasized that the entry of the Marlin Mine in San Miguel Ixthuacán and Sipakapa created enormous social conflict at the level of the family and community, and that preventing similar social conflict was one of their objectives. The residents of these relatively peaceful communities felt that mining threatened their social cohesion. Their
fact-finding trips to San Miguel Ixtahuacán gave them first-hand accounts of what the entry of a controversial mine could do to a community.

**Figure 6.3: Consulta ballot in Cabricán**

![Consulta ballot in Cabricán](image)

Source: Author (2010)

Further evidence to warrant the fear of social conflict is emerging from Goldcorp’s other Guatemalan project, the violence-plagued Escobal silver mine partially owned by Goldcorp and operated by Tahoe Resources in San Rafael Las Flores, Santa Rosa (Cruz 2013; Solyom 2013). In 2013, Tahoe’s security chief was charged with assault, causing bodily harm and obstruction of justice by Guatemalan prosecutors for ordering security guards to shoot six peaceful protestors outside the mine, several of whom suffered serious injuries (La Hora 2013; Munson 2013; NISGUA 2013; Prensa Libre 2014). During another protest, a police officer was killed (BBC News 2013). After
participating as observers in one of several local consultas that overwhelmingly opposed the mine, four indigenous Xinca community leaders were kidnapped by heavily armed men. Two escaped and one was released, but Exaltación Marcos Ucelo was found tortured and murdered (Rights Action 2013; Solyom 2013). More recently, on April 13, 2014, a father and daughter who were both community leaders in opposition to the mine were shot. Alex Reynoso suffered multiple gunshot wounds and his daughter Topacio was killed (Lakhani 2014; Rights Action 2014). Despite the wave of violence and the consultas, Tahoe purports to have a social license to operate and the support of the local communities. (Méndez 2013; Munson 2013; Solyom 2013; Lakhani 2014).

The Guatemalan context of extreme exclusion and political disillusionment, the importance of local renewable resources such as water, and the track record of the Marlin Mine were cited as the primary motivating factors behind the consultas. The movement reflects a growing polarization and mistrust of the mining sector and government efforts to promote mining, creating a volatile climate for other mining investment such as Tahoe Resources'/Goldcorp's Escobal project or Goldcorp's other exploration interests. More importantly for Guatemalans, the consultas have taken on a "symbolic:" function that serves as a protest against the failure of the Peace Accords to create an inclusive "national project" (Grandin 2000), and a demand that the decision-making structures of the state be transformed into a more participatory democracy.

Self-Determination

Social and environmental conflicts emerge when communities are in resistance to 'dispossession' (Harvey 2005; Bebbington 2009). In cases affecting indigenous communities, the people engaged in this resistance often adopt a discourse of self-
determination, which is deeply connected to property rights and natural resources and issues of territorial control (Anaya 2005; Crippa 2008). In the last decade, the right of indigenous peoples to free, prior and informed consent (FPIC) over extractive projects has taken on significance in conflicts over natural resources as it gains acceptance as an emerging international human rights standard (Ward 2011). The discourse of self-determination and promotion of FPIC are evident in indigenous struggles in Guatemala.

Consulta organizers have focused their attention on mining and other megaprojects, while basing their legal authority on domestic Guatemalan legislation and indigenous rights as affirmed through Guatemala’s international commitments such as the International Labour Organization’s (ILO) Convention 169. While drawing support from international law, the consultas are also focused on addressing the failure of Guatemala to recognize indigenous rights or to have an inclusive society. This objective helps explain why the consultas have spread far beyond the fateful actions of Sipakapa, as demonstrated by Figure 2.6 (refer to Appendix I).

According to Trentavizi and Cahuec (2012, 58), the consultas are consistent with traditional indigenous law, “developed within their communal practices, following the traditional customs learned and passed on between the Maya.” In their case studies of San Juan Ixcoy, Huehuetenango, and Santa María Cunén, Quiché, Trentavizi and Cahuec (2012, 59) found that the consultas were not new, but “just one more occasion that they [the communities] made a decision,” in this case a collective decision taken after discussion and consultation between the entire community, in a manner consistent with each community’s customs, the daily life of the families, and modeled on how community members understood their ancestors to practice traditional consensus-based
governance. The cooperation and collaboration of the Municipal Council with traditional governance structures meant that traditional customs were respected, but that the organizers valued a process that was also consistent with the municipal and national laws that govern consultas.

Trentavizi and Cahuec (2012) found that in San Juan Ixcoy, the traditional governance component meant the involvement of the Alcalde Indígena (indigenous mayor), supported by Article 55 of the Municipal Code, which calls on the authorities to “recognize, respect and promote existing parallel indigenous authorities” (van de Sandt 2009, 57). In Cunén, which lacked the custom of an Alcalde Indígena, the involvement of the cofradía (brotherhood) provided traditional oversight of the process. The cofradía is an arm of the Catholic Church but with strong Maya spiritual influences that maintains the presence of traditional customs in the community, offers counsel and help to community members in the urban area (Trentavizi and Cahuec 2012).

In Sipakapa, the consulta was initiated, organized and affirmed via municipal decrees, with Alcaldes Comunitarias (Community Mayors) and COCODES charged with conducting the vote in each aldea (village) (van de Sandt 2009). In Cabricán, and Huitán, there was no evidence of an indigenous mayor but the Alcaldes Comunitarias and COCODE from each aldea, elected separately from the Municipal Council and the

16 In the context of Cunén, Quiché and San Juan Ixcoy, Huehuetenango, Trentavizi and Cahuec (2012) found that the Alcaldes Comunitarias represent traditional authorities within the municipality, elected each year by the inhabitants. The authors also found that in some communities (such as San Juan Ixcoy), there exists a related position that forms part of the traditional governance structure – the Alcalde Indígena (Indigenous Mayor). The person is chosen by election from a Council of Elders following ancestral customs. Their purpose is to promote social harmony and spiritual guidance and protection for the municipality, manage the traditional Maya religion, among other activities. Van de Sandt (2009, 55) notes that there are approximately 13 municipalities in Guatemala with an active Alcalde Indígena structure in place. The authority of the position remains legislatively below the Municipal Council, but van de Sandt notes that in areas with a majority indigenous population, the traditional authorities can have de facto control of the municipality (e.g. Totonicapán).
representative of a particular aldea, did provide support and authority during the process and the vote. The integration of traditional and modern governance structures varied between communities, and existing community customs and structures were utilized by consulta organizers to reach out to the communities, and to legitimize the consulta from the perspective of traditional customs and Guatemala's municipal laws. The analysis found that Maya participants and organizers understood the process as a modern manifestation of the consensus-based decision-making of their ancestors, and consistent with traditional customs. This finding is consistent with what James Anaya (1998, 36) describes with respect to the continued existence of customary law for the Maya in Belize: that there remains a “customary system, of which the alcalde and other authorities are an important part,” and that the “contemporary Maya land use and occupancy is the extension of a centuries-long system of land tenure and resource use.”

The scale of the municipality is fitting for such an exercise as “each municipio constitute a unique group, united by blood and tradition and differing from all others in history, language, and culture” (Tax 1937, 433; Watanabe 1990; Ekern 1998; Urkidi 2011, Sampeck 2014), and the scale at which colonial-era communal titles were granted to indigenous communities (Lovell 1992, 24; van de Sandt 2009; Sampeck 2014). In this case study, support for the scale is the fact that Maya-Sipakapense of Sipakapa still hold registered communal title to their lands, registered by previous community leaders, and are a distinct linguistic group found solely within the territory of the municipio. In the cases of the Maya-Mam of Cabricán and Huitán, community members did not discuss whether the Guatemalan state recognized their lands as titled, but forcefully asserted that
their lands belonged to their community, which was referred to as part of a larger Mam-speaking linguistic group.

The consulta reflects an adaptation of a communal governance structure being re-imagined, albeit in varied forms depending on the community and what traditional governance structures remain in place. The inclusion of ladinos in the consulta is one such re-imagination which creates its own set of contradictions and questions about whether the consulta is consistent with pre-contact customary law, international treaties and declarations regarding indigenous peoples, and principles such as free, prior, and informed consent. For community members, the process was 'theirs' and the inclusion of ladino neighbours did not detract from their assertions of rights, including the right to self-determination. Their approach was supported by the fact that the communities of Cabricán, Huitán, and Sipakapa are almost entirely indigenous, meaning that the participation of non-indigenous people was important in countering racism and promoting local unity while not a major factor in the outcome of the vote. This approach was further supported by the full endorsement of the consulta through the municipio from local and regional indigenous rights and indigenous political organizations, such as the Consejo de Pueblos del Occidente (CPO) and the Consejo Mam.

Despite the full support of indigenous political organizations and indigenous community members, the participation of non-indigenous people in 'an exercise of indigenous rights' creates a contradiction between the consulta process and the application of international law and declarations with regards to indigenous peoples. The contradiction is related to the various forms of consultas, particularly the difference between an indigenous consultation and a popular or citizen consultation. Each type
confers different rights which impact the obligations of the state to respect the outcome. The difference stems from the territorial and land rights of indigenous peoples resulting from traditional customary laws and land tenures, which require states to consult and from the perspective of UNDRIP, obtain consent (Jahncke Benavente and Meza 2010). In Guatemala, respect for traditional customary laws is legally required as a result of Guatemala’s endorsement of ILO 169.

Some observers may regard then the consultas as deviating from these definitions because the organizers chose to ignore the question of race in determining who would participate, and in the choice to employ the state structure of the municipio as the scale at which to conduct the consulta. Whether this strategic decision detracts from the strength of a community’s territorial claims is a broader question of international law. The communities find support for their approach in Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that, “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.” From this perspective, the consulta can be understood as a self-determined decision by an indigenous community to employ the tools available to them via their participation in the Guatemalan nation-state, to advance their rights. There remain contradictions, some of which may not qualify as pre-contact customary tradition, yet the self-determined nature of this decision is in keeping with the community’s right to decide how to engage the state.

Van de Sandt (2009, 106) notes that “in communal land management in indigenous communities in Guatemala, “state” (municipal) and “traditional” (indigenous)
institutions and authority are closely intertwined — a legacy of the particular tenure history of these communities.” In some indigenous Guatemalan communities where the structure of Alcaldías Indígenas had been lost, an indigenous revitalization has re-established the traditional authority structure (van de Sandt 2009). One notable exception to the municipio being the relevant scale for this revitalization is the unification of the Q’anjobal linguistic group, which united eight municipalities in Huehuetenango through community consultations that created a Q’anjobal Parliament called the Pat’qum (van de Sandt 2009, 65).

Despite the Q’anjobal example, the consultas are reflective of predominantly indigenous communities asserting territorial rights at the scale of the municipio. The former United Nations Rapporteur, James Anaya, supports the understanding of the consultas as a legitimate expression of indigenous rights. In his preliminary report following the Rapporteur’s Guatemalan visit in 2010, Mr. Anaya stated,

“Such initiatives [the consultas] are valid and relevant inasmuch as they reflect the legitimate aspirations of the indigenous communities to make known their views concerning projects that have a potential impact on their traditional territories. The rejectionist position of most communities in which consultations have taken place reflects both the absence of consent and the lack of a proper consultation procedure” (Anaya 2010, 6).

A key aspect of Anaya’s findings is the lack of consent as expressed through the consultas. Community members employed the language of indigenous rights to resist the entry of mining and their right to hold the consulta. How this approach translates to the international sphere and how it adheres to the definition of ‘free, prior and informed consent’ are broader questions that need further legal research. The analysis in this case study reveals that the consultas at a minimum are a demonstration of the lack of consent for mining. Further, the consultas are arguably valid expressions and exercises of
indigenous rights based on the overwhelmingly large proportion of indigenous participants, the self-determined strategic decision to 'acculturate' colonial political structures to maintain and assert customary rights, and the limited space allowed for indigenous organizing in the post-conflict era of Guatemala. Further analysis of the extent to which consultas reflect traditional governance structures and land management, how linguistic groups understand and assert collective territory in the modern context, and the nature of the relationship between modern municipal politics and traditional customs, is beyond the scope of this thesis, and warrants further inquiry.

My analysis demonstrates that local actors are the primary organizers of their consulta, and that a key motivation is control of territory at the level of the municipality. The consulta organizers explicitly invoke the indigenous right to self-determination as a basis for their actions. The most common expression to describe the consulta in terms of self-determination was “la voz del pueblo” (the voice of the people). For participants, this voice mattered and was the final arbiter in decisions affecting their municipality, whether they were indigenous or not and regardless of the implications this approach has for whether the consulta strictly adheres to indigenous rights principles such as FPIC. Community members were offended that the Guatemalan state failed to consult or obtain consent prior to issuing exploration licenses, and cited this as evidence of a system of governance that was failing to respect their rights and include them in a more democratic manner. The consulta sought to affirm their collective rights in response to this failure.

Organizers found support from within Guatemala's laws and from Guatemala's international obligations and commitments. Participants cited the Municipal Code, the Constitution, the ILO Convention 169 and the United Nations Declaration on the Rights
of Indigenous Peoples as support for why the consulta must be respected. However, for most, the legal instruments which supported their action were secondary to moral and ethical considerations. When simply described as nuestra voz (our voice), the community’s right to decide for their own future and their children’s children was what mattered. Discussions about the failure of Guatemala’s democratic process to be represent their interests formed further rationale for why the consulta was important.

The consulta organizing had internal nuances that vary between locales. When observing the interaction between Cabricán’s consulta organizing committee and the elected Municipal Council, local politics clearly played a role. A debate about whether the consulta should be by ballot or by a show of hands, whether youth under the eligible age to vote should participate, and whether the municipality should officially endorse and fund the consulta demonstrated that local actors were driving the process. The movement has support from regional, national and international organizations that facilitated inter-community networking and learning about consultas, but local citizens were the primary organizers, contrary to some industry reactions (Bolaños 2011). To further complicate matters, the active participation of ladino (non-indigenous) residents of Cabricán and Huitán demonstrated unity between indigenous and non-indigenous neighbours. What the indigenous and ladino cooperation means, in terms of indigenous rights and self-determination, is beyond the scope of this research but was an important observation that reveals the potential for the consultas to play a role in the process of reconciling indigenous and non-indigenous interests at the local level. Figure 6.4 (refer to Appendix I) highlights the degree to which local participation occurred in various consultas based on 2002 census statistics and government statistical projections (INE 2002).
Customary law on consensus decision-making was adapted into a modern decision-making process by the *consulta* organizers, notwithstanding the participation of a small minority of non-indigenous community members. The organizers obtained information from Goldcorp during their visit to the Marlin Mine, and then from the surrounding communities around the mine and based on these two sides of the story began an internal process of dissemination, debate and organization. The subsequent months of information gathering and sharing through communal assemblies reflects that the actual vote was but one important step in the process, where "consent materializes" (participant 3-1-a). Such concern with process and the goal of not re-creating top-down structures highlighted a desire for a more democratic state that began in the community.

The concern for local water sources in Cabricán and Huitán, coinciding with the location of Goldcorp's exploration license, reveal that the communities were motivated by specific concerns with the potential future impacts of mining, although these were described in terms of a broader rejection of metal mining. Moreover, the assemblies and municipal meetings (e.g. Cabricán’s efforts to have their *consulta* officially endorsed by the elected Municipal Council) provided a forum for debate and a process by which arguments for or against mining could be aired.

My findings contradict the perception that the *consultas* are a "mere referendum to elicit a “yes” or “no” response from the affected communities" (Anaya 2010, 5).17

17 UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, stated in his preliminary report following his visit to Guatemala (Anaya 2010) that, "The consultation should not be treated either as a mere referendum to elicit a “yes” or “no” response from the affected communities," while noting that the consultations occurred in the absence of any consultation for existing mineral exploration and exploitation licenses. Anaya reasoned that *consultas* are "valid and relevant inasmuch as they reflect the legitimate aspirations of the indigenous communities." However, he took the position that the *consultas* are not necessarily final and binding. Anaya reasoned that "holding of community consultations should neither preclude the organization nor prejudice the content of fresh consultation procedures that comply with international standards and in which the State actively participates in accordance with its obligations."
Some commentators have reported that, “Neither the national government nor the investors participate, so the community never analyses the pros and cons of any project or negotiates specific demands. Instead, community members, including children, vote in public, raising their hands and voices to register their opposition, not just to a specific project, but to mining in general” (ICG 2013b, 11). While it is true that the consultas are generally being organized to protest mining (and in some municipalities, hydroelectric or other industrial projects), analysis was undertaken by some community members and shared with fellow community members. The visits to the mine make clear that the ‘pros and cons’ were considered by the organizers prior to the decision to organize the consulta, and discussed during community meetings during the process, in efforts to ensure the ‘informed’ aspect of FPIC was met.

While the degree of formalization of the process may not satisfy the mining industry’s or government’s perspective on what constitutes FPIC, the context of the consulta must be noted here. The three communities organized their consultas in response to the failure to conduct any consultation prior to the issuance of mineral licenses, and in the case of Sipakapa, inadequate consultation at the mine approval stage. Participant 3-1-a noted how the consultas could not possibly be consistent with the exact definition of FPIC, because the government had already violated the component requiring the engagement to be ‘prior’ to the issuance of a license:

“What it [the consulta] is saying is, “I grant my consent freely and informed, or I do not grant it.” It is ‘prior’ or it isn’t – it will be prior if the government has respected [the law], but if they have already issued the license it can’t be prior. But that is not my responsibility, it is the responsibility of the government, who already violated the law.”
Based on awareness that the *consulta* would likely be attacked by the government and industry, the organizers made conscious efforts to ensure that the process was consistent with Guatemala's laws governing *consultas*, meanwhile including traditional models of decision-making that existed in their community. The balance between the two is seen in the decision by Cabricán and Huitán to use secret ballot in the *consulta* (as opposed to a show of hands which was considered more 'traditional'), while also allowing children and ladinos to participate. Regardless of efforts to ensure the *consulta* was consistent with the law, Guatemala's Ministry of Energy and Mines, Goldcorp, and the business sector dismissed them as illegitimate while simultaneously seeking to regulate and reconstitute them (Bolanos 2011).

The analysis shows that the *consulta* organizing and enforcement would benefit from a more formalized structure that was recognized by the state, binding on companies and with clear steps to address the various requirements of FPIC. Such steps may influence the scale at which the *consulta* is held (e.g. the *municipio* v. linguistic territory), who officially organizes the *consulta* (e.g. the municipality v. traditional governance structures in the community) and whether and how non-indigenous community members participate. However, the *consulta* organizers and indigenous organizations promoting the *consultas* are very clear that their starting point for such a negotiation begins with respect for the existing *consultas*, and meaningful consultation and involvement of indigenous communities in shaping what the regulated structure looks like (Ismatul 2011; NISGUA 2011a, 2011b). Given the power differential between the mining sector and community leaders, a fair negotiation is not likely without significant political change or mediation by other sectors and human rights experts concerned with the protection of
indigenous rights, and with the extreme polarization and lack of trust in the country around the theme of mining, mediation may not happen. How such an impasse will be overcome is a pressing and ongoing theme for future research.

The consultas are an expression of indigenous and municipal self-determination, often expressed as la voz del pueblo. The movement represents a growing rejection of large scale extractive industries in Guatemala, both a symbolic and instrumental effort to transform Guatemala’s democratic institutions to better represent the voice of the people – the indigenous and rural majority that have historically been excluded from the priorities of government. The consultas are a new form of something old: the transformation of indigenous customary law to resist unwelcome forms of development. The results equate to the lack of free, prior and informed consent for mineral exploration and development. As a symbolic act of resistance and an action based on international law and Guatemala’s municipal and constitutional laws (though not yet binding), consultas are changing how indigenous communities are organizing to alter power relations in Guatemala.

Re-negotiation of Power

Marcus Power (2003, 198) calls for critical geographers to map the “changing spatiality of power and the geographical expression of networks of governance and resistance.” Power’s approach is a useful lens to examine the implications and meanings of the consultas at multiple scales: at the scale of the local municipality, at the national scale, and beyond to the boardroom of the mining industry and their investors.

Guatemala is a country that exemplifies what Beck et al. (2010) observed in reviewing multiple cases of conflicts over natural resources: asymmetric power relations
between communities affected by extraction proposals and those who make decisions about whether those impacts are acceptable. The asymmetry extends to the relationship between communities and the mining industry. The consultas must also be situated within this national and international context that ignores the agency and decision-making authority of indigenous communities.

The consultas can be understood as both a community exercise of “power with” fellow community members and other indigenous communities and organizations, and a partial exercise of “power over” the state and the mining industry. John Allen describes such power relations as “associational” and “instrumental” (2003, 117-123). The consulta is novel in terms of community-company relations in that the consulta does not require the company – it is an internal decision-making process that is driven by the community for the community. By taking control of the decision-making process itself, the communities are avoiding the pitfalls of engaging the company after the mining license has been issued, rights to access land already granted, the duty to consult already violated. Kuyek (2006) has documented the challenges faced by communities who choose to engage companies in a consultation process that is funded by the proponent of the project. By circumventing this engagement, the communities are protesting the very first violation of rights: the failure to consult prior to the granting of the mineral rights.

The analysis reveals that the organizers were consciously aware that questions of power, agency, land rights and decision-making authority over their territories lay at the heart of the consulta. The community members understood the consulta as resistance to the entry of mining in their community, but also a rejection of the status quo that had dominated and marginalized indigenous peoples. One participant (3-1-a) emphasized
that the *consulta* was a means to balance the power relations between indigenous communities and the country’s elite, and that this power derived from not separating consultation and consent.

Many of the participants echoed this perspective: the *consulta* was a response to the traditional concentration of power in the hands of a few and a system that excluded them. The organizers understood the *consulta* as a tool with the potential to transform their society and an effort by indigenous communities to take back power at a local territorial level. The power — self-determination in the form of decision-making over extractive projects — was being exercised *through* the *consulta*. Not surprisingly, these efforts are being resisted by the Guatemalan state and corporate interests. Companies, industry organizations and the government have tried to stop *consultas* through legal means (Holden and Jacobson 2008, 339), intimidation tactics (Glamis Gold 2005; MiningWatch Canada 2005; Imai et al. 2007), ignoring the results (CAO 2005), and since then, proposing to ‘regulate’ them (Prensa Libre 2011). Some projects have proceeded despite *consultas* in opposition, such as a cement factory in San Juan Sacatepéquez (Prensa Libre 2013a). The analysis reveals that the *consulta* is a form of instrumental power over the state and mining sector that for now is limited by the extreme asymmetry of power between the communities and the state.

Guatemala’s courts have provided mixed messages about the nature of the *consultas*, declaring the referenda legal and valid but not binding on the federal government (Holden and Jacobson 2008). The most recent decision from December 2013 goes further in calling the *consultas* an important indicator of local views on a project, and that the federal government must take them into consideration, but the fact
remains that the results have not been recognized by the government (Prensa Libre 2013d). Meanwhile, the mining regime in Guatemala still grants mineral rights without consultation with communities. Companies, Goldcorp and others, hold mineral licenses where consultas have very clearly rejected their presence. Figure 6.5 (refer to Appendix I) highlights the extent of mineral interests in Guatemala, both authorized licenses and applications for licenses as of 2011, and Figure 6.6 (refer to Appendix I) highlights the scale of conflict in Guatemala by demonstrating where consultas conflict with the mineral tenures.

The consultas have been an effective tool to elevate the debate on mining and indigenous rights. What the consultas have not done, and perhaps cannot do, is to transform the politics of the country to address the larger problems in Guatemala, including the protection of indigenous rights. Despite this limitation, the consultas have certainly acted as a training ground for community members to re-imagine political participation, local governance, indigenous rights, and to strengthen regional advocacy networks. To understand the implications of the organizing and re-imagining is beyond the scope of this thesis but is an area of research that warrants further attention. How the elevated debate on indigenous rights translates into the discourse of corporate social responsibility and socially responsible investment is one of the key questions of this investigation.

The Limits of Corporate Social Responsibility

Dashwood and Puplampu (2010, 182) note that there are ‘limits’ to CSR – that voluntary corporate efforts are impacted by the “enabling or disabling” dynamics from external factors like host governments, and that CSR cannot and should not “achieve
everything," like guarantee sustainable development or replace the government. Idemudia (2010, 142) found that in the Nigerian context, CSR delivered "marginal" results because of a lack of government incentive. Welker (2009) found that in Indonesia, CSR has "produced fresh zones of struggle and new forms of violence" in relation to the use of 'community' security forces instead of the former, more militaristic model.

The role of socially responsible investors (SRIs) creates another layer of complexity to the debate. Conley and Williams (2008) and Coumans (2011) have extended the analysis of CSR to other actors who engage in 'CSR' (e.g. NGOs, SRIs) and have found that an emerging theme and critical question is one of 'voice' – who determines who is a 'stakeholder' and therefore 'engages' a corporation to negotiate a remedy to a conflict? Coumans (2011, 10) concludes that SRIs occupy "a space for dialogue and negotiation that was created by community struggle," and questions whether an SRI is the correct actor to be negotiating outcomes to that struggle.

How SRIs deal with community agency in the context of mining, including the indigenous right to say 'no' to a project in a traditional territory is a question that has not been fully explored by academics. In the Bolivian context, Humphreys Bebbington (2013) has found that local involvement in decision-making was "required" for peaceful projects, implicating FPIC as an emerging standard in terms of CSR and SRI. Based on participation in multi-stakeholder roundtables on corporate accountability in mining, Coumans (2010, 38) found that "existing CSR codes that pertain to mining do not reflect sufficient awareness of the role of community agency in corporate accountability and in protecting values of concern to communities," and "CSR codes do not reflect an
awareness of the ways in which CSR programs may be strategically used to undermine community agency.” Coumans notes that the lack of attention to community needs in CSR codes is not surprising given that community actors are usually under-represented in the development of those very codes of voluntary conduct, and further that the lack of consequences for a company failing to abide by a CSR code does not motivate strict adherence to the provisions that are in place.

The failure of Goldcorp CSR efforts to quiet the majority of its critics in Guatemala (Barreto 2013), including the very polarized and strongly negative perspectives of the participants from Cabricán and Huitán, is evidence that their efforts are too late and too little considering the national context. The Human Rights Assessment conducted at the Marlin Mine (On Common Ground 2010) and the implementation of some of its recommendations (Goldcorp 2011a) did not allay widespread criticisms of its operations or mining. Goldcorp has since adopted a Human Rights Policy (Goldcorp 2011b), a Corporate Social Responsibility Policy (Goldcorp 2011c), and began engaging the municipal governments of San Miguel Ixtahuacán and Sipakapa though a “mesa de diálogo” (multi-stakeholder table) process initiated by Guatemala’s Vice-President Espada on December 2, 2010 (Goldcorp 2011a). Goldcorp (2011a, 5) describes the purpose of the dialogue to “ensure that ‘the mining industry develops in a framework of respect for the communities and the environment in benefit to the country’ and has ‘met at least monthly both in the communities and in the capital.’” In January 2012, the company also announced it would pay more than the 1% royalty rate to 4% of gross revenues, with 50% of the total royalty to go directly to the municipality in which
extraction occurs, and an additional 1% to support economic development plans in San Miguel Ixtahuacán and Sipakapa (Goldcorp 2012a).

In 2012, Goldcorp (2012b) announced it had secured an agreement with the Sipakapan Municipal Council to allow exploration in Chocoyos (an aldea of Sipakapa). The news puts into context the perspective of the Sipakapan participant (3-2-a) that the company had changed. However, the agreement created great controversy in Sipakapa, resulting in the formation of an alternative “council” modeled on consulta-organizing and indigenous rights-promoting committees elsewhere, called the Consejo del Pueblo Maya Sipakapense (Maya-Sipakapan Council). The Consejo initiated legal action claiming that the Municipal Council did not consult the community, making the agreement a violation of the community’s rights and without respect for the 2005 consulta. The Consejo proceeded to organize blockades of the Pan-American Highway and a march in Sipakapa to protest the situation (Castillo 2013), and is calling for a new consulta to determine whether the Municipal Council should allow the exploration or not. The division in the community may reflect what Welker (2009) described as one of the “side-effects” of CSR – new community divisions. It is beyond the scope of the thesis to closely analyze the emerging internal conflict in Sipakapa, but based on the ongoing resistance to the exploration, it is clear that CSR actions by Goldcorp, like negotiating with Sipakapa’s Municipal Council, become sites of contestation exacerbated by the polarized debate about mining in Guatemala.

Despite the CSR efforts by Goldcorp and the Guatemalan government, anti-mining consultas continued to proliferate, and the organizers from Fabricán and Huitán remain focused on stories of assassinations, criminalization of local mine opponents,
water contamination and water shortages, sick children, damaged homes, divided families and divided communities. The sheer number of Guatemalans who have rejected metal mining via consultas is a testament to this collective rejection of the industry and the failure of CSR to significantly change public opinion. A poll of Guatemalans in January 2013 revealed that overall 66% of Guatemalans opposed mining, with 72% of those living in rural areas opposed (Barreto 2013). This data supports the analysis that the consultas represent a veritable mood of Guatemalans opposed to large scale extractive industries, as demonstrated by the significant participation in the consultas, illustrated in Figure 6.4 (refer to Appendix I). At a minimum, the consultas reflect a polarized debate in Guatemala about how decisions are made which affect communities, and a call for a more inclusive decision-making process that is respectful of indigenous rights. The call for reform of the Mining Law, especially the failure to consult communities prior to the issuance of mineral licenses, reflects the broader debate. In this regard the CSR actions by Goldcorp are largely silent, or else opposed to fundamental reforms that risk giving more power to communities (Bolaños 2011).

The analysis reveals that participants were completely unaware of the concept of socially responsible investors as a concept or CSR ‘actor.’ Organizers were aware of CSR efforts only through promotional marketing by Goldcorp and the Guatemalan government, the visit of residents from Cabricán and Huitán to the Marlin Mine and from interactions with residents of San Miguel Ixtahuacán and Sipakapa who were aware of the Human Rights Assessment. All but one of the consulta organizers rejected the CSR efforts by the company or its investors, if the litmus test of acceptance was convincing the people to welcome metal mining in their community. Participants described their
skepticism in ‘voluntary’ self-regulation because “no one is going to speak badly of their own house,” explaining that it is illogical to them that companies are expected to self-report violations of rights or the law (Cabricán organizer 2-5-a). Many interviews highlighted that despite the glowing and positive descriptions of the Marlin Mine in the media that conflict continues in San Miguel Ixtahuacán and cited their visit to say that, “one thing is said inside and another reality is lived outside” (Cabricán organizer 2-1-d).

The same participant described what he heard in the Marlin Mine was a corporation that has to “sell their product” (Cabricán organizer 2-1-d), noting that this was understandable but did not convince him that mining was something desirable in his community, and contradicted what was witnessed outside of the mine perimeter. Many interviews focused on the disparity between the words and promises from the company and what has been witnessed in San Miguel Ixtahuacán. Consulta organizers also questioned what some might see as purely positive actions: Goldcorp’s CSR initiatives to build a health clinic and support local schools. Concerns were raised about the ‘company town’ effect that projects like this could have, because the efforts simply absolved the government’s constitutional obligations to provide the services.

An outlier position blamed solely the government for failing to have adequate laws or enforcement when dealing with Goldcorp. However, the majority of participants believed that both the company and the government had obligations to conduct themselves responsibly, and that this was not happening. The consulta organizers were particularly affronted by the failure of government to consult or obtain consent prior to the sale of the mineral rights. One individual (a lawyer) cited a legal principle called “fruit of the tree” to explain why Goldcorp was responsible even if it was the
government's failure to consult or get consent, since the company was benefitting from
the government violating their rights.

Beyond symbolizing a rejection of CSR efforts in Guatemala, consultas also
provide an opportunity to problematize what CSR means, and how the consultas
'translate' into CSR discourse. The fact that SRI and 'home state' CSR efforts were
unknown in rural Guatemala is an important finding, revealing a wide gulf between CSR
'practitioners' and Guatemalan community members affected by mining investment.
This 'CSR Gap' is partly geographic because the discourse has parallel but differing
messages to different audiences. In Guatemala, many participants recounted that mine
promoters had promised the levels of wealth and 'development' enjoyed by Canadians,
which could only be attained by accepting a mine. In Canada, debates continue about
how to regulate Canadian-based corporations violating laws with impunity in other
countries like Guatemala.

Guatemala's history and context thus plays an important role in how CSR
translates across different geographic boundaries. The extreme exclusion of indigenous
and rural peoples from the decision-making processes, the violence that continues to
target community leaders despite the promise of peace, and the corruption and lack of
access to legal remedies, create conditions that make Guatemala a CSR 'black hole.'
Here, the discourse of CSR means very little given that the country does not ensure
respect for basic human rights. The result is that statements like 'we operate within the
bounds of the law' mean very little in Guatemala, yet nowhere in the CSR framework is
this factor taken into account.
CSR meant very different things to consulta organizers than those who promote or debate the ‘movement.’ Many CSR actors regard the movement as measures ‘to mitigate some of neoclassicism’s harsher effects’ (Conley and Williams 2008, 4), and in doing so convince communities to accept projects. However, in the case of the consultas, the communities had very clearly said ‘no.’ The rejection of mining creates a paradox in CSR terms, with the consulta openly contesting the potential of voluntary CSR measures because the community outright rejected the presence of the company. In Guatemala, the extent of the conflict is illustrated in Figure 6.6 (refer to Appendix I).

On its CSR blog called “Above Ground: Our World of Community Responsibility,” Goldcorp highlights its attentiveness to local concerns, and points out that, “some resistance groups are fundamentally opposed to mining as a means of economic development” (Goldcorp 2012b). This statement is not entirely inaccurate – the consulta organizers are opposed to mining (metal mining to be specific) in their municipality. However, the consulta represented a broad sector of the population, not an NGO or “some resistance group.” Therefore, Goldcorp’s dismissal of the anti-mining sentiment in Guatemala, including the consultas, reveals the limits of CSR, where the only company action that would appease a community is to pack up and leave. A pertinent question then for the SRI industry is how this kind of conflict, the absence of consent or a “social license to operate,” influences the ‘socially responsible’ status of companies.

The analysis revealed that, as a result of the Ethical Funds’ policies and raison d’être, the SRI is an ‘interstitial’ actor in the conflict between the communities who held consultas and Goldcorp. By ‘interstitial,’ I mean that the Ethical Funds, as a Goldcorp
investor who stands by the company’s CSR efforts since the initiation of the HRIA (Ethical Funds 2013a), is an intermediary between the CSR discourse of the company and the communities who believe that their right to FPIC is being violated. In the case of Sipakapa, the Ethical Funds was a direct intermediary, because they negotiated with Goldcorp management to develop the terms of reference for the Marlin Mine HRIA without consulting the community, albeit with results that did satisfy some community members. In this case, the SRI’s participation indicates that, indeed, it is paying attention to well-known conflicts arising from its investments. Whether the consultas are also on its radar is unknown, but given the firm’s FPIC policy, they could be.

As an actor with a role in shaping Goldcorp’s CSR policies, and in determining what degree of change is acceptable for the Ethical Funds’ investors, the SRI is an interstice or link between the owners of Goldcorp, the management and the communities. Coumans (2011, 2012b) criticizes this role for undermining the agency of communities to negotiate their own outcomes to conflicts. I believe that without more consultation and obtaining the consent of directly affected communities, the SRI risks making choices that indeed undermine community agency.

The conflict in Guatemala elevates the question of if and how SRIs respond to an indigenous community’s rejection of its investment, in addition to the relevance of geographic context in determining ‘ethical’ investment criteria. There is evidence that the Ethical Funds does screen or divest in response to conflicts related to indigenous self-determination, such as their divestment of Enbridge, Inc. in 2013 (NEI 2013), divestment of Taseko Mines Ltd. in 2009 (Ethical Funds 2011), and their divestment of Vedanta Resources plc in 2010 (NEI 2010). However, there remains a lack of clear policy and
public scrutiny about what is a screening-level issue for SRIs, about when a SRI should divest versus 'engage,' and in doing so, how decisions about what are acceptable compromises are made. Again, the central issue is one of voice – for whom an investment (or divestment) decision taking place, and how were those directly affected by the investment involved in that decision.

The analysis reveals that a clear policy is urgently needed to identify how SRIs engage indigenous communities, how the right to self-determination is safe-guarded in the process of investigating and responding to conflict, and the responsibilities that SRIs hold to ensure accountability to those ultimately affected by their investment choices. Beyond accountability, and based on the history and increasing polarization in Guatemala, the analysis demonstrates that both country of operation and FPIC are important factors that SRIs could be screening for. Community members certainly believe the latter, in addition to their belief that SRIs should not be investing in metal mining at all.

Conclusion

CSR efforts are not mutually exclusive to a good set of laws and regulatory enforcement. In fact, Coumans (2012) believes that strong laws that include access to judicial remedy are essential to good CSR programs. Unfortunately, in Guatemala, CSR does not fill the gap created by a non-inclusive society that fails to protect human rights, or provide sufficient rationale for other communities to welcome mining into their municipality.

The consultas are openly contesting the potential of voluntary CSR and SRI activities by advocating for the right of local communities to free, prior and informed
consent over extractive projects. The assertion of self-determination brings into stark relief one of the most contentious issues for the mining industry, and one that is usually avoided through the use of CSR discourse. In Guatemala, the entry of modern mining occurred prior to the implementation of the Peace Accords or legislation enshrining respect for indigenous rights. The results could not be more polarized: mining is widely regarded as an unwelcome new form of exploitation and dispossession, and the consulta regarded as "an expression of resistance to everything about the situation in which we live" (Participant 2-4-a). It is no surprise then that the fight to keep out mining is linked to a broader struggle for indigenous rights and to make Guatemala a more inclusive democracy.

How the mining industry and its CSR actors like the Ethical Funds respond to the consultas will determine whether Guatemalans take CSR seriously. To date, the general trend has been to hold dialogue tables and conduct studies, while refusing to acknowledge that communities have a right to decide their own future. Without the crucial ingredient of respecting community agency or the consultas results, mining will likely never occur in Guatemala without serious social conflict.
CHAPTER SEVEN CONCLUSION

This exploratory case study sought to better understand Maya community perceptions of indigenous rights in the context of their formal rejection of mining, and perceptions of corporate social responsibility (CSR) discourse as employed by socially responsible investors (SRI) with investment in their territory. Via interviews with consulta organizers and direct supporters from Sipakapa, Cabricán and Huitán, I confirmed that the consulta represented an important exercise in self-determination at the scale of the Guatemalan municipio. In addition, I determined that there is a severe lack of knowledge about socially responsible investing in the three communities, or awareness of the CSR discourse as it is debated in Canada and elsewhere, but in principle the majority of consulta organizers rejected metal mining as a 'socially responsible' activity.

My findings indicate that the consulta was an exercise of community agency to protest the extreme exclusion and exploitation of Guatemala's indigenous majority, and in particular, the 1997 Mining Law that did not provide for any consultation or consent prior to the issuance of mineral rights to third parties. For the organizers, the Mining Law epitomized the extreme historical exclusion of the Maya from the national agenda, a history that is perceived to be repeating itself with the entry of modern extractive industries today. In Cabricán and Huitán, the consulta organizers were motivated by direct observations of the environmental and social impacts of mining in San Miguel Ixtahuacán and Sipakapa. The behaviour of Goldcorp and the Guatemalan government near the Marlin Mine and elsewhere provided further motivation.

Strengthening and making known the community's 'voice' was the common link between the three communities, the organizer's motivations, and their exercise in self-
determination. The consulta was explicitly described as the “voice of the people” that found support in various laws and treaties, both at the national and international level, despite the refusal by the Guatemalan government and mining industry to acknowledge them. For organizers, the consulta asserted the right to free, prior and informed consent, and was considered an absolute – to attempt to proceed with a project without their consent was anathema given their local proximity to the potential mine, the direct impacts, and their understanding of land rights. I argue that the consulta can be understood as an attempt to reconfigure indigenous-state and community-state relationships and an effort to re-balance the extremely asymmetric power relations that exist in Guatemala.

The lack of awareness among consulta organizers of SRIs and CSR reveals a CSR Gap – a wide gulf between the discourse of CSR and the harsher realities found in rural Guatemalan indigenous communities opposed to mining. This is different than the “gap in our understanding” identified by Dashwood and Puplampu (2010, 181) and Ofori (2007), in that it is not simply a lack of understanding of the “nature, content, and intent” of CSR interventions, but a geographic and discursive barrier between communities in Guatemala and CSR actors in Canada, such as socially responsible investors. Communities affected by mining investment lack information about and access to the centres of power and decision-making in Guatemala and Canada, and CSR actors likely lack information about the actual on-the-ground impacts of their investments, until situations explode into serious conflict as occurred at the Marlin Mine.

This case study helps to address a gap in the literature on consultas in Guatemala by privileging local voices and organizers. The majority of academic attention focuses
on the consulta in Sipakapa (Imai et al. 2007; Yagenova and Garcia 2009), resistance to mining in San Miguel Ixtahuacán and more broadly on the phenomenon of consultas (Holden and Jacobson 2008; Loarca 2008; ACOGUATE 2009; van der Sandt 2009; CSA-TUCA et al. 2010; Dougherty 2011; Urkidi 2011; Øveraa 2013), and the national and international implications of the movement (Fulmer et al. 2008; Urkidi 2011). The limited research that prioritizes the perspectives of consulta organizers and participants provide insight from other regions of Guatemala: Trentavizi and Cahuec (2012) share perspectives from the departments of Quiché and Huehuetenango, and Rasch (2012) provides voices from Huehuetenango. My case study (Laplante and Nolin 2014) adds to this field by providing perspectives from two Maya-Mam communities in the department of Quetzaltenango, in addition to Maya-Sipakapense perspectives. Further, my finding that Cabricán and Huitan undertook a process of information gathering, dissemination and debate in the lead up to their consultas, and were motivated by the threat of mineral tenures on their primary municipal water source, rebut the perception of the consulta as a haphazard plebiscite that was not conducted in response to specific projects (ICG 2013b).

This case study also addresses the general lack of local community voices found in the CSR literature, especially in the Latin American context. For Coumans (2010, 35), CSR literature “insufficiently focuses on the agency of communities themselves in defending social, economic, and environmental values of importance to them, sometimes in ways that conflict with industry goals and interests. Closer attention to the agency of community members…in the context of conflicting interests with a mine project, may provide a more nuanced analysis of the actual impact of CSR projects.” In an exploratory manner, but also in keeping with my approach that for researchers, it is their “capacity to
explain how the institutions, values and practices of non-Aboriginal society work that is their greatest value for Aboriginal people” (Howitt and Stevens 2005, 41), I maintained a focus on the discourse of CSR and SRI, the perspectives of the consulta organizers on that discourse, and the implication of the consulta for socially responsible investors in Canada.

I argue that consultas, as an explicit rejection of mining by indigenous communities, challenge CSR discourse on multiple levels and shed light on its internal contradictions. First, the consulta was used to communicate a rejection of proposed mining in a community, and also a rejection of the promises of CSR, in the form of the commitments made by Goldcorp about the benefits and CSR programs that would flow to the community with the acceptance of a mine. The refusal reveals inherent limits to CSR that differ across spatial boundaries and are influenced by the “tangled arrangements of power” (Allen 2003) between state governments, communities, and multinationals and their investors operating in multiple jurisdictions.

In this case, the consulta represents a boundary condition for CSR, a local action that creates geographic limits on where CSR, as practiced by the mining industry, is welcome. Such a rejection is inadequately addressed in the CSR literature focusing on how improved benefits-sharing, support for local development projects and improved environmental practices can compensate for the entry of a mine, the displacement of communities, or negative impacts to the environment.

Here, the consulta challenges CSR for its failure to meaningfully and explicitly incorporate the indigenous right to free, prior and informed consent into the discourse. For local community members, obtaining their consent is an absolute minimum for a
project to be considered “socially responsible.” CSR discourse to date often assumes that projects will proceed, in part because the discussion is dominated by corporations that adopt the language and actions in order to promote projects, not as a set of principles which might risk projects not proceeding.

In the case of SRIs such as the Ethical Funds, who have an economic stake in their investments and are responsible with garnering profits for their mutual fund holders, there is also a benefit and economic motivation to have projects proceed. The responsibility to profit and the interests of potentially impacted communities is not mutually exclusive, but is an inherent contradiction in the SRI model. The contradiction could become a conflict of interest when a SRI makes decisions about whether to divest or simply continue in dialogue with an extractive company over its failure to respect the indigenous right to free, prior and informed consent.

The problem is not just one of economic interests but also communication and access to the investors. As a result of the gap in the existing model of CSR, the aspirations, concerns and most importantly, the voices of locally affected communities may not reach places like Canada, where SRIs such as the Ethical Funds make decisions about investments in companies such as Goldcorp. Has the Ethical Funds ever heard of Cabricán, or Huitán, given that their primary attention was to the operating Marlin Mine and the communities near the project? Is the SRI aware that these communities have conducted a consulta that rejects Goldcorp’s mineral concessions in their municipality? To understand the reach of the consultas and the assertion of FPIC was not achieved with this case study, but is a recommended focus of future research.
What is certain is that for consulta organizers, and a vast proportion of Guatemalans (Barreto 2013), mining as it is currently promoted in Guatemala will not proceed without serious conflict. In this context, the analysis indicates that the screening conducted by SRIs may be overly narrow to protect indigenous rights. Potential screening-level criteria to avoid such conflict include the free, prior and informed consent of communities for all projects, and at an early stage; and to screen for companies operating in countries and regions where respect for human and indigenous rights are below the standards set by international instruments like the UN Declaration on the Rights of Indigenous Peoples.

This case study advances some concepts found in critical geography, notably Martinez-Alier’s (2002) rubric of “environmentalism of the poor.” The importance and proximity of local renewable resources that were threatened by mining emerged as a critical factor in the consulta organizers’ rejection of metal mining as a model of development, in line with Martinez-Alier’s thesis. However, I add that it benefits the discussion to also refer to this approach as “environmentalism of the culturally rich.” The “Cerro el Corral”, the source of Cabrican’s and Huitan’s water, was simply more valuable when viewed as water, a lung, municipal inheritance, rather than as a mineral deposit. For the consulta organizers it was not only the threat that a mine posed to their local livelihoods, but the threat that a mine posed to their cultural riches. Adopting such an approach is in line with how Cabricán and Huitán understood their cerro, and I believe, how many indigenous communities may understand and value their natural environment.
The findings represent a valuable contribution to the understanding of the emergence of consultas in Guatemala and the role of free, prior and informed consent (FPIC) in CSR discourse. To include the voices of consulta organizers helps to offset the privileged ability of Goldcorp and the mining industry to design and communicate CSR projects and policies via media outlets, blogs and through corporate donations to institutions and organizations. In contrast, many Canadians are not aware of consultas in Guatemala and otherwise may not have access to the voices of consulta organizers. This disparity is a product of the asymmetrical distribution of information that appears as a hallmark of the CSR Gap. The lack of community members' knowledge about SRIs demonstrates that the lack of information flows both ways.

My exploratory case study faced several challenges. First, the scope of a Master of Arts thesis limits the extent to which I could analyze all the relevant factors influencing the emergence of the consultas and how they translate in the discourse of CSR. I chose to privilege local perspectives from three communities over an exploration of macro-level issues. In particular, it was beyond the scope of this case study to examine the very role of corporations within our legal and state structures, the ability for an incorporated ‘body’ to have morals and make ethical determinations, or to analyze the important debate happening about what constitutes meaningful remedy when corporations do harm.

It is also beyond the scope of this thesis to examine the variables controlling where consultas have occurred. The question would benefit from further research into the role of indigenous organizations and traditional governance structures at the community and regional level, the internal organizing capacity at the community level,
the proximity of communities to proposed projects, and the role of communication between communities and regions.

The analysis was limited to the perspective of consulta organizers and supporters. In doing so, I did not analyze arguments from parties opposed to the very existence of the consulta. However, what emerged from the three communities was a wide variety of perspectives and in the polarized and suspicious context of Guatemala, to have collaborated with Goldcorp or the Ethical Funds prior to the field work would have severely impacted my ability to engage and obtain the trust of consulta organizers.

Importantly, the non-participation of the Ethical Funds limited my ability to examine and better understand the perspectives of a socially responsible investor. Despite their refusal to participate, the research process is a valuable lesson on the challenges faced when engaging the SRI sector outside of the industry preferred "professionally facilitated multi-stakeholder" process. In order to obtain both community and SRI perspectives, future research may require multiple projects investigating the long-term outcomes of SRI policies and interventions.

The challenge of engaging SRIs may also benefit from a sector-wide analysis that broadens the scope and research questions. Future research that seeks to elucidate SRI decision-making and strategies would benefit from such a sector-wide analysis to examine how different SRIs employ their screening, engagement and divestment strategies, and when and how FPIC plays a role. Independent, multi-sited methodologies that include perspectives of SRIs and those who have engaged SRIs with concerns for particular investments will be valuable.
Questions of traditional indigenous territoriality and governance were also beyond the scope of this research. In particular, the differences between communities in how they organize the consulta, whether there are alternatives to the scale of the municipio for indigenous assertions to territory, whether the existing and emerging organizational structures and decision-making processes in the communities are based on pre-contact Maya structures, or the significance of the movement in terms of a national indigenous political movement, are all relevant themes for future research. Further work would benefit from examining these themes in a country-wide analysis of the consultas, the differences and similarities between each community process and the actors involved, and the linkages to the broader indigenous rights movement in Guatemala.

The interviews for this case study represent a snapshot in time of several months in 2010, and despite several years passing, questions remain about the implications of the consultas at the local, national and international levels, and in terms of CSR discourse. Recently, Cabricán’s Alcaldes Comunitarias (community mayors), with the support of the Consejo Mam (Mam Council), asked Guatemala’s Constitutional Court to annul the “Eluvia” exploration license (Vásquez 2014). The ongoing actions by Cabricán demonstrate that the struggle did not stop with the consulta itself, and communities know that they cannot rely solely upon the consulta results to protect their interests. While the long-term implications of the consultas are far from clear, what is clear is that CSR discourse risks a crisis of legitimacy in Guatemala if corporate actors and governments continue to deny the indigenous right to free, prior and informed consent.

The shared objectives of the three communities who organized consultas with the other 67 municipios in Guatemala between 2005 and today indicate that the findings are
transferable. The parallel themes identified by Trentavizi and Cahuec (2012) and Rasch (2012) further affirm the transferability. Some of the common themes include the primary role of local actors as organizers, the resulting rejection of mining as their ‘voice,’ and the importance of the process of the consulta, not just the plebiscite. In addition, other research confirms the importance of the Guatemalan context in the emergence and spread of the phenomenon (Loarca 2008; van de Sandt 2009; Urkidi 2011; Rasch 2012), and that the increasingly assertive indigenous voices are changing the relationship between Guatemala’s Maya majority and the state government (Overaas 2013). A pressing theme for future research in Guatemala is whether and how the exclusion of indigenous peoples from the centres of power, the extreme polarization on the issue of mining, and the lack of trust between consulta supporters and the state government are resolved, if they can be. These questions bridge the fields of natural resource governance and electoral politics, and it may require a significant political shift in the country if fundamental reforms around indigenous rights and the extractive sector are to be realized.

The findings fit with the growing body of literature on consultas and the growing critique and problematizing of CSR discourse as it is practiced by mining companies and investors in states such as Guatemala. This case study then provides a basis to situate future research that examines how local agency interacts and challenges the discourse of CSR, and on the motivations and significance of consulta organizers and mining opposition in Guatemala.

As the pressure of mineral exploration and extraction increases on indigenous lands in Guatemala, the need to protect and respect indigenous rights will be under
increasing scrutiny. In particular, the importance of local self-determination when making decisions about projects will be at the forefront of the debate. In Guatemala, to ignore *la voz* (the voice) of Cabricán or Huitán or Sipakapa is to create the conditions for irresponsible mining.

The biggest burden to bear in advancing and promoting the *consultas* and indigenous rights will always lie with the communities themselves, yet the challenge is not their own. With globalized mining comes globalized responsibility – not just ‘corporate’ responsibility but citizen, investor, and state responsibility. Incorporating enshrined respect for local voices into new models of responsibility, including legal responsibilities, is an important step to transforming the extractives sector and its relationship with indigenous peoples.
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Figure 2.3: Authorized Mineral Licenses in Guatemala 2011

Projection: Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011) (National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011) (Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012) (Ministry of Environment and Natural Resources)
Figure 2.4: Applications for Mineral Licenses in Guatemala 2011

Applications for Mineral Licenses by Type 2011
- Extraction
- Exploration
- Reconnaissance

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011)
(National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011)
(Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012)
(Ministry of Environment and Natural Resources)
Figure 2.5: Goldcorp Mineral Licenses and Applications in Guatemala 2011

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011) (National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011) (Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012) (Ministry of Environment and Natural Resources)
Figure 2.6: Prevalence of Consultas in Guatemala (2005 - 2013)

Municipalities with Consultas by Theme

Activity
- Hydroelectric
- Hydroelectric and Natural Resources
- Mining
- Mining and Cement Factory
- Mining, Oil & Hydroelectric
- Oil and Hydroelectric
- Marlin Mine
- Department
- Lake or River
- Municipality

2005 - 2013: 76 consultas

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011)
(Ministry of Geographical Institute of Guatemala)
Ministerio de Energía y Minas (2011)
(Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012)
(Ministry of Environment and Natural Resources)
Figure 2.7: Distribution of Consultas in Guatemala (2005 - 2013)

Prevalence of Consultas by Department

- 0
- 1 - 2
- 3 - 4
- 5 - 9
- 10 - 20
- 21 - 28

*Marlin Mine
Lake or River

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
- Instituto Geográfico Nacional de Guatemala (2011) (National Geographic Institute of Guatemala)
- Ministerio de Medio Ambiente y Recursos Naturales (2012) (Ministry of Environment and Natural Resources)
Figure 2.9: Select Industrial Projects and Consultas in Guatemala

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011)
(National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011)
(Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012)
(Ministry of Environment and Natural Resources)
Figure 2.10: Goldcorp Interests near the Marlin Mine 2011

Projection: Universal Transverse Mercator
Datum: NAD 1927

Source Data:
- INDEPGEN (2011)
- Ministry of Environment and Natural Resources (2012)
Figure 6.4: Popular Participation in Consultas in Guatemala (2005 - 2013)

Projection: Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico National de Guatemala (2011) (National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011) (Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012) (Ministry of Environment and Natural Resources)
Figure 6.5: Mineral Interests in Guatemala 2011

- **Authorized Mineral License 2011**
- **Application for Mineral License 2011**
- **Marlin Mine**
- **Protected Area**
- **Department**
- **Lake or River**

**Authorized Mineral Licenses 2011**
- Area: 7105 Km² (6% of Country)*
- Number: 418 Licenses

**Applications for Mineral Licenses 2011**
- Area: 40860 Km² (34% of Country)*
- Number: 647 Applications

*Excluding Overlaps

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011)
(National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011)
(Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012)
(Ministry of Environment and Natural Resources)
Figure 6.6: Mineral Interests and Consultas in Guatemala

- Authorized Mineral License 2011
- Application for Mineral License 2011
- Municipality with Consultas 2005-2013
- Martin Mine
- Department
- Lake or River

Projection:
Universal Transverse Mercator
Datum: NAD 1927

Source Data:
Instituto Geográfico Nacional de Guatemala (2011)
(National Geographic Institute of Guatemala)
Ministerio de Energía y Minas (2011)
(Ministry of Energy and Mines)
Ministerio de Medio Ambiente y Recursos Naturales (2012)
(Ministry of Environment and Natural Resources)
COMUNICADO DE PRENSA

Los vecinos de todas las comunidades, organizaciones de desarrollo local y Gobierno Municipal del municipio de Cabricán del departamento de Quetzaltenango, a la comunidad nacional e internacional, medios de comunicación radial, escrita y televisada y población en general, ante las amenazas provocadas por las políticas de explotación minera que dañan a la madre naturaleza y su población, comunicamos lo siguiente:

1. Que en el municipio de Cabricán están autorizadas licencias de exploración de minas de oro, plata, zinc y otros metales, las cuales son identificadas con los nombres de: MAQUIVIL Registro LR-074, CALEL Registro LEXR-828, ELUVIA Registro LEXR-010-06, MARINA Registro LEXR-08-06, todas autorizadas por el Ministerio de Energía y Minas sin haber consultado previamente a la población.

2. Que como pueblo Maya Mam de Quetzaltenango, Huehuetenango, San Marcos y Retalhuleu, estamos hoy más que nunca organizados y unidos en la conservación del medio ambiente y en defensa del territorio que históricamente nos corresponde.

3. Hoy 20 de octubre, como pueblo de Cabricán unidos con nuestro Gobierno Municipal celebramos nuestra Consulta Comunitaria de Buena Fe, amparados en la Constitución Política de la República, Convenio 169 de la OIT y Declaración de las Naciones Unidas sobre los derechos de los Pueblos Indígenas, Código Municipal y Ley de Consejos de Desarrollo Urbano y Rural,

4. De acuerdo al resultado de la consulta comunitaria de buena fe realizada hoy 20 de octubre en los 34 centros de votación: votaron: por el SI 73 por el NO 13,610 votos nulos 130.
5. Ante este resultado la población expresó masivamente **UN NO** a la explotación minera en nuestro territorio Cabricaneco, porque estamos conscientes de sus consecuencias.

6. Ante la decisión de la población demandamos: al **Gobierno Central** a través del **Ministerio de Energía y Minas**, y **Ministerio de Ambiente y Recursos Naturales** **QUE NO** extienda más licencias de explotación y explotación de los recursos naturales **y cancelé en su totalidad las licencias ya otorgadas en nuestro municipio y en todos los municipios del país**.

7. A las empresas transnacionales demandamos el respeto a las decisiones de nuestro pueblo, apegándose al cumplimiento de las leyes nacionales e internacionales.

8. **INVITAMOS** a los pueblos originarios de Guatemala, a unirse a la causa de nuestra lucha, para hacer un frente común ante las políticas públicas que amenazan nuestros derechos como pueblos.

9. Y a todos los medios de comunicación social les demandamos informar con veracidad apegada a la realidad de nuestros pueblos.

   Cabricán, Quetzaltenango 20 de octubre de 2010.
Original E-mail Requesting Interview:

-----Original Message-----
From: laplan0@unbc.ca [mailto:laplan0@unbc.ca]
Sent: Thursday, November 04, 2010 3:23 PM
To: Bob Walker
Subject: Request for Interview(s)

Bob Walker
Vice President, Sustainability
Northwest and Ethical Investments L.P.
Tel: removed
Email: removed

Dear Mr. Walker,

Re: Request for Interview(s)

I write to inform you of my thesis research, and to request interviews with yourself and/or representatives of the Northwest and Ethical Investments L.P. (Ethical Funds).

I am a Masters student in the Natural Resource and Environmental Studies program at the University of Northern British Columbia. I have begun a project that is examining the 'consulta comunitaria' movement in Guatemala and how it has affected and is affected by the socially responsible investment movement in Canada. I have conducted interviews in Guatemala over the past 6 months that focused on communities where consultas have been held or are being planned, and where there are Montana licenses. My goal is to better understand how Maya consulta organizers understand and are demanding respect for the indigenous right to free, prior and informed consent, and how this is affected by the presence of the Ethical Funds as a SRI with interests in Goldcorp. Conversely, I also wish to include in the study the opposite - the Ethical Funds understanding and opinions about the consulta movement in Guatemala, the indigenous right to free, prior and informed consent, and how you promote this at the corporate level.

Attached is my abstract and the consent form that further explains the project. If the Ethical Funds agrees to participate in this project, I propose to visit your Vancouver office at your convenience. I am available after November 27th and before December 14th, 2010 and am flexible after the new year. I prefer to visit this year, but understand that calendars fill up and you are likely very busy at the best of times. As mentioned in the consent form, I am also requesting the opportunity to check in with you (or another appointed representative) after the interview. This could take the form of a second interview, a phone call or e-mail. The purpose of this follow-up is to allow me to double-check my notes prior to writing the thesis. If this is not possible I understand.
I also send my apologies for the relatively short notice about this project. However, and as I am sure you are aware, the level of insecurity is very high in Guatemala. As a result, my research plan included the decision to not contact you until after the Guatemalan interviews were complete. The purpose of this was to ensure the safety (and sense of security) of the Guatemalan participants.

I am currently traveling back to Canada and as a result do not have easy access to a telephone. However, I will be checking my e-mail regularly, and am happy to schedule a call if you feel the need to talk to me prior to deciding. Please feel free to send any and all questions by e-mail as well.

Regards,

J.P. Laplante, B.Sc., B.I.T.
M.A. Candidate, Natural Resource and Environmental Studies (Geography)
University of Northern British Columbia
3333 University Way, Prince George, B.C. V2N 4Z9
Email: laplan0@unbc.ca
Response #1 from Ethical Funds:

Dear J.P Laplante,

Thank you for your invitation to participate in your research study. This is a fascinating research topic. Several aspects of it are of interest to us.

Unfortunately, we must decline your invitation to participate. There are at least two reasons. First is time. We participate in several academic research networks and we receive frequent invitations to participate in various initiatives. We are simply unable to participate in every effort. To do so would take up too much of our time and cause us to neglect the work we do.

Second, I do wonder about your research design. In considering the questions you raise, we think that a professionally facilitated, multi-stakeholder roundtable process would be a more effective way to proceed. The roundtable would consist of several parties including other investment firms operating in this arena, companies, international human rights experts, and of course indigenous leaders from different communities and perhaps different countries. This process would allow participants to hear and learn directly from each other.

I hope that you will be pleased to learn that, as a matter of fact, we are currently participating in a project that bears a strong resemblance to this kind of effort. This stems from a recent study on Free, Prior, and Informed Consent initiated by a labour pension fund in Quebec.

Good luck with your research. If you proceed, and if you feel it necessary to mention our decision not to participate, I ask that you disclose the reasons provided.

With Best Regards,

Bob
Dear Mr. Walker,

Thank you for your quick and thorough response. I appreciate the constraints placed upon you by time, and you raise valuable points about why the Ethical Funds has chosen a particular methodological approach to researching your policies. However, I write to ask that you reconsider your decision to decline an interview, given my points below.

Your preferred approach of a 'professionally facilitated, multi-stakeholder roundtable process' has benefits; the most obvious being that it provides a very broad spectrum of participants, ideas, opinions, etc. However, the approach I have taken does not contradict such a process. Rather, direct individual and group interviews are important precisely because they are different and provide perspectives that might otherwise not be available in a forum. Choosing to focus on a particular topic in a particular place provides a more thorough understanding of the subject, and as a result interviews are a common tool for social scientists. I also believe that an interview with yourselves will provide an important perspective in my thesis precisely because you preferentially participate in multi-stakeholder dialogues. Without your participation, my thesis will focus on others' opinion of you and consultas. With your perspective, I will be able to provide a more nuanced and diverse set of opinions.

A professionally facilitated multi-stakeholder roundtable would not likely include the 20+ community organizers and leaders who agreed to participate in my project. Their insight is valuable for the simple fact that they are underrepresented at many levels - international debates, SRI forums, academic studies, etc. In fact, one of my main preliminary findings is that the participants are largely uninformed of the SRI movement. Therefore, I ask you: How does the Ethical Funds decide who gets invited to a multi-stakeholder forum? How do very poor farmers from rural Guatemala who are opposed to your investment become part of such a process? Do you provide for the fact that they do not have the funding to travel to Canada? Do you include such outreach when developing policy?
Have you ever directly had conversations with opponents of Goldcorp who are leaders at the community level? Perhaps more importantly in the very polarized anti-mining movement in Guatemala, would these participants accept your funding to attend such a forum?

It is true that the problem of 'who' gets to participate in studies or forums affects any work, including my own. However, a direct interview process does help to deal with problems pertaining to how comfortable the participants are, and as a result, how much information they share. It has been my goal to ensure that the participants felt very comfortable and as a result were able to be more open with a Canadian researcher. Part of doing this involved returning repeatedly to some communities to ensure that I was not simply showing up for a day and leaving. I also observed several consultas and as a result have a more nuanced understanding of how and why they might be important for your firm to consider at the policy level.

My questions above, as I hope you agree, point to a weakness inherent in multi-stakeholder dialogues. That is, the question of who is participating will affect the outcome. For this reason, my work is an opportunity for the Ethical Funds to explore and better understand opinions that you might otherwise never hear, except in my final thesis. For this reason, I hope that you reconsider my interview request. I believe one or two interviews with yourself or an appointed representative would not only provide me with a better understanding of your work, but conversely would provide yourselves with a better understanding of what community leaders in Guatemala think about consultas and SRIs.

If you decide to decline I will make a note of it within my thesis. However I will be sure to also note your understandable reasons for declining. Finally, good luck with your other projects - I would be very interested to read any reports that result from your work on free, prior and informed consent.

Sincerely,

J.P. Laplante, B.Sc., B.I.T.
M.A. Candidate, Natural Resource and Environmental Studies (Geography)
University of Northern British Columbia
3333 University Way, Prince George, B.C. V2N 4Z9
Email: laplan0@unbc.ca
Response #2 from Ethical Funds:

---------------------------------------------------------------------------------------- Original Message -----------------------------
Subject: RE: Request for Interview(s)
From: "Bob Walker" <removed >
Date: Wed, November 17, 2010 11:46 am
To: "laplan0@unbc.ca" <laplan0@unbc.ca>
----------------------------------------------------------------------------------------

Dear Mr. Laplante,

Your well-considered response prompts me to conclude that it is indeed a shame that time constraints prevent our participation in your project.

I would, however, like to correct your impression that we have a preference for 'multi-stakeholder processes'. In our view, these exercises may supplement but cannot supplant direct contact with a wide variety of interests including leaders of impacted communities, corporate representatives, employees, elected officials, civil society organizations, etc. Indeed, on a daily basis, our work is informed by these interactions. When feasible and useful we collaborate with other entities and with academics on items of mutual concern and interest in a broader collaborative process. On occasion, we publish the results of these collaborations with a description of our methodology so readers can judge for themselves the contributions and limitations our efforts.

I do have a couple of questions for you that I hope you can help me with. First, how have you selected the 20+ participants for your study? What measures will you put in place to control for selection bias? You hint that your group consists mainly of poor rural farmers opposed to investment in Goldcorp -- and, I assume, opposed to the Marlin mine (forgive me if I'm reading too much into your communication). How will your study incorporate the views of those individuals and groups who are neutral on these questions? The views of elected officials? Those who are in favour of the mine - the employees, for example?

On another note, you state that one of your preliminary findings is that your participants are largely uninformed about the 'SRI movement'. How have you arrived at the implied assertion that you are able to judge their level of awareness? (I could take issue with what may be an embedded assumption - that there is an 'SRI movement' - but will refrain from doing so here). Can I ask what you told them about SRI? In so many cases, we find that people - academics included - fundamentally mischaracterize our work. I would greatly appreciate learning more about your understanding of what we do and what you communicated to the people in your study to see if it matches up with our investment philosophy and how we put that philosophy into practice.

Finally, how did you arrive at the conclusion that Ethical Funds would be invited to participate in your study? How have other Goldcorp shareholders or service suppliers in this industry respond to your invitation?
I look forward to your response.

With Best Regards,

Bob
Response #2 to Ethical Funds:

Dear Mr. Walker,

Thank you for responding a second time. It is unfortunate that time constraints prevent you from participating.

I will briefly explain the selection process of the Guatemalan interviews, but will refrain from explaining in depth. You will have a better opportunity to look at this further as I will be sure to provide the Ethical Funds with a copy of my thesis and thus a more in depth explanation of my methodology and methods.

The perspectives I sought in Guatemalan are certainly 'biased' and partial. However, as many social scientists have recognized for 30+ years, all views and opinions are inherently biased. As such, I sought a particular 'view' that while limited, provides what I believe are interesting and valuable perspectives on consultas, the right to free, prior and informed consent, and resistance to companies which have not implemented FPIC into their business model. I chose the Ethical Funds precisely because you have been a SRI leader on this front - you have public FPIC policy and from a public viewpoint, are trying to grapple with how to implement this at a corporate level. Guatemalan participants were selected based on their participation/association with being consulta organizers/supporters where Montana licenses exist. You guessed right, the vast majority (but not all) of the participants opposed Montana's presence. The thesis will openly explain the process further and I hope that this can be provided to you in a timely manner.

Regards,

J.P. Laplante
APPENDIX IV – INTERVIEW GUIDE FOR COMMUNITIES

Community Interview Guide:

a) How did you become aware of Montana Explorada's mining license? Was this after the mining license was granted?

b) Did Montana Explorada explore in your municipio? If so, how did they approach the community? At what point in their exploration did they meet with you? What was your initial response? How did Montana respond to you?

c) Was Montana Explorada's approach respectful, appropriate, effective? Who from Montana met with you?

d) Have there been other representatives (from the state, for example) who visited in order to consult, or to discuss the mining license or activities of Montana? Have state representatives visited to discuss the consulta? What did these representatives share with you?

e) When and how did your community decide to hold a consulta? What is your rationale and motivation for adopting this mode of decision-making?

f) Are you aware of the United Nations Declaration on the Rights of Indigenous Peoples? Can you explain what rights are enshrined within that document? How do you understand the right to free, prior and informed consent? How does this compare to a 'consultation'?

g) What were Montana Explorada’s actions prior to, during and after the consulta?

h) Since the consulta, has the company attempted to negotiate its entry into your land? Has it negotiated with individuals? Has it explored in your land?
i) Are you aware that in Canada, 'socially responsible investors' are trying to change Montana/Goldcorp's behaviour? What is your understanding of an SRI? Do you think they can help you in your struggle to prevent mining here?

j) Have the presence of 'socially responsible investors,' including the Ethical Funds, changed your strategy to resist Montana?

k) Are you aware of the Human Rights Impact Assessment being carried out in San Miguel Ixtahuacan? Do you think this is an adequate response to the allegations against Montana Explorada?

l) Has the Ethical Funds ever contacted your community to discuss the consulta and Montana Explorada's actions since the vote?
APPENDIX VI – GUATEMALAN PARTICIPANT INFORMATION SHEET

Resumen

Consultas e Inversiones ‘Socialmente Responsables’: Una investigación que examina las perspectivas sobre el derecho indígena al consentimiento libre, previo e informado

Desde 2005, muchas comunidades Maya han tenido referendos que se llaman Consultas Comunitarias de Buena Fe, y que preguntan si la comunidad es de acuerdo con proyectos minera, hidroeléctricas u otros megaproyectos en su territorio. Las consultas han sido una forma de resistencia contra las licencias de explotación minera de las empresas transnacionales y usan el derecho Indígena al consentimiento libre, previo e informado, que es un derecho internacionalmente reconocido, relacionado con la autodeterminación. En Canadá, de donde vienen la mayoría de inversiones de minería en Guatemala, fondos que se auto-llanan ‘las Inversiones Socialmente Responsables’ (SRI, por sus consignas en inglés), están promoviendo respeto empresarial hacia los derechos Indígenas. La manera en que la resistencia Maya a la minería canadiense se interpreta en las oficinas de SRIs, y la forma en que SRIs promueve el derecho Maya al consentimiento libre, previo e informado, es un campo de investigación aun no explorado.

Mi estudio exploratorio va a examinar dos perspectivas sobre una consulta Maya: las percepciones y experiencias de los organizadores de una consulta comunitaria y las perspectivas y las experiencias de una SRI canadiense que se llama “Compañía de Fondos Éticos” o “Ethical Funds”, el cual tiene acciones en la compañía Goldcorp/Montana, que opera en Guatemala. Las entrevistas se van a conducir en Guatemala y Canadá, con el objeto de comprender como los organizadores comunitarios perciben y hacen exigencias a fondos SRI en la lucha para rechazar minería y como una SRI percibe y responde al rechazo.

Since 2005, a large number of Maya communities have held referendums called consultas which ask the community whether they are in agreement with mineral, hydroelectric or other megapropjackets in their traditional territory. The consultas have acted as a form of resistance to the granting of mineral rights to transnational corporations, and invoke internationally recognized rights to indigenous self-determination, including the right to free, prior and informed consent over development projects on traditional territories. In Canada, where much of the Guatemalan mining investment is based, funds which call themselves ‘socially responsible investment firms’ (SRIs) are promoting corporate respect for indigenous rights. How Maya resistance to Canadian mining translates into the boardrooms of SRIs, and how SRIs strategically promote the Maya right to free, prior and informed consent, is an unexplored field of research.

This exploratory case study will examine two perspectives on a Maya consulta: the perceptions and experiences of the Maya community organizers and the perceptions and experiences of a Canadian SRI called the Ethical Funds, which invests in the Canadian mining company called Goldcorp, operating on indigenous land in Guatemala. Interviews will be conducted in Guatemala and in Canada with the goal of better understanding how Maya community organizers’ perceive and make demands of the SRI industry in their struggle to reject mining and how an SRI perceives and responds to this rejection.
APPENDIX VII – COMMUNITY CONSENT FORM

Consultas e Inversiones ‘Socialmente Responsables’: Una investigación que examina las perspectivas sobre el derecho Indígena al consentimiento libre, previo e informado

Investigador Principal: John-Paul (Juan Pablo) Laplante
Candidato para una Maestría en el Programa de Recursos Naturales y Medio Ambiente del Departamento de Geografía de la Universidad del Norte de Columbia Británica
Dirección: 3333 University Way, Prince George, B.C., Canada, V2N 4Z9
Tel: 001-250-960-5311 Fax: 001-250-960-6533 Correo Electrónico: laplan0@unbc.ca

Supervisora Académica: Doctora Catherine Nolin
Profesora Asociada del Programa de Geografía de la Universidad del Norte de Columbia Británica
Dirección: 3333 University Way, Prince George, B.C., Canada, V2N 4Z9
Tel: 001-250-960-5875 Fax: 001-250-960-6533 Correo Electrónico: Nolin@unbc.ca

Patrocinador: Universidad del Norte de Columbia Británica

Las casillas se van a chequear mientras se llenan.

☐ Objetivos: Comprender como los organizadores comunitarios perciben y hace exigencias a fondos SRI en la lucha para rechazar minería y como una SRI percibe y responde al rechazo.

☐ Pasos:
- Usted está invitado a participar en una entrevista grupo con Juan Pablo Laplante y un ayudante local porque ustedes fueron identificados como las personas que tienen información importante por ser organizadores de la consulta comunitaria que es en respuesta a las actividades de la empresa Montana.
- Le vamos a hacer preguntas sobre sus perspectivas acerca de las consultas, las inversiones que son supuestamente “socialmente responsables” y cómo otros han respondido a la consulta en su comunidad.
- La entrevista está basada en una lista de preguntas. Sin embargo, ustedes están libres para extenderse más allá de las preguntas y pueden usar el tiempo que necesiten.
- La entrevista se va a programar en un tiempo que le convenga a ustedes.
- El investigador le va a pedir permiso para grabar la entrevista y para tomar notas.
- Se necesita una entrevista, pero yo quiero llamarme para chequear con usted mi comprensión de la entrevista y los hechos.

☐ Confidencialidad:
- Pueden escoger ser anónimo o identificarse en los resultados, informes y presentaciones de esta investigación. Si ustedes escogen ser anónimo, ninguna información que lo identifique va a grabarse, o si ya se grabó, la vamos a borrar de las cintas y de las notas.
- Todos los datos de la investigación, incluyendo las cintas, van a estar protegidos en un archivo cerrado o en una computadora con clave de seguridad. Solamente el Investigador y la Supervisora van a tener acceso a esta información.
- Ustedes tienen el derecho de revisar las cintas y las notas. Las cintas van a estar bajo llave durante 5 años en la Universidad del Norte de Columbia Británica, y después se van a destruir.
Riesgos/Beneficios:

- La meta de esta investigación es ofrecerles beneficios reales a los participantes. La tesis y una versión popular en español van a ser enviados a su comunidad. Pero pueden pedirle al investigador una copia de la versión popular.
- Puede haber otros beneficios como trabajo voluntario, traducción de información sobre inversionistas 'socialmente responsables', oportunidades para entrar en contacto con ellos, y otras formas de apoyo que se decidan por un acuerdo mutuo.
- Durante las entrevistas o pláticas sobre temas delicados, los participantes pueden sentir nerviosismo y emociones. Si eso pasa, el investigador le va a preguntar si ustedes quieren continuar.

La participación es voluntaria:

- Ustedes pueden decir 'no' a la entrevista, o evitar cualquier pregunta. También pueden salir de la investigación en cualquier momento.
- Si usted(es) sale(n) de la investigación, no vamos a usar ninguna información que usted(es) nos haya dado. Y si usted(es) lo pide(n), cualquier información individual se va a destruir.

Compensación:

- Sus tiempo es muy valioso; pero, como soy estudiante, no puedo ofrecerles una recompensa económica. A cambio, yo puedo ofrecerles algo de comer, durante o después de la entrevista, y también estoy dispuesto a prestarle a su comunidad mi ayuda como investigador.

Ustedes van a recibir copias firmada de este formulario para consultar en el futuro. Usted puede contactar a Juan Pablo Laplante al teléfono 001-250-960-5311 o via correo electrónico a lapan0@unbc.ca. Si ustedes tienen preguntas sobre sus derechos como participante o sobre el proceso de la investigación, puede contactar la Oficina de Investigación de la Universidad del Norte de Columbia Británica (001-250-960-5650 o reb@unbc.ca), pero solamente en Inglés.

Permiso

Si ustedes comprenden bien esta información, que le ha explicado Juan Pablo Laplante, y si ustedes están de acuerdo con participar en esta investigación, entonces expresenlo ahora.
APPENDIX VIII – ETHICAL FUNDS INFORMATION SHEET AND CONSENT FORM

Ethical Funds/Northwest & Ethical Investments L.P.
Information Sheet and Consent Form

Maya *Consultas* and Socially Responsible Investing: A case study examining perspectives on the indigenous right to free, prior and informed consent

**Principal Investigator:** J.P. Laplante
Candidate for Masters of Arts in the Natural Resource and Environmental Studies Program, Geography Department, University of Northern British Columbia
3333 University Way, Prince George, B.C., Canada, V2N 4Z9
Tel: (250) 960-5311 Fax: (250) 960-6533 Email: laplan0@unbc.ca

**Academic Supervisor:** Dr. Catherine Nolin
Associate Professor, Geography Program, University of Northern British Columbia
3333 University Way, Prince George, B.C., Canada, V2N 4Z9
Tel: (250) 960-5875 Fax: (250) 960-6533 Email: Nolin@unbc.ca

**Funding:** University of Northern B.C.

**Objectives:** To better understand how Maya community organizers' perceive and make demands of the SRI industry in their struggle to reject mining and how an SRI perceives and responds to this rejection.

**Procedures:**
- You are being invited to participate in an individual interview with J.P. Laplante because you are a representative of the Ethical Funds with knowledge of the firms' promotion of indigenous rights.
- Questions will be asked about the firms' strategies to promote indigenous rights, including corporate engagement, and the firms' perspectives on *consultas* and the indigenous right to free, prior and informed consent.
- A list of questions will guide the interview. However, you are free to expand beyond the questions and use the amount of time you require.
- The interview will be scheduled at a time that is convenient for you.
- The researcher will ask your permission to record the interview and take notes.
- Two interviews are requested, or in lieu of a second interview, the opportunity to contact you by telephone or e-mail. In the follow-up interview, phone call or e-mail, the researcher will ask for comments on the accuracy of notes from the previous interview.

**Confidentiality:**
- As an individual, you can choose to be anonymous or identified in the research results, reports and presentations. If you remain anonymous, then no identifying information will be recorded, or if it is, it will be deleted from the tapes and any transcripts made from the tapes.
- Confidentiality will be also protected by storing all research data, including digital recordings, in a locked file or password protected computer. Only the researcher and academic supervisor will have access to the data.
• You have the right to review the digital recording and the transcript. The electronic data will be stored in a locked cabinet for 5 years at the University of Northern British Columbia before being destroyed.

Risk/Benefits:
• It is the goal of this research to provide tangible benefits to the participants. A copy of the thesis will be sent to the Ethical Funds.
• Other benefits may include information-sharing, and opportunities to engage and learn from Maya communities who have held a consulta.
• In the conduct of the interviews and in-depth discussion of sensitive issues, participants may experience feelings of emotional distress. If this occurs, the researcher will ask you if you wish to continue.

Participation is Voluntary:
• You may refuse to participate, refuse to answer questions, or withdraw from the study at any time.
• If you withdraw from the study, any information you shared will not be used. Upon request, the information will be immediately destroyed.

Compensation:
• Your time is very much appreciated; however, as a graduate student I am unable to offer compensation.

You will receive a signed copy of this form to keep for future reference. J.P. Laplante can be contacted confidentially at 001-250-960-5311 or by email at lapan0@unbc.ca. If you have any questions about your rights as a research participant or the conduct of the study you may contact the University of Northern British Columbia’s Office of Research (001-250-960-5650 or reb@unbc.ca).

Consent

I fully understand the nature of this consent as explained to me by J.P. Laplante and agree to participate in this study.

______________________________  ________________________________
Signature of Participant          Print Name & Date

I, the undersigned, have fully explained the study to the person named above.

______________________________  ________________________________
Signature of Researcher          Print Name and Date
APPENDIX IX – INTERVIEW GUIDE FOR ETHICAL FUNDS

Interview Guide for Ethical Funds

The following questions are intended to guide a semi-structured interview inquiring into how the Ethical Funds (EFC) understands and responds to Guatemalan consultas and the assertion of the Indigenous right to free, prior and informed consent (FPIC) in rejecting metal mining. The questions also inquire into EFC’s policies pertaining to engagement and screening, with FPIC and Goldcorp as a focus. The questions are meant as a guide only.

Policies Pertaining to Indigenous Rights & Consultas

a) What is EFC’s policy regarding the Indigenous right to free, prior and informed consent? How does it differ, if at all, from ‘consultation’?

b) Does EFC have a policy or general response to the consultas in Guatemala?

c) How has the political and social situation in Guatemala influenced or directed the approach EFC has taken in its investment and engagement with Goldcorp?

d) What is EFC’s approach to engagement with Goldcorp, given that in Guatemala there are dozens of consultas which have indicated overwhelming community support for a ‘no to metal mining’ position, and that Goldcorp has mining concessions in some of these regions?

Policies Pertaining to Research, with a focus on Consultas & Mining Companies

e) What is EFC’s process when deciding how to invest – does it involve considering local conditions and/or countries where a company has existing operations?
f) If early research is limited, what are the 'triggers' for more in-depth investigation, and consideration of engagement and concern with a particular company?

g) Has research been conducted by or for EFC on the consultas in Guatemala? If so, can you elaborate on the objectives, process and outcomes? If not, what might be a typical process for investigating how to respond at the policy level to consultas?

Screening v. Engagement

h) Can you explain EFC's policy and/or approach to engagement to improve corporate performance?

i) Can you describe EFC's history of concern and engagement with Goldcorp?

j) Has EFC considered making the principle of free, prior and informed consent a screening-level issue for your investments? If yes, what do you see as the positives/negatives to this approach?

k) Do you see it as foreseeable that FPIC be a standard minimum business practice when operating in Indigenous territories?

l) Beyond screening companies, what are the main engagement initiatives that EFC employs to improve or change Goldcorp's approach to FPIC and Indigenous rights?
APPENDIX X – CONFIDENTIALITY FORM FOR
TRANSCRIBER/TRANSLATOR

Formulario de Confidencialidad para el Traductor

Consultas e Inversiones ‘Socialmente Responsables’: Una investigación que examina las perspectivas sobre el derecho indígena al consentimiento libre, previo e informado

Investigador Principal: John-Paul (Juan Pablo) Laplante
Candidato para una Maestría en el Programa de Recursos Naturales y Medio Ambiente del Departamento de Geografía de la Universidad del Norte de Columbia Británica
Dirección: 3333 University Way, Prince George, B.C., Canada, V2N 4Z9
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Supervisora Académica: Doctora Catherine Nolin
Profesora Asociada del Programa de Geografía de la Universidad del Norte de Columbia Británica
Dirección: 3333 University Way, Prince George, B.C., Canada, V2N 4Z9
Tel: (250) 960-5875 Fax: (250) 960-6533 Correo Electrónico: Nolin@unbc.ca

Patrocinador: Universidad del Norte de Columbia Británica

Objetivos y Pasos: Usted está contratado para traducir entrevistas que forman parte de una investigación que examina las perspectivas de una comunidad Maya y los inversionistas ‘socialmente responsables’ sobre consultas de comunidades Maya y el derecho a decir ‘no’ a la minería. La investigación está a cargo de Juan Pablo Laplante, un estudiante de Maestría a la Universidad del Norte de Columbia Británica, con apoyo de la universidad. Usted va a ser contratado con un salario de __________ por cada entrevista.

Confidencialidad: Como traductor, usted queda comprometido por este acuerdo a guardar como confidencial toda la información de las entrevistas. Usted va a recibir una copia firmada de este formulario para futuras referencias. Juan Pablo Laplante puede ser contactado en confianza al teléfono 001-250-960-5311 o por correo electrónico a laplan0@unbc.ca. Si usted tiene cualquier pregunta sobre sus derechos o sobre el proceso de la investigación, puede contactar la Oficina de Investigación de la Universidad del Norte de Columbia Británica (001-250-960-5650 o reb@unbc.ca), pero en Inglés.

Consentimiento

Si usted comprende bien el sentido de este acuerdo que le ha explicado Juan Pablo Laplante, entonces por favor expréselo ahora.

__________________________  ________________________
Firma del Traductor        Nombre y Fecha

Yo, el abajo firmante, le he explicado bien la contenido de este acuerdo a la persona citada arriba.

__________________________  ________________________
Firma del Investigador     Nombre y Fecha