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Articles

***Consultas* and Socially Responsible Investing in Guatemala: A Case Study Examining Maya Perspectives on the Indigenous Right to Free, Prior, and Informed Consent**

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Since 2005, more than 78 Maya communities representing approximately one million Guatemalans have held referendums called consultas comunitarias, which ask the community whether they are in agreement with mineral, hydroelectric, and/or other megaprojects in their traditional territory. Participation in the consultas is a form of resistance to the granting of mineral rights to corporate interests. In Canada, where much of the Guatemalan mining investment is based, “socially responsible investment firms” (SRIs) promote corporate respect for Indigenous rights. Based on interviews and participant observation, we highlight the perspectives of Maya consulta organizers in three communities that have undertaken consultas to resist the mining licenses of the Canadian mining company Goldcorp, Inc. We argue that a strict policy of corporate respect for the right to free, prior, and informed consent of affected communities is a minimum requirement for Maya acceptance of SRI legitimacy.

Keywords *consultas*, corporate social responsibility, “ethical investing”, Guatemala, Indigenous Rights

Debates around the relationship between Indigenous peoples and resource extraction continue to grow as multinational interests expand their search for minerals, oil, and gas. The impacts from these industries on the cultural and environmental fabric of Indigenous communities is well documented (such as North, Clark, and Patroni 2006) and has led to growing attention to the rights of Indigenous peoples to say

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“no” to resource extraction proposals. The debate crosses all geographic boundaries, but often returns to Canada, which is home to a large proportion of the capital investment in mining. Here, we examine the complex relationship with Canadian gold company Goldcorp, Inc., its “socially responsible investors,” and several Maya communities impacted by the staking of claims in their homelands in Guatemala. We focus on the perspectives of Maya community organizers who have said “no” to Goldcorp.

In May 2010, to the praise of its socially responsible investors (SRIs), Goldcorp, Inc. (Goldcorp), released its commissioned human rights impact assessment (HRIA) of the troubled Marlin Mine, located in Guatemala’s western department of San Marcos. The HRIA was the outcome of pressure and shareholder activism responding to well-documented charges of environmental harms, violations of Indigenous rights, and community divisions and violence near the mine. For the SRIs and the company, the report was groundbreaking and worth celebrating. However, controversy followed the 2-year-long assessment process. Nongovernmental organizations (NGOs) accused Goldcorp of creating a predetermined process without merit or the ability to remedy the impacts of the operation (Rights Action 2010), local communities and NGOs refused to participate, and one of the participating SRIs eventually withdrew, citing lack of prior consent from the affected communities (Law 2009). The report, prepared by On Common Ground (2010, 8), admitted that “the assessment appeared to be escalating tensions and increasing polarization both among and between the communities and undermining the conditions for carrying out a participatory human rights impact assessment as intended.”

Despite the report’s troubled history, one of the engaged SRIs, the Ethical Funds, heralded the assessment as raising “the bar” and Goldcorp as setting “a new standard for disclosure and transparency” (Ethical Funds 2010). The report does level criticisms at Goldcorp and calls for revised policies. A formal company response to the assessment’s recommendations followed, and later in 2010 Goldcorp made public an update on the company’s progress (Goldcorp 2010a; 2010b). The company has since issued a human rights policy (Goldcorp 2011a).

The actual impact of the HRIA remains in doubt, highlighted by the July 2010 shooting of local community member and mine opponent Diodora Hernandez (Amnesty International [AI] 2010), the ongoing refusal of Goldcorp to respect the Inter-American Commission on Human Rights’ precautionary order to temporarily suspend operations at the Marlin Mine (Prensa Libre 2010), and more recent violence against protesters in San Miguel Ixtahuacán (Rights Action 2011; AI 2011).

The controversy surrounding Goldcorp’s activities in Guatemala provides an exemplary case study to examine the discourse and debate about the potential of voluntary corporate social responsibility (CSR) and shareholder activism as tools to improve corporate behavior (Laplante and Nolin 2011; Beck et al. 2010; Dolan and Rajak 2011; North, Clark, and Patroni 2006). The HRIA is an example of how mining companies are learning to engage their detractors using the language and tools of CSR. In the Marlin Mine case, the “success” of the HRIA depends on perspective; for the company, it has gone “further” than many of its peers in allowing scrutiny of its operations. As Dougherty (2011) documents, for community members and communities opposed to the very presence of the company in their ancestral lands, the HRIA has done little.

The Ethical Funds and fellow SRIs, in turn, occupy what Coumans (2011, S38) describes as “a space for dialogue and negotiation that was created by community struggle.” This interlocutor role in conflict between local communities and the SRI’s investment is an underexamined field of research. How communities and SRIs

perceive their respective roles and what determines “successful” shareholder activism are important questions that deserve scholarly attention.

The utility of SRIs is of particular importance where community interests may not benefit from the strategic choices made by the SRI—particularly, when the community says “no” to the presence of a company. Such opposition emerged in a formalized manner in Guatemala through *consultas comunitarias* (*consultas*), which are municipal plebiscites that are used as a demonstration of resistance to mining companies and to affirm the autonomy and self-determination of Maya communities over their ancestral lands (Urkidi 2011; Ward 2011). How such resistance to Canadian mining translates into the boardrooms of SRIs, and how SRIs strategically promote Maya self-determination, is not well documented (Studnicki-Gizbert, Daviken and Fabiola Bazo 2013).

In the following, we provide a brief description of the Guatemalan context to illuminate the significance of *consultas* as responses to the entry of Canadian mining giant Goldcorp in 2005 (then, Glamis Gold, and henceforth termed Goldcorp regardless of the date). The company operates in this violence-plagued country that, in many ways, is not at peace, despite the 1996 Peace Accords, which failed to deliver the promised prioritization of Indigenous rights, land reform, and access to justice (Granovsky-Larsen 2011; International Crisis Group [ICG] 2010). We also provide a brief description of the common strategies by which Goldcorp’s socially responsible investor, the Ethical Funds, engages corporations. Based upon 6 months of fieldwork in Guatemala’s western highlands, we share preliminary findings from interviews and participant observation research with *consulta* organizers and supporters impacted by Goldcorp. This exploratory case study examines the role and importance of the *consultas*, the right to say “no” to mining as enshrined in the concept of free, prior, and informed consent (FPIC), and the role of the Ethical Funds in promoting respect for Maya self-determination (Ward 2011).

Guatemalan Context

The *consultas* in Guatemala are rooted in a particular history that witnessed one of the most violent genocides of the 20th century, one that directly targeted Maya communities in the western highlands where the majority of Guatemala’s mining licenses are held (Commission for Historical Clarification [CEH] 1999; Nolin Hanlon and Shankar 2000). Violent attacks upon Maya community organizers remains an ongoing trend and Goldcorp’s resisters are not immune (Procurador de los Derechos Humanos de Guatemala and Morales Alvarado [PDH and Morales] 2009; U.S. State Department 2009; AI 2010). Such violence is endemic in this unjust society where the Maya majority continues to suffer from uneven development, poverty, and discrimination (Manz 2008; Lovell 1988; Jonas 1991). It is remarkable and prescient that Maya community organizing and resistance continue in the wake of the genocide, the impunity by which its intellectual authors remain free, and the dangerous mutation of the paramilitary forces into powerful gangs and narcotraffickers (Handy 2008; Manz 2008; Grandin 2004).

At the heart of almost every Indigenous Maya struggle is land, both reform of the title system and respect for communal lands (de Villa and Lovell 1999; Sieder 2007). Today, an estimated 65% of agrarian lands are held by 3% of the population (Lovell 2013, 3). This concentration was made possible by the 1871 Liberal revolution under President Barrios, who implemented a plantation state economy that severely undermined the already precarious collective land titles held by Maya

communities since the Spanish invasion (McCreery 1994; Handy 1984). For Lovell (1988) and many scholars and Maya community organizers, the Barrios revolution was the second invasion (Perrera 1993). Progressive land reforms implemented by President Arbenz led to the Central Intelligence Agency (CIA)-sponsored coup in 1954 (Handy 1994), setting the stage for the third invasion, the 36-year internal armed conflict that claimed at least 200,000 lives and disappeared another 50,000 (CEH 1999; LaFeber 1993; Jonas 1991). Nonetheless, resistance to the status quo continues, and here we argue that the *consultas* represent a new and vital front in a 500-year-old story (Grandin 2004).

Mining: The Fourth Invasion

According to Nolin (2010), we should see the entry of multinational mining companies since the 1996 Peace Accords as the fourth invasion of Guatemala. The country's neoliberal transformation in the late 1990s included a new mining law (Legislative Decree 48-97), which reduced royalty rates from 6% to 1%, simplified exploration and mineral title access at the expense of community consultation, removed foreign ownership limits, and now allows the extraction of enormous profits from the country (Holden and Jacobson 2008; Solano 2005; Doan 1998). In return, Guatemalans are promised the benefits of "development"—jobs, infrastructure, and revenue. Unfortunately, with only a 1% royalty rate and a government deemed immensely corrupt (Comisión Internacional Contra la Impunidad en Guatemala [CICIG] 2008), not much remains of this promise except for jobs.

The influx of companies and the rush to stake mineral claims have created serious conflict (Yagenova and García 2009). The lack of consultation requirements in the new mining law directly affects hundreds of communities, who have since been told that the ground under their feet is no longer theirs. For many, this news came only when a company decided to send geologists in to explore.

Goldcorp sits atop Guatemala's new economic order. Self-proclaimed as one of Guatemala's largest taxpayers while also claiming to be the "lowest cost" producer of gold in the world, the company represents for many Guatemalans everything that is wrong with large-scale extractive industries (Burrows 2007; Goldcorp 2011b). Through its wholly owned subsidiaries, Montana Exploradora and Entre Mares, Goldcorp operates the Marlin Mine and has numerous exploration projects. The Marlin Mine's troubled history resounds throughout Central America as an example of how companies operate at the expense of local communities (Gordon and Webber 2008). San Miguel Ixtahuacán and Sipakapa, Maya-Mam and Maya-Sipakapense communities, respectively, are directly affected by the project (Smith 2009).

Documented impacts on these two communities include intimidation and assassination of mining critics (AI 2010; Frente de Defensa San Miguelense [FREDEMI] 2009; Imai, Mehranvar, and Sander 2007; Amuchastegui 2007), fraudulent land acquisitions and evictions (On Common Ground 2010; Valdez 2010), negative impacts from operations, such as skin irritation (FREDEMI 2009; Einbinder 2008), damaged homes (Comisión Pastoral Paz y Ecología [Pastoral Commission for Peace and Ecology] and Unitarian Universalist Service Committee [COPAE and UUSC] 2009), the depletion and contamination of scarce water resources (Bianchini 2006; E-Tech International 2010), and high levels of heavy metals in individuals living near the mine (Physicians for Human Rights [PHR] 2010). These impacts are largely ignored and denied by the Guatemalan government and Goldcorp.

The promotion of the mining industry at the expense of the rights of Maya communities was summed up in 2005, when Guatemala's former President Oscar Berger defended his deployment of the military to break up a blockade preventing Goldcorp from delivering equipment to the mine. Berger stated "We have to protect the investors" (Nolin and Stephens 2010), and hours later the military and police opened fire on the protestors, killing Raúl Castro Bocel (Nolin and Stephens 2010; Imai, Mehranvar, and Sander 2007). Similarly, the contemporary Colom administration ignored an order from the Inter-American Commission on Human Rights to temporarily close the Marlin Mine while studies took place to determine the extent of the negative impacts to the local communities. For more than 2 years the Guatemalan government and Goldcorp failed to comply, outlasting the Inter-American Commission, which eventually withdrew the order in the dying days of 2011 (Goldcorp 2011c).

Consultas Comunitarias—Resistance Grounded in Self-Determination

[Community referendums are] a tool for mobilization, a political tool to tell the State and the Guatemalan government that we have the right to express our opinion, that we have a right to our future, and that we should be treated with respect. (Member of *consulta* organizing committee in Huehuetenango [Network in Solidarity with the People of Guatemala (NISGUA) 2010a, para. 1])

In Guatemala, an emerging method to determine if a community grants consent to extractive projects is the *consulta comunitaria* (community consultation). The Guatemalan *consulta* movement began in 2005 in Río Hondo, Zacapa, in resistance to a hydroelectric project. The Marlin Mine-affected community of Sipakapa followed suit on June 18, 2005, and the overwhelming majority of Sipakapenses rejected the presence of Goldcorp in their municipality (Compliance Advisor Ombudsmen [CAO] 2005).

Local Sipakapan leader Mario Tema described the vote as "revindicating the rights of people who have been the owners of these territories for at least the last 5,000 years" (Paley 2007). The community argued that the *consulta* is a formal expression of their Indigenous rights protected by the legally binding International Labour Organization (ILO) Convention 169 (ILO 1989), Guatemalan municipal law, and the Guatemalan constitution, and that Goldcorp and the Guatemalan Ministry of Energy and Mines are legally bound to honor the vote against mining in their territory (Paley 2007; COPAE 2006; Sieder 2007). The right to consent is further strengthened by the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which includes several clauses championing the Indigenous right to "free, prior and informed consent" (FPIC) over development and extractive projects in traditional territories. Guatemala is a signatory to this nonbinding declaration.

Goldcorp and the Guatemalan government attacked and later ignored Sipakapa's *consulta*. The company went to court in an attempt to stop the vote (Imai, Mehranvar, and Sander 2007, 113), and freely admitted to a World Bank investigation that it continued to explore on Sipakapan land after the *consulta* (CAO 2005). Goldcorp continues to operate the Marlin Mine, but has yet to expand further into Sipakapan territory. In 2007, the Guatemalan Ministry of Mines challenged the constitutionality of the vote and the country's constitutional court

declared that the *consulta* process is legal but not binding (Holden and Jacobson 2008, 339).

Regardless of the legal limbo, the *consultas* in Río Hondo and Sipakapa opened a floodgate. Between 2005 and mid-2013, 78 communities and approximately 1 million people have participated in similar *consultas* across western Guatemala (Council of Maya Peoples 2013; Mining Watch Canada 2013; NISGUA 2011a; Valladares 2012). The votes have included women, and in some cases have allowed unofficial tallies of youth (ages may vary between *consultas*, but one author witnessed young grade-school children participating). The votes emerge as a serious challenge to Guatemalan state authority and the presence of extractive companies. The invocation of Indigenous and municipal rights makes the struggle not just one of negotiation for fairer mining laws, but a struggle for what has been largely denied to Maya communities since the first invasion: self-determination.

The Ethical Funds and Socially Responsible Investment

Socially responsible investing (SRI) has its origins in religious teachings on how to use money ethically and evolved into its modern manifestation during American antimilitarization campaigns in the 1960s and antiapartheid boycott campaigns in the 1980s (Renneboog, Horst, and Zhang 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 investment that classifies as SRI has grown substantially and includes pensions and mutual funds.

The strategies employed by SRIs fall into three broad categories, including selection filters or exclusionary screening; shareholder activism; and community investment (Muñoz-Torres, Fernández-Izquierdo, and Balaguer-Franch 2004). These methods are ideally supported by research teams, independent monitoring institutions, and an ethics committee, which oversee the choices made by the SRI. Screening involves applying ethical criteria to screen out “unethical” investments. Shareholder activism involves promoting corporate policy change through shareholder proposals and votes, and often subsequent negotiation with management. Community investment refers to supporting projects considered to be giving back to the community. The activities of the Ethical Funds in Guatemala employ the shareholder activism approach, using the HRIA as a vehicle to investigate and pressure Goldcorp.

SRIs make various strategic choices about how to promote CSR. The Ethical Funds’ choice of engagement and negotiation with Goldcorp is one of its more commonly employed strategies, described by Milstead (2010) as “more carrot than stick.” Little is known about how SRIs make decisions, or how effective the various approaches are for the promotion of Indigenous self-determination, as demanded by the Guatemalan *consultas*. The examination of the Ethical Funds is all the more relevant because the company has a policy of promoting free, prior, and informed consent and therefore has reason to promote and ensure respect for the Maya *consultas* (Ethical Funds 2007). The case is part of a growing awareness that the best intentions of a CSR discourse may not satisfy the demands of affected communities and that the delivery of CSR programs is largely determined by the corporate actors involved (Coumans 2010; Dashwood and Pupilampu 2010; Idemudia 2007; Laplante and Nolin 2011; Ofori 2007).

Methods

Using a multidisciplinary approach and drawing from critical geographic and environmental studies that question the ways in which power and privilege are spatialized and shape repression and resistance (Power 2003; Watts 2004; Watts 2005), fieldwork by the authors took place from May to November 2010 in three communities in Guatemala's western highlands where Goldcorp holds licenses (Figure 1). However, we are not seeking a generalizable representation of these communities. Rather, our goal is to understand this exemplifying case of the perspectives of *consulta* organizers resisting Goldcorp. The particular experiences of each community are different; however, in all cases the communities learned of the sale of the mining rights after the fact. Private and group interviews, secondary source analysis, and participant observation are combined to allow for triangulation of perspectives and analysis. Long-standing academic and solidarity work in Guatemala ensured safe introductions to communities and several NGOs working on social justice issues. The communities gave the authors permission to cite the names of the communities and the names of the main organizations involved.

Ten semistructured interviews with 21 participants were conducted in both private and group interviews with members and supporters of the three predominantly Maya municipalities of Huitán, Cabricán, and Sipakapa, where *consultas* were held and the communities voted in *consultas* against the Goldcorp-held mining licenses (Table 1). A snowball sampling approach allowed the *consulta* organizers to shape interactions and participant selection, build trust, and ensure trustworthiness of the interviews (Nolin Hanlon and Shankar 2000). Key informants were predetermined as *consulta* organizers and direct supporters (e.g., lawyers representing community interests). In Cabricán and Huitán, the organizers formed committees that represented broad sectors of the communities, including, but not limited to, teachers, clergy, Indigenous rights organizations, reporters, broadcasters, librarians, principals, youth, and farmers. Interviews were conducted in Spanish by one of the authors.

One community, Sipakapa, the original municipality in Guatemala to vote "no" to Goldcorp, is located in the department of San Marcos, and approximately 15% of the Marlin Mine lies on Sipakapan land (Imai, Mehranvar, and Sander 2007; Smith 2009). Sipakapense is spoken and a rural agricultural subsistence economy dominates. The other two communities, Cabricán and Huitán, were in the process of organizing their *consultas* and have since voted resoundingly "no to mining." Both communities lie east of the Marlin Mine in the department of Quetzaltenango. Cabricán's referendum on October 20, 2010, represents the first *consulta* in that department. Cabricán and Huitán are predominantly Maya-Mam and, like Sipakapa, have rural agricultural subsistence economies. None of these communities are "wealthy" from a consumer goods or government services perspective; however, their economy is largely based on agriculture that has supported the populace for generations. Two additional interviews were undertaken with individuals from San Miguel Ixtahuacán, the community most affected by the Marlin Mine. While there has yet to be a *consulta* in this municipality, the Indigenous Mayor's Council issued community *actas* (decrees) against the presence of Goldcorp.

Participant observation involved one visit to Sipakapa and multiple visits to Cabricán and Huitán during the process of organizing their referendums. One of us, J.P.L., was also privileged to observe Cabricán's *consulta* and various official meetings prior to the vote. Secondary sources pertaining to Goldcorp, the Ethical

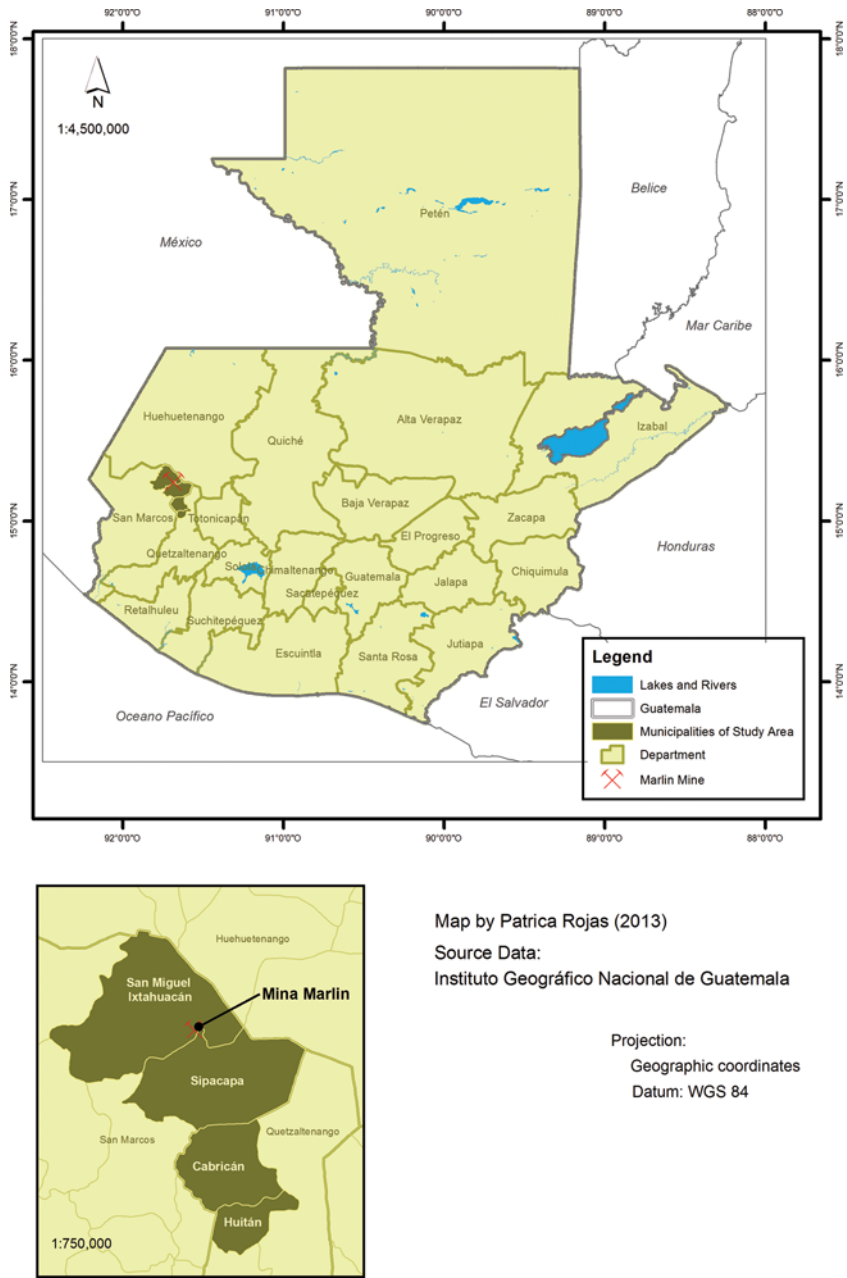


Figure 1. Municipalities within scope of study and Goldcorp’s Marlin Mine. (Color figure available online.)

Funds, and *consultas* are used to assist in the triangulation of perspectives (Bryman 2008; Stake 2005; Meijer, Verloop, and Beijgaard 2002). Goldcorp’s, the Ethical Funds’, and the communities’ public statements, news releases, annual reports, and correspondence form the basis of the source material. We seek to combine multiple data sources to obtain a “thick description” (Geertz 1973, 3) and to assist

Table 1. *Consulta* results in municipalities within scope of study

Community	Date of <i>consulta</i> (dd/mm/year)	Total population estimate ^a	Results of <i>consulta</i>	Goldcorp license (yes/no)	Number of interviews	Respect for the <i>consulta</i> ?
Sipakapa	18/06/2005	16,774 (2008)	2,415/2,504 voted “no” ^b	Yes	2 individuals	No
Cabricán	20/10/2010	24,474 (2010)	13,610/13,813 voted “no” ^c	Yes	2 group interviews (4 + 2) + 3 individuals	Unknown
Huitán	22/11/2010	13,633 (2010)	6,758/6,788 voted “no” ^d	Yes	1 group (6 individuals) + 2 individual	Unknown
San Miguel Ixtahuacán	N/A	35,276 (2010)	N/A	Yes	2 individuals	N/A

Note. References: ^aInstituto Nacional de Estadística (2008); ^bACOGUATE (2009), Confederación Sindical et al. (2010); ^cNISGUA (2010b); ^dNISGUA (2010c).

in assuring rigor in the analysis of “inherently partial” perspectives (Clifford 1986, 7; Baxter and Eyles 1997).

Results

All three communities voted and expressed their disapproval of mineral extraction in their respective municipalities and in doing so rejected the mineral exploration and extraction licenses of Goldcorp. The overwhelming majority voted against the presence of the company (Table 1), which reveals broad community consensus. Interviews in the communities also revealed consensus regarding several topics that are outlined in the following.

“Voice of the People”

The most common theme expressed by nearly all of the participants was “*la voz del pueblo*” or “voice of the people.” Most explained explicitly that expressing this voice was the central motivating factor in their support for the referendum and that it was directly related to the autonomy of the municipality. Others were less explicit about the reference to self-determination but nevertheless expressed a similar understanding in different words. The importance of this “voice” is directly related to the complete lack of consultation prior to the dispensation of mineral rights.

One organizer in Cabricán elaborated:

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 favor of the Maya people. Therefore, we believe that the consultation (*consulta*) of the people is exercising for the first time that right.

The uses of terms common to scholarly investigation of Indigenous rights—free, prior, and informed consent, self-determination, autonomy, and agency—were elaborated upon differently by each participant and usually in related terms. Several referred to self-determination explicitly; however, the majority characterized the *consulta* and the rights asserted in the vote simply as “our voice.” The majority of the participants did not question the authority of this “voice”—for them, their community’s opinion not only mattered, it was the final arbiter deciding what should take place in their municipality.

Another organizer from Cabricán linked the *consulta* to broader efforts to change the status quo in Guatemala:

The popular consultation (*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.”

One subtheme related to a broader theme of Indigenous rights is the idea that consent and consultation are “two sides of the same coin.” One participant believed

that without the right to say “no”—to consent explicitly—consultation could not occur meaningfully. He noted that Goldcorp believes it “consulted” the local communities near the Marlin Mine, yet this consultation was deceitful and had not prevented conflict.

Another organizer from Cabricán stated:

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.

Problems of State Law

A second recurrent theme involved the concern of the organizers with the Guatemalan government’s failure to meaningfully consult prior to the sale of the mineral rights. This failure formed a core reason why the licenses were outright rejected, second only to the environmental and human rights impacts from large-scale mining and the experience of local communities at the Marlin Mine. Concern with the failure of the Guatemalan state to safeguard the rights and lands of these communities, with a firm belief that the Ministry of Energy and Mines did not have their interests at heart, was for many organizers the fundamental conflict that the *consultas* participants rallied against.

One organizer stated, again in Cabricán, that 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 popular* is an expression, a demonstration, of not just a rejection of mining, but to tell the state: “we want to participate in the decisions of the government, in the decisions of the state, that they take us into account.”

In the same interview, the organizer confirmed that “They talk about ‘the state of law’ but the same people who break the law violate the ‘state of law.’” He went on:

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.

Concern for Water Sources

A key concern for all three communities, which they highlight on banners, posters, comunicués, and in our discussions, relates to the contamination and potential drying up of water sources. In Cabricán, one organizer says, “Primarily it is about

water, for us water is extremely important. People cannot live without water, right?” An organizer in Huitán describes water’s role in their motivation:

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.

Polarization and Mistrust

The high degree of polarization and mistrust in Guatemala in relation to mining emerged as much from observation as from interviews. It could be argued that this stems directly from the country’s history and the continued failure of the government to adequately respond to the needs of these communities. It is also a reflection of the complete lack of consultation prior to the issuing of mineral rights and the history of usurpation of collective land since conquest (Smith 2009). Due to this polarization, we can only conclude that the right to consent over mining projects is a minimum if a project is to advance with any semblance of peace and broad community support in Guatemala.

The CSR “Gap”

In relation to socially responsible investing and the Ethical Funds, the main finding is that none of the participants had a good understanding of just what SRI is or who the Ethical Funds are. Several participants had a vague idea about “Goldcorp’s study” and as a result were aware that Canadian investors had been involved.

This significant “gap” points to a limitation inherent in SRI—namely, that these firms are unable to engage all the communities affected by their investments. Only after serious struggles in San Miguel Ixtahuacán and Sipakapa did the Ethical Funds and other SRIs take notice. Upon hearing a brief explanation that SRI avoided some companies (tobacco, arms, etc.) and tried to persuade others, including Goldcorp, to improve their behavior by investing and engaging the corporation, almost all of the participants responded with surprise and puzzlement. The screening and community investment strategies were understood, but shareholder activism was not. All the participants but one considered Goldcorp an “unethical” company, and as a result deemed anyone making a profit from that company to also be unethical. Several participants described this as an *engaño*, or “a trick.”

Conclusions

UN Special Representative John Ruggie (2008, 3) identified the impunity with which transnational corporations freely commit human rights violations as the result of “governance gaps”—the ungoverned spaces between home states such as Canada and “weak states” such as Guatemala. A “CSR gap” also exists between the reality in mining-affected communities in western Guatemala and the beneficiaries in Canada. What the SRI is promoting and negotiating in the boardrooms of Canada’s corporate heartland does not equate on the ground in Guatemala. This “gap” is a reflection of many factors—limited engagement with communities who are not on the firms’ radar, as well as a limited understanding of capital markets in rural Guatemala. Clearly, promises of corporate social responsibility mean less in a country like Guatemala, where the government is either unable or unwilling to protect the basic human rights of its citizens.

The *consultas* have created an opportunity to bridge this gap. By saying “no” to Goldcorp and the Guatemalan state, these communities are affirming their rights, and by raising their “voice,” demand to be heard. Their demands that Goldcorp and its shareholders explicitly respect the *consulta* results are a test of how CSR and SRIs will ultimately influence impacts from the extractive sector on Indigenous communities. Whether those in the boardrooms are listening is a question that needs to be asked repeatedly. To its credit, the Ethical Funds has already identified the right to free, prior, and informed consent as a principle worth promoting. How far it is willing to go to do this—whether to the point of demanding from Goldcorp to also adopt a strict policy of FPIC, or face divestment—is something that only time will tell. Many other questions remain: How independent are SRIs, given that they are shareholders and need to make a profit? What are the guidelines and operating principles that guide the actions of SRIs? How do communities determine whether these principles are being enforced, and is the right of Indigenous peoples to free, prior, and informed consent to become a “screening-level” issue?

In the meantime, the *consultas* have taken on a life of their own in Guatemala. Perhaps due to the creation of slightly safer spaces for protest and resistance afforded by the Peace Accords, these communities are acting in ways that would have been unimaginable 25 years ago. The recent announcement by Guatemalan legislators that they seek to “regulate” the *consultas* affirms the strength that the movement has gathered (Prensa Libre 2011; NISGUA 2011b). Maya community organizations responded to this announcement with mistrust and demanded that the existing *consultas* simply needed to be respected, not “regulated.” The outcomes from this collision between state and Indigenous law remain to be seen; however, we believe they will be determined not in Vancouver but in places like Cabricán, Huitán, and Sipakapa.

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