

Extracting Consent or Engineering Support?
An institutional ethnography of mining, “community support” and land acquisition in Cerro de
San Pedro, Mexico

By Tamara Herman
B.E.S., University of Waterloo, 1999

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Abstract

This thesis explicates the translocal ruling relations embedded in the process that a Canadian corporation used to acquire collectively held land for a mine in Mexico. Using Institutional Ethnography, I begin from a disjuncture between the corporation's statements that the mine holds "local support" and the contesting claims of an opposition movement. I contextualize this disjuncture by referring to the institutional discourse of "corporate social responsibility" in mining. I make visible the hierarchy of texts activated by the corporation to acquire land and produce the claim of "local support." I overlay this problematic with a reconstruction of the legal disputes between the corporation and its opposition, indicating where the process is hooked into legislation that organizes multinational investment in mining. The inquiry illuminates the workings of power, illustrating how provisions for foreign investment enshrined in multilateral institutions and upheld in Mexican legislation hold primacy over provisions for "local support."

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1. Introduction: “Community support” and mining in Cerro de San Pedro

“A gaggle of ‘experts’ will often be on hand offering up wildly conflicting versions of what a ‘mine development plan’ will mean in practice. Whom to believe? From long experience I know that, after metaphorically ‘going down the mine’ to seek the truth, one often returns to the surface with more questions than answers” (Moody, 2007, p 5).

The Cerro de San Pedro open pit gold and silver mine has been generating controversy since 1997, when a Canadian corporation named Metallica Resources Inc. first informed inhabitants of the central Mexican village of Cerro de San Pedro that it had purchased a mineral extraction concession for a mountain overlooking their community. Located in the mountains adjacent to the city of San Luis Potosí, with its population of approximately 1.5 million, the Cerro de San Pedro mine is expected to extract and process between 80,000 and 100,000 ounces of gold and 2.25 million ounces of silver annually over the course of its estimated life of ten years (New Gold Inc. [New Gold], 2008). The mine is operated by Minera San Xavier (MSX), a Mexican subsidiary wholly-owned from 1997 until 2008 by Metallica Resources (Metallica), a “junior¹” company registered on the Toronto Stock Exchange, and after 2008 by Canadian “intermediate” corporation New Gold Inc. (New Gold)².

Over the years, project opponents have filed a series of legal cases contesting the corporation’s bid to mine. Reports of cooptation, repression and political violence against the opposition movement began to emerge. Yet the company, which states its commitment to practicing “corporate responsibility” (Metallica Resources Inc. [Metallica], June 7, 2006), insists that the mine holds the “support” of the “local residents” (Metallica, October 23, 2003). After several

¹ See page 26 for an explanation of junior mining corporations

² For simplicity’s sake, the three firms will frequently be referred to simply as the “corporation” throughout this thesis.

years of delays, mine operations began in 2006 amid continued resistance and pending legal cases.

This thesis emerges from my interest in exploring how the “support” of “local residents” was produced within the land acquisition process that the corporation was required to follow in order to develop and operate a mine which is located, in part, on collectively-held lands. Using institutional ethnography (IE), an alternative sociology developed by Dorothy Smith, I begin my research from the standpoint of the Frente Amplio Opositor (FAO), a broad coalition of individuals and groups opposed to the Cerro de San Pedro open-pit mine. This vantage point allows me to make visible ruling relations that stretch across time and place, implicating an institutional complex of trade and investment regimes that govern the mining industry. Doing so takes me from the site of Cerro de San Pedro, where I spent 5 months, through a legal maze leading to the Mexican Revolution, the World Bank and the North American Free Trade Agreement (NAFTA). I find that the regimes that I examine work to advance foreign land acquisition for investment purposes irrespective of “corporate responsibility” frameworks that pledge “local support.”

This introductory chapter provides, in the next section, an overview of how my thesis works its way through the complex story of Cerro de San Pedro. The chapter then turns directly to the history of the conflict at the Cerro de San Pedro mine in order to provide enough background information for the discussions that follow.

Thesis storyline: A summary of the thesis chapters

IE differs from many of the conventional research processes in social sciences fields in that it does not begin with a preconceived research question or apply a theoretical framework.

Researchers begin an IE by exploring an institutional complex from a specific standpoint. The course of the inquiry unfolds as the researcher discovers the social relations embedded in the subject at hand. Thus, the specific threads that will be pursued over the course of the research are not established at the beginning (D.E. Smith, 2005).

As mentioned, this introductory chapter traces the thread of the storyline of my thesis and provides a brief chronology of the Cerro de San Pedro case. In the second chapter, I describe my research focus, structure and approach. I explain why I was compelled to investigate disjunctures between corporate and community versions of how “corporate social responsibility” (CSR) is practiced in the allocation of land for mining projects. Importantly, the chapter describes how using IE allowed me to explore the social relations that connect people opposing a mine to other people, places and moments, where policies that form trade and investment regimes are generated and set in motion.

In the third chapter, I provide background information on how the mining sector is organized and why corporations invest in countries such as Mexico. The chapter then moves to a deeper examination of CSR frameworks and the discursive context within which multinational mining corporations operate. I explore a specific and controversial theme within CSR: the role that potentially-impacted communities play in land-use decisions surrounding mining. The chapter concludes with an overview of the discrepancies that have been widely reported between

corporate claims of obtaining local “support” and the accounts of communities located on and/or near mining sites.

Chapter 4 demonstrates that these discrepancies are evident in the contradictory reports that emerge in Cerro de San Pedro as to whether the corporation has obtained the “support” of the “local residents” to mine on a portion of collectively-held *ejido*³ land. I look closely at this disjuncture, beginning with differing notions of who the “local residents” are, what their involvement in land-use decisions should be and how the process should unfold.

The discussion in the fourth chapter establishes the relevancy of the fifth chapter, where I explore how this disjuncture is produced. I explain how – debates around the “support” of “local residents” notwithstanding – peoples’ involvement in land-use decisions surrounding the mine is coordinated through a standard text-based process. This entails examining the concessions, leases and other texts that mediate the land acquisition process, specifying whose “support” is required by law in order for the corporation to access mineral deposits and begin mining.

The standard, text-base land acquisition process was contested, and Chapter 6 turns to the opponents who chose to challenge the project’s lease in court. I describe the significance of the FAO’s allegations that the corporation had not acquired the consent of the legally-sanctioned *ejidatarios* – or *ejido* members – as required by virtue of the Mexican Constitution. The chapter documents how, irrespective of discrepancies and pending court cases surrounding the lease, the

³ The *ejido* is a land tenure regime enshrined in the Mexican Constitution following the Mexican Revolution (1917) to distribute land to collectives of peasants. The *ejido* is discussed at length throughout this thesis.

governing body intervened to provide the corporation with a permit for a “temporary occupation” (*ocupación temporal*), which granted it access to *ejido* lands.

Chapter 7 looks at how the issuing of the temporary occupation and its role in activating land acquisition illuminates translocal ruling relations embedded in the process through which the corporation gained access to *ejido* lands. I explain that the temporary occupation is rooted in an interconnected complex of legislation oriented around NAFTA. The intertextual hierarchy within which the temporary occupation is based eclipses the collective *ejido* land-holding model that was implemented at the time of the Mexican Revolution. As such, this inquiry into the Cerro de San Pedro case shows how provisions for investment that are enshrined in multilateral institutions and upheld in Mexican legislation hold primacy over CSR policies, including provisions for “local” “support”.

Background: A chronology of the Cerro de San Pedro mine



Figure 1: Location of San Luis Potosi

(source:
http://commons.wikimedia.org/wiki/File:San_Luis_Potosi_in_Mexico.png)

The history of the village of Cerro de San Pedro, the mine and the conflict is extremely complex and difficult to trace. While the detailed timeline provided in *Annex 2: A History of Cerro de San Pedro*⁴ summarizes hundreds of media articles and press releases, seven interviews and countless informal discussions, the purpose of this section is to document key points in the corporation’s bid for the mine.

⁴ Please refer to *Annex 2: A History of Cerro de San Pedro*, on page 117, for a more complete timeline. Further details on the legal challenges are provided in Chapters 5 – 7.

Cerro de San Pedro was established in 1592, when Spanish colonizers began to forcefully settle the area's mineral-rich mountains after almost a century of warfare against local indigenous inhabitants. The settlement of San Luis Potosí was founded in the valley adjacent to the mountain in order to both accommodate the mining industry and ensure access to scarce water supplies (Guadalajara, 2007). Cerro de San Pedro was formally declared an *ejido* in 1926, with an area of 1776 hectares and over one hundred *ejidatarios* (Comisión Nacional Agraria, 1926).

Cerro de San Pedro enjoyed several centuries of mining-based booms and busts. In 1948, however, an era of decline began when the last major mine closed its operations in response to a workers' strike. As mineral prices plummeted, a wave of poverty gripped the town and a mass exodus occurred towards the growing city of San Luis Potosí. The relatively small remaining population of Cerro de San Pedro was often described as "abandoned" or "ignored" (Reygadas Robles-Gil, Guadalajara & Chávez, 2008). In 1957, a census concluded that only 32 *ejidatarios* remained (Procuraduría Agraria Nacional, 2008). Yet the colonial churches, lavish historic buildings, old mines and ruins bore testament to Cerro de San Pedro's importance in the time of Spanish rule and, by the 1990s, the village had become a tourist destination (Guadalajara, 2007).

In 1996, the community was informed in a meeting with mining engineers that MSX, Metallica's wholly-owned Mexican subsidiary, had purchased mining concessions in Cerro de San Pedro (Metallica, 1996). As stated by Antonio⁵, a former resident of the community that I interviewed:

The mining company thought that this was going to be very easy. They simply saw a community with many unmet needs, an abandoned town, with political, social and

⁵ The names of all interviewees are pseudonyms

religious divisions. The company must have thought, without a doubt, that this was a fertile land for them to plant their business, their company⁶.

At the time, community members were relatively unanimous in their objections to the mine. When contacted by villagers, local environmental groups demanded to see the mine's Environmental Impact Assessment (*Manifestacion de Impacto Ambiental*, EIA) to evaluate potential project impacts. The groups concluded that the project's potential impacts presented significant environmental and health risks to both the village of Cerro de San Pedro and the wider San Luis Potosí valley (Frente Amplio Opositor [FAO], 2007b).

Amid growing opposition, MSX produced a lease on February 6, 1997 to occupy *ejido* lands for mining. The lease was signed by individuals claiming to represent the *ejido* of Cerro de San Pedro (Comisariado Ejidal, 1997). Most of these individuals resided in La Zapatilla, a village located several kilometers from Cerro de San Pedro and on the site that would become the mine's cyanide leaching pad (Melé, 2007).

Graciela, a resident of Cerro de San Pedro that I interviewed, maintains that villagers were not told of any agreement at the time. On March 14, 1998, the corporation held a "public forum", where project opponents voiced their concerns. Later that week, Cerro de San Pedro Mayor Baltazar Loredó – who had opposed the mine and launched an investigation into the legality of the sale of private lands to MSX – was found dead with a bullet in his head (Reygadas Robles-Gil et al., 2008). Authorities claimed that Loredó's death was suicide. Skeptics noted that his body was bruised and that the bullet fired through his skull entered from the right side, while

⁶ All my interviews were conducted in Spanish, and all translations to English are mine unless otherwise noted.

Loredo himself was left-handed (Ross, 2005). In the midst of increasing public scrutiny, the corporation began to seek allies within the community, with what many claimed were divisive consequences. Antonio, a church representative that I interviewed who played a prominent role in the community, states that the company “offered me money....and they explicitly approached me to be their puppet, because of my role in the community. This seemed to be dishonest, atrocious. So I distanced myself radically and did not have any more dialogue with them.”

On February 26, 1999, an environmental permit was awarded by Mexico’s federal environmental authority, known now as the Secretary of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT) to MSX for its EIA, contingent upon the fulfillment of one hundred conditions (Reygadas Robles-Gil et al., 2008). Less than a year later, however, project opponents launched a legal campaign against MSX, owned at the time by both Metallica and the well-established Cambior Inc. The campaign included challenges in two distinct legal domains: environmental and agrarian law. The agrarian suit was launched on March 15, 1999, when the National Agrarian Registry (*Registro Agrario Nacional*) confirmed that the individuals who had signed the 1997 lease with MSX were not officially recognized as *ejidatarios* (Lic. H. Errendira Giron Flores 2000, pers. comm., March 15). The environmental challenge began on February 9, 2000, when a local non-governmental organization (NGO), Pro San Luis Ecológico, contested the mine’s environmental permit.

Mine development stalled for a number of reasons in the years that followed. While MSX enjoyed the support of state-level and national governments, the mine’s legal setbacks were compounded by the growing strength of the FAO. Meanwhile, Cambior’s fifty-percent stake in

the mine was sold to Glamis Gold Ltd. (Glamis Gold Ltd., 2000), which stated that operations would only commence when the low price of gold became more favourable (FAO, 2007b). Metallica purchased Glamis' stake in 2003, asserting "the project has received all federal, state and municipal permits necessary to commence construction, subject to compliance with certain items contained within the permits" (Metallica, February 5, 2003). Yet when the corporation announced that construction would begin in early 2004 (Metallica, February 20, 2004), Cerro de San Pedro mayor Oscar Loredo – the 22 year-old son of murdered mayor Baltazar Loredo – declared that he would not issue the required municipal permits (Reygadas Robles-Gil et al., 2008). Tensions among residents of Cerro de San Pedro began to build, and – as stated by Graciela – some residents reportedly began accepting monetary compensation from the corporation.

On March 17, 2004, the Agrarian Tribunal ruled that the lease between MSX and the non-registered *ejidatarios* in 1997 was void because it had been signed by individuals who did not hold rights or authority over the *ejido* (Alvarado, 2009; Martinez, December 4, 2004; Tribunal Unitario Agrario, March 17, 2004). The corporation appealed the decision, specifying that it held the support of U.S. and Canadian embassies, the office of the Governor of the State of San Luis Potosí, and various federal agencies (Metallica, April 14, 2004; Metallica, June 2, 2004).

It was precisely in this context of political support that allegations of corruption and coercion began to surface. On June 29, 2004, Mexican President Vicente Fox asked San Luis Potosí State Governor Marcelo de los Santos Fraga to bring Oscar Loredo to him, where he allegedly told the Cerro de San Pedro Mayor that he "was worried about moving ahead with the project

and recommends his approval” (Reygadas Robles-Gil et al. 2008). On August 12, Loredó announced that he would ratify municipal permits, stating that he “couldn’t resist the pressure of the governor, the corporations and Fox” (“Por presiones del president”, August 12, 2004). MSX received its municipal construction and operations licenses later that month (Metallica, August 31, 2004). Residents that I interviewed claim that divisions in the community grew, with those who accepted compensation and/or relocation from the corporation pitted against community members opposing the mine. Several incidents of property damage, harassment and assault were recorded (for example, Becerra, October 3, 2005).

On June 3, 2005, MSX obtained a permit for temporary occupation from the Secretary of the Economy’s (*Secretaría de la Economía*) Federal Mining Bureau (*Dirección General de Minería*). This granted the corporation access to minerals through Article 6 in the Mining Law, which establishes mining as the preferential form of land use. Paradoxically, the Superior Chamber of an administrative court imposed an unchallengeable sentence on October 5, 2005, holding that the environmental permit that was initially awarded by SEMARNAT was illegal, as alleged by Pro San Luis Ecológico in 2000. In a move condemned by many critics, SEMARNAT re-authorized the project’s EIA and awarded a new environmental permit to MSX for the use of *ejido* land on April 10, 2006 (Azua, February 22, 2007; Mata, January 15, 2007; Reygadas Robles-Gil et al., 2008).

The issuing of the temporary occupation and environmental permit incited a fierce wave of resistance in San Luis Potosí. Blockades halted mine operations on two separate occasions in April 2006 (Becerra, April 12, 2006; Balcorta & Becerra, 2006). Months later, MSX won an

appeal filed in the Agrarian Tribunal, which held that the *ejidatarios* did not have the right to contest the lease because it had been signed in 1997 and they had attained their accreditation in 2001-2002 (Alvarado, 2009). Yet court cases, appeals and counter-appeals continued throughout 2007, with a steady stream of demonstrations and media actions staged by the FAO (Reygadas Robles-Gil et al., 2008). Production at the Cerro de San Pedro project began on May 1, 2007 (Metallica, November 13, 2007).

In June 2008, Metallica completed a merger with two other junior mining firms to become New Gold Inc., an intermediate firm with a market capitalization of approximately US\$1.6 billion (New Gold, June 30, 2008). The legal situation of the mine remained questionable, however, until November 2009, when Mexican environmental authorities closed the mine in response to an environmental ruling (“Mexican environmental agency”, 2009). The mine closure, while celebrated as a major victory, was also short-lived: On December 14, 2009, New Gold was granted a temporary injunction to resume operations while awaiting its appeal (New Gold, December 14, 2009).

2. Research focus, approach and structure: Using institutional ethnography to explore the “support” of “local residents” in Cerro de San Pedro

The overview of the history of Cerro de San Pedro described in the first chapter offers a glimpse into the richness and complexity of my research site. The purpose of this chapter is to describe how I look into community and corporate relations surrounding land acquisition in Cerro de San Pedro, and to define my research focus, approach and structure. The chapter begins by describing my location and interest as a researcher. It then moves to a discussion of IE, the method of inquiry I use to explore the social organization of “local support” for corporate land acquisition in Cerro de San Pedro. This approach allows me to begin in the experience of the mine opposition movement and trace the texts implicated in seeking “local support” within the land acquisition process, while locating where and when the process is “hooked” into the overall regulatory frameworks and multilateral regimes that govern the industry. The chapter continues by providing a brief synopsis of my methods and data sources, followed by a discussion of some challenges of working in the field in Mexico.

My location

I first became interested in resource extraction over ten years ago, when I conducted ecological research for a remote village opposing a Canadian oil corporation’s exploration activities in the Ecuadorian Amazon. Over the years, I continued to be active in social justice work, focussing primarily on community organizing and advocacy on global social justice issues. My interest in the topic of resource extraction was rekindled years later when I traveled as an independent journalist to India, where a Canadian corporation was attempting to build a bauxite mine. Discrepancies in corporate, state and community versions of whether the project had “local support” or “consent” were prevalent at the time (Herman & Thorndycraft, 2005; Herman &

Thorndycraft, 2006). Yet decades of struggle and conflict in the region – which were marked by assassinations, repression and militarization – made questions of *how* the “support” was obtained as pertinent as *whether* there was “support” in the first place.

I was exposed to a different side of the mining issue at a human rights organization, where my work involved advocacy and policy analysis on human rights, investment and resource extraction in the South. At the time, a broad coalition of activist collectives, non-governmental organizations (NGOs), faith-based groups, academics, research institutes and unions was preparing to launch an advocacy campaign against Canadian extractive corporations operating internationally (Canadian Network on Corporate Accountability [CNCA], 2007).

With approximately \$50 billion invested in over 8000 properties in more than 100 nations worldwide, Canadian corporations are prominent players in the mining industry (Natural Resources Canada, 2007). Yet many Canadian companies have faced fierce resistance from the people living near the sites of their projects (for example, Rights & Democracy, 2007). These communities have drawn attention to the poor track record of Canadian mining companies operating overseas, leading to a Canadian Parliamentary Standing Committee in 2005 (Standing Committee on Foreign Affairs and International Trade [SCFAIT], 2005) and a subsequent series of national roundtables that examined the Canadian extractive industry in developing countries in 2006/07 (Foreign Affairs and International Trade Canada [DFAIT], 2006; National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries [Roundtables], 2007).

The issue of CSR – or, simply put, business ethics⁷ – permeated the work that Canadian organisations were undertaking in preparation for the roundtables. I felt conflicted investing so much time into analysing policies, standards, codes of conduct and other CSR tools. I knew that the problems I was grappling with required more than a case-by-case approach, and that focussing on the “macro” was important. Yet it all seemed very detached from the people whose testimonies I had recorded in the Amazon or India, and I wondered whether the documents that I pored over were anything other than public relations tools for the government and private sector.

When I enrolled in my Master’s program, I was very interested in critically examining CSR, while bridging my experiences in the field and in the office. Much of the academic literature focused on theoretical discussions or technical matters. I wanted to examine whether CSR frameworks changed peoples’ participation in decision-making surrounding land acquisition, without losing sight of the global forces at play. In order to keep peoples’ experiences at the forefront of my work, I wanted to focus on a specific site. After discussing their needs and my interests, the FAO invited me to conduct my fieldwork in Mexico.

Institutional Ethnography (IE)

As I developed a basic understanding of IE through my coursework, I began to see how it could guide my inquiry into the multifaceted issues of communities, CSR and international mining. IE is an alternative sociology developed by Dorothy Smith (D. E. Smith, 1986, 1987, 2005, 2006) that “explores the social relations organizing institutions as people participate in them and from their perspectives” (D. E. Smith, 2005, p. 225). IE differs from other modes of inquiry in its ontology of the social, which draws attention to “how actual people are coordinating their

⁷ CSR will be discussed in detail in Chapter 3 on page 25.

activities” as opposed to viewing the social as “existing over and above individuals and determining their behavior” (D. E. Smith, 2005, p. 223). By focussing on how activities are coordinated, institutional ethnographers discover how the doings of people in local settings are organized and “hooked up” into the doings of other people in other places and times. Exploring social organization entails considering at least two sites: the local setting of lived experience; and the translocal, or outside everyday experience (Campbell & Gregor, 2004).

Peoples’ lived experiences or “standpoints” are the starting point for IE. The term “standpoint” emerged from the women’s movement, where initiating an analysis in the experience of women opened a subject position that had not existed previously, marking a radical political shift (D. E. Smith, 2005). It is important to specify that beginning from a standpoint does not simply mean adopting a viewpoint or attempting to theorize peoples’ experience. Rather, it entails using every day experience as a point of departure from which discoveries about the workings of power can be made (Campbell & Gregor, 2004). The lived, embodied experience generated from a standpoint of marginalization is raw data that can be used to build important knowledge about the way things work, often shedding light on the seemingly intangible forces that organize our experiences and that we seek to confront.

To extend inquiries beyond peoples’ experience and into the ways in which power functions, institutional ethnographers direct their attention to “social relations.” Social relations refer to the coordination of the activities of people, who do not necessarily meet, across multiple sites and at various points in time. This sequential coordination of peoples’ activities is what Campbell and Gregor (2004) describe as ruling, or how “power is exercised in local settings to accomplish

extra-local interests” (p. 36). Extra-local interests are activated through institutions, which D.E. Smith (2005) calls “complexes embedded in ruling relations that are organized around a distinctive function” (p. 225). Institutions do not exist outside of the social. Rather, we participate in institutions and the translocal ruling relations embedded within.

In most contemporary bureaucracies, some form of text is required to coordinate peoples’ activities in different sites across time. Texts, as used in IE, are materials that enable replication; they carry some form of message that triggers a response when activated by their readers. As such, texts are constantly in motion, coordinating sequences of action and “work”, or the ways in which people – intentionally or not – participate in institutions. The importance of texts in rendering ruling relations visible to institutional ethnographers cannot be overstated. As explained by D.E. Smith (2006), the text “is what enables [IE] to reach beyond the locally observable and discoverable into the translocal social relations and organization that permeate and control the local” (p. 65).

In its explications of the textually-mediated coordination of peoples’ doings, IE has been likened to map-making. D.E. Smith (2005) writes:

Like a map, [IE] aims to be through and through indexical to the local sites of people’s experience, making visible how we are connected into the extended social relations of ruling and economy and their intersections. And though some of the work of inquiry must be technical, as mapmaking is, its product should be ordinarily accessible and usable, just as a well-made map is, to those on the terrain it maps (p. 29).

Maps that show how things work and are put together can be used to build knowledge on confronting “how people’s lives come to be dominated and shaped by forces outside of them and their purposes” (Campbell & Gregor, 2004, p. 12). IE has been used to produce knowledge on various social justice issues, including gay rights (G. W. Smith, 2006), labour advocacy for textile workers (Ng, 2006), and environmental activism (Turner, 2006).

I approached my research looking for a way to make a tangible contribution to local communities contesting Canadian mining projects. IE offered a method of inquiry that allowed me to reconcile the “grassroots - versus - policy-level” dichotomy while developing insight that could be of great value to struggles North and South of the Canadian border. Many communities at the forefront of struggles against mining are small, rural and/or indigenous, and find themselves confronting not only transnational mining corporations but the institutional arrangements that drive and sustain the industry. I wanted to learn how I could better understand these arrangements in order to develop a critique of the mining industry that would begin from the embodied experience of people facing mines. In doing so, I also hoped to make a contribution to the social justice groups and solidarity organizations based in Canada that contest Canadian corporations operating abroad.

Standpoint of the inquiry: The Frente Amplio Opositor (FAO)

My research begins from the standpoint of the members of the anti-mine movement in Cerro de San Pedro. The origins of the anti-mine movement can be traced to 1997, when residents of Cerro de San Pedro and San Luis Potosí formed the Board for the Defence of the Historic Patrimony of Cerro de San Pedro (*Patronato Prodefensa del Patrimonio Historico y Cultural de Cerro de San Pedro, “Patronato”*). The group launched its campaign against mine, soliciting

the attention of social justice and environmental organizations in the area. Initially, the *Patronato* attempted to intervene in the government's decision-making processes surrounding the mine. As the struggle moved through time, the group began to turn its attention to direct action and legal cases. The *Patronato* changed its name to the FAO to reflect the different groups and individuals that began contributing to the movement.

At present, the FAO is a loosely-organised grassroots coalition comprised of a broad range of individuals and collectives, including environmentalists, academics, activists, parliamentarians, lawyers and local inhabitants. While some members of the FAO are residents of the sparsely-populated village of Cerro de San Pedro, many live primarily in nearby San Luis Potosí, a city of 1.5 million located twenty kilometres from the mine site. Importantly, however, the FAO also includes Cerro de San Pedro *ejidatarios*. The *ejido*, a land use regime founded following the Mexican Revolution in order to redistribute lands, is granted legal status in the 1917 Mexican Constitution and – as will be discussed – was modified prior to the implementation of NAFTA in 1994. *Ejidatarios* manage their lands communally through a collective decision-making body (Perramond, 2008; Thompson & Wilson, 1994). A portion of the Cerro de San Pedro mine site is located on Cerro de San Pedro *ejido* lands.

The FAO consists of approximately twenty core members and several dozen supporters. The diverse members of the FAO hold different reasons for opposing the mine. My interviews taught me that their shared standpoint emerges from a common interest in participating in the decision-making process surrounding the corporate acquisition of Cerro de San Pedro lands, with an

objective of halting the project⁸. The anti-mine movement is largely made up of people whose marginalization from the ruling apparatus is visible in their absence from formal processes, organizations and institutions that govern land acquisition. Conducting an inquiry from the standpoint of the FAO entails beginning from the actualities of peoples' experience of marginalization and moving to the processes used by the corporation to acquire land as they unravel "on the ground." More specifically, I set out to learn about who was entitled to participate in decisions surrounding the land acquisition process, to what extent and how, from the standpoint of the FAO. An inquiry that begins from this standpoint offers the potential to reveal information that may be markedly different from data drawn from research that begins, for example, in legal theory, economics or administration. As will become apparent, the FAO resisted and intervened in the land acquisition processes, and its experience generated knowledge that illuminates ruling relations embedded in institutional complexes.

Research purpose: Beginning my inquiry

There are many threads to the story of Cerro de San Pedro, but the strand that caught my attention was the disjuncture between two visions of the Cerro de San Pedro mine. On one hand, the FAO maintains that "local people strongly oppose the mine" (FAO, 2007b). On the other hand, the corporation asserts that the mine "enjoys overwhelming local support" (New Gold, December 14, 2009). I did not enter into my research wanting to learn about which version of the story was "true", but rather how the "support" of "local residents"⁹ that the corporation

⁸ See page 21

⁹ Refer to *Annex 3: "Responsibility", "Community" and "Support" in Corporate Documentation*, page 138.

claimed to hold was produced and organized in the corporate acquisition of 290.4 hectares of *ejido* lands¹⁰ for the Cerro de San Pedro mining project.

When I began my research, I recognized that many of the terms I was using in defining my research purpose were “shells.” As explained by D.E. Smith (2005), a “shell” is a term used by some linguists to refer to nouns that “do not stand alone but remain to be filled with substance by clauses” or some actuality (p. 112). The ways in which shells are filled are of particular interest to institutional ethnographers because they cast a light on the workings of institutional complexes, or the clusters of organizations and/or discourses that accomplish specific functions. The actualities assigned to shells play a role in coordinating peoples’ activities, standardizing courses of action and accomplishing institutional discourses. While this topic will be further developed in the following chapters, in the paragraphs below I briefly describe my initial questions with regards to three contentious “shell” terms that I felt needed to be filled as I began my research: “land acquisition”, “local” and “support.”

I used the term “land acquisition” at the beginning of my research – and throughout this thesis – to encompass the textually mediated process that legally permits privatized commercial access to mineral resources. The actualities I was interested in examining were the sequences of activities that allowed “land acquisition” to be recognized as legal in Cerro de San Pedro. I wanted to look at where the texts implicated in land acquisition were related to broader legislation, and how they connected a specific site in Mexico to the trade and investment regimes that organise the workings of the mining industry.

¹⁰ Other parcels of privately and communally-owned land were acquired for the CSP mine; however, due to the scope of this paper, I limit my analysis to the 290 hectares of *ejido* lands on which the mine pit and the road between the pit and the processing plant are located.

“Support” is a word used in numerous corporate documents (for example, New Gold, December 14, 2009). Yet what “support” actually entails and where it fits into the process through which the corporations accessed *ejido* land was unclear to me when I began my research. Likewise, the corporation’s use of “local residents” (for example, Metallica, October 23, 2003) was murky. The corporation did not clarify who those people actually were and what made them “local residents.”

I wanted my research focuses to be on filling these shells, locating provisions for “local support” within the confines of the “land acquisition” process. The texts that coordinate the activities that produce the “support” of specific people within land acquisition, however, are not all equal. Their hierarchical order was brought to light when members of the FAO contested the land acquisition process in court. My inquiry involves exploring the subsequent legal investigations into the validity, compatibility and hierarchy of implicated texts and whether they were activated within the process through which the mine began its operations.

Research methods and data collection

The research methods I used were standard in IE -- I conducted seven semi-structured interviews and collected other data from participant observation and texts. I worked closely with a professor who specializes in the history of Spanish colonization and is also a member of the FAO. All my interviewees have been publicly involved in resisting the mine at different points, and all were able to help guide me through different parts of the puzzle of Cerro de San Pedro. The first interviews I conducted were with two *ejidatarios* and two non-*ejidatarios* who had lived in the village of Cerro de San Pedro for various amounts of time while opposing the mine.

I also interviewed a priest who had been based in the village, a member of the FAO who resided in the city of San Luis Potosí, and one lawyer who had been involved in the cases in the Agrarian Tribunals. My informants were the experts and – in what DeVault and McCoy (2006) call “talking with people” – the interviews could be best described as informal discussions pertaining to “how things work” (p.23). The “things” in question were “land acquisition” and the “support” of “local residents.”

As with other types of ethnography, IE is concerned with peoples' everyday activities. Participant observation is central to IE as it is “grounded in actual events from which descriptions and stories are derived” (Diamond, 2006, p.58). It may also provide a “starting point,” serving as a very tangible means of developing standpoint and discovering the local actuality from which a problematic emerges (Diamond, 2006). The day-to-day observations that permeated my five-month stay in San Luis Potosí proved invaluable to understanding the local context and the way in which the FAO organized its resistance.

The texts that I use as data allow me to move from the experiences and happenings that my informants discuss into the translocal ruling relations embedded in the process through which the corporation obtained “support.” Using texts involved countless hours of reading legal documents, supplemented by research reports, media articles, assessments and policy briefs in Spanish. I consider the legal texts to be active and enacted by people, and explore how they are interdependent and organized hierarchically (D. E. Smith, 2005). I look at the texts in relation to the events that had transpired on the ground in order to identify which ones were implemented and how.

Ethics and realities of working in the field in Mexico

Conducting research in a foreign context is complex and, at times, difficult. Exploring social organization in a place where I had never lived and in a learned language was a challenge that required more time than anticipated.

My inquiry was directed at the social organization of a process, and my interviews did not aim to dissect the experiences of my informants or test for validity in the multiple versions of events that were recounted to me. Nevertheless, interviews themselves are not divorced from the ruling relations found within academia (D.E. Smith, 2005). Although I was not in an official “power-over” position, Northern-based researchers in Southern contexts run a greater risk of reifying existing hierarchies and furthering ongoing processes of colonization, often despite genuine attempts at researching for social change (Mohanty, 2003; L. T. Smith, 1999). While I could not help but engage in social relations embedded in South-North research, I made my attempts to acknowledge and minimize asymmetries known to my informants. I was fortunate to have a month to settle-in before beginning interviewing, which gave many members of the close-knit group I was working with time to learn more about my motivations and research. The fact that I had worked closely with several members of the FAO’s Montreal-based solidarity group and was known in my home community through my past work on mining gave me a base of credibility and trust. I had also offered to work on the FAO campaign in Mexico by producing radio shows for local community-run stations and contributing to international solidarity work, which were well-received as tangible contributions. I communicated clearly that my respondents were the “experts.” I did have to be very sensitive to questions of risk when interviewing informants, and was concerned prior to my departure about people feeling “forced” into interviews. As already

mentioned, however, my work was supervised by a university professor and facilitated by several key informants, and I only interviewed people who had already taken an overtly public role in opposing the mine. In the end, I had to exercise diplomatic skill in explaining why I could not interview every single member of the FAO!

Because I was associated with members of the FAO, government officials and mine supporters were inaccessible to me. I had not planned to interview mine supporters, but the corporation and government were the sole possessors of several key documents that I hoped to locate. Neither the corporation nor the local government responded to my calls.

Using texts as data was complicated on several other fronts as well. The Mexican bureaucratic, administrative and judicial systems are very different from the Canadian regimes I was familiar with, and some key legal terms do not translate easily. Language in legal documents is challenging – for Mexicans and Canadians alike. Learning about textually-mediated land acquisition was complicated by over thirty legal challenges and appeals. Finding a “paper trail” of land acquisition and the events described in my interviews or in other documents I read was sometimes impossible. Furthermore, there were many allegations of corruption in the corporate land acquisition process. Gathering data was a time-consuming process, but the details that emerged were very useful in the day-to-day work of community organizing against the mine.

3. Background: Corporate responsibility and the discursive context of mining

Embedded within the processes through which mining corporations acquire land access are complex social relations that connect people opposing the mine to other people, places and moments, where corporate, state and multilateral policies that form trade and investment regimes are generated and set in motion. The preceding chapter explains how my research uses IE to explore the translocal ruling relations embedded in the process through which the corporation acquired access to Cerro de San Pedro *ejido* lands. It defines how my inquiry into the social organization of the land acquisition process focuses on how the “support” of “local residents” was produced. Yet understanding why the corporate claims of holding the “support” of “local residents” is so crucial requires an understanding of the transnational mining industry.

This chapter provides background information on the workings of the mining industry, the emergence of CSR as an institutional discourse, and what this entails for corporations and their opponents. It begins by outlining the major activities and transactions that must occur in order for a metal or mineral to be extracted, processed and sold. Next, it turns to the workings of the industry, shedding light on the reasons behind the industry’s shift to increased transnational investment in Latin America, Asia and Africa over the past decade. More transnational mining has been accompanied by transnational opposition, which has grown in response to allegations of human rights abuses and environmental devastation by extractive corporations. After summarizing these trends, the chapter moves to the CSR frameworks that corporations have adopted in response to pressure to adhere to social and environmental legislation, as well as the key debates that have arisen. I then focus on the contested but prominent themes of

“communities”, “support” and “consent”. The chapter concludes with a discussion on the institutional discourse of CSR.

The workings of the mining industry

The mining industry is characterized by series of interlocking transactions involving the prospectors that conduct explorations, corporations that extract and process metals and minerals, shareholders that invest in corporations, insurance brokers that sell their policies to corporations, banks and multilateral institutions that finance insurance, and other individuals who are seeking to maximize profit while minimizing risk (Mines, Minerals and Sustainable Development [MMSD], 2002). The industry describes itself as “[exhibiting] the characteristics of an integrated production system, with companies occupying identifiable niches and using various business strategies to reduce risk and to create opportunities for growth and upward mobility in the system” (MMSD, 2002, p. 60). This citation captures several important features of the industry that will be briefly introduced in the section that follows: the various types of corporations, organizations and institutions that comprise the mining sector; the multiple ways in which the industry is hooked into the workings of the world financial system; and the “opportunities for growth and upward mobility” that the industry pursues in its investments.

Mining begins with exploration, which involves locating untapped mineral reserves and estimating their quantity, quality and accessibility (Poliquin, 2004). Correctly estimating quantities and qualities of minerals buried deep within the earth while attracting investment in a context of fluctuating prices is a challenging but potentially lucrative endeavour (Hennart, 1989; World Bank Group, 2006). Specialized companies, many of which are small firms known as “juniors”, usually undertake this activity. In theory, juniors attract investors to the mineral

reserves that they locate. Juniors usually proceed to sell the ore bodies to “intermediate” or “major” mining companies with more established holdings (MMSD, 2002; Roundtables, 2007).

Extracting minerals and metals from the earth and transforming them into useable forms is a capital-intensive activity. Most mining companies are publicly-registered, meaning that their shares can be bought and sold. Although the fluctuating prices of mineral commodities are presumed to simultaneously reflect and affect both demand and supply, they are subject to “price-setting interventions by industry and governments” (MMSD, 2002, p. 54).

While some shareholders are individuals, most shares in public mining companies are held by financial institutions that manage collective investment packages, such as insurance and pension contributions. The Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSX-V), which focuses on juniors, play a vital role in selling mining shares worldwide. In 2006, sixty percent of all public mining companies were registered on either the TSX or the TSX-V, and the exchanges were the sites of over eighty-percent of all mining deals (Kuyek, 2007).

Most mining companies require debt financing, which commercial banks usually provide. Multilateral institutions, regional development banks and export credit agencies may provide additional funding and insurance, generating further investment in return (Friends of the Earth International, 2002; MMSD, 2002). For example, the World Bank’s International Finance Corporation (IFC), which is the world’s largest multilateral provider of loan and equity financing for multinational corporations mining in the South, invested almost US\$1.7 billion in extractive industries in 2005. The Bank’s Multilateral Investment Guarantee Agency (MIGA) offers an

array of services designed to promote foreign investment in the South, such as providing investors with insurance against political risk, advising governments and mediating disputes (Moody, 2007).

The countries in which the corporations are registered are implicated in transnational mining through their involvement in multilateral institutions such as the World Bank. Governments also negotiate bilateral and multilateral trade and investment agreements, which can foster mining investment. Companies registered in Canada may enjoy additional support in the form of political and financial assistance from embassies, grants and loans, and diplomatic intervention in legal cases (CNCA, 2007; Kuyek, 2007). Government support for mining firms is encouraged by a substantial industry lobby that seeks to influence research and policy-making while engaging in advocacy.¹¹

Mining and investment in an international context: A move to the South

Because mineral reserves are non-renewable and costs change over time, mining corporations are constantly looking for potential new sources (Reed, 2002). Over the course of the 1990s, the mining industry launched and/or intensified exploration and operations in the South, while the relative share in worldwide investment in the former “strongholds” of Canada, the US and Australia decreased (Bridge, 2004). This move occurred for several reasons.

Investing in Northern industrialized countries was rendered less profitable in the 1990s by factors that include higher labour costs, more stringent environmental laws and falling ore grades

¹¹ For example, see the Prospectors and Developers Association of Canada <<http://www.pdac.ca>>; the Mining Association of Canada <www.mining.ca>; the Mining, Minerals and Sustainable Development project <<http://www.iiied.org/mmsd/>>

(Kapelus, 2002; Reed, 2002). At the same time, investment increased in Southern countries that were previously considered risky or inaccessible, due largely to World Bank and International Monetary Fund (IMF) policies and multilateral trade and investment rules. Many indebted Southern countries have been subject to World Bank and IMF interventions in order to receive debt relief and funding over the course of the past 30 years. These interventions have included “Structural Adjustment Programs” (SAPS), which were first implemented in the 1970s and renamed “Poverty Reduction Strategy Papers” (PRSP) after 2000. A central component of SAPS and PRSPs are measures designed to encourage foreign investment in a given sector by – simply stated – making it more profitable for international investors (Moody, 2007).

Among the measures through which SAPS and PRSPs have encouraged foreign investment is privatization, and the mining sector has largely shifted away from state ownership and control (Mining Watch Canada, 2001; World Bank Group, 2006). To this end, the World Bank has required that over ninety countries rewrite mining codes and legislation in order to attract and facilitate foreign investment (Bridge, 2004). The reforms often contain interlocking mechanisms which, for example, reduce taxes for investors, allow for the expropriation of profits, “relax” environmental protection requirements and deregulate land tenure (Clark, 2003; MMSD, 2002). Reed (2002) notes that Southern nations attempting to attract foreign investment are “increasingly being forced by competition by other developing countries to engage in regulatory bargaining (e.g., offering tax breaks, concession in environmental regulation, etc.)” (p. 205). Mining sector reforms in Southern countries are consistent with a broader global trend of economic liberalization and investment, supported by multilateral institutions such as NAFTA and the World Trade Organisation (WTO) (Moody, 2007).

Canadian corporations have profited immensely from these new overseas opportunities (Natural Resources Canada, 2007). Around forty percent of all exploration in the world is undertaken by Canadian companies, and mining accounts for twelve percent of all Canadian direct investment abroad (Roundtables, 2007). The generous provision of public funding is a central factor contributing to the strength of Canadian companies. Aside from the support mechanisms outlined in the previous section, Export Development Canada, the Canadian International Development Agency (CIDA), and the World Bank Group's International Finance Corporation (which includes Canadian contributions) invest heavily in the mining sector (CNCA, 2007).

The rise of corporate social responsibility (CSR) in transnational mining

Growing international resistance has accompanied growing international mining investment, and a central feature of the discursive landscape is the rise of CSR. This section describes why and how CSR has become a widely-used term in the mining industry.

The actual sites where mines are constructed are usually thousands of kilometres away from the urban locations where commodity prices are set, brokers trade stocks, governments write policies and multilateral bodies confer. There are, however, people who are less visible in the description of the transactions that comprise the mining industry: the people living on or near the mine sites. Seizing land, penetrating remote areas, building infrastructure, removing ore from the earth and utilizing chemical processing can hold serious repercussions. The growing number of transnational mining firms operating in the South has spawned numerous well-documented cases of devastating impacts on ecosystems and communities which include – but are certainly not

limited to – toxic spills, water contamination, political repression, assassinations, displacement and militarization (for example, Gedicks, 2001; Kemp, 2009; Moody, 2007; SCFAIT, 2005).

It has been widely argued that this situation is linked to the deregulation of mining sectors in the South. Multinational corporations must comply with the laws in the country in which they are operating, but not the laws of the country in which they are registered.¹² The emphasis on attracting investment described in the preceding section means that corporations enjoy less stringent – and costly – environmental, human rights and labour legislation. The absence of binding and enforceable transnational environmental, health, labour or human rights legislation further contributes to a regulatory void (Amnesty International Canada et al., 2005; DFAIT, 2006). Meanwhile, the transactions that comprise the mining sector render corporations legally accountable to the profit-making interests of shareholders, insurers, and investors instead of the communities on whose lands they are operating. As explained by Kuyek (2007):

Corporations are considered in law to be a separate “person” or legal entity: they enjoy the same rights as people (“natural persons” in corporate statute jargon). However, corporations do not have a conscience, and their performance is entirely driven by their financial performance – their bottom line. Issues like social, cultural and environmental performance will only matter if, and to the extent that, they affect the finances of the company (p. 2).

The communities across the globe who face mining projects have not remained silent. Many have mobilized transnational advocacy networks whose tactics include court cases, fact-finding

¹² In 2009, Liberal MP John McKay introduced Bill C-300, a private member’s bill that would implement several recommendations from the 2007 national roundtables mentioned on page 13. The bill will go to the House of Commons in late 2010.

missions, media campaigns, direct action and shareholder activism. The initiatives of communities have led to increased public scrutiny of the industry and a global debate on whether and how to govern and reform mining. At times, “bad press” translates into shareholder risk, placing profits in peril (Kemp, 2009; Kuyek, 2007; Roberts, 2003).

The corporate response to increased scrutiny and criticism in mining has largely been to develop and adopt business ethics strategies under the banner of CSR, a term that first emerged in the private sector in the 1950s (Banerjee, 2007; Jenkins, 2004; Kapelus, 2002). CSR, according to the often-used European Commission (2009) description, refers to “a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis.” A prevailing theme in discussions of CSR, however, is that no single definition exists. The term is fraught with conceptual ambiguities and contested views, leading to a wide variety of approaches, definitions and theoretical models (Blowfield & Frynas, 2005; Carroll & Shabana, 2010; Okoye, 2009).

It follows that corporations profess to interpret, practice and communicate approaches to CSR in a variety of ways. Many corporations articulate CSR commitments by producing documents that describe “values” or “missions”, endorsing statements or frameworks created by multilateral bodies, adopting existing codes or standards, or devising “social” or “environmental” projects or initiatives. Producing reports that describe a corporation’s performance in terms of the CSR criteria that it has established and communicate its “accomplishments” to shareholders, governments and the general public is another key component corporate CSR practice. In fact – as diverse as the approaches to CSR may be – performance reporting has emerged as a central

practice and is often presented alongside the legally required financial information. The chain of activities required to produce CSR reports has grown into an industry in its own right, with a smattering of consultants, public-relations firms, management specialists and accountants at its disposal (Banerjee, 2007; Roberts, 2003; Szablowski, 2002).

Critiques of CSR and transnational mining

Not surprisingly, CSR is an issue of contention. While debates range from technical matters, such as the adoption of specific codes and standards, to more fundamental questions regarding private enterprise and capitalism, my focus here is whether and how CSR coordinates specific activities within the processes through which mining companies access land. This question is especially pertinent in light of debates surrounding the voluntary nature of CSR standards and the lack of accountability and enforcement mechanisms (for example, Amnesty International Canada et al., 2005; Hamann, 2006; Michael, 2003). This section briefly summarizes conflicting views surrounding voluntary CSR commitments before discussing corporate-community relations within land acquisition processes.

Critics have ascertained that voluntary CSR standards are a mechanism through which corporations can manipulate public opinion without being subject to binding social, environmental and/or labour regulations (for example, Kuyek, 2006). A common debate is whether CSR is simply a public relations tool that allows a mining corporation to continue operating while avoiding facing “serious accusations that it fails to respect cultures, protect the environment and return fair shares of its profits to the countries where it operates” (Moody, 2007, p. 3). The question of whether corporate pledges of “responsibility” are rhetorical devices or signify substantial changes has been treated in various academic fields, including political

economy (Banerjee, 2007), Foucauldian theory (Livesey, 2002), critical development studies (Blowfield & Frynas, 2005), and corporate law (Conley & Williams, 2006).

Relations with “stakeholders” are the source of significant debates surrounding CSR in the mining sector (Jenkins, 2004; Kemp, 2009; Szablowski, 2002). Involving critics or opponents in CSR-related activities through “multistakeholder dialogue (MSD)” is increasingly common in mining, yet some argue that these processes are vehicles of cooptation and containment (Gedicks, 2001). Joan Kuyek (2006) maintains that:

An analysis of the concepts of CSR and MSD must first situate them within their proper contexts: as mechanisms through which the mining industry attempts to fashion its legitimacy in the public eye and retain and expand its power and influence (p.204).

CSR, “communities” and land acquisition

The debates and discussions surrounding CSR are particularly poignant in the area of community-corporate relations in land acquisition. Kapelus (2002) states that “corporate literature on CSR is permeated with references to how corporations perceive themselves to be part of the community” (p. 279). Yet Jenkins (2004) argues that:

the issue of community relations is no different from any other that mining companies must deal with, a volatile mix of risks and opportunity that must be understood, evaluated, managed and monitored.... It is clear that the decision of companies to develop community strategies does not stem from a moral choice; it

is as a strategic response to social challenges that constantly shift the background of constraints in which the organization must operate (p. 32)

The relations between corporations and communities are articulated through a range of carefully selected terms, which usually include “consultation”, “engagement”, “participation” and “MSD.”¹³ These terms describe processes aimed at determining whether some form of “consent” or “support” can be attained from the communities¹⁴. Increasingly, acquiring a form of documented “consent” or “support” is not only integral to CSR frameworks: it is a requirement for corporations receiving support from governments or multilateral bodies (Brodeur & Herman, 2006; Whiteman & Mamen, 2002). The means and procedures to secure “support” or “consent” of local communities, however, can be the most contentious aspect of corporate land acquisition.

Mining corporations acquire “support” or “consent” and gain access to resources through processes within which complex power relations are embedded. These relations can be traced from the relations between community members to locations where corporate, state and multilateral policies are generated (Whiteman & Mamen, 2002). The processes used to secure local “support” or “consent” are not always designed to take into consideration the complex dynamics at work within communities that are faced with major decisions that may have serious implications for their members’ lives (Ballard & Banks, 2003). Academic and activist literature argues that cosmetic or superficial “consultations” may simply serve to legitimize pre-determined corporate activities and form the basis of a public relations strategy without allowing

¹³ For simplicity’s sake, these terms will be referred to as MSD for the remainder of the chapter.

¹⁴ Other terms, such as “approval”, “permission”, “acceptance” or “agreement”, are also used to indicate community consensus on projects. The terms “support” and “consent” will be used throughout this thesis because they appear in documentation, texts and discourse surrounding the Cerro de San Pedro case.

for a decision-making process that may result in local people overturning project plans (Colchester & Farhan Ferrari, 2007; Mamen & Whiteman, 2001; Szablowski, 2002). Common allegations of flawed processes include limiting the definitions of “community” to exclude project critics (Macintyre, 2004), dividing communities (Weitzner, 2002b), bringing in pro-mine “community representatives” from other regions in order to influence the processes (Rights & Democracy, 2007), creating false “peoples” organizations (Colchester & Farhan Ferrari, 2007), inflicting police brutality on opponents (Das & Das, 2006), and assassinating critics (Santoyo, 2002). In her study of indigenous communities and extraction, Weitzner (2002a) notes that the “catalogue of problems identified reads like a manual of how-not-to-consult, with the benefits provided by mining companies described as short-term and tokenistic. But beyond these weaknesses, consultation processes have been destructive in and of themselves (p.5).”

Drawing from discussions on the theme of “participation” in development, critical literature interrogates what words like “engagement”, “participation”, “dialogue” or “consultation” in mining actually mean and what they should look like (Colchester & Farhan Ferrari, 2007; Whiteman & Mamen, 2002). Communities resisting extractive corporations – and, in particular, indigenous communities – have long asserted their right to “give or withhold their free, prior and informed consent to actions that affect their lands, territories and natural resources” (Colchester & Farhan Ferrari, 2007, p. 2). This principle has been termed the right to “Free, Prior and Informed Consent” (FPIC) and taken up by various groups and movements (Tebtebba Foundation & Forest Peoples Programme [FPP], 2006). The term “FPIC” was adopted to respond to many deficiencies of existing processes. “Free” implies that people who may be affected by a project must be able to exercise self-determination in making decisions in a time

frame, manner and language of their choosing, in accordance with their own processes and norms and without pressure or coercion. “Prior” entails ensuring that processes involving communities occur in advance of the allocation of land use or access to a bidding corporation. “Informed” means that potentially affected communities must have all relevant information on the project. Finally, “consent” implies that communities are able to say “yes” or “no” to a project in a manner that ultimately determines its outcome (Bass, Seth Parikh, Czebiniak, & Filbey, 2003; Colchester & Farhan Ferrari, 2007; MacKay, 2004; Weitzner, 2002a; Weitzner, 2002b; Whitmore, 2006).

The discourse of CSR

Despite gaining ground in international fora, the successful implementation of FPIC within mining land acquisition processes remains problematic (Colchester & Farhan Ferrari, 2007; Mehta & Stankovitch, 2000). While corporations have embraced terms such as “support”, “dialogue”, “engagement”, “participation” or “consultation”, they have been more reluctant to integrate “consent” – and much less FPIC – into their CSR documentation (Colchester & Farhan Ferrari, 2007; Whiteman & Mamen, 2002). These differences in wording may appear cosmetic, inconsequential, or irrelevant. Yet considering corporate language provides us with insight into CSR discourse as it pertains to mining and “communities” and, it follows, the workings of power. This section briefly defines discourse, describes several relevant studies of CSR and discourse, and explores CSR as an institutional discourse in mining.

According to D.E. Smith, discourse is used by Foucault to “identify conventionally regulated practices of using language that formulate and recognize objects of knowledge in distinctive ways” (Smith, 2005, p. 224). IE elaborates upon Foucault’s analysis and focuses on how

discourse, which is coordinated textually, organizes institutional practices. For institutional ethnographers, discourse “refers to a field of relations that includes not only texts and their intertextual conversation, but the activities of people in actual sites who produce them and use them and take up the conceptual frames they circulate” (DeVault & McCoy, 2002, p. 772, n.2). Discourses can accomplish ruling by being legally-binding. Yet they can also be less explicit, organizing what can and cannot be articulated (D.E. Smith, 2005; D.E. Smith, 2006).

The specific discourse of CSR has been the subject of numerous academic studies (for example, Banerjee, 2007; Conley & Williams, 2006; Livesey, 2002; Roberts, 2003). Livesey (2002) and Conley and Williams (2006) look specifically at texts and discourse, examining companies’ reports and documents on CSR standards and performance in order to consider whether they are a vehicle for accomplishing changes in policy and practice or simply empty rhetoric. Conley and Williams (2006) maintain that corporate reports are of interest because they are “entirely voluntary, neither their existence nor their format being dictated by governments. Thus, they reflect the considered choices that companies make about how to discuss corporate social responsibility, and their style and content are especially revealing for this reason” (p. 38). In her study of Shell’s approach to MSD, Livesey (2002) finds that “the goal was to reinstate an acceptable set of rules for how controversy over environment and social justice should be defined, discussed, and addressed in the wake of pressures for environmental and social reform” (p. 339). Conley and Williams (2006) also conclude that setting the terms and language of MSDs offers “companies a way to control the way in which [the stakeholders’] voice is exercised”, reinforcing existing power imbalances (p. 20).

Corporate CSR reporting is not an inconsequential practice. CSR reporting – and the activities and processes contained within the reports – may not bring about the type of changes that mining critics seek. Nonetheless, it does hold concrete implications for the procedural arrangements to which transnational mining firms are bound. Simply stated, the mining sector comprises a series of financial transactions, and the profitability of these transactions depends on the successful execution of resource extraction and processing activities on the mine site. Financial transactions increasingly demand some sort of CSR framework. The frameworks are texts that mediate courses of action to accomplish CSR, setting out a list of conditions into which the performance of a given corporation must appear to fit. Whether conditions are, in fact, taken into account may be debatable. Nonetheless, the development and execution of CSR organizes specific sequences of activities carried out by various professionals linked to the industry, including consultants, public-relations firms, management specialists and accountants. The experiences of people who are physically located near the sites where the actual mining activities take place must somehow be made to fit into a checklist of conditions designed extra-locally.

CSR in the mining sector is what IE refers to as an “institutional discourse”. McCoy (2006) explains institutional discourse by beginning with language, which is a “phenomena of interface” that coordinates peoples’ experiences. Language in various fields of work is a “way of knowing” and a “key constituent of institutional relations” (p.118). Institutional discourses are “conceptual systems, forms of knowledge that carry institutional purposes and reflect a standpoint within relations of ruling” (p.118). They lay out the categories and concepts into which people’s experience must fit. Yet, as Turner (2006) maintains, “institutional discourse is designed, and the processes of design are essentially political; that is, they concern the forms of power that

emerge in institutional regimes” (p. 120). It is through institutional discourse that the doings of people are concerted and coordinated across time and space. D.E. Smith (2005) asks:

How do you translate institutional discourse into something that has to be done by someone? Institutions happen in everyday actualities; people produce them in the course of their everyday doings. How are texts that accomplish the distinctive standardizing and generalizing essential to what we mean by institutions entered into the local actualities in which institutions exist? How are the shells of institutional discourse filled (p. 113)?

In the case Cerro de San Pedro, the filling of the shells of institutional CSR discourse takes us back to the site of the mine.

4. Research Site: An introduction to the conflict at the Cerro San Pedro mine

The themes of increased transnational mining investment, CSR and communities discussed in the previous chapter set the context for the conflict at the Cerro de San Pedro mine. Throughout the project's turbulent history, the corporation has assured the public that it is "responsible" and holds "local" "support" (for example, Edwards, 2009; Metallica, April 14, 2004; Metallica, October 23, 2003) while battling opponents in a long and complex sequence of court cases. This chapter draws topics discussed in the preceding chapter into the fold and maps the discursive terrain through which the corporation and the FAO enact their struggle over who "local residents" are, what constitutes their "support" and who is permitted to intervene in land-use decisions.

It is important to emphasize that I do not intend to judge or evaluate the discrepancies between the corporate and FAO analysis of CSR. Instead, indicating the disjuncture between the two versions of the story sets the context for a deeper look into how the "support" of "local residents" was produced in the land acquisition process in the chapters that follow. In other words, the "shells" the CSR institutional discourse uses must be identified before they can be filled.

The first part of this chapter summarizes corporate publications, charting the company's claims that it practices "corporate responsibility" and holds the "support" of "local residents". Next, I outline the statements made by the FAO – in documents and interventions – in response to the corporations' CSR-related claims. In both sections, background information on the location, demographics and geography of the area is provided where relevant and necessary to illustrate contradictory views on "community" and "support."

Corporate documentation and CSR in Cerro de San Pedro

Corporate documentation is of interest to me because it is a tool that a corporation uses to construct and control its public image (Jenkins, 2004, p. 28). The section that follows begins to explore the discrepancy at the heart of the conflict surrounding the Cerro de San Pedro mine by summarizing numerous reports, statements and press releases issued by Metallica, MSX and New Gold that pledge corporate “responsibility” and allege to hold the “support” of the “local residents.”¹⁵ It should be emphasized, however, that this section is not an exhaustive analysis of corporate discourse. My aim is simply to provide context for the inquiry that unfolds in the remainder of this thesis, supplemented by some examples from related research conducted in the field of IE.

While avoiding use of the term “corporate social responsibility”, the corporation makes numerous claims to practice “responsibility.” Unlike some mines, there is no distinct policy for the Cerro de San Pedro project that clearly outlines what responsibility entails and how it is evaluated. Nonetheless, there are three themes in corporate annual reports, news releases and webpages: contributions to the community, economic benefits, and adherence to standards.

The first theme is the contribution that the company makes to communities in the form of services, resources, infrastructure and supplies. Metallica’s “corporate responsibility profile” (2007), for example, states:

¹⁵ For a summary of corporate pledges of “responsibility” and statements related to the “support” of “local residents”, see *Annex 3: “Responsibility”, “Community” and “Support” in Corporate Documentation*, page 138.

with a tradition of giving, we reach out to our neighbors through special programs ranging from infrastructure initiatives, including roads and housing, to local school improvements, free community medical and dental services and extensive land reclamation programs (p. 12).

MSX maintains that its “adopted neighbors have benefited in many ways from the operation of the mine”, obtaining goods and services that range from soccer team uniforms to support in drawing property tax boundaries (Minera San Xavier [MSX], 2007, p. 51). Meanwhile, New Gold’s (November 19, 2009b) “Social Engagement” webpage refers to the corporation’s support for “growth and development in all the communities with which we engage”. In the midst of a legal conflict with the FAO in 2009, New Gold (November 19, 2009b) held that it had “improved the local environment and preserved the historic character of the town”.

The second theme encompasses claims made by the corporation that the mine will result in economic gain for local communities. While admitting that mine construction was suspended due to the legal cases filed by FAO, Metallica tells its 2004 Annual Report readers that:

MSX is very aware of the need to earn and maintain its social license to work within the municipality of CSP [Cerro de San Pedro] and takes this responsibility very seriously. With these relationships, Metallica is hopeful that the issues that have surrounded the CSP project for the past year will soon be behind the Company so that it can move forward in developing a project that will help sustain the economy of the local community for a number of years to come (Metallica, 2004, p.9).

MSX (2009) holds that it is “a source of employment, economic drive and social engagement with the neighbours and inhabitants of the Municipality of Cerro de San Pedro”. It clearly emphasizes its economic contributions to the Cerro San Pedro municipal government, which includes creating jobs, as well as donating 100 ounces of gold and 5000 ounces of silver per year (approximately \$130,000 and 15% of the municipal budget) (MSX, 2007).

A third theme that emerges in documents referring to corporate responsibility is the adherence to – albeit vague – environmental and social standards. Although its environmental permit was reinstated in 2006, for instance, Metallica (May 15, 2006) states that the authorization “further validates the company’s long held contention that the CSP project meets the highest environmental and community standards.” In 2007, the firm claims that it “made it a priority to act as a responsible mining company – from our safety practices to our environmental stewardship” (Metallica, 2007). New Gold (2009) states that Cerro de San Pedro “has an enviable record of meeting its environmental and social responsibilities”.

Academic literature suggests that the language the corporation uses to convey its contributions to the community, promise of economic gain and adherence to standards is not unique to the Cerro de San Pedro case. Jenkins (2004) states that “companies frame themselves as central components of the communities in which they operate, as neighbours and as key instigators of economic development and improved standards of living” (p. 29). Furthermore, firms often utilize “affirmations” describing the community as a “‘neighbour’, as a ‘host’, and a sense of togetherness” (Jenkins, 2004, p. 28). Research conducted by Conley and Williams (2006) suggests that using standards to articulate adherence to CSR is also common.

The corporations operating in Cerro de San Pedro have gone to great lengths to communicate “responsibility” in times of increased turmoil. When an article in McGill University’s student newspaper reported on a protest organized in Montreal featuring a delegation from Cerro de San Pedro in 2007, for example, the corporation responded. A Metallica spokesperson and public relations professional wrote that the corporation “committed to 100 additional social and economic benefits to the local community beyond what’s required” and “demonstrates a responsible approach to mining that we should hope all Canadian mining companies take” (Rowan, 2007).

Staking terrain: “local residents”, “support” and “consent” in corporate documentation

Cerro de San Pedro corporate documentation often conjoins “responsibility” with references to “community” and “local residents”. Kapelus (2002) contextualizes the prominence of these references, noting that:

the process of identifying the community has become much more explicit in nature, being designated a key task of CSR. It has also become much more sophisticated, involving the entire machinery of CSR, composed of community affairs, public relations, social impact assessments, and public involvement programmes. Identifying a community, however, is a complex and contested task (pp. 280-281).

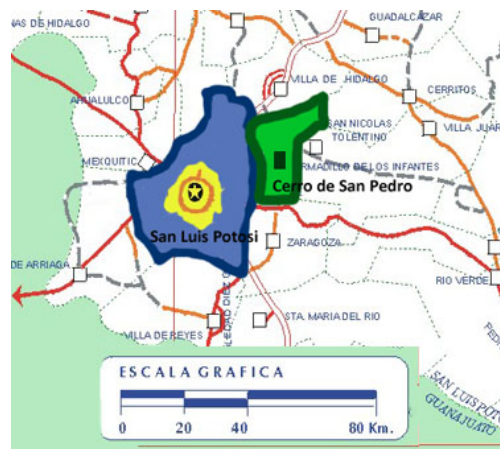
It will be seen that defining “community” in Cerro de San Pedro is one of the most contentious issues surrounding the mine, implicating the legitimacy of peoples’ involvement in decision-making and their entitlement to draw benefits.¹⁶ Understanding the complexities and conflict

¹⁶ Although “local residents”, “communities”, “local area” and “neighbours” are all used in literature about Cerro de San Pedro, for simplicity’s sake the term “local” will be used to encompass all terms throughout this thesis.

surrounding the definition of “local” requires a closer look at the location, demography and geography of the area.

Figure 2: Location of municipalities of San Luis Potosí and Cerro de San Pedro

(source: modified from <http://www.mapasmexico.net/mapa-sanluispotosi.html#mapa-linea>)



The mine itself is located on a mountain overlooking the village of Cerro de San Pedro, which is approximately twenty kilometers from the downtown core of San Luis Potosí, a densely-populated city of 1.5 million¹⁷. Agricultural fields and *colonias*, or impoverished neighbourhoods, separate the two. The town of Cerro de San Pedro and the city of San Luis Potosí are located in different electoral municipalities. The district boundary between the municipality of Cerro de San Pedro and the

municipality of San Luis Potosí is approximately eight kilometers from the mine site, and is located on the outlying fringe of the city. As a result of its fifty-year period of population decline, the municipality of Cerro de San Pedro has a population of only 3,278, of which 2,800 are registered voters (DaVila, 2009). Figure 3, taken from the project’s EIA, shows that the corporation defines the affected area as being limited in scope to the Cerro de San Pedro area.

The corporation’s documentation indicates how the small size of the municipality, combined with its isolation from San Luis Potosí, higher poverty rates and lack of government services, factor into its definition of who qualifies as “community.” A document entitled “Community, Environmental and Social Initiatives” produced by MSX (2007) provides particular insight. To

¹⁷ See Figures 2 and 3.

Figure 3: Definition of impacted area of Cerro de San Pedro mine

(source: Ontiveros, L.S., June 5, 2010).

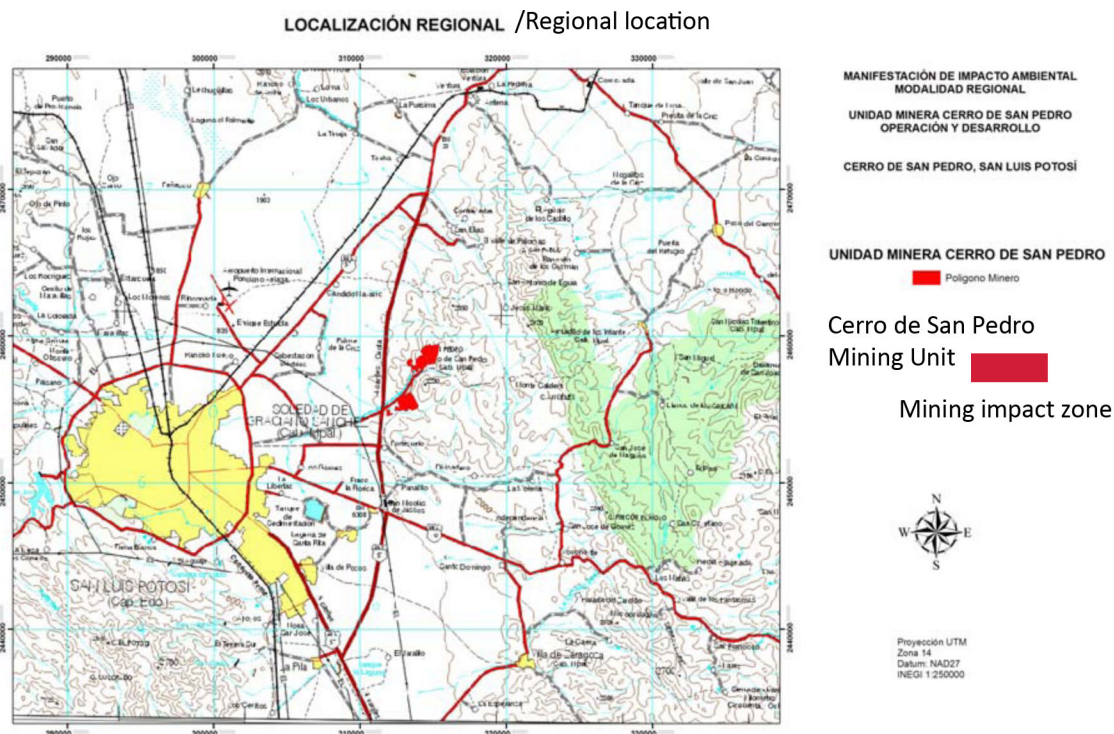
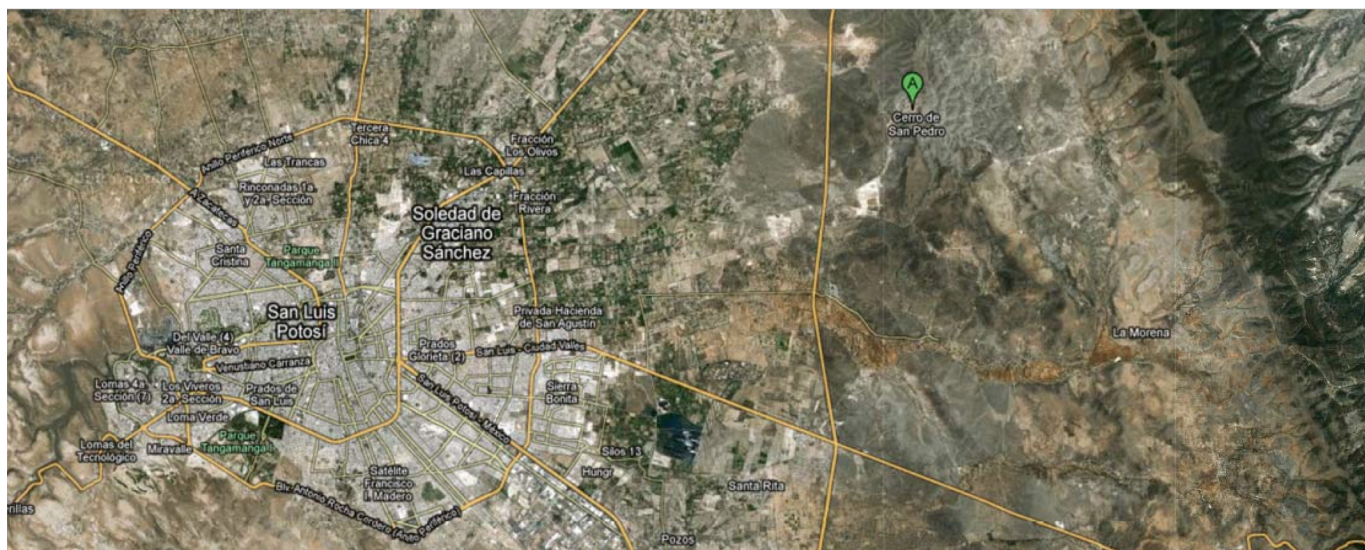


Figure 4: Satellite map of Cerro de San Pedro, Valley of San Luis, and City of San Luis Potosí

(source: www.google.com)



begin, the document emphasizes the small population and high poverty rate of Cerro de San Pedro:

The municipality is one of the poorest of the State, with a population of less than 4,000 inhabitants and a budget of less than \$1 million per year...Cerro de San Pedro [has] remained a poor miner's town, while SLP [San Luis Potosí] prospered to become one of the largest cities in Mexico. However, Cerro de San Pedro remains as a charming ghost town considered by many to be a historical monument as a whole (pp. 25-26).

The document also emphasizes the mine's distance from the city and its lack of services:

In our business a mine is usually separated by a long distance from the main population centers and it has to adopt, as you may adopt a child, the nearby communities as part of the price of doing business. Our mine is in many ways the dream job for miners because they are only 20 or 30 minutes away from their homes in a fair sized city. However, the communities are far enough from the city to be ignored by all levels of government and therefore in urgent need of help (pp. 3-4).

The residents of these "ignored communities" appear to unanimously "support" the corporation. After receiving a permit in the midst of legal problems in 2003, for example, Metallica (October 23, 2003) writes that it was "very grateful for the support and confidence shown in MSX by the local residents, the various federal agencies and particularly the Governor of the State of San Luis Potosí and his staff in securing this authorization." A letter to the editor sent by Metallica to the McGill Daily maintains, "19 out of 24 families in the town have signed letters supporting the mine because of the social and economic benefits it provides" (Rowan, 2007). A New Gold

“Fact Sheet” claims that “there is overwhelming local support for New Gold because the local residents appreciate the benefits it brings to them and their community” (Edwards, 2009).

The corporation, however, has notably refrained from using the term “consent”. In a letter sent to Alfredo Hermilo Herrera Muñoz of the National Defense Secretariat (*Secretaría de la Defensa Nacional*) on May 11th, 2004, MSX Director General Fred H. Lightner writes that:

We have been asked to obtain the consent of the non-governmental organizations that oppose the project, but we would like to inform you that obtaining the said consent is an impossible requirement. This would entail the approval of 100% of all residents, a standard that is not logical for any project, much less one where the dissidents are a small minority (translation mine) (F.H. Lightner, 2004, pers. comm., May 11).

The letter, obtained through an access to information request undertaken by the FAO, highlights another important component of the corporate discourse surrounding Cerro de San Pedro.

References to the “local residents” “supporting” the mine are often accompanied by suggestions that the project opponents are a small group of “outsiders”. In 2006, for instance, Metallica filed a press release after losing an appeal for blasting on *ejido* lands. It writes:

It is disappointing that this small group can continue to utilize Mexico’s legal system for the political gain of themselves and others, while at the same time jeopardizing the economic well being of the local communities; the livelihoods of the more than 200 employees and subcontractors who are currently working on the project and the greater business environment of the State of San Luis Potosí and United States of Mexico itself (Metallica, April 7, 2006).

Another striking example is the letter to the editor sent to the McGill Daily by Metallica in 2007, which asks “why does the FAO – with almost no representation from the local village – think it’s acceptable to ignore the wishes of the local residents and seek to condemn them to a life of poverty?” (Rowan, 2007). Similarly, a New Gold fact sheet released in November 2009 in response to a legal challenge alleges that “a small group opposed to the mine has conducted a series of challenges, appeals and counter appeals to the EIS [EIA]... Opponents to the mining operations are almost exclusively from outside of the immediate community” (Edwards, 2009).

Digging in: Contesting claims of CSR in Cerro de San Pedro

The “small group of outsiders” opposing the project is presumably the FAO. The FAO, for its part, has repeatedly contested corporate descriptions of practicing “responsibility” and enjoying the “support” of “local residents” in its documentation and interventions. This section summarizes the central arguments advanced by the FAO.

The most notable discord between the FAO and the corporation is who qualifies as “local”. It is a well-known fact that many FAO members either live temporarily in old family weekend houses in Cerro de San Pedro or in San Luis Potosí (Melé, 2007). The corporation’s insistence that the FAO members are “outsiders” (Edwards, 2009; Rowan, 2007) is especially significant in light of the differences between the two municipalities that are described above.

Recognizing the legitimacy “of one community stakeholder over another” (Jenkins, 2004, p. 28) and using exclusive criteria to define community (Moody, 2007) have widely been observed in mining corporation/community relations. Especially relevant in the case of CSR is the fact that identifying a community implies constructing boundaries and borders, which, as Kapelus (2002)

describes, “may not necessarily fit the lived experience of the people in question and may lead to the development of further complications and conflicts” (p. 24). The FAO argues that San Luis Potosí residents are “local”, and holds that the corporation uses the differences between the two municipalities to its advantage, narrowing the definition of “local residents” in order to exclude legitimate stakeholders from other potentially affected areas (for example, Mendoza & Moreno, 2007). According to Agustín, a FAO member and university history professor that I interviewed:

MSX has taken advantage of the municipal divide to center its attention on the less-than four thousand residents and argue that the community agrees with the mine. But this argument is completely false... MSX would have to speak to the real affected community, which includes more than 1.3 million people and not just the four thousand residents of the municipality of Cerro de San Pedro.

The citation above refers to a central aspect of the FAO’s point of contention: environmental risk. The FAO has argued repeatedly that the project’s affected area extends beyond Cerro de San Pedro and into the agricultural lands, highly-populated slums and city that lie in the San Luis Potosí valley. Most of these areas are part of the municipality of San Luis Potosí.

Basic information on the environmental risks of the Cerro de San Pedro mine is integral to the FAO’s argument. The Cerro de San Pedro mine uses an estimated thirty-two million liters of water per day from an aquifer that is currently used at almost double the rate of its replenishment¹⁸ but provides water to 40% of the population of the city of San Luis Potosí and 90% of the valley (Tribunal Latinoamericano del Agua, 2007; Warden & Jeremic, 2006). The San Luis Potosí region is a fragile and arid ecosystem, and areas located just kilometers away

¹⁸ The Government of San Luis Potosí calculates that the aquifer recharges at a rate of 113.5 mm³/year and is extracted at a rate of 74mm³/year (San Luis Potosí, 2008).

from the mine and processing plant are especially vulnerable to the water shortages, contamination and pollution that are characteristic of large-scale open-pit mines. (Harris & Boelsterly, 2005; Reygadas Robles-Gil & Reyna-Jiménez, 2007; San Luis Potosí, 2008). Water-related risks are compounded by the ninety million tons of cyanide used by the Cerro de San Pedro project to separate the precious metals from the ore (Tribunal Latinoamericano del Agua, 2007). Cyanide leaching processes are particularly hazardous to human and ecosystem health, and spills can have lethal consequences (Mineral Policy Center, 2000). Meanwhile, the pollution from blasts and the tailings could further disrupt agriculture and human health throughout the region. The Cerro de San Pedro operation uses approximately thirteen tons of ammonium nitrate-based explosives per day, which can result in immense quantities of dust and increase the risk of pulmonary fibrosis and silicosis for nearby communities (Boylan, 2006; Mines and Communities, 2007; Ochoa, 2006). The severity of these environmental risks is reflected in several of the environmental laws used to challenge the project's environmental permit (Alvaro, 2009; FAO, 2007b).

Many of my interviewees emphasized that the FAO has sought to address the scale of environmental risks – in part – by defining “local residents” in a way that includes the population of San Luis Potosí. This, however, has been challenging. A local professor states, for example, that the corporation has tried to maintain its focus on the village of Cerro de San Pedro instead of the valley and city because residents of San Luis Potosí “feel that [Cerro de San Pedro] is a distant problem in geographic and historic terms” (Mendoza & Moreno, 2007). Agustín alleges that:

MSX is pursuing a strategy to make sure that the city of San Luis Potosí doesn't react...[the corporation] realized that it could take advantage of the judicial and territorial borders, the divisions between municipalities, the relative poverty and the feeling of neglect in the municipality of Cerro de San Pedro to centre its attention on its four thousand residents and sixteen small communities.

The complex issue of “support” and/or “consent” for the mine is also addressed by the FAO, which has contested the “overwhelming local support” (New Gold, December 14, 2009) claimed by the corporation on several bases. In line with its move to extend the sphere of “local” to the San Luis Potosí valley, the FAO carried out a “popular referendum” in 2006 in four municipalities. Almost twenty thousand people were asked if they “agree with the installation of Mineral San Xavier in Cerro de San Pedro”, and over ninety seven percent voted “no”¹⁹ (Jeremic & Warden, 2007).

Yet the critique of “local support” extends beyond geography and numbers. Importantly, mine opponents hold that the issue of “support” cannot be divorced from the context of poverty and the corporation's limited definition of “local”. In one interview, Graciela, a resident of Cerro de San Pedro, told me that the local poverty and the small size of the village facilitated the corporation's entry into the community. She notes that “there are very few of us [in Cerro de San Pedro], and the company has captured almost half of the population. Some were threatened, others paid, and others support the corporation because they're working there”. Her view is echoed by Emanuela, a Cerro de San Pedro *ejidatario*, who states that “MSX was the best option that [many families] had had for years. How can you go against your best option? You can't.” In

¹⁹ The consulta was largely discredited by the corporation, which maintained the questions were misleading and that the public had already been consulted on the project (Pedraza, October 25, 2006).

another interview, Antonio, a representative of the Catholic Church who had been stationed in the town, says that:

The first thing the company did was study the community to see who they could get support from. Those who they got support from were strengthened economically. They gave them work and these people saw the arrival of the mining company as their salvation, the way out of the abandonment, impoverishment and resentment situation in which they lived. What does 'local support' mean here?

While contesting the terms and content of "support" – and in line with the international movement in support of the right to FPIC – the FAO has also made reference to the requirement for "consent" (Tello, 2007; Warden & Jeremic, 2006). As Emanuela claims, "if the area of influence of the project is twenty kilometers in diameter, they must have the consent of everyone in the area, right? Because they'll be all affected...including the people in San Luis Potosí".

5. Producing the “support” of “local residents” in the “land acquisition” process

The discursive terrain of the Cerro de San Pedro conflict is marked by debates surrounding CSR. While the corporation claims to hold “local support”, mine opponents contest how “local” is defined and what “support” entails. Acknowledging and explaining these discrepancies is important to my inquiry into the social organization of land acquisition from the standpoint of the FAO. In the midst – and perhaps irrespective – of these differing versions of the “story” of Cerro de San Pedro, a legal process to convert land to a mine was being pursued by the corporation in accordance with government regulations. Looking at how the “support” of “local residents” is produced directs our attention to the sequence of activities that constitute the land acquisition process. This legally sanctioned process specifies who can participate in decisions regarding the mine, to what extent, how and when. While the preceding section described the discursive setting of this tension, this next chapter delves into the procedural aspect of how the shell terms “local”, “support” and “consent” are filled with actualities in the land acquisition process.

I define the land acquisition process in Chapter 2 as the sequence of activities that allow for commercial access to mineral resources, including the issuing of leases or temporary occupations. Land acquisition is textually mediated; the corporation’s access to mineral resources is coordinated by interrelated, hierarchically organized texts that are enacted by a series of individuals who may not meet face-to-face. Throughout the process, individuals in specific positions must sign texts to authorize sets of actions. The texts specify which activities the corporation can undertake at specific stages of mine development, from the initial exploration to the processing of gold and silver, bridging the site to the translocal. This chapter traces the

progression of these activities, serving as a modest roadmap of translocal sequences of action that comprise land acquisition. My inquiry unfolds from the standpoint of the FAO, and the “roadmap” provided in this chapter illustrates who was entitled to express their “consent” and/or “support” for the Cerro de San Pedro project in a manner which was of consequence to land acquisition.

The chapter begins with a brief discussion of texts and land acquisition before turning to the process in Cerro de San Pedro itself. I explain the maps of land acquisition that I have drawn, identify the relevant texts that propelled mine development forward and locate the municipal, state-level, and national legislation within which the texts are founded²⁰. Next, I look at where “consent” or “support” was triggered by tracing who was entitled to participate in major decisions surrounding the Cerro de San Pedro *ejido* lands, how, and to what extent.

Text and land acquisition

Campbell and McGregor (2002) describe texts as “crystallized social relations” (p.79) because of the remarkable way in which they render translocal ruling relations visible to institutional ethnographers. They do so by taking us beyond what is locally observable, into the practices that make up the institution in question. Because they are replicable, texts succeed in “hooking” the activities undertaken by people in local settings to extralocal interests (D.E. Smith, 2001). In IE, text is not simply an inert object but an “active constituent of organizational process” with which we engage (D. E. Smith, 1990, p.122).

²⁰ The multilateral “hooks” are further discussed in Chapter 6 (page 77) and Chapter 7 (page 90).

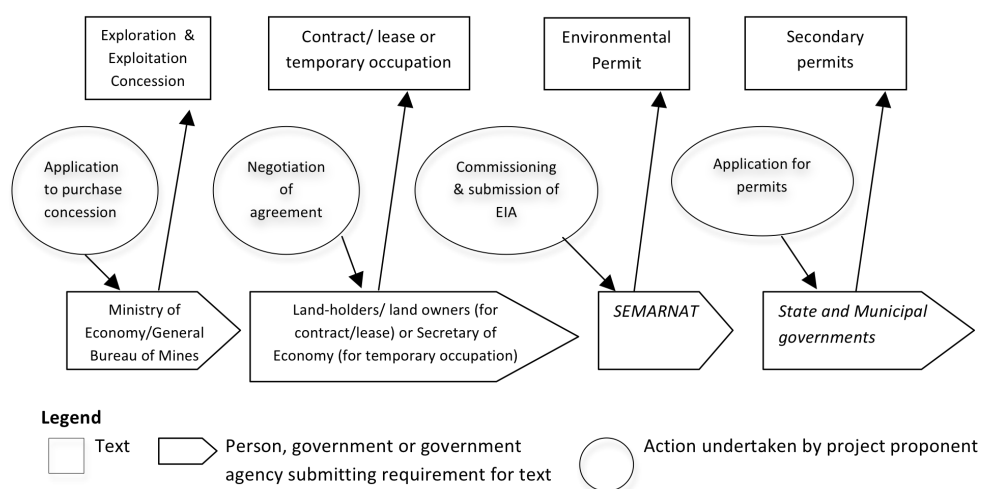
Institutional ethnographer Susan Turner (2001, 2006) uses texts to map ruling relations embedded in land-use decision-making processes. Turner's inquiry into municipal planning examines the process through which a parcel of ravine land in Ontario was approved for residential development, exploring text-based social relations that shape institutions. Turner begins from the standpoint of residents who sought to intervene in municipal planning in order to look into how texts were used in decision-making. Her mapping of text-based work is able to "not just map position locations within an institution but make visible the power of texts to organize what is getting done and how" (Turner, 2006, p. 159).

As in Turner's work, the texts that coordinate the sequences of standardized activities that produce land acquisition at Cerro de San Pedro are important elements in my research. While Turner focuses much of her analytical attention on text-based work processes, my interest here lies in understanding how the land acquisition process in Cerro de San Pedro is put together. Simply stated, I identify the texts that dictate the succession of activities that legally produced the transformation of the Cerro de San Pedro *ejido* lands into an open-pit mine.

An overview of the four steps that form the basic land acquisition process is shown in *Figure 5: Basic Land Acquisition Process for Mines*. The process is coordinated by four central categories of texts: mining concessions, a land use contract or lease, an environmental permit, and secondary permits. The issuing of the texts imply that several processes have been accomplished: the proponent has purchased a concession from the Bureau of Mines, the corporation has concluded a land use transaction with landholders or owners, the project proponent has conducted an environmental study, a government agency has granted an

environmental permit, and a series of other government bodies have allocated secondary permits. In theory, the issuing of these documents demonstrates that a mine conforms to various legal provisions drafted at the municipal, state, national and multilateral levels. The process is relatively standardized, or designed to be replicable – with some site-specific variations – on other parcels of land throughout Mexico where corporations seek to seize, extract and process mineral resources. It is through these hooks to other legislation that the texts implicate a mine site in translocal ruling relations.

Figure 5: Basic land acquisition process for mines



Mapping land acquisition in Cerro de San Pedro

Mapping the land acquisition process in Cerro de San Pedro is not an easy feat. There is surprisingly little publically available information on the precise sequence of permits that were required for the Cerro de San Pedro project²¹. Furthermore, the complex sequence of legal cases affected the corporation's progress by putting permits into question, and slowing and diverting the land acquisition process. I trace the land acquisition process through interviews, media

²¹ The interviews I requested with representatives of the Canadian embassy in Mexico and the Mexican Bureau of Mines were not granted.

articles, academic papers and corporate press releases, all of which are listed in *Annex 2: A History of Cerro de San Pedro*²². While a number of these reports are contradictory and/or incomplete, I have double-checked important texts and events in multiple sources. This section explains how to read my map of land acquisition before turning to an overview of the process itself.

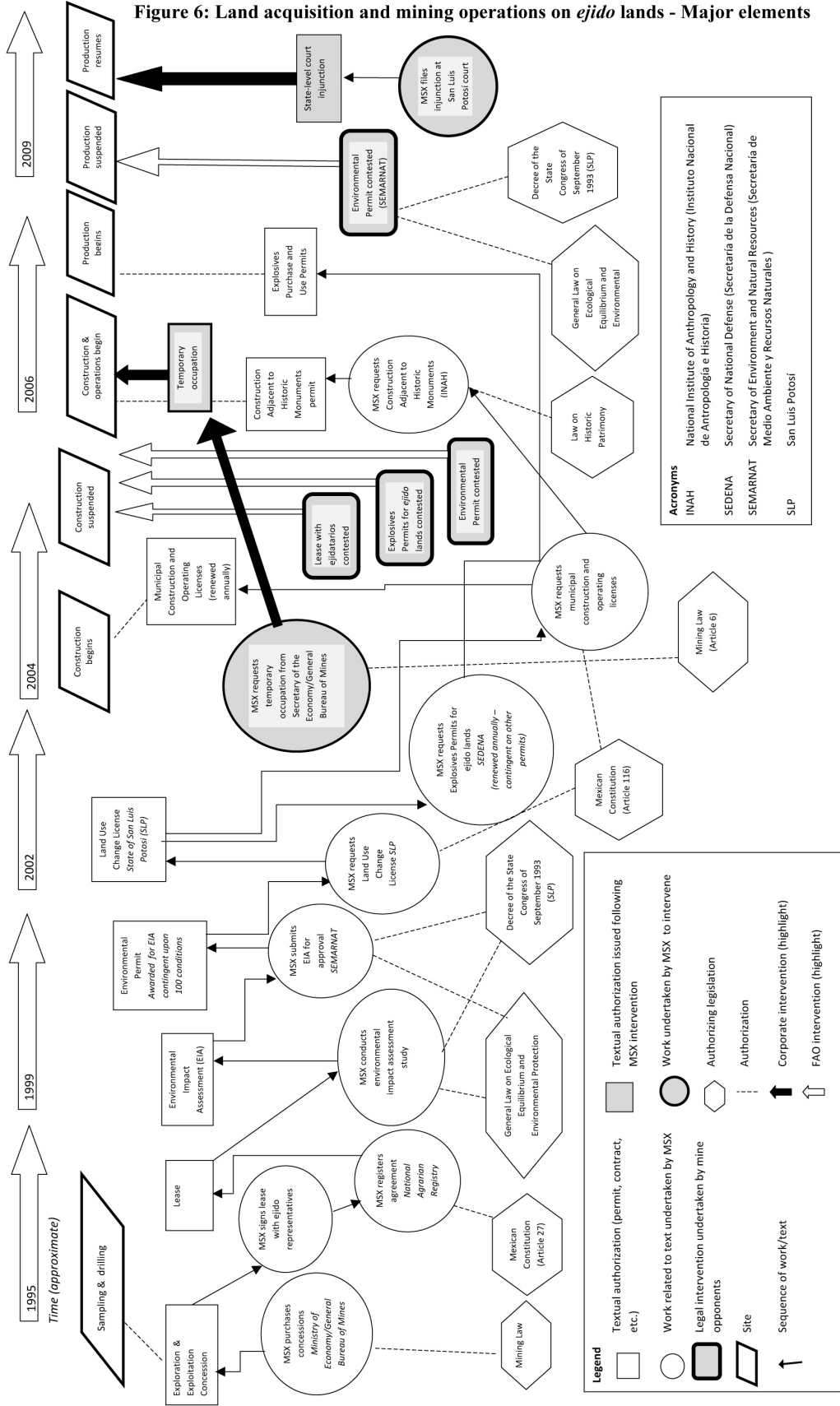
The process for the Cerro de San Pedro mine is shown in *Figure 6: Land acquisition and mining operations on ejido lands – Major elements*²³. The arrows at the top of the page mark the passing of time. The parallelograms just below represent the activities undertaken at the physical site of the *ejido* lands. The next layer shows the major texts, represented in squares. The circles indicate the work that MSX, as the project proponent, undertook to secure required documents from landholders and/or government agencies before proceeding to the next stage of the process. The agreements, licenses and permits submitted by MSX are required by law, and the most significant municipal, state-level and national legal documents are represented in the hexagons. Solid lines with arrows illustrate the connected text/work sequences, showing how each phase of project approval is based on the requirements of prior phases and texts. The broken lines represent authorization for an activity, and are used to point out the links between the activities, texts, the legal documents, and the mine site itself.

As explained, both the corporation and the FAO intervened in the standard land acquisition process. The substantial interventions of the FAO – namely the legal challenges to the

²² See page 117.

²³ Due to the scope of this thesis, the chart cannot represent the land acquisition process in its entirety. The main steps and documents as they relate to the interest of the FAO in intervening in the process are illustrated.

Figure 6: Land acquisition and mining operations on *ejido* lands - Major elements



agreement with *ejidatarios* and the environmental permit – are displayed in the shaded rectangular boxes with rounded corners. The corporation's counter-suits are not illustrated in the chart, but its major interventions are shown in the shaded shapes that correspond to the legend (i.e. circles represent work and squares represent text). A heavier arrow shows where corporate interventions affected the land acquisition process significantly. The white arrows indicate where the FAO's interventions considerably affected the land acquisition process.

- ***The exploration and exploitation concessions***

The land acquisition process in Cerro de San Pedro begins at the left side of the chart, with the purchase of mining concessions. Metallica acquired twenty-five mining concessions in 1995 by purchasing MSX (Metallica, 1995). MSX had purchased the concessions from the Mexican government, which is allocated the rights to subsoil natural resources by virtue of Article 27 of the Mexican Constitution (Zamora, Cossío, Pereznieta, Roldán-Xopa & Lopez, 2004).

The sale of concessions is regulated by the Mexican Mining Law (*Ley Minera*, 1992), which is administered by the Mexican Federal Executive Branch through the Ministry of Economy's (*Secretaría de Economía*) Federal Mining Bureau (*Dirección General de Minería*). The Mining Law dictates requirements for the allocation of fifty-year exploration and exploitation concessions²⁴. Concessions are awarded to applicants who meet the requirements of the Mining Law through either a bidding process or on a first-served basis. Although they can only be granted to Mexican entities, the Foreign Investment Law (*Ley de Inversión Extranjera*, 1996) allows Mexican mining corporations that are wholly-owned by foreign firms to purchase mining

²⁴ The exploration and exploitation concessions had been separate until 2005, when the Mining Law was amended (García-Garza & Vázquez-Silveyra, 2006).

concessions. The concessions do not directly confer property rights to parcels of land, but they allow the holder to explore, exploit and sell all minerals and substances found below the earth's surface, as well as dispose of all waste or debris. As will be seen in the case of the Cerro de San Pedro mine, concessions also allow corporations to seek additional permits to expropriate, temporarily occupy or establish an easement on the lands used for exploration, exploitation or processing. Mining concessions grant holders preferential access to water over other water users. Obligations for the concession-holder include paying fees required by the Mining Law, disclosing information to the Ministry of the Economy, complying with applicable regulations, and permitting inspection visits. The concession applicants must submit a basic environmental summary to the SEMARNAT's National Institute of Ecology (*Instituto Nacional de Ecología*, INE), which has ninety days to submit an authorization (Alvarado, 2009; Coordinación General de Minería, 2008; Garcia-Garza & Vazquez-Silveyra, 2006; Kryzda, B., Goodrich, Riquelme y Asociados, 2005; Zamora et al., 2004).

- ***The lease***

Mining concessions allocate rights to sub-surface minerals, but they do not allot any rights to the surface of the land. As mining also affects the surface area of a given concession, separate "private covenants" are required with the landholders (Coordinacion General de Minería, 2008). As will be further discussed, reforms to Article 27 of the Mexican Constitution allow *ejido* land to be leased to third parties. In these cases, *ejido* members must issue and document their consent for land use changes such as mining by signing a lease. When the surface area above a concession includes *ejido* land, mining is carried out under the auspices of the Secretary of Agrarian Reform (Coordinacion General de Minería, 2008). If the project proponent is unable to

negotiate a lease or contract with landholders, it may present “evidence” that it attempted to do so. In these cases, the Secretary of the Economy may issue a temporary occupation (Ochoa, 2006).

Agrarian law is triggered within the land acquisition process for Cerro de San Pedro because a portion of the concession is located on *ejido* land, and MSX was forced to negotiate with *ejidatarios*²⁵. MSX signed a lease for 290.4 hectares of *ejido* land with the individuals who claimed *ejidatario* status in an Extraordinary General Assembly of the Cerro de San Pedro *ejido* in 1997. The agreement stipulates that the mine must conform to the laws of Mexico. It allows the corporation to occupy the land for a fifteen-year period, provided that other required permits are obtained. The lease between the two parties is registered at the National Agrarian Registry (*Registro Agrario Nacional*) (Assies, 2008; Comisariado Ejidal, 1997).

- ***The environmental permit and secondary permits***

Once the relevant contract or lease is signed by both the project proponent and the land-holders, mining corporations must commission an environmental assessment and present the results in an EIA, in accordance with the General Law on Ecological Equilibrium and Environmental Protection (*Ley General de Equilibrio Ecológico y la Protección al Ambiente*, LGEEPA). The environmental assessment is conducted and written-up by a consultant hired by the project proponent. The EIA is evaluated by SEMARNAT, which approves, denies or issues conditional approval for the project. If approved, SEMARNAT issues an environmental permit.

²⁵ Separate negotiations with private landowners, communal landholders and other *ejidos* were required for other sections of the mining area. The scope of this thesis limits this discussion to the process applied to the *ejido* lands.

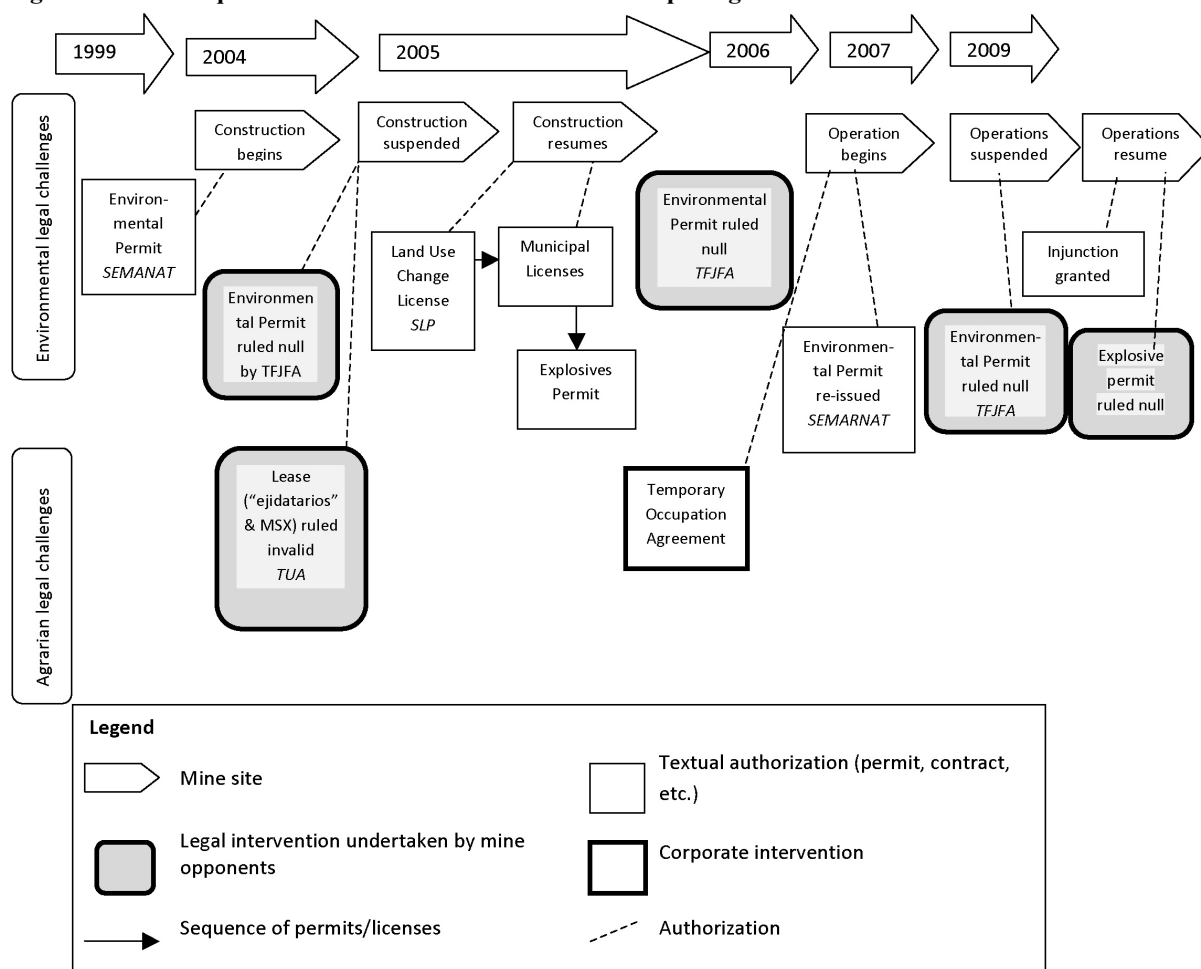
The SEMARNAT environmental permit is an essential document: the project proponent cannot seek any additional permits without it. The additional required permits vary from project to project, and are triggered by the specific environmental risks identified in the EIA. If the project, for example, is deemed to present risks in terms of hazardous waste, another permit is required. As in the rest of North America, most land in Mexico is subject to zoning laws at the state and municipal levels, and projects that would alter designated land uses are also subject to additional sets of licenses and permits. At the state level, projects may be required to obtain land use change licenses, construction permits, operating licenses, and licenses for the use and occupation of premises. Other state and municipal planning policies that regulate land use may also involve additional permits and licenses (Coordinacion General de Minería, 2008; Goodrich, Riquelme y Asociados 2006; Palerm & Aceves, 2004).

In 1999, SEMARNAT issued an approval for the Cerro de San Pedro project's EIA, contingent upon one hundred conditions, and awarded an environmental permit (Metallica, 1999). This allowed the corporation to seek and obtain additional permits, including state-level Land Use Change Licenses, explosives permits and additional necessary local permits (Metallica, May 8, 2000). The risks outlined in the EIA implicate several national, state-level and municipal laws and policies. These include the Decree of the State Congress of September 1993 (*Decreto Estatal del 24 septiembre de 1993* [Decree of 1993]), which deems Cerro de San Pedro and the surrounding area a protected site due to its ecological significance and importance to watersheds. The Decree of 1993 bans activities that could lead to changes in the subsoil for a twenty-year period (Reygadas Robles-Gil et al., 2008).

- **Legal challenges within the land acquisition process**

By the time the state Land Use Change Permit was awarded, the corporation had encountered its first significant legal obstacle in the land acquisition process. Because the challenges altered the timing and course of the land acquisition process, they are included in this section and shown, in detail, in *Figure 7: Land acquisition in Cerro de San Pedro – Principal legal conflicts*.

Figure 6: Land acquisition in Cerro de San Pedro – Principal legal conflicts



The Decree of 1993 and the LGEEPA were grounds for an environmental suit filed by NGO and FAO affiliate Pro San Luis Ecológico at the Superior Chamber of the Federal Fiscal and Administrative Federal Tribunal (*Sala Superior del Tribunal Federal de Justicia Fiscal y*

Administrativa, TFJFA) in 2000 (Greenpeace Mexico, 2006). The TFJFA, which is the most significant administrative court in Mexico, operates autonomously within the government's Executive Branch and can overturn administrative rulings that it deems illegal, declaring them null or void (Kossick, 2004; Zamora et al., 2004). The TFJFA imposed a decree of nullity on the Cerro de San Pedro environmental permit in 2000, which the FAO sought to enforce through an appeal for constitutional protection, or *amparo*²⁶, in 2005 (Reygadas Robles-Gil et al., 2008). As noted earlier, SEMARNAT re-authorized the project's EIA and awarded a new environmental permit for the use of *ejido* land on April 10, 2006 (Azua, February 22, 2007; Reygadas Robles-Gil et al., 2008).

In 1999, MSX also received a notice from the National Agrarian Registry that the individuals who signed the lease in 1997 were not officially recognized as *ejidatarios* (Lic. H. Errendira Giron Flores 2000, pers. comm., March 15). Because the matter concerned agrarian law, the lease was contested at the United Agrarian Tribunal (*Tribunal Unitario Agrario*, TUA), a decentralized conflict resolution panel created during the constitutional reforms of 1991 (Assies, 2008). The newly-accredited *ejidatarios* also began contesting the Cerro de San Pedro project's explosives permits, issued by the Secretary of National Defence (*Secretaría de la Defensa Nacional*, SEDENA).

- ***The temporary occupation***

With the agrarian suit pending, MSX filed a request to the Ministry of the Economy for a temporary occupation of the *ejido* land (Azua, 2007; Metallica, June 10, 2005). Temporary

²⁶ The *amparo* aims to defend individuals against violations of rights protected within the 1917 Mexican Constitution by state and federal officials (Zamora et al., 2004).

occupations are provisions within Article 6 of the Mining Law that guarantee the concession-holder access to the land required for all phases of mine development. Temporary occupations are granted by the Ministry of the Economy based on a review of technical reports filed by the corporation, hearings for affected landowners, and government appraisals. Temporary occupation applications on *ejido* land are subject to agrarian law (Coordinacion General de Minería, 2008; Garcia-Garza & Vazquez-Silveyra, 2006).

The temporary occupation for the Cerro de San Pedro project triggered the issuing of several other outstanding permits and marked a major defeat for the *ejidatarios*' bid to maintain control of land use (Azua, February 22, 2007). By 2006, MSX had obtained the municipal construction and operation licenses, a permit for Construction Adjacent to Historic Monuments, and the necessary explosives permit²⁷ (Azua, February 22, 2007; Becerra, September 23, 2005; Metallica, February 9, 2006). These permits allowed production to begin in 2007. Production, as mentioned, was momentarily stalled in November 2009 when Pro San Luis Ecológico won a suit against SEMARNAT that revoked the corporation's environmental permit ("Mexican environmental agency", November 20, 2009). The *ejido* was also successful in a suit that revoked the SEDENA explosives permit, but mining activities continued nonetheless (González, August 22, 2009).

The "support" of "local residents" in the land acquisition process

In her IE of municipal planning, Turner (2006) investigates the textual practices that organize peoples' participation in land-use decision-making. Her mapping exercise begins with a desire to understand how residents' concerns were sidelined in a planning process, and the "analytic

²⁷ The SEDENA explosives permit, which must be renewed each year, was successfully challenged by the Cerro de San Pedro *ejido* several times prior to being issued in February 2006.

goal is to situate the text back into the action in which it is produced, circulated, and read, and where it has consequences in time and space” (p. 140). Turner focuses much attention on a document entitled “The Notice of Public Meetings (Notice)”, which advises residents of an opportunity to participate in the municipal planning processes surrounding development in a ravine. Her work allows her to “make visible the work going on outside the public setting that seemed to make the council’s approval so inevitable” (p. 142). She finds that residents contesting development plans “are drawn into the legally required text-based processes via standardized texts embedded in those processes” (Turner, 2001, p.300).

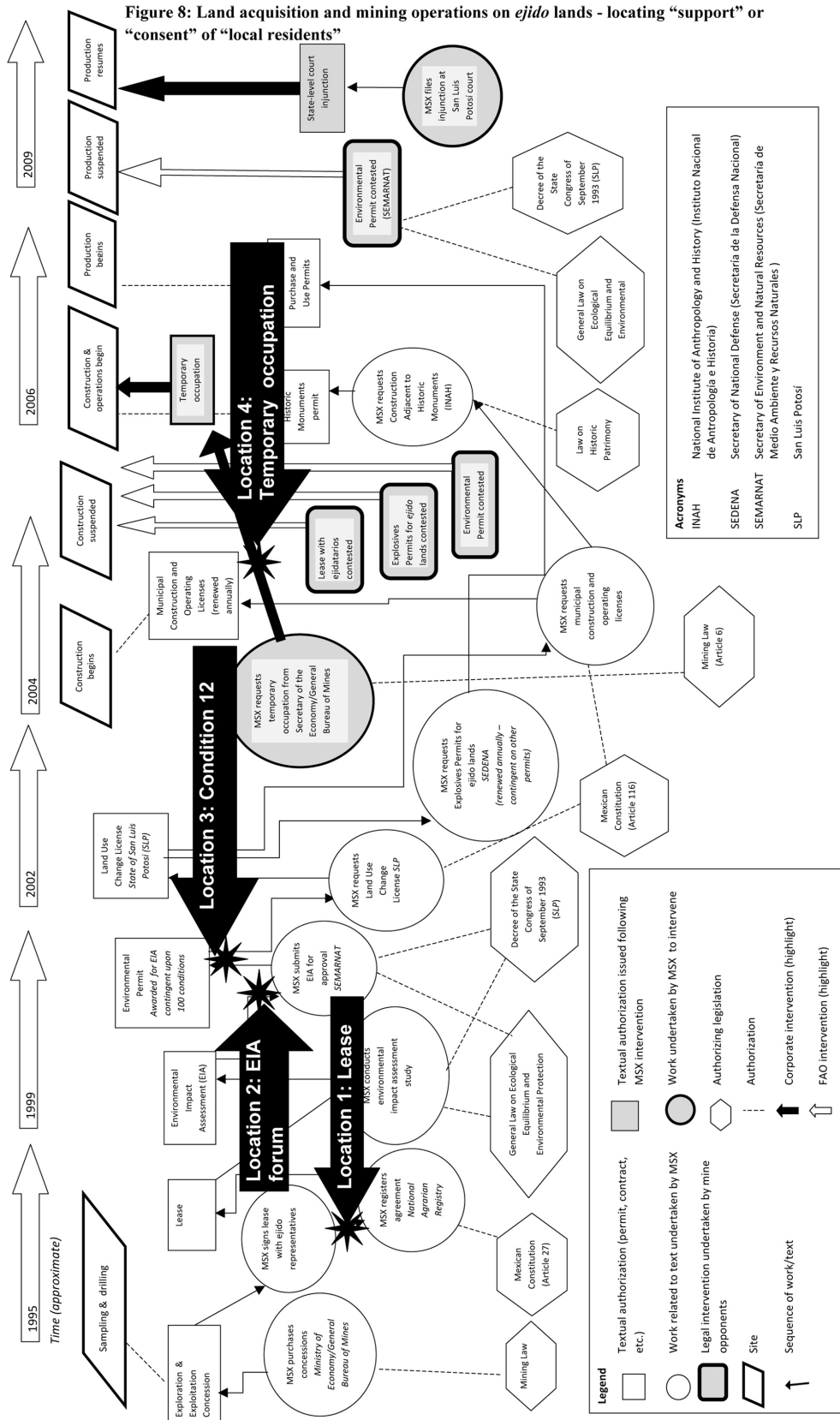
My interest in mapping the land acquisition process lies in exploring how the “support” or “consent” of “local residents” that the corporation claims exists was produced in Cerro de San Pedro. Because land-acquisition is textually-mediated, I am interested in locating the points where – as the corporations insisted – the “support” of “local residents” was produced. The agreements, permits and licenses that are issued activate a series of events related to mine development; the texts hold the authority to dictate actions and coordinate the involvement of various people at specific points in time. Beginning from the standpoint of the FAO entails looking into who was entitled to express their “consent”, “support”, or lack thereof in a manner that influenced outcomes. As will be discussed in the next chapter, it also involves identifying the points in the process where land acquisition could be confronted and contested.

Most of the text-work sequences shown in *Figure 6* implicate the corporation, government bodies and judicial entities. In general, the corporation submits documents to a government body, where an individual confirms that legal requirements specified by other texts have been

met before issuing a subsequent text, often in the form of permits or licenses. I consider the points of intervention to be locations where “support” or “consent” of “local residents” – or any individuals other than those who work for the government or the corporation – could be expressed and accounted for within the confines of the standardized land acquisition process. There are four distinct locations for Cerro de San Pedro that my interviewees identified where significant provisions exist for some type of intervention from people who do not work in government agencies: the lease with landholders, the environmental assessment process forum, “Condition 12” issued in the EIA, and the temporary occupation. These four locations are indicated in *Figure 8: Land acquisition and mining operations on ejido lands – Locating ‘support’ or ‘consent’ of ‘local residents’*. While the legal challenges themselves represent interventions that held consequences, they will be discussed in Chapter 6. My aim here is to illustrate why the FAO argues that the land acquisition process is limited and indicate specific points that were raised by the project opponents that I interviewed. As such, my writing incorporates data from interviews with FAO members into the land acquisition process developed in the preceding section.

- ***Location 1: Land tenancy and “ejidatarios”***

Leases and land use contracts are specific points in the standard land acquisition process where a corporation is legally required to secure written agreement from parties outside government bodies. The approval of two-thirds of all *ejido* members must be obtained before land can be sold or leased, and all small parcels of *ejido* land must be transferred in a single block (Thompson & Wilson, 1994).



In the case of the Cerro de San Pedro project *ejido* parcel, land access depended on the consent of the *ejidatarios*, which was to be documented in the land lease (Alvarado, 2009). Although landholders must sign the lease before an EIA can be submitted, the particular legal trajectory of the Cerro de San Pedro mine had serious implications for the succession of permits. As illustrated by the white arrows in *Figure 6: Land acquisition and mining operations on ejido Lands – Major elements*, the legal complications resulted in the agreement being challenged *after* the *ejido* land had been cleared of vegetation and construction had begun. Furthermore, the First Collegiate Tribunal of the Ninth Circuit (*Primer Tribunal Colegiado del Noveno Circuito*) ruled that the Cerro de San Pedro *ejidatarios* who challenged the lease “lacked legal standing” in 2005 (Alvarado, 2009).

- ***Location 2: The EIA Forum and “the public”***

The only point where any concerned individual – from any geographical area – could express their opinions and intervene in the formal land acquisition process for the Cerro de San Pedro mine was at a public consultation held between the submission of the EIA and SEMARNAT’s issuing of the environmental permit. The Mexican EIA process stipulates that SEMARNAT may decide to conduct a “public consultation.” The proponent must then notify the “public” in a local newspaper. SEMARNAT may or may not decide to consider the comments and concerns raised in the forum in its final EIA resolution. The resolution can be challenged at the TFJFA (Palerm & Aceves, 2004).

Although a lengthy debate on the role of “public participation” in Mexico’s environmental assessment process is beyond the scope of this thesis, Palerm and Aceves (2004) state in their study of the process that in the current system:

There is no obligation whatsoever to notify specific stakeholders of an EIA application or to involve them in the process...The consultation procedure does not define any effective means to guarantee participation, and it lacks binding obligations for the SEMARNAT to give follow-up on the opinions expressed in the meeting (p.103).

Ultimately, therefore, it can be assumed that any statement of “support” or “consent” on the part of the “public” in the Cerro de San Pedro EIA process would not necessarily impact the land acquisition process.

When I asked residents of Cerro de San Pedro whether they had attended any consultations, some recalled one meeting on January 19, 1998²⁸. All four interviewees who mentioned this forum had learned about the event less than two days beforehand, leaving them little time to prepare. Several reported difficulties entering the building and speaking, and one person claimed that because the forum was “public”, the corporation hired a bus filled with residents of other villages, who had received compensation.

These recountings of the consultation process for the Cerro de San Pedro project are not uncommon in land use planning. In her discussion of the residents’ opposition to development plans, for example, Turner (2006) remarks that:

²⁸ While not a “consultation”, two of my interview informants informed me that residents were told about the project in September 1996, when the local priest was asked to invite villagers to a religious ceremony and a meeting. After the ceremony, a mining engineer announced that MSX would be opening a mine in the village. The meeting was followed several days later by a visit from a state government official.

For residents entering the process only when they receive the Notice and attend the council meeting, it is difficult to find out and follow what is going on and to anticipate, and prepare to engage with, the texts and activities that actually produce the consequences to the land (p. 146).

- **Location 3: Condition 12 and “consent”**

While SEMARNAT approved the project’s EIA, the environmental permit it issued was dependent on meeting “Condition 12”, which held that MSX must obtain the consent of one-hundred percent of the population of Cerro de San Pedro and other affected communities in order to operate (Soubervielle, 2000). The Condition is, in theory, enforceable: The Federal Attorney on Environmental Protection (*Procuraduria Federal de Proteccion al Ambiente, PROFEPA*) is responsible for monitoring compliance to environmental regulations in Mexico (Alvarez, 2004).

Condition 12 was the subject of much debate at an extraordinary municipal council session held by Cerro de San Pedro mayor Oscar Loredó in April 2004. There, Loredó resolved to prohibit MSX’s operations until it fulfilled the conditions imposed by SEMARNAT, including securing an agreement with all inhabitants of the area. Loredó reversed his stance and allocated municipal permits for the project afterwards, citing pressure from the State Governor and President Fox (Reygadas Robles-Gil et al., 2008).

The FAO, however, waged a campaign around Condition 12 in the media and filed a case against SEMARNAT. According to Emanuela, an *ejidatario* that I interviewed:

The corporation justified itself before SEMARNAT. When we said ‘no, the corporation doesn’t have consent’, the company said ‘we advised everyone, but not all people have legal standing as plaintiffs. They don’t have legal interest. So we don’t have to ask people’s permission’. But to comply with Condition 12 the corporation had to inform the community. So they did what they called an ‘educational caravan’, and SEMARNAT produced a document that said ‘the condition has been met’. And they got the green light.

Critics have long asserted that no measures were taken to enforce Condition 12 despite petitions from project opponents (Barreiro, 2008; Soubervielle, 2000). As mentioned earlier, the corporation has stated that obtaining consent would be impossible (F.H. Lightner, 2004, pers. comm., May 11).

- ***Location 4: The temporary occupation***

Article 21 of the Mining Law stipulates that the temporary occupation application procedure contains a requirement for a hearing with the “affected landowner”. According to a press release issued by Metallica (June 10, 2005):

The receipt of the temporary occupation agreement, an important milestone for the project, is a long and involved process which includes soliciting comments from all affected parties and land owners in the area; detailed surveys and land evaluations; and paying restitution to the land owners in the form of annual payments. In this particular case, it also involved overcoming a number of legal challenges put forth by opponents of the project.

The actual application form for a temporary occupation that must be submitted by mining corporations to the Federal Mining Bureau, however, makes no mention of public support or consent²⁹, and my search for a document that attested to the comments solicited from landholders and affected parties did not uncover any. Emanuela does recall being informed of the process, and comments that, “when the company was following the procedures for the temporary occupation, it only notified the seven living *ejidatarios*... The whole temporary occupation issue really stirred things up.” None of my interview respondents were solicited for comments prior to the temporary occupation, and – contrary to Metallica’s statement – media reports express a clear opposition to the issue of a temporary occupation (for example, Becerra, December 19, 2005; Becerra, July 23, 2005; Martinez, December 19, 2004). When I wrote to New Gold to inquire about records of the process, I received a response stating that the information I requested preceded the corporation’s involvement in the project³⁰.

To summarize this section, exploring possibilities for intervention from the standpoint of the FAO raises important questions with regards to the land acquisition process. Individuals whose status as *ejidatarios* was nullified by a court signed the lease, which was then subject to various appeals and finally ruled as insignificant by an administrative court. The only point where the “support” of individuals who self-identify as “local residents” could add their voices was during the public hearing, which was criticized by FAO members on both a procedural and substantive basis. The condition for the full “consent” of the community of Cerro de San Pedro and other affected communities, as dictated by the environmental permit, was not allocated any provision for enforcement. Finally, the temporary occupation agreement apparently calls for some form of

²⁹ See Annex 4: Application form for temporary occupations, page 149.

³⁰ Communication received from Christine Marks, New Gold Inc., March 1, 2010.

soliciting comments, but no documentation of this process appears to exist and mine opponents feel they were disregarded.

The land acquisition process unraveled in a context where *who* was “local” and *what* “support” entailed was debated among project supporters and opponents in local and international media. The process indicates a disjuncture between the actualities of people opposing the mine and the texts that coordinate the institutional work of land acquisition. The “textual reality” of the “support” of “local residents”, as it is documented within the confines of land acquisition, does not conform to the actualities of the experiences of FAO members, who are adamantly opposed to the mine and consider themselves to be legitimate stakeholders. As D.E. Smith (2005) states:

Disjunctures between the actualities of people’s experience and the actionable institutional realities are imposed by the regulatory frames – law, code, policy, discourses, or other regulatory corpora – governing the structure or organization of textual devices and the categories and questions embedded in them (p.199).

The land acquisition process specifies the categories into which the experiences of people whose lives will be deeply touched by the project must fit. Yet when the sequence of permits and licenses regulating land acquisition in Cerro de San Pedro are listed, any dissent and opposition to the mine is rendered invisible. How, then, were the shells of “support” of “local residents” for the Cerro de San Pedro mine filled? Mapping the land acquisition process raises the question of whether opposition to the project was irrelevant to project advancement.

6. Contesting the “support” of “local residents” at the Agrarian Tribunal

Exploring the disjuncture between differing views on whether the “support” of “local residents” was obtained for the Cerro de San Pedro mine takes us to the land acquisition process. The process is mediated by texts that dictate a series of activities that legally produce the mine, organizing who can participate in the land acquisition, in what capacity, and at what points in time. The map of the land acquisition process for the Cerro de San Pedro mine and the intervention points illustrate that while the corporation claims to hold “overwhelming local support,” the mechanics of the standardized process through which it accessed the *ejido* land make few provisions for any type of binding or consequential input. With a volatile political environment, an administrative border that excludes many project opponents as “local residents”, and limited – as well as largely ineffective – points within the land acquisition for any kind of substantial public involvement in decision-making, it comes as little surprise that the FAO decided to contest the corporations in court.

The FAO has done so through two tribunals: the TFJFA and the TUA. The FAO, with the support of Pro San Luis Ecológico, has used the TFJFA to file its environmental appeals against the mine. Land holding and tenancy is contested through the TUA, which is the federal tribunal that considers all disputes involving the protection and administration of *ejidos* by virtue of the Law on Agrarian Tribunals (*Ley Organico de los Tribunales Agrarios*, 1992) (Zamora, et al., 2004). The TUA has become the site of a long string of legal cases that are of particular interest to me in my exploration of how the “support” of “local residents” was produced in land acquisition. If “local residents” “supported” the mine, what is being debated in a tribunal that deals with land ownership? Why is the lease – which serves to document the landholders’

consent to the mine – disputed in court? And why was the temporary occupation able to supersede all legal documents and cases evoked by the FOA? As I moved deeper into my research, I was drawn into an exploration of this branch of the Cerro de San Pedro case.

The goal of this chapter is to further explore ruling relations by discussing how the texts that form the land acquisition process were taken up – and enter into – the FAO’s resistance. The chapter takes us from the mechanics of the land acquisition process to my interviews, where FAO members and lawyers speak about the legal challenges related to the lease undertaken by *ejidatarios*. It begins by explaining why the TUA was targeted by the FAO and how the challenges were mounted. Next, it summarizes what happened in the series of cases and appeals that were launched by the FAO and the corporation to determine who was an *ejidatario* and whether they were entitled to intervene in land acquisition. The chapter then focuses on the temporary occupation permit, reflecting on what it meant for the movement against the mine and summarizing the key legal arguments used by the FAO in response. The summary I provide of the FAO’s participation in the legal suits allows us to look further into the textually-mediated ruling relations embedded in this case. Documents that mediate translocal ruling relations, I argue, ultimately have more bearing on land access than the “support” of “local residents.”

Targeting the TUA

The FAO first learned that the 1997 land lease was signed with supposed *ejidatarios* and the corporation by chance. In an interview, José, a FAO member and retired engineer who was born in Cerro de San Pedro, explains that a family member happened to see an edict³¹ in the

³¹ Edicts are notices that are required by Agrarian Law to appear when *ejidatarios* are officially recognized (Zamora, et al., 2004).

newspaper inviting individuals interested in the *ejido* to present themselves at an agrarian hearing. He recalls that:

I saw that they wanted to name *ejidatarios*. So I said to myself, if there aren't any *ejidatarios*, how is it that there is a lease with *ejidatarios*? I realized that the people who signed the contract must be trying to obtain *ejidatario* status, and so I focused on this. I told myself, here's where we can take the land back from the mining company. Why? Because it rented the land from people who are not *ejidatarios*. A few of us organized, wrote a letter, and went to the *ejidatario* meeting.

José's interest in challenging the lease became a central strategic focus for the FAO and the site of a period of legal battles. Despite finding out about the initial edict by chance, José's idea of focusing on the lease was not in the least frivolous. The map of the land acquisition process provided in the preceding section clearly illustrates why the lease was so important in the corporation's bid for the mine. José and other FAO members knew that overturning the lease would have serious consequences for the issuing of other permits and, ultimately, the mine itself. Nonetheless, the FAO required a form of legal legitimacy to be able to challenge the lease in an influential forum.

Contesting the mine in the TUA would, in principle, offer a strategic advantage to the FAO. First, cases in the TUA follow a relatively simple procedure (Zamora, et al., 2004). Second, and more significantly, contesting the lease through an agrarian tribunal implies that the matter is dealt with in a court that specializes in – and presumably seeks to uphold – the legal infrastructure surrounding *ejidos* instead of the legal arrangements surrounding corporate law

(Castillo, 2004). *Ejidatarios* are allocated what is termed “legal interest” (*interés jurídico*), or the legitimacy to contest land acquisition in the TUA (Zamora et al., 2004). José explains that:

Finding *ejidatarios* interested me because we needed to be able to have legal interest...[legal interest] means that you have a demonstrated interest in what you’re reclaiming. I couldn’t file a complaint under Agrarian Law because I’m not an *ejidatario*. We were able to put court cases forward by *ejidatarios* because they have legal interest. They’re the landholders, and they’re reclaiming what belongs to them.

The legal interest or legitimacy of *ejidatarios* is integral to discussions surrounding the mine. Graciela, for instance, tells me that “we support the legally-recognized *ejidatarios* because they’re at the forefront of the struggle. They have legal legitimacy to take on this struggle.”

As stated by researcher Patrice Melé (2007), the *ejidatario* status obtained by six FAO members essentially grants them “a ‘right to act’ in judicial guerrilla warfare” (p. 28).

Gathering the FAO *ejidatarios*

Although the FAO was certain that the individuals who had signed the lease with MSX were not accredited *ejidatarios*, the village of Cerro de San Pedro’s exodus meant that no registered *ejidatarios* were still living. After reading the edict, José appeared at the initial hearing with a list of hereditary *ejidatarios* and several of their successors. The magistrate suspended the naming of *ejidatarios* and an era of legal battles began.

The “judicial guerrilla warfare” undertaken by the FAO, however, was not without its pitfalls, beginning with the process of gaining *ejidatario* status. Clara, who obtained *ejidatario* status, recounts the lengthy and tedious procedure:

You had to go find papers, all sorts of written documents, to prove that you were really an *ejidatario*. Documents like death certificates of grandparents and birth certificates were not easy to obtain. It was also hard because the corporation was paying the civil servants off. They put all sorts of obstacles in our way, and it made it hard for people to get their papers.

The obstacles that Clara refers to were more pronounced when, after allocating *ejidatarios* status to seven individuals – six of whom were affiliated with the FAO – the magistrate who had been assigned to the case was removed by the court administration. The new magistrate immediately stopped allocating *ejidatario* accreditation, leaving over twenty requests made by FAO members unresolved (Melé, 2007). Graciela, who was denied *ejidatario* status despite being a lifelong resident of Cerro de San Pedro, states that:

My great-grandfather was the founder of the *ejido*. My great-grandmother was an *ejidatario*. My grandparents were *ejidatarios*. We are the descendents of *ejidatarios*. And yet we're still waiting for our accreditation, we still don't have it...They changed the first magistrate because of pressure from the company and the government. Then the second magistrate arrived, and none of the requests we put forward passed afterwards.

The small number of individuals granted *ejidatario* status posed a technical challenge for the FAO. Esteban, one of the FAO's agrarian lawyers, explains, "the National Agrarian Registry, a census for *ejidatarios*, requires at least thirty-five *ejidatarios* for an Agrarian Council to be formed". As José states:

In agrarian terms, the highest level of authority is the Agrarian Council. A Council can decide what it wants to do – be it selling land, renting it, evicting *ejidatarios*...This is why

they got rid of the magistrate, because he was giving *ejidatario* accreditations. They didn't want us to have a council. Having a council means having complete authority.

Despite not having an Agrarian Council, the six anti-mine *ejidatarios* were able to file cases using a figure in agrarian *amparo* law termed “legal substitution” (*persona substituta*), which Esteban explains “allows *ejidatarios* to use judicial force in the absence of an *ejido* council.” While the “legal substitution” provision does allow *ejidatarios* to “act in defense of the patrimony of the *ejido*”, Esteban notes that it does not hold the authority of an Agrarian Council.

Taking on the lease in the courtroom

In spite of the challenges described above, the opposition movement went quickly to work. Emanuela, who obtained *ejidatario* status, recalls, “as official *ejidatarios*, our first task was to try to overturn the lease that the mining company signed for those 290 hectares.” This move was highly significant. Graciela reflects, “when they started to file court cases about who was really a hereditary *ejidatario*, and when they started to contest the lease that was illegally filed by people who weren't *ejidatarios*, the confrontation against the company began.”

In a series of court cases and appeals that followed, questions of who was a legitimate *ejidatario* and whether the court-sanctioned *ejidatarios* were entitled to make land-use decisions that determined the fate of the mine were debated. The FAO won its first agrarian challenge in 2004³², when the TUA ruled that the rental agreement between the MSX and the non-registered *ejidatarios* in 1997 was void because it was signed by a group of people who did not hold *ejido* rights (Martinez, December 4, 2004). The corporation quickly responded by appealing the

³² Tribunal Unitario Agrario del Vigésimo Quinto Distrito (2002), Expediente 807/2002, Poblado: Cerro de San Pedro, Municipio: Cerro de San Pedro, Estado: San Luis Potosí.

TUA's initial decision, holding that it did not have to "cease construction of its project or vacate the ground" (Metallica, April 14, 2004). It stated:

MSX and the current possessors of the ground, who are the original *ejido* members that entered into the 1997 Lease Agreement, are in the process of appealing this decision to a higher-level Federal Court and are seeking a court order freezing the Agrarian Court decision thereby permitting MSX to continue to use the *ejido* land (Metallica, April 14, 2004).

The "original *ejido* members" that the corporation refers to are residents of La Zapatilla, a town adjacent to Cerro de San Pedro and within the municipality. According to Esteban, these residents had claimed to be *ejidatarios* when negotiating with the corporation because the Cerro de San Pedro *ejido* lands were essentially unused at the time. The residents of La Zapatilla had never been able to formalize their status as *ejidatarios*. The villagers had already accepted a resettlement package from the corporation, were reportedly promised jobs, and vowed to work with MSX to secure the mine site (Melé, 2007). The corporation, for its part, claims to be "dealing at all times with the persons who actually have had historic possession to the land being leased" (Metallica, April 14, 2004). It has repeatedly referred to the FAO *ejidatarios* as "absentee *ejidatarios*" (Metallica, November 4, 2004; Metallica, April 7, 2006; Metallica, June 7, 2006; Metallica, November 21, 2006). Thus, while the discrepancies described earlier in this thesis regarding who is a "local resident" persist, the fact that most FAO *ejidatarios* do not live full-time in Cerro de San Pedro has been at the forefront of corporate comments on the legal conflict.

The TUA ruled against the first appeal filed by MSX in December 2004, leading the corporation to state that it “continues to pursue a number of other options available to it to establish secure land tenure in order to access its mineral rights” (Metallica, December 21, 2004). These included another appeal and the application for the temporary occupation (Metallica, June 2, 2004). José recalls the severity of the situation, noting that “if the lease case fell, they knew that their access to land would fall through too...the lease was [the corporations’] citadel”. Yet the TUA ruling was still pending when the temporary occupation was issued to MSX in 2005, allowing the corporation to access land (Metallica, June 10, 2005).

Disputing the temporary occupation

The issuing of the temporary occupation at a time when the lease was still being disputed in the TUA is considered, by the FAO, to be illegal (for example, Alvarado, 2009; Becerra, July 23, 2005). The FAO legal team bases its argument in articles found in both the Agrarian Law (*Ley Agraria*) and the Mining Law. The legal team cites Article 74 of the Agrarian Law, which states that the ownership of common use lands is “*imprescriptible, inalienable e inembargable*” – or not subject to a period of limitations, not subject to seizure, and inalienable (translation mine) – albeit with several exceptions. The lawyers also evoke Article 75 of the Agrarian Law, which holds that “in cases where lands have been proven to be of use to the *ejido* population, the common land uses in which the *ejido* or *ejidatarios* participate may be prioritized” (Becerra, July 9, 2005). The FAO’s Agrarian Lawyers then turn to mining legislation, which establishes, in Article 21 of the Mining Law and Article 56 of the Regulation of the Mining Law (*Reglamento de la Ley Minera*, 1993), that the expropriation of *ejido* lands and temporary occupations are subject to Agrarian Law (Alvarado, 2009; Becerra, July 9, 2005). Taken together, these elements lead Esteban to argue that “agrarian law supersedes mining law”.

The FAO lawyers also raise a point that became a central focus in the hearings surrounding the lease: temporary occupations are not referenced in Agrarian Law. Says Cerro de San Pedro resident Graciela:

The Secretary of the Economy illegally granted a temporary occupation. The temporary occupation is like an expropriation that the government can impose on your private property. But a temporary occupation can't be given to *ejido* lands. The judicial figure just does not exist in Agrarian Law.

Esteban argues that the pending legal questions of who was an *ejidatario* and whether the lease was valid rendered it “impossible to generate a temporary occupation. The judicial conditions to implement it do not exist. Legally –without *ejidatarios* or an Agrarian Council – there wasn't anyone to notify, or any means of notifying them.” Furthermore, he holds that both a lease and a temporary occupation for the same parcel of land cannot exist: “Look – we beat the lease, they got scared, and they submitted a request for a temporary occupation to circumvent any problems. But the two figures collide. You either have an occupation or you have a lease”. Estéban also suggests that “the legal processes are so poorly managed and the regulations are so vague that there are lots of ambiguities around the Agrarian Registry...so the *ejidatarios* are not only against the mine, they're also litigating so that the courts recognize their rights.”

Discrepancies in the courtroom

The issuing of the temporary occupation may have eclipsed the question of whether or not local residents supported the mine, but it does not mean that disputes over who was a legitimate landholder are rendered irrelevant. Irrespective of the temporary occupation, the legal interest

held by the *ejidatarios* has allowed them to target a series of secondary permits issued to the corporation by various government agencies. These include – but are not limited to – challenges to the environmental permit (Mata, January 15, 2007), the suspension of the mine’s explosives permits (Metallica, June 7, 2006), the suspension of municipal permits (Balcorta, August 20, 2006), and an *amparo* against the Secretary of Agrarian Reform (*Secretario de Reforma Agraria*) (Yanez, 2007). These cases have not jeopardized corporate access to the land, per se, but they have stalled corporate operations on numerous occasions.

The Secretary of Agrarian Reform, visibly confused by the multiple cases filed before and after the temporary occupation, held an extraordinary assembly in 2006 to determine who was a legally recognized *ejidatario*. This move was criticized by an FAO lawyer, who maintains that the “the objective is to take *ejidatarios* who are inconvenient off the list and adding those who are employees of MSX”. While Agrarian Law holds that *ejidatarios* can lose their status if they aren’t utilizing their lands, the lawyer argues, “in this case, the *ejidatarios* can’t use their lands because they’re currently occupied by Minera San Xavier”. The Secretary did not come to any conclusion on the issue (Mata, 2006).

Later in 2006, MSX obtained what Estéban calls “a definitive sentence against the movement and the *ejidatarios*” when the final ruling on the lease was released. An *amparo* filed by the corporation meant that the case was transferred from the TUA to a Collegiate Tribunal (*Tribunal Colegiado*). Collegiate Tribunals do not specialize in agrarian matters but review *amparos* involving final judgements issued from other courts (Alvarado, 2009; Zamora et al., 2004). The Collegiate Tribunal maintained that the lease was void, but it dismissed the FAO

ejidatarios' claims because they had not obtained accreditation as *ejidatarios* at the time of the agreement's signing in 1997 (Alvarado, 2009).

José, like many FAO members, considers this decision to be illogical. He holds that the court "says that the lease is void, because there were no *ejidatarios* at the time. It insists on that point. But the resolution that it gave us is that 'the lease is void, and so is everything you've done [in court].'" A FAO activist and *ejidatario* writes that the resolution "did not only leave the previous rulings [in the FAO's favour] without effect, but left 290 hectares of *ejido* land in limbo. Nobody has the legal interest to reclaim the legal or illegal possession of the lands by MSX" (translation mine) (Alvarado, 2009, p. 15). Reflecting on the continuing series of Agrarian cases, Estéban notes, "you can see, from 2001 until now, the confrontation in the land tenancy cases surrounding who is a real *ejidatario* and who isn't. And with the support of the authorities, the corporation got its occupation of the lands of Cerro de San Pedro."

The final decision regarding the lease may have been overshadowed by the temporary occupation, but it is still relevant to my inquiry. I am exploring how the "support" of "local residents" was produced, and my earlier discussion of CSR emphasized the importance of filling the "shells" of institutional discourse. In the case of Cerro de San Pedro, we can inquire into what basis the corporation would have for claiming the "support" of "local residents" in the midst of court cases challenging land rights. In the land acquisition process itself, there are certain conditions that must be satisfied. As seen in Chapter 5, conditions relevant to "support" appear in four separate locations. If the anti-mine *ejidatarios* have no judiciable claims on the

lease, their dissent is erased at one of the most strategic points of the land acquisition process.

Discussing regulatory frames in institutions, D.E. Smith (2005) notes:

In the process of constructing a factual account on institutional terms, some aspects of lived actuality get picked out and worked up as an event, a state-of-affairs representation of a person, or the like. The shaping of facts, news, information, cases and other forms of knowledge is circular in this sense: frames govern the selection of what will be recorded, observed, described, and so on (p. 191).

This inquiry suggests that the filling of the “shells” have less to do with CSR and more to do with conforming to legal requirements. The “lack of support” expressed by the self-identified “local residents” affiliated with the FAO is not recorded within the legal decisions that regulate who is entitled to intervene in land acquisition in the Cerro de San Pedro. Meanwhile – despite discrepancies and ongoing cases – mining operations continue.

Textually-mediated resistance

The court proceedings play a pivotal role in organizing the FAO’s interventions in the land acquisition process. The magistrates deliberate who is entitled to voice their opinions and/or make decisions that impact the outcome of the proposed mine, and who is excluded. These decisions are based on texts regulating who is an *ejidatario* and what courses of action are possible on lands defined as mining concessions. The FAO devises legal interventions according to the processes, activating texts at the intersection of mining law and agrarian law.

I return here briefly to Turner’s (2001, 2006) work because it looks specifically at the textual practices of governing and it sheds light on the court challenges undertaken by the FAO.

Focusing on residents' attempts to intervene in a municipal land-use decision-making process, Turner (2001) finds that the standardized texts in legal processes "operate to shape residents' strategies" (p.300). The readers of the "Notice" are:

legally notified, and directed to a course of action in which 'the site' and people's capacity to act in relation to it, are co-ordinated. That course of action, or next move, is constrained. The text regulates what the reader can see, look for – the site – and what happens as a 'plan' for its use" (Turner, 2001, p.311)

In much the same way, the FAO *ejidatarios* are drawn into text-based legal processes through standardized texts that specify who is authorized to participate and how in land-use decision-making. The FAO activates the texts that regulate who is an *ejidatario*, where and how they intervene in the process, but their "moves" are constricted by margins of action specified in legal proceedings. The FAO's legal strategy is based on an analysis of how existing documentation could be interpreted in the interest of halting the mine. The texts surrounding agrarian law and resource extraction penetrate into peoples' everyday activities in a tangible way, playing a key role in organizing dissent to the Cerro de San Pedro mine.

The legal cases also clarify and expose the hierarchy of texts that govern the mining industry in Mexico. While the magistrates were responding to the legal challenge put forth in the TUA, the corporation activated a piece of legislation that ultimately superseded agrarian law. It is precisely this piece of legislation – the temporary occupation– and its position in the intertextual hierarchy governing mining that becomes my starting point for the last chapter.

7. Translocal ruling relations in Cerro de San Pedro: The Mexican Revolution meets NAFTA

In order to explore how the “support” of “local residents” was produced in Cerro de San Pedro, my inquiry begins by reflecting on international investment in mining and the resistance it has generated. Next, I introduce questions on whether CSR is simply a rhetorical device used by corporations to manage their public image or a procedural device that influences land acquisition. In the case of Cerro de San Pedro, these questions arise in response to the corporation’s claims to hold the “support” of “local residents”. In the fifth chapter, I turn to the land acquisition process to locate whether and how the “support” of “local residents” could enter into its workings. My analysis is rooted in the standpoint of the FAO, which brought its opposition to both the process itself and the corporation’s allegations of holding community support to the courtroom. The government’s issuing of a temporary occupation of *ejido* lands, as requested by the corporation, at a time when court rulings surrounding land holdings were pending is particularly pertinent to this research. The course of this inquiry now leads to the reasons why the temporary occupation guarantees land access despite discrepancies raised in court. As such, this final phase of the inquiry looks into textually-mediated translocal ruling relations within which the land acquisition of the Cerro de San Pedro *ejido* is embedded, taking us from the Mexican Revolution, through thirty years of World Bank programs, to the North American Free Trade Agreement (NAFTA).

The purpose of this chapter is to render translocal ruling relations visible by drawing a sketch of the intertextual hierarchy, which situates the temporary occupation in the context of the requirements of NAFTA. The chapter begins by returning to IE readings regarding how

hierarchies of texts coordinate institutional work, imposing regulatory frames that enter directly into peoples' lives. Next, the chapter moves to a text that emerged as a consequence of the Mexican Revolution – Article 27 of the Mexican Constitution – and regulated land distribution and mineral resource ownership until a set of reforms was implemented in the 1990s. I trace the interconnected trajectories of legislation governing *ejidos* and mining from the Revolution, through decades of World Bank programs, and to three related documents that were developed to conform to NAFTA (1994): The reforms to Article 27 (1992), the Mining Law (1993), and the Foreign Investment Law (1996). These texts shed light on the task of the Agrarian Tribunal in the Cerro de San Pedro case, which negotiated discrepancies between two land ownership regimes: the communally-owned and inalienable model of the *ejido* and the transferable private property provisions of NAFTA. The fact that the temporary occupation, a mechanism related to NAFTA, was enacted in court and eclipsed not only *ejido* law but provisions for the “support” of “local residents” may come as no surprise. The way corporate land acquisition was organized indicates clearly how extralocal interests penetrated the mine site and the lives of people resisting the Cerro de San Pedro mine. The chapter ends with a discussion of how land acquisition is organized to accommodate investment and not to accommodate any intervention to its detriment.

Intertextual hierarchies and translocal ruling relations

Melé (2007), in his study of the Cerro de San Pedro case, writes that simply winning court cases has held few concrete ramifications for the FAO, “as the central question is the definitive and executory character of the verdicts” (p. 69). His statement refers to a trend that has been quite frustrating for Cerro de San Pedro project opponents: certain permits, legislation and legal decisions hold concrete implications for activities on the mine site, while others simply do not. Which texts are “activated” and which are not is neither random nor coincidental. Looking into

how the texts are hooked into the institutional complexes that deal with investment in mining in Mexico reveals how ruling relations mediate land acquisition in Cerro de San Pedro.

IE directs our attention to “intertextualities”, or the hierarchical organization of interrelated texts. The hierarchical organization refers to the frames and concepts that are established by high-level texts and are traced to lower-level texts. Hierarchy does not simply refer to position. Instead, it is textual and conceptual, addressing how the “regulatory frames of institutional discourses structure the relevances and select the categories, concepts, and methods that organize institutional representations” (D.E. Smith, 2005, p. 187). Texts coordinating sequences of action are the substance of institutions, and their regulatory character emerges from the way they establish frames or concepts that are pertinent to the work of people in multiple settings. This explains why not all texts actually authorize activities: the higher-order texts, or texts that have been vested the authority to regulate processes, illuminate the ruling relations into which a given process is hooked (D.E. Smith, 2006). D.E. Smith (2005) writes that:

Exploring the regulatory dimensions that have been designed into the textual genres that structure the transformation of actuality into ‘information’, ‘data’, ‘news’ and so on, takes ethnography further into the contemporary forms of the organization we call ‘power’ (p. 193).

It is clear that the textual requirements of a temporary occupation have been fulfilled in the Cerro de San Pedro case. Yet the reasons why the temporary occupation had dramatic consequences for the mine site can be traced to the history of a series of texts, the way in which they have been brought into action and how they are interrelated. Doing so requires beginning in the Mexican Revolution.

The revolutionary roots of Article 27: The *ejido* and mining in the Mexican Constitution

While the laws regulating *ejidos* and mining were pitted against each other in the Cerro de San Pedro case, they actually share a common history. Article 27 of the Mexican Constitution establishes both federal ownership of mineral resources and the *ejido* regime. This section briefly summarizes the historical intersection of the two items and the corresponding regulatory regimes.

After three centuries of colonial war and occupation, in which the Spanish Crown executed its mining and agro-export agenda, Mexico's independence in 1821 was driven, in part, by a legacy of strikingly inequitable land distribution. Imported diseases, slavery, oppression and dispossession ravaged indigenous communities, and conflicts between various classes of Spanish and Mexican-born landowners erupted. Independence, however, did not rectify matters, and indigenous communities continued to systematically lose land to wealthy landowners and foreigners over the course of the century. The Mexican Revolution, which began in 1910, was largely fought for land redistribution and resource rights, which included mining. By its end, in 1917, over one million people – mostly indigenous – had died (Assies, 2008; Castillo, 2004; Hernandez, 1995).

The Revolution ended with the signing of the 1917 Mexican Constitution. Article 27 of the Constitution established the *ejido*³³ as a communal agrarian land tenure regime that would regulate and distribute land ownership, return land to indigenous communities, distribute land to

³³ There are two types of *ejidos*: individual *ejidos*, which grant legal rights to a community but allocate specific croplands to individual *ejidatarios*; and collective *ejidos*, which entail collectively-organized agricultural production. Most *ejidos* are individual (Castillo, 2004, p.32).

other rural agrarian communities, and expropriate significant areas for future redistribution. It also established national sovereignty over all land, water and natural resources in the Mexican territory (Assies, 2008; Castillo, 2004). These two provisions were interrelated. In creating a communal land-holding “social sector” model that would exist in tandem with private property ownership, Article 27 “established the legal framework for a profound agrarian reform” (Assies, 2008, p. 41). It also established the *ejido* as a legal entity for the “social sector”, which would be vested in indigenous and other rural communities (Castillo, 2004).

The *ejido* system’s model of communal rights was complemented by Article 27’s provisions to retain collective national ownership of land, resources and water. It established that land, water and resources were inalienable, or not subject to acquisition, and that their exploitation could only be granted by authorized federal institutions for the benefit of all Mexicans. Mining, as briefly discussed earlier, was integral to the colonial invasion and occupation of Mexico, and national control over mineral resources was a point of contention in the independence period. Article 27 was intended, in part, to protect mineral resources from foreign interests (Alvarado, 2009; Hernandez, 1995).

While legislation surrounding mining and the *ejido* intersect in Article 27, both sectors followed distinct trajectories thereafter. The next sections will discuss the legislative development of both sectors separately, before bringing them together again.

The *ejido* meets the World Bank and NAFTA

As revolutionary as Article 27 was at its inception, the *ejido* was perceived as an unproductive and non-modern agrarian model by various subsequent governments, and was often under threat

(Alvarado, 2009). Over the years, a series of exceptions was integrated into the legislation, facilitating private investment in state-owned resources on collective lands (Castillo, 2004).

The 1960s marked the beginning of a period of reforms to the *ejido* system that included creating extensive processes for the certification and titling of *ejidatarios* (Castillo, 2004). At the same time, Mexico – like most other Latin American nations – was encouraged by foreign governments to develop its economy according to a model of state-induced industrialization, known as “import substitution”, which was dependent on government spending made possible through loans. When world oil prices plummeted in 1982, Mexico found itself unable to repay its loans and was forced to adopt policies generated by multinational lenders, such as the International Monetary Fund (IMF) and World Bank (Assies, 2008).

The IMF, World Bank and other lending institutions demanded that Mexico restructure its economy in order to both generate currency towards its debt repayment and be eligible for further loans. The restructuring focused primarily on opening the economy to foreign investment and trade. Privatization was a central component of these programs. Castillo (2004) writes that:

Since Article 27 of the 1917 Constitution regulated the property of land and its resources, which were essential elements of the Mexican economy, they had to be transformed too, especially those related to *ejido* and communal lands because they were the land tenure property systems that were not private nor legally permitted to be privatized (p.79).

World Bank recommendations included, to this end, further regulating titling, abolishing restrictions on renting *ejido* lands, and permitting the sale of *ejido* plots to other *ejidatarios* (Heath, 1990). In 1992, Carlos Salinas de Gortari – who was, at the time, the unelected President

of Mexico's only permitted political party – officially announced that Article 27 would be restructured. The announcement was met with what Assies (2008) describes as “shock, since it had been preceded by unilateral economic liberalization that apparently was to pave the way for NAFTA” (p. 50).

Effectively, the 1992 reforms to Article 27 were not only viewed as a culmination of the restructuring imposed by multilateral lending institutions, but also as a pre-requisite to NAFTA (Assies, 2008; Castillo, 2004; Ochoa, 2006). NAFTA's (1994) primary objectives included eliminating barriers to trade, facilitating the free movement of capital, promoting “fair competition”, increasing investment, and establishing a framework for trilateral cooperation to “enhance” the agreement's effectiveness. The *ejido* regime obviously contravened these objectives because it designated lands as not legally alienable, entailing that they were not a commodity, a site for investment or convertible into private property. Castillo (2004) states that:

[The *ejido*'s] legislative protection and growth-control mechanisms were not compatible with the ‘free investment’ tenets of the era of NAFTA. Consequently, as a way to secure their future loans and investments, the national and global private financial sector required that the Mexican State legalize the sale of *ejido* land, which would become their guarantee in case they needed to confiscate it (pp. 76-77).

The 1992 reforms exempt the state from its constitutional obligation to expropriate and redistribute land. Significantly, they allow *ejidatarios* to lease, transfer, or mortgage, and – in some cases – sell their land. *Ejidatarios* may also enter into joint ventures and long-term production contracts with outside investors. Any disputes that arise between *ejidatarios* or among *ejidos* and investors are to be resolved by presidentially appointed Agrarian Tribunals

(Assies & Duhau, 2009; Thompson & Wilson, 1994). Essentially, as stated by Castillo (2004), the reform of Article 27 “allows the legal conversion of *ejido* land into a commodity” (pp. 75-76) and “made it easier for *ejido* land to be gradually converted into private property” (p. 38).

Despite rhetoric claiming that the role of government would be diminished, the reforms have been criticized for simply creating a new array of “administrative and bureaucratic functions” for the State while strengthening its role as a “regulatory body of property” (Castillo, 2004, p. 87). The Cerro de San Pedro case indicates that land tenure is still very much regulated and mediated, if only by texts that are oriented towards different functions than those of the original Article 27.

Mining meets the World Bank and NAFTA

As explained earlier, the legal framework for mining is also established in Article 27, which confirms federal jurisdiction over the sector (Sanchez-Mejorada, 2000). Interestingly, while the *ejido* regime was moving towards increased privatization through the course of the century, the mining provisions added to Article 27 in the 1960s limited foreign capital in the sector to forty-nine percent, pushing the industry to “Mexicanize” (Hernandez, 1995). The World Bank, however, had another vision for mining in Mexico, and the programs it imposed from the mid-1980s onwards had dramatic impacts on the industry. After a series of privatizations and reforms to the concession-granting process in the late 1980s, World Bank-inspired reforms were implemented during the “Mexico Mining Restructuring Project” (MMRP) from 1991 to 1998 (Castillo, 2004). The program’s objectives included fostering foreign investment and privatizing state-owned corporations, reforming policies and institutional frameworks, facilitating private sector access to land, modifying the concession-granting process, financing the industry, and implementing a “mineral rights policy” (World Bank, 2010). Importantly, the program

accomplished its objectives by targeting the sector's regulatory and institutional framework. The MMRP was implemented by Salinas' party through a program named the "National Mining Modernization Program", which drastically reformed the sector from 1990 to 1994. The World Bank, in response, offered financing to private corporations investing in Mexico. By the project's completion in 1998, over 8.7 million hectares of land were released, 17,220 new concessions were issued, and the processing time for granting concessions was reduced from five years to five months (Bricker, 2009; Hernandez, 1995).

As in the case of the *ejido*, the mining sector's regulatory framework was also modified as NAFTA came into effect. The Foreign Investment Law (*Ley de Inversión Extranjera*, 1993) and the Mining Law were both reformed in a way which – when taken together – further stimulated foreign investment in mining.

A series of reforms to the Foreign Investment Law and its regulations were implemented from 1993 until 1996. The reforms privatize state-owned sectors and corporations, offer incentives for foreign investment, and permit the full repatriation of profits and dividends to foreign locations without taxes. The law removes earlier restrictions on foreign capital in specific sectors, including mining. It eliminates previous limits that had prevented foreign ownership of more than forty-nine percent of Mexican mining corporations, and allows full foreign ownership without any prior permit or government approval (Alvarado, 2009; Hernandez, 1995; Sanchez-Mejorada 2000). Ultimately, the law grants "absolute legitimacy" to foreign investment interests and "guarantees legal interest in cases of controversy" (Costero, 2004, p. 18).

The Mining Law was reformed in 1994, replacing a law established in 1960 and intensifying “the liberalization of the mining industry through process that coincided with the signing of NAFTA” (Alvarado, 2009, p.6). The new Mining Law confirms that mining concessions may only be purchased by Mexican citizens, *ejidos*, agrarian communities or corporations, but defers the matter of foreign ownership to the Foreign Investment Law. It follows that foreign corporations are now permitted to have full ownership of Mexican mining corporations. Any company with a legal address in Mexico can therefore wholly own mining concessions, reversing earlier policies that maintained public control over the sector (Sanchez-Mejorada, 2000).

Full foreign ownership of mining concessions was not the only major legislative change implemented in the Mining Law as NAFTA was coming into effect. Article Six of the Mining Law deems mineral exploration, exploitation and processing as “of public benefit”, ensuring that they take precedence over *all* and *any* other uses of land, including agriculture or housing. To this end, Article Six is vested with an implementation mechanism to ensure that mining takes precedence of all other land uses: temporary occupations. As will be further discussed, the implications of prioritizing mining over other land uses have been dramatic in Cerro de San Pedro and beyond (Garcia-Garza & Vazquez-Silveyra, 2006).

Enforcing NAFTA: The Investor-State Dispute Mechanism

Not only did NAFTA negotiations require conformity in the legislative frameworks governing investment in its signatory countries (Castillo, 2004); it worked to “institutionalize both the deregulation of national economies and the legal guarantee of investor rights” (Clark, 2003, p. 5). Importantly, investor rights are legally guaranteed, in part, through the investor-state dispute mechanism embedded in NAFTA’s infamous Chapter Eleven.

Chapter Eleven shields investors against government measures that violate NAFTA's core principles, which hold that investors from all three member countries must be treated equally ("national treatment") and in accordance with international law while enjoying full protection from expropriation by all levels of government. The specific government measures that are subject to Chapter Eleven include all national, state or provincial legislation, local or municipal laws and bylaws, and any policies that hold consequences for private sector investment, which essentially "means that investors are protected from nearly all forms of government action" (Nogales, 2002, p. 109). Investors can challenge and seek damages directly from national governments in the countries in which they are investing by virtue of an international arbitration panel. The arbitration panel, which is "unprecedented in international law", puts "the most extensive set of rights and remedies ever provided to foreign investors in an international agreement" into action (Nogales, 2002, pp. 109-110). Chapter Eleven, therefore, "provides mineral developers as investors with the right to seek compensation for a taking from the national government in which the project is situated" (Ingelson & Mitchell, 2009, p. 70).

NAFTA's Chapter Eleven has been activated on numerous occasions, and with significant financial consequences for governments. Many cases have involved land-use stakes, and NAFTA arbitration panels have required that governments compensate investors for having refused to authorize projects based on environmental regulations. In one of the most infamous Chapter Eleven cases, an American corporation won a case in the arbitration panel against the Government of Mexico after it refused to issue an environmental permit for a hazardous waste facility in the state of San Luis Potosí. The corporation, Metalclad, was awarded almost \$16

million. Canadian mining corporation Glamis Gold submitted the first Chapter Eleven claim for a mining project. Its \$50 million suit against the US Government and the State of California, which the corporation alleges “destroyed” the value of its assessment, is still pending (Ingelson & Mitchell, 2009; Wallace, 2005).

“Community” “support” meets the World Bank and NAFTA

If the texts regulating investment in post-NAFTA Mexico impose distinct sequences of activities to stimulate and govern mining, the textual provisions for the “support” of “local residents” for projects can be said to meet a dead-end. This section briefly traces the textual basis of community “support”, beginning – once more – with the World Bank.

As Article 27 deems mineral resources as belonging to the Mexican people, it may seem inconsistent that securing some form of consent is not a central tenet of land acquisition for mining. World Bank Structural Adjustment credit 3359, which was implemented from 1986-1990, eliminated environmental requirements and public hearings from the concession-granting process (Vargas-Hernandez, 2007). An expedient and superficial concession-review process grants Mexico a distinct comparative advantage over other countries competing for mining investment (Ochoa, 2006). Mexico is the only North American country that does not grant public audiences in concession-granting processes (Alvarado, 2009).

The LGEEPA was reformed in 1988 in order to better conform to NAFTA and streamline the environmental permitting system, and regulations that pertain to EIAs were passed in 2000 (Alvarez, 2004; Palerm & Aceves, 2004). Palerm and Aceves (2004) conduct an extensive study of the EIA system and identify significant barriers to community involvement within the process.

They situate Mexico as a “semi-democracy” that enjoyed its first multi-party elections following Salinas’ exit from power in 2000:

Civil society in Mexico is maturing and demanding more participatory decision-making processes; however, the current EIA system is still far from offering such opportunities. The opportunities for participation are very limited when compared to best practice principles (p.103).

The authors also suggest that: “Public hearings should be mandatory and not left to the discretion of the SEMARNAT. This deficiency requires urgent attention” (Palerm & Aceves, 2004, p.105). Similarly, Tweetie (2006) argues: “Public involvement is an area in which the Mexican EIA law falls considerably short of its American and Canadian counterparts” (p. 890).

The Mining Law, for its part, makes few requirements for community involvement in decisions regarding mining. The word “community” only appears twice, leaving Ochoa (2006) to remark that the “flagrant omission leads in practice to mining projects that consistently fail to incorporate the concerns and interests of local peoples” (Ochoa, 2006, p. 148).

Although an extensive review of community participation in concession-granting and EIA procedures that constitute land acquisition is beyond the scope of this paper, it is strikingly obvious that provisions for any expression of “overwhelming support” or “local residents” lack the implementation mechanisms of expropriation found in the temporary occupation’s regulatory frame of Article Six of the Mining Law. Corporations of the three NAFTA signatory nations can sue governments for violating their “right” to profit, but communities cannot. It should be noted that the reforms to the Mexican Constitution, the Mining Law and the Foreign Investment Law

cannot be said to have attained the “support” of “local residents” either. Instead, they were implemented by an unelected government when Mexico was still under one-party rule. Castillo (2004) argues that:

The way that State policies have been approved and implemented in Mexico reflects the lack of participation, of those who are directly affected, in the decision-making process. The character of the Mexican State has been, to a large extent, authoritarian, and consequently so are its planning processes. The modifications to Article 27, for example, were proposed and approved behind closed doors (p. 40).

The reforms were not accepted silently in Mexico -- social movements such as the *Zapatistas* actively resisted the modifications, and struggles for community control over land are a feature of the political landscape (Castillo, 2004).

Temporary Occupation in Cerro de San Pedro: The *ejido* and mining at the intersection of the Mexican Revolution, the World Bank and NAFTA

In reflecting on the seemingly never-ending Agrarian court cases, Esteban remarks:

Is the Mining Law above Agrarian Law? The two laws emanate from the same place - Article 27 of the Constitution. A part of each of them is needed for the Article to be complete, right? So which part of the Article is above the other? Look, the fact that the tribunals have ruled that the Mining Law, or the principles of the Mining Law, are above social agrarian rights is a serious matter.

Melé (2007), meanwhile, concludes that, “the Minister of the Economy permitted the mining company to pass above the TUA by granting a temporary occupation in the name of the national priority constituted by mining activities” (p. 68).

The different pieces of legislation described in this chapter are interrelated, and when combined, they illustrate why the Cerro de San Pedro *ejido* was transformed into an open-pit mine irrespective of opposition and resistance. This section brings the texts discussed thus far together, indicating how they coordinate land acquisition and where they are hooked into broader legislative frameworks. Some attention will be given to the implications of the texts in the Mexican mining sector in general before turning specifically to Cerro de San Pedro.

This chapter suggests that struggles between communities, mining corporations and government in Mexico take place against the backdrop of a history of structural adjustment and NAFTA. As Clark (2003) notes: “In addition to its textual content, the liberalized and competitive investment climate fostered by NAFTA places further pressure on the Mexican government to provide competitive business opportunities in order to attract potential investors” (Clark, 2003, p. 23). Attracting investors is facilitated by a series of interrelated legislation. The reforms to Article 27 allow *ejido* lands to be sold to investors, the Foreign Investment Law allows foreign investors to fully own Mexican corporations and expropriate profits, and the Mining Law stipulates that the Foreign Investment Law applies to mining concessions. The Mining Law also sanctions mining as the preferred use of land. To this end, Article Six of the Mining Law establishes temporary occupations as a mechanism for ensuring that mining is given precedence in land use decision-making. In doing so, it crystallizes and operationalizes the legislative changes to the *ejido* regime and mining sector that have been discussed throughout this chapter. Simply stated, in the advent of conflict, Mexican landholders – *ejidatarios* or otherwise – are given a choice of either

accepting payment in exchange for their lands or refusing payment and seeing their lands expropriated (Ochoa, 2006).

The manner in which the Mining Law interconnects with the Investment Law and the reforms to Article 27 of the Constitution presents immense challenges to communities approached by mining corporations. Clark (2003) reflects on the situation following the constitutional reforms:

Subsequent sales by peasants of their lands, often to private corporations, took place with little legal oversight to regulate the considerable power imbalance inherent in such an association. This imbalance has been magnified by the mining law, which establishes mining as a “public interest” activity, given priority over any other use of the land. This principle leaves communities in a disadvantaged position, inducing them to negotiate on unequal terms and to accept unfair contracts, since they face the constant threat of having their land expropriated “in the public interest.” Through measures that empower foreign investors while diminishing community rights and the state's latitude for intervention to defend the public good, the result of neoliberal adjustment has been the progressive advance of socially and ecologically unsustainable mining activities (p. 23).

Ochoa (2006), in her research into the ramifications of reforms on Mexican communities confronting mining, writes that:

the Mexican Constitution establishes that subsoil minerals belong to the nation, and not to landowners. When taken together with the priority afforded to mining activities vis-à-vis alternative uses of the land, this disposition creates severe power imbalances in the relations between mining companies and the owners – individual or collective – of land.

The Mining Law obligates companies to present the contract of rental or sale for the

property (or properties) in question at the moment it presents its application, or, alternatively, to present ‘evidence’ that it has ‘attempted’ to obtain such a contract. When a company indicates that it has attempted to fashion a contract, the Ministry of the Economy designates an official to verify the ‘necessity’ of expropriating the property. In this context, the threat of legal expropriation of lands becomes an effective tool for making landowners accept unjust terms of rental or sale (pp. 148-149).

Overshadowing transactions involving communities, mining corporations and government is NAFTA’s Chapter Eleven. The arbitration panel executes investors’ guaranteed rights and its decisions hold significant financial ramifications for Mexican governments. The decisions dispute resolution body, whose members are trade and finance experts and officials, is not accessible to communities (Clark, 2003).

In light of this regulatory framework and its enforcement mechanism, it is clear why MSX, in announcing that it would apply for a temporary occupation in the midst of its legal challenges, wrote that it “is confident that it will prevail in this matter; in part due to Mexican law recognizing mining as a preferred use of the land” (Metallica, April 14, 2004). While the corporation’s confidence may have been well founded, the Collegiate Tribunal’s final decision regarding the lease was taken at the intersection of two land-holding regimes: the collective, unalienable *ejido* model and the private, commodified NAFTA model. Esteban explains:

The temporary occupation carries the constitutional weight of what a concession signifies, and what the concept of public interest is. Its basis is generated on these principles...when we went to oppose temporary occupation, we went to the Agrarian Tribunal. And the Agrarian Tribunal told us: “Here we litigate, here we interpret the

judicial truth on the question of the legality of temporary occupations.” But the Federal Courts told us that the temporary occupation was above agrarian legislation. The judge said ‘no, look. You can’t litigate against the Secretary of the Economy or the Federal Mines Bureau for issuing a temporary occupation in an Agrarian Tribunal. You have to go to an Administrative Tribunal to see if you’re right. And so everything pertaining to agrarian litigation, environmental protection, and social rights of the *ejidos* is subject to a federal judge and a Collegiate Tribunal. They said, “*ejido*, if you want to fight MSX, you have to fight against the Secretary of the Economy and the Bureau of Mines. Go to a tribunal that deals with administrative matters, where – judicially – matters are very complicated, and where judicial and economic conditions tend to be litigated in favour of the corporation”.

As such, the Cerro de San Pedro case is transferred from the agrarian realm, where temporary occupation does not exist, to a legal realm that conforms to the administrative requirements of NAFTA and enjoys its enforcement mechanism. The threat of Chapter Eleven may not have weighed on the administrative tribunal’s decisions. That said, in 2006 Metallica allegedly threatened to use Chapter Eleven to seek damages from the Mexican government in the media (Warden & Jeremic, 2006; Vargas-Hernandez, 2007). According to Warden and Jeremic (2006), “just the threat of such a suit has proven, in other examples, to provide a chill-effect within governments, thus further destabilising an already weak judicial system.”

NAFTA is a regulatory text, and its position in the hierarchy of texts governing the mining sector is revealed in the sequence of actions it triggers, which can ultimately lead to an arbitration panel that may hold financial ramifications. The texts that regulate mining – the Foreign Investment

Law and the Mining Law – were established to conform to NAFTA and impose the same conceptions of land and the resources it holds as transferable commodities. The temporary occupation is a mechanism of this interrelated nexus of texts, and it both draws on their authority and ensures that the texts can be acted upon, or translate into concrete changes on the site of the Cerro de San Pedro *ejido*. Yet the history of reforms to Article 27 attests to the incompatibility of the *ejido* regime with NAFTA. Alternative land uses or forms of land ownership are not concepts that can be inserted into the textual reality of NAFTA.

Digging deeper than NAFTA: Multilateral regimes and Cerro de San Pedro

Translocal ruling relations implicate a complex of multilateral trade and investment regimes embedded within the process through which the corporation gained access to Cerro de San Pedro *ejido* lands. Although the analysis in this thesis ends at NAFTA, it is clear that NAFTA itself is situated in a broader complex of institutional relations governing finance and investment. The World Trade Organization, the stock market, currency exchanges and other textually mediated complexes of translocal social relations work with NAFTA to govern the mining sector (Kuyek, 2007; Moody, 2007). MSX, Metallica and New Gold – like other corporations – are organized according to these complexes. As D.E. Smith (2005) writes: “Corporations exist within the ruling relations and their interconnectedness – financial markets, banks, legal systems, mass media, government departments and agencies at all levels, and so on” (p. 183).

The texts explored in this chapter allow us to see how the corporation is firmly implanted in broader institutional complexes. The FAO, decidedly, is working in a context where the institutional complex within which the corporation is embedded holds primacy over the texts that advocate for collective control over the fate of *ejido* lands. Campbell and Gregor (2002) explain

that ruling “takes place when the interests of those who rule dominate the actions of those in local settings” (p. 38).

The land acquisition process is designed to promote certain interests, and those interests are clearly revealed in the hierarchy of texts that facilitated corporate land access in Cerro de San Pedro. In her study, Turner (2001, 2006) finds that municipal planning is also organized according to specific interests. Says D.E. Smith (2005):

Though she does not engage directly with the interconnections between development as business and the municipal governmental process, it is clear that what she is describing is an organization designed to facilitate the interests of the developer rather than those of the residents of the area and perhaps of the community more generally (pp. 183-184).

In the context of Cerro de San Pedro, where transnational investment is facilitated, in part, by exclusive provisions for community participation established by Mexican domestic policies and legislation that were created to conform to World Bank requirements, the process through which the corporation acquired land is geared to facilitate its interests.

8. Conclusion: Critiques and thoughts from the bottom of the pit

This thesis tells a small part of the long and complex story of Cerro de San Pedro. The thread of the story that I follow leads from a dusty plot of land in the Central Mexican mountains to the texts of NAFTA. This section summarizes the thesis storyline before turning to concluding thoughts.

My thesis begins with my interest in exploring how the controversial statements of “overwhelming local support” (New Gold, December 14, 2009) for the Cerro de San Pedro open-pit mine were produced. This question is compelling to me because of my experience working with communities resisting mines and the growing references to CSR in corporate rhetoric. When I began my research, I felt that an inquiry into what “overwhelming local support” meant would contribute to debates over whether CSR implicates substantial changes in the land acquisitions processes through which corporations are able to legally mine.

IE offers a method for delving into this topic, and I was attracted to its promise of shedding light on “how knowledge and power come together in the everyday world to organize what happens to people” (Campbell & Gregor, 2002, p. 12). IE focuses on texts as a means of reaching beyond what is observable to us and into the translocal social relations that organize our experience. Using IE to direct my inquiry, I identify several “shell” terms that I seek to fill with actualities: “Land acquisition”, “support” and “local residents.”

I move forward in my research by exploring why “overwhelming local support” matters in the first place. An overview of the workings of the mining industry shows how corporations are

ultimately accountable to their shareholders, although they depend upon a complex of social relations to accomplish their work of minimizing risk and maximizing profit. Mining corporations' endless quest for new mineral deposits has led many to the South, where IMF and World Bank reforms have contributed to privatizing and deregulating the sector. Communities opposing mining operations in the South have successfully drawn international attention to atrocities committed by corporations. Resistance has prompted the industry to adopt an institutional discourse of CSR, which has – in turn – been criticized for failing to establish binding legislation and serving as “empty rhetoric.”

The discursive battle over the “support” of “local residents” in Cerro de San Pedro takes place in this context. The FAO has countered corporate claims, asserting instead that the corporation's definition of who is “local” is limited and that the “consent” – instead of merely the “support” – of potentially-impacted communities must be required. While the debates on these topics rage on, I turn my attention to the land acquisition process itself, or the textually-mediated procedure that the corporation must follow in order to legally access land and exploit resources. My interest in this process stems from exploring how “local” “support” is generated in the first place, or discovering how actualities are made to fit the “shells.” I compose a modest roadmap of the texts and transactions that constitute land acquisition and find that four categories of texts – a concession, a lease, an environmental permit, and secondary permits – secure the corporation's legal rights to mine. My interviews reveal, however, that the formal process contains very few areas where local “support”, “consent”, or lack thereof can actually influence land acquisition in a substantive way.

In this context, it is unsurprising that the FAO chose to contest the mine in courts. The cases its lawyers filed activate a number of texts that are hooked to the land acquisition process. I focus on the case to void the lease, as it is a legally-codified document that should communicate the consent of the *ejidatarios* who are officially recognized as the landholders. In the midst of inconsistent, unclear and contradictory rulings, the government intervened to allocate a temporary occupation to the corporation, permitting land access.

The reasons why the temporary occupation trumps agrarian law can be found in the intertextual hierarchy that coordinates transnational mining in Mexico. The temporary occupation is a mechanism to enforce the precedence granted to mining in Mexico's Mining Law, which was reformed in 1993 following a series of structural adjustment programs in the sector and in concert with the coming-into-effect of NAFTA. At around the same time, the Mexican government modified Article 27 of the Constitution to conform to a property ownership regime that would allow for the private sale of *ejido* lands under NAFTA. NAFTA itself is part of a multilateral complex of institutions that coordinate transnational investment. Yet provisions for incorporating any "local" "support" for mining or lack thereof do not have the kind of the enforcement mechanisms that are incorporated into NAFTA. The disjuncture between two regimes – NAFTA and the *ejido* – is visible when tracing ruling relations in this way. This thesis suggests that when corporate claims of holding the "support" of "local residents" are evaluated in light of how land acquisition actually works in Cerro de San Pedro, the extra-local interests that profit from investment arrangements like NAFTA are more visible.

“Underwhelming” local support

What does “overwhelming local support” mean in a context where key terms are debated and the procedures that legally permit mining render community consent largely irrelevant? This thesis presents an argument for why corporate claims of obtaining community support must be considered in terms of how land acquisition works, which texts hold precedence, and whose interests are ultimately accomplished. “Support” can be “produced” through legal texts, a series of permits and a web of court rulings without necessarily implying that people affected by a project can make decisions that tangibly implicate outcomes. If the texts that coordinate land acquisition are taken alone, producing “support” can render dissent invisible.

This thesis contributes to a widening pool of research on CSR that questions tangible outcomes when voluntary, non-binding texts are apparently implemented in the context of multilateral trade and investment regimes. Commenting on CSR, Banarjee (2007) states:

Despite the rhetoric of stakeholder engagement and human rights, governmentality informs the political economy of CSR through a technology of power that governs the social in the name of the economic leading to an outcome where profits are privatized while the losses become socialized (p.141).

In Mexico, as an increasing number of communities face controversial mining projects, critics highlight the schism between weaknesses in domestic legislation in terms of public input in land-use decision-making and the strength of trade and investment regimes. In her study of communities and mining in post-NAFTA Mexico, Ochoa (2006) remarks:

Democracy becomes a sham when legislative design and governmental administrative practices not just fail to promote public participation, but also actively inhibit it [...] As

such, the 'transparent' and 'participatory' decision-making process is transformed into a whispered monologue. The institutionalized exclusion of the general public gravely diminishes the chances that mining projects will produce equitable and sustainable outcomes – after all, knowledge of key issues such as cultural practices and traditions, and economic organization is excluded from the outset (p. 156).

To conclude, it is clear that this study of the texts surrounding land acquisition in Mexico highlights one aspect of a very complex situation. While power operates in other forms and settings, IE renders visible ruling relations that are mediated by texts (D.E. Smith, 2005). The textually mediated forms of organization studied in this thesis raise the procedural aspects of questions of governance and decision-making in an era where the role of international trade and finance in shaping local sites of experience cannot be overlooked.

Annex 1: List of Acronyms

CSP – Cerro de San Pedro (in corporate documentation)

CSR – Corporate Social Responsibility

DGIRA - General Bureau of Environmental Impact and Risk (*Dirección General de Impacto y Riesgo Ambiental*)

EIA – Environmental Impact Assessment (*Manifestacion de Impacto Ambiental*)

EZLN – Zapatista Army of National Liberation (*Ejercito Zapatista de Liberación Nacional*)

FAO - Frente Amplio Opositor

IE – Institutional Ethnography

IMF – International Monetary Fund

INAH - National Institute of Anthropology and History (*Estado del Instituto Nacional de Antropología e Historia*)

INE – National Institute of Ecology (*Instituto Nacional de Ecología*)

LGEEPA – General Law on Ecological Equilibrium and Environmental Protection (*Ley General de Equilibrio Ecológico y la Protección al Ambiente*)

MSD - Multistakeholder Dialogue

MSX –Minera San Xavier

NAFTA – North American Free Trade Agreement

PAN - National Action Party (*Partido Acción Nacional*)

PRD - Party of the Democratic Revolution (*Partido de la Revolución Democrática*)

PRI - Institutional Revolutionary Party (*Partido Revolucionario Institucional*)

PRSP - Poverty Reduction Strategy Papers

RAN - National Agrarian Registry (*Registro Agrario Nacional*)

SAP – Structural Adjustment Program

SEMARNAT - Secretary of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*)

SEDENA – Secretary of National Defense (*Secretaría de la Defensa Nacional*)

TFJFA - Federal Superior Fiscal and Administrative Justice Court (*Tribunal Federal de Justicia Fiscal y Administrativa*)

TUA – United Agrarian Tribunal (*Tribunal Unitario Agrario*)

Annex 2: A history of Cerro de San Pedro

This timeline covers the period from 1519 - 2010

1519

The Spanish Empire launches the first attacks against the indigenous nomads of the *Gran Chichimeca* region, who inhabit a territory that encompasses the present state of San Luis Potosí (Ruiz Guadalajara, 2007).

1592

March 2

A group of Spanish military officials verifies claims of vast quantities of minerals in a mountain located on the indigenous *Guachichil* territories to the north-east of the outpost of San Luis. The mountain is baptized Cerro y Minas de Potosí, named after the famous Cerro Rico de Potosí³⁴. Spanish colonizers begin to aggressively settle in areas surrounding the mountain; local indigenous groups migrate northwards (Ruiz Guadalajara, 2007).

November 3

The Spanish town of San Luis de Mesquitique (present site of the city of San Luis Potosí) is founded to accommodate mining in Cerro y Minas de Potosí (Reygadas Robles-Gil et al., 2008).

1620

The village of Cerro y Minas de Potosí is renamed Cerro de San Pedro (Reygadas Robles-Gil et al., 2008).

1655

The colonial city of San Luis Potosí adopts an iconography of San Luis de la Paz on the “*Cerro de Potosí*” as its coat of arms in recognition of the site’s high output of gold and silver. By this time, the village of Cerro de San Pedro is the parish capital of the Michoacán Obispo, which administers 200 haciendas throughout the region and constructs a variety of buildings (Reygadas Robles-Gil et al., 2008; Ruiz Guadalajara, 2007).

1767

Residents of Cerro de San Pedro participate in uprisings against Spanish colonial rule (Reygadas Robles-Gil et al., 2008).

1917

The *ejido* land tenure system is reified in Article 27 of the Mexican Constitution (Castillo, 2004).

³⁴ Cerro de Potosí is the mountain which overlooked the town of Cerro de San Pedro and is currently being mined

1926***April 11***

Cerro de San Pedro is declared an *ejido*, with an area of 1776 hectares. Over 100 people are allocated *ejidatario* status (Comisión Nacional Agraria, 1926).

1948

The American Smelting and Refinery Company (ASARCO) closes its operation in Cerro de San Pedro due to a strike, marking the end of several centuries of commercial mining. In the years that follow, there is a mass exodus from Cerro de San Pedro. Some residents remain in the village, engaging in artisanal mining and other economic activities (Reygadas Robles-Gil et al., 2008).

1957

A census (*depuracion censal*) is conducted in the Cerro de San Pedro *ejido* in order to both determine which residents inherit *ejidatario* status and allocate *ejidatario* status to others. The census concludes that only 32 *ejidatarios* remain (Garcia, Mendoza, Mata, Vega, & Tristan, May 26, 2008).

1970s

A group of approximately 30 residents of the nearby town of La Zapatilla request a right to represent the *ejido* (*representacion ejidal*) of Cerro de San Pedro after noting that almost all resident *ejidatarios* have left or died. They are denied legal status as *ejidatarios*, but make several other attempts during the course of the 70s and 80s. Nonetheless, residents of La Zapatilla maintain defacto leadership as *ejido* commissioners (*comisarios ejidales*) through to the 90s (Melé, 2007).

1990s

Various mining companies, such as Peñoles y Fresnillo, undertake exploration activities around Cerro de San Pedro (Reygadas Robles-Gil et al., 2008).

1992

Mexican President Salinas reforms the Article 27 of the Mexican Constitution, allowing for the commodification of *ejido* lands (Castillo, 2004).

1993***September 23***

The San Luis Potosí State Congress (*Congreso del Estado de San Luis Potosí*) establishes the Decree of the State Congress of September 1993 (*Decreto Administrativo del Congreso del Estado de septiembre de 1993* [the Decree of 1993]). The Decree of 1993 recognizes Cerro de San Pedro and the surrounding area as a protected site for at least twenty years because of the unique flora and fauna in the region. The Decree of 1993 is based on a State plan, which

highlights water shortages as a critical issue, prioritizes the renewal of watersheds and favours industries with low water consumption and pollution rates (Vargas-Hernandez, 2007). The Decree of 1993 outlaws any activity that would lead to changes in the subsoil (Warden & Jeremic, 2006).

1995

April 6

Metallica Resources Inc. purchases Mexican corporation Minera San Xavier (MSX), accumulating 25 concessions totaling 272.58 ha. The corporation states that this “district was discovered in 1575 (sic) and has produced in excess of 2.0 million ounces of gold and 25.0 million ounces of silver” (Metallica Resources Inc. [Metallica], April 6, 1995).

1996

February 29

Metallica commissions a pre-feasibility study for an open pit gold and silver mine in Cerro de San Pedro. The study indicates a mineable reserve of 61.5 million tons grading 0.65 grams per tonne (g/t) gold and 23.6 grams per tonne (g/t) silver, which will amount to an estimated US\$86 million (Metallica, February 29, 1996).

May 5

The Director of the National Institute of Anthropology and History (*Estado del Instituto Nacional de Antropología e Historia*, INAH) forms the *Patronato Pro Defensa Del Patrimonio Cultural e Histórico del Municipio de Cerro de San Pedro A.C.* to protect the historical integrity of Cerro de San Pedro (Frente Amplio Opositor a Minera San Xavier [FAO], 2007b; Vargas-Hernandez, 2007).

1997

Environmental groups demand to see the Environmental Impact Assessment (*Manifestacion de impacto ambiental*, EIA) to evaluate potential project impacts. They assess the level of risk to warrant an extension of the zone of potential impacts beyond the village of Cerro de San Pedro and into the city of San Luis Potosí and the municipality of Soledad (FAO, 2007b). Metallica launches an aggressive media campaign, headed by governors Horacio Sánchez Unzueta and Fernando Silva Nieto (Reygadas Robles-Gil et al., 2008).

February 6

MSX signs a contract with the individuals claiming to represent the *ejido* of Cerro de San Pedro in an Extraordinary General Assembly. The contract holds that the corporation will temporarily occupy 290.8465 hectares of *ejido* land for a 15-year period (Comisariado Ejidal, 1997).

November 21

Cambior Inc. and Metallica Resources enter into a joint venture for the Cerro San Pedro project. Cambior is announced as project manager, invests \$20 million in project development expenditures and provides a loan of up to \$60 million (Metallica, November 21, 1997).

1998

March 14

MSX holds a public forum, as required by the General Law on Ecological Equilibrium and Environmental Protection (*Ley General de Equilibrio Ecológico y la Protección al Ambiente*, LGEEPA). Project opponents see an advertisement in local papers announcing the event and attend.

March 19

The Mayor (*Presidente Municipal*) of Cerro de San Pedro, Baltazar Loredo, requests an intervention from the State congress to investigate the legality of the sale of *fincas* to MSX in collaboration with municipal authorities of the previous administration (Reygadas Robles-Gil et al., 2008).

March 20

The Mayor of Cerro de San Pedro is found dead with a bullet in his head. Although authorities claimed that Loredo's death was suicide, bruises are found on his legs. The bullet fired through his skull entered from the right side, while Loredo was left-handed (Ross, 2005; Vargas-Hernandez, 2007).

1999

February 26

A Land Use Change License (*Cambio de Uso de Suelo*) is awarded by National Institute of Ecology (*Instituto Nacional de Ecología, INE*) Secretary of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales, SEMARNAT*) to MSX for its EIA. The License authorizes a change in land use for 373.39 hectares. The permit is contingent upon a set of 100 conditions. These include the relocation of the communities Cerro de San Pedro de San Pedro and La Zapatilla (Greenpeace Mexico, 2006; Metallica, March 15, 1999; Reygadas Robles-Gil et al., 2008; Vargas-Hernandez, 2007).

2000

March 15

The National Agrarian Registry (*Registro Agrario Nacional, RAN*) confirms in writing that the 16 individuals who were elected as commissionaires of the *ejido* [the signatories of the 1997 contract with MSX] are not officially recognized as *ejidatarios* (Lic. H. Errendira Giron Flores 2000, pers. comm., March 15).

March 20

The Supreme Court of the Fiscal and Administrative Federal Tribunal (*Sala Superior del Tribunal Federal de Justicia Fiscal y Administrativa*, TFJFA) imposes a decree of nullity (*Juicio de Nulidad*) on the environmental permit and related permits issued by SEMARNAT in response to the case filed by Pro San Luis Potosí Ecológico on February 9, 2000 (Greenpeace Mexico, 2006; Reygadas Robles-Gil et al., 2008).

May 4

The San Luis Potosí State Government authorizes a state Land Use License to the Cerro de San Pedro mine (Metallica Resources Inc., May 8, 2000; Vargas-Hernandez, 2007).

MSX signs an agreement for an Integral Program for Environmental Management (*Programa Integral de Gestion Ambiental*) with the state and municipal governments. The agreement specifies that MSX will report on its voluntary, self-regulated environmental commitments to accredited Mexican authorities (Convenio de coordinación y cooperación en materia de protección ambiental y desarrollo de la región, June 14, 2004).

May 9

Glamis Gold Ltd. announces that it has purchased Cambior de Mexico, S.A. de C.V. from Cambior Inc. for US\$7 million. Glamis retains 50% ownership of the Cerro de San Pedro mine (Glamis Gold Ltd., 2000). It announces that the mining operations will commence when the market value of gold is favourable (FAO, 2007b).

December 10

The *Jornada San Luis* reports that MSX has failed to satisfy condition #12 imposed by SEMARNAT in its approval of the corporation's EIA. Condition #12 requires MSX to attain the consent of 100% of the population of Cerro de San Pedro, while the FAO maintains that 17 families are opposed to the project. The Federal Attorney on Environmental Protection (*Procuraduria Federal de Proteccion al Ambiente*, PROFEPA) is responsible for monitoring compliance with these conditions (Soubervielle, 2000).

2001

The Social Justice Committee of Montreal, Mining Watch Canada and the Mexican NGO FUNDAR Center for Analysis and Research collaborate on an initiative funded by the International Development Research Centre (IDRC) to examine the impacts of Canadian mining operations in Mexico and provide support to the affected Mexican communities. Field research is conducted in Cerro de San Pedro (Vargas-Hernandez, 2007).

2002

April

Federal and state mining permits are amended to grant MSX access to 68,992,000 cubic meters of water (Vargas-Hernandez, 2007).

July 9

The State of San Luis Potosí reforms chapter IV of the October 7, 2000 Urban Development Law for the State of San Luis Potosí (*Ley de Desarrollo Urbano del Estado de San Luis Potosí*), which would permit the modification of the Decree of 1993 (FAO, 2006).

2003

Elections are held. MSX supports the Party of the Democratic Revolution (*Partido de la Revolución Democrática*, PRD) and National Action Party (*Partido Acción Nacional*, PAN) candidates. FAO supports 21 year-old Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI) candidate Oscar Loredó, murdered mayor Baltasar Loredó's son. Loredó wins elections, articulates opposition to MSX (Reygadas Robles-Gil et al., 2008).

February 5

Metallica announces that it has entered into a purchase agreement to acquire Glamis Gold's 50% interest in the Cerro San Pedro gold and silver heap mine, assuming full ownership. The corporation announces, "the project has received all federal, state and municipal permits necessary to commence construction, subject to compliance with certain items contained within the permits" (Metallica, February 5, 2003).

October 23

Mexican state and federal agencies, as well as the Catholic Archdioceses of San Luis Potosí, authorize the structural stabilization and installation of blast monitoring equipment at the Cerro San Pedro Apostle Church (Vargas-Hernandez, 2007). Metallica maintains that it has complied with all required conditions, and anticipates that the relocation of residents who choose to accept homes near the community of Cerro de San Pedro will begin in late 2004 (Metallica, October 23, 2003).

2004***January 9***

Pro San Luis Ecológico submits a demand for a Constitutional Protection (*Amparo*) with regards to the decree of nullity filed at the TFJFA on March 20, 2000. The demand is referred to the Ninth Collegiate Tribunal (*Noveno Tribunal Colegiado*) (Greenpeace Mexico, 2006).

February 20

MSX announces the beginning of construction of the Cerro de San Pedro mine. It claims that 400 people will be employed at the peak of construction and 200 people will be employed during operations (Metallica, February 20, 2004).

March 16

In an Extraordinary Municipal Council session, mayor Oscar Loredó resolves to prohibit MSX's operations until it fulfills – among other requirements – the conditions imposed by when it authorized the project's EIA in 1999. This entails barring all activities until permits are obtained, as well as preparing the site for trucks, without securing an agreement with all inhabitants of the area first (Reygadas Robles-Gil et al., 2008).

March 17

The United Agrarian Tribunal of the 25th District (*Tribunal Unitario Agrario del Vigésimo Quinto Distrito*) residing in the State of San Luis Potosí rules that the rental agreement between the MSX and the non-registered ejidatarios in 1997 is void (case 807/2002). The court maintains that the contract was invalid because it was signed by a group of people who did not hold ejido rights and did not represent the ejidatarios of Cerro de San Pedro (Alvarado, 2009; Martínez, December 4, 2004; Tribunal Unitario Agrario, March 17, 2004).

MSX holds that the court did not rule that the company “had to either cease construction of its project or vacate the ground.” It maintains that court nullified the minutes of the meeting where the lease was signed in 1997 and the authority of the individuals claiming to be *ejido* representatives. It states that: “Both MSX and the current possessors of the ground, who are the original ejido members that entered into the 1997 Lease Agreement, are in the process of appealing this decision to a higher-level Federal Court and are seeking a court order freezing the Agrarian Court decision thereby permitting MSX to continue to use the ejido land” (Metallica, April 14, 2004).

March 31

Metallica completes the purchase of Glamis 50% stake. It receives \$7.25 million for the royalty and the remaining \$5 million of debt that Metallica owed Glamis as part of the original purchase agreement (Metallica, March 31, 2004).

April 12

A protest at Cerro de San Pedro is organized by Zapatista Front of National Liberation (*Frente Zapatista de Liberación Nacional*, FZLN) (Vargas-Hernández, 2007).

May 11

MSX sends an “aggressive” document to SEDENA stating that it will publically announce in the U.S. that it has been blocked from operating because it has not acquired the explosive permit. It states that the announcement will have negative repercussions because other corporations will begin questioning the risk of investing in Mexico (Reygadas Robles-Gil et al., 2008).

May 13

The Mayor of Cerro de San Pedro, Oscar Loredó, uses the Municipal Council Act (*Acta de Cabildo*) to suspend all permits and licenses for MSX, including those pertaining to the purchase and use of explosives (Reygadas Robles-Gil et al., 2008).

June 2

Metallica confirms that it is awaiting an appeal filed against the nullification of the Lease Agreement and has “encountered delays in obtaining an explosives operating permit for the project”. It announces that it has submitted a formal application to the Federal Bureau of Mines for right of way or “easements” and temporary occupation permits that would grant it land access. Metallica also announces that SEDENA has demanded written support from the current Mayor of Cerro San Pedro for its explosives permits. The corporation specifies that it holds the support of U.S. and Canadian embassies, as well as the office of the Governor of the State of San Luis Potosí and various federal agencies, in its attempts to secure an explosives permit (Metallica Resources, June 2, 2004).

June 18

All copies of the daily newspaper *Jornada San Luis* are pulled from circulation in the early hours of the morning after publishing an article denouncing an offer made by a State Government representative and local business-owner to Cerro de San Pedro Mayor Oscar Loredó in exchange for authorizing municipal permits for MSX³⁵ (Rodríguez, 2005).

June 23

The TFJFA cancels the environmental permit awarded to the company by SEMARNAT, concluding that it violated the LGEEPA and the Decree of Planning in the State of San Luis Potosí (Greenpeace Mexico, 2006; Vargas-Hernandez, 2007). Metallica suspends construction activities at the Cerro San Pedro Project due to its failure to secure both the explosives permit from SEDENA and a renewal of the construction and operating license from the Municipality of Cerro de San Pedro. It states that “MSX is in full compliance with all other material license requirements, and is legally entitled to the renewal of its municipal construction and operating license, which has been consistently renewed annually for the past four years” (Metallica Resources, June 23, 2004).

June 29

³⁵ These allegations were confirmed in a State Human Rights Commission (*Comisión Estatal de Derechos Humanos*, CEDH) investigation finalized in June, 2005 (Rodríguez, 2005).

President Vicente Fox Quezada asks State Governor Marcelo de los Santos Fraga to bring Cerro de San Pedro Mayor Oscar Loredó to him. Fox tells Loredó that he “was worried about moving ahead with the project and recommends his approval” (Reygadas Robles-Gil et al., 2008).

August 7

An extraordinary municipal council session is called and members are asked by Oscar Loredó to sign operating permits for MSX. He is alleged to have claimed that he had no choice and felt his life was at risk. A recording quotes Loredó as saying: “We know that the federal government, the state government, agree...they are so strong that one cannot be against them...our hands are tied...there are threats, there are blows...they declared ‘ingovernabilty’”. When questioned by council member Abundio Alvarado, Loredó responds, “my life doesn’t matter to you?” (Reygadas Robles-Gil et al., 2008).

August 12

Oscar Loredó publically announces that he will ratify municipal permits, reversing his earlier stance. Loredó maintains that he “couldn’t resist the pressure of the governor, the corporations and Fox”. He claims that several members of council have received threats. The municipal permits allow for MSX to begin construction (“Por presiones del president”, August 12, 2004).

August 31

MSX announces that project opponents successfully challenged its EIA in an amparo case. It holds that its environmental permit remains valid “pending official notification of the ruling by Federal authorities and legal appeals”. The corporation states that it “is actively and aggressively challenging this ruling. However, no assurance can be made that MSX will prevail in its legal challenges to this *Amparo*” (Metallica, August 31, 2004).

November

The Mexican Senate Chamber passes an “urgent resolution” to halt operations at Cerro de San Pedro (Vargas-Hernandez, 2007).

November 4

Metallica Resources announces that it has won an appeal against the challenge to the lease. It reports, “a Federal Court [the TFJFA] has ordered the Agrarian Court to reinstate the surface rights lease agreement between MSX and the ejido of Cerro San Pedro”. The Agrarian Tribunal is ordered to issue a new resolution and to revoke its earlier nullification order. The Tribunal “has the option to either permanently reinstate the lease agreement or to nullify it, but for different reasons than those which formed the basis of the Agrarian Court's original resolution” (Metallica, November 4, 2004).

November 22

MSX submits an *amparo* against the canceling of its Land Use Change License and related permits (Greenpeace Mexico, 2006).

December

MSX undertakes test blasts in the area of La Zapatilla (“Coalition continues effort”, February 2, 2005). INAH asks MSX to halt its test-blasts until the required permits are issued (Vargas-Hernandez, 2007).

December 2

The Agrarian Court upholds its earlier ruling nullifying the surface rights lease between MSX and the individuals claiming to represent the ejido of Cerro San Pedro. It confirms that the contract signed between MSX and supposed ejidatarios for 290 hectares of ejido land is nullified because the contract signers were not registered ejidatarios (Martinez, December 4, 2004).

MSX announces that the most recent Agrarian Tribunal ruling does not limit its access to sub-surface rights. Pro-MSX residents file an *amparo* against both the latest Agrarian Court decision and the judge. MSX states that it “continues to pursue a number of other options available to it to establish secure land tenure in order to access its mineral rights” (Metallica, December 21, 2004). Metallica appeals the ruling (Alvarado, 2009).

December 4

The *Jornada* reports that MSX has only fulfilled 32 of the 100 conditions issued by SEMARNAT in its approval of the project’s EIA (Martinez, December 5, 2004).

December 24

SEDENA suspends MSX’s explosives permit (Velasco Yanez, 2005).

2005

Gold prices surge (Vargas-Hernandez, 2007). The Cerro de San Pedro Municipal Town Council attempts to adopt a Municipal Urban Development Plan that erases the protected status granted to the town in 1993 (FAO, 2006).

January

Mexican Congress approves a resolution urging Environment Secretary Alberto Cardenas Jimenez to prepare a detailed report about the MSX project. The resolution is significantly modified when legislators remove language urging Cardenas to “immediately observe” court rulings, which would entail a suspension of the SEDENA explosives permit (“Coalition continues effort”, February 2, 2005).

FAO writes an open letter to the Constitutional Governor of the State of San Luis to denounce damages caused by the blasts and the dangers and risks of planned mining operations (Vargas-Hernandez, 2007).

January 2

MSX is accused of having sought out signatures of “false” *ejidatarios* who support the corporation in late 2004 from the adjacent community of La Zapatilla. A FAO member states that the “false” *ejidatarios* “signed as ejido landholders when they do not possess any land to allow the company to blast and exploit” (Elizalde, 2005).

March

MSX files a defamation suit against members of the FAO, two *ejidatarios* of Cerro de San Pedro and an activist from Pro Defensa de Cerro de San Pedro for defamation (Procuraduría General de Justicia en el Estado, 2005). The National Network of Civil Society Human Rights Organizations ‘All Rights for All’ (*Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos Para Todos*), a national human rights organization, circulates letters of support for the accused as an “Urgent Action” (Vargas-Hernandez, 2007).

June 3

MSX obtains a Temporary Occupancy Agreement (*Ocupación Temporal*) from the Secretary of the Economy via the Federal Mining Bureau (*Dirección General de Minas*) due to provisions in Mining Law regarding preferential use of land for 203.1634 hectares of Cerro de San Pedro ejido land (Order # 610-3155)(Azua, February 22, 2007).

Metallica maintains that “despite an earlier ordered nullification of the long standing agreement that MSX had with the ejido of Cerro San Pedro for use of the land to access its mineral rights, the courts have never denied MSX legal access to the ground” It states that:

The receipt of the temporary occupancy agreement, an important milestone for the project, is a long and involved process which includes soliciting comments from all affected parties and land owners in the area; detailed surveys and land evaluations; and paying restitution to the land owners in the form of annual payments. In this particular case, it also involved overcoming a number of legal challenges put forth by opponents of the project (Metallica, June 10, 2005).

July 5

The Director of the Bureau of Mines of the Secretary of the Economy, Eduardo Flores Magon, states that San Luis Potosí may be added to the “black list” of investors due to the problems encountered by MSX and Industrial Minera Mexico (Saldierna, 2005).

July 8

The Cerro de San Pedro *Núcleo Agrario*'s *ejido* legal representative Carlos Covarrubias states that the temporary occupation issued to MSX does not conform to the Agrarian Law or the Mining Law. Covarrubias argues that the temporary occupation does not exist in Agrarian Law, and – as such – any use of agrarian land against the will of *ejidatarios* constitutes expropriation. Article 21 of the Mining Law, through which MSX obtained lands, establishes that the expropriation of *ejidal* goods and commons must be subject to agrarian legislation (Becerra, July 9, 2005).

September 1

A permit for Construction Adjacent to Historic Monuments (*Autorización de Obra en Colindancia a Monumentos Históricos*) is allocated to MSX by INAH. The permit is contingent upon 15 restrictions and requires a financial contribution to INAH (Azua, February 22, 2007; Becerra, September 23, 2005).

September 20

MSX receives the annual renewal of blasting permit from SEDENA for 2005, but does not acquire rights to blast on *ejido* land. Metallica states: “The use of explosives on ground owned communally by the *ejido* of Cerro de San Pedro, which includes the pit area and the access road to the pit, is still prohibited pending the outcome of the appeal” (Metallica, September 20, 2005).

September 28

Cerro de San Pedro Mayor Oscar Loredo reverses his earlier stance and states that if MSX complies with conditions established by environmental authorities, the corporation will not negatively impact the municipality's population. Loredo recognizes that he had opposed the mine before, but states that he has changed his thinking (Pedraza, 2005).

September 30

In a council session, the municipality of Soledad refuses to accord a land use permit that would allow MSX to dispose of its tailings, as requested by the corporation. It sites grave ecological dangers to residents of the municipality and surrounding areas as the reasons behind its refusal to grant the permit (Reygadas Robles-Gil et al., 2008).

October 1

Mexican President Vicente Fox meets with Metallica executives in Canada (Martinez, October 2, 2005).

October 3

The Attorney General of the Federal Department of Justice (*Procuraduría General de Justicia del Estado*, PGJE) investigates twenty individuals related to the FAO (Becerra, October 3, 2005).

October 5

The Superior Chamber of the TFJFA imposes an unchallengeable sentence (D.A.24/2005-3011) annulling the MSX permit in response to a case launched by Pro San Luis Ecológico. The Tribunal holds that the permit that was initially awarded was in violation of the Decree of 1993, which defined Cerro de San Pedro as a zone of wildlife and aquifer preservation for a twenty-year period. The violation of the Decree is noted as a violation of the LGEEPA. The Land Use Change License issued by the San Luis Potosí State Governor in May 2000 is also nullified as a result. The TFJFA orders SEMARNAT to issue a new permit (FAO, 2006; Reygadas Robles-Gil et al., 2008).

October 12

As per legal requirements, MSX issues a notice to INAH that blasting will begin at the Cerro de San Pedro. INAH maintains that the blasting must be suspended until a Constitutional Protection filed by ejidatario Marcos Rangel Mendoza (1168/2005) is heard (Becerra, October 17, 2005).

December 30

FAO successfully blocks the adoption of a new Municipal Urban Development Plan for Cerro de San Pedro via a petition for constitutional protection in an agrarian court (case 108/2006) (FAO, May 20, 2007).

2006***January 27***

MSX receives the annual renewal of its (still restricted) blasting permit from SEDENA for the calendar year 2006. Metallica reports that while awaiting appeal of its unrestricted blasting permit on *ejido* land, construction activity has escalated at the project site (Metallica, January 27, 2006).

February 9

SEDENA removes the restriction from the explosives operating permit issued for the calendar year 2006, allowing for “full and unrestricted construction of the CSP project” (Metallica, February 9, 2006).

February 13

Heavy machinery and explosives arrive in Cerro de San Pedro (Becerra, February 13, 2006).

February 21

More than 300 people demonstrate against the Cerro de San Pedro mine in the city of San Luis Potosí (Becerra, February 21, 2006).

February 22

Employees and managers of MSX hold an “informative meeting.” They state that MSX holds all permits necessary for operation and that the majority of the population of the municipality is in favour of the project. The corporation states that it has employed 50 community members at the mine (Becerra, February 22, 2006).

February 24

A Secretary of the Economy spokesperson, Eugenia Diaz Infante Ibarra, says that the temporary occupation was issued because MSX met all prerequisites. Ibarra maintains that, “we have to be partners and opening the same possibilities to new investors that arrive in San Luis Potosí” (Mata, February 24, 2006).

February 26

The State Commission on Human Rights (*Comision Estatal de Derechos Humanos*) submits a statement claiming that MSX has caused violations of “environmental rights and the right to ecological health, the right to historical patrimony, and the right to information of the inhabitants of the municipality of Cerro de San Pedro”. It recommends that “the information that the State of San Luis Potosí holds on the installation of MSX must be made public... timely and truthful information on the technical studies, risks and consequences of the mineral extraction project operated by MSX must be made public” (Becerra, February 28, 2006).

In Cerro de San Pedro, villagers photograph explosions that send large rocks tumbling into the streets, inciting panic. The corporation maintains that the falling rocks were foreseen, controlled and safe (Becerra, February 22, 2006).

April 6

Lawyer and mine opponent Enrique Rivera Sierra is physically assaulted by MSX employees, and another FAO member is sprayed with pepper-spray (Becerra, April 15, 2006; Islas & Hausfather, October 4, 2007).

April 7

The court orders SEDENA to renew previously-imposed restrictions on the explosives operating, or blasting, permit issued to MSX for 2006 in the pit areas and access road, which is ground owned by the *ejido* of Cerro de San Pedro (Metallica, April 7, 2006).

April 10

SEMARNAT re-authorizes the MSX EIA and awards a new environmental permit to Minera San Xavier (SGPA/DGIRA.DG.0567/06) for the use of 290.4 hectares of *ejido* land. It specifies that the permit refers to the environmental aspects of the project and does not entail a permit to begin construction or operations at the mine site: Other permits are required at the municipal level and for other sectors (Azua, February 22, 2007; Reygadas Robles-Gil et al., 2008).

Pro San Luis Ecológico maintains that the permit is inconsistent with the diverse cases that it has filed (Mata, January 15, 2007).

Over 50 people form a blockade to stop MSX operations for 2 days. The FAO says that MSX is operating illegally (Becerra, April 12, 2006).

April 18

Members of *La Otra Campana del Ejercito de Liberacion Nacional San Luis Potosí* block the MSX vehicles on the road to Cerro de San Pedro (Becerra & Balcorta, April 18, 2006).

June 7

MSX loses its appeal of the suspension of the use of explosives on ground owned by the ejido of Cerro de San Pedro. Metallica announces it will appeal again and challenge other cases brought forward by “five absentee *ejidatarios*” (Metallica, June 7, 2006)

July 5

Pro San Luis Ecológico submits a further complaint (*recurso de queja*) to the TFJFA against the Land Use Change License awarded to MSX by SEMARNAT/DGIRA on April 10, 2006. It claims that the license fails to account for land use restrictions imposed by the Decree of 1993. Pro San Luis Ecológico disputes the TFJFA claims that mining is a “primary activity” and not an “industry”; and, as such, is not subject to the Decree in question (Pro San Luis Ecológico, 2009).

July 21

MSX legal representative Angel Candia Pardo tells *Jornada San Luis* investigative reporter Hugo Becerra that the suspension of the project’s environmental permit is irrelevant and the corporation does not agree with the ruling. Pardo maintains that the opposition to the mine consists of 5 people and that the corporation will continue operating (Becerra, July 21, 2006).

August 15

The Third District Court (*Tercer Juzgado de Distrito*) grants to the *Núcleo Agrario* of Cerro de San Pedro a third suspension of its Land Use Change License and municipal Operation and Construction Permit. The Judge holds that the suspension will ensure that “no act resulting in the total or partial privation, temporarily or definitively, of the *Núcleo Agrario*’s goods or their subtraction from the ejido regime” (Balcorta, August 20, 2006).

October 9

The Secretary of Agrarian Reform (*Secretaria de la Reforma Agraria*) holds an extraordinary assembly to determine who the legally-recognized *ejidatarios* are. FAO Agrarian Lawyer Carlos Covarrubias Rendon argues that the meeting was called to revoke the status of anti-mine *ejidatarios*: “The objective is to take *ejidatarios* who are inconvenient off the list and adding those who are employees of Minera San Xavier.” The law holds that *ejidatarios* can lose their status if they aren’t utilizing their lands, but Covarrubias states that “in this case, the *ejidatarios*

can't use their lands because they're still occupied by Minera San Xavier" (Mata, October 8, 2006).

October 11

A representative from the Agrarian Reform (*Reforma Agraria*) visits Cerro de San Pedro for an inspection. The representative notes that thirty five parcels of *ejido* lands were destroyed due to the removal of vegetation and frequent explosions taking place in mine construction. The inspection confirmed that the mine prevented *ejidatarios* from engaging in all types of agricultural activities on the land, although it failed to confirm whether the lands were used for agriculture prior to the mine. FAO maintains that there are only seven registered *ejidatarios* and not thirty, as claimed by the Agrarian Reform ("*Ejidatarios y minera confían*", October 1, 2006).

October 22/23

A Public Referendum on Cerro de San Pedro/MSX is conducted by the FAO. Out of the 19,050 respondents, 97.59% indicate they do not agree with the installation of the MSX project (FAO, October 30, 2006)

October 25

MSX disqualifies the FAO consulta because it "does not reflect the reality of what's happening". It holds that Article 34 of the LGEEPA entails a requirement for a public consultation before authorizing the EIA. MSX maintains that this consultation took place in 1998, and members of Pro San Luis Ecológico participated (Pedraza, October 25, 2006).

October 31

SEDENA approves MSX's explosives operating, or blasting, permit for *ejido* lands, overturning a legal action brought against SEDENA by the *ejido* (Metallica, October 31, 2006).

December 10

Members of FAO and Pro San Luis Ecológico are harassed and threatened with death by MSX employees at a sit-in organized in front of the mining infrastructure. The employees, identified as residents of Monte Caldera, a town near the municipality of Cerro de San Pedro, attack project opponents with rocks and bars, breaking the windows of various cars, in one of which people were sleeping (Reygadas Robles-Gil et al., 2008). MSX denies any relation to the individuals who attacked the demonstrators (Ruiz, 2006).

2007

January

Pro San Luis Ecológico files a complaint against the Mexican government under the North American Free Trade Agreement's (NAFTA) Commission for Environmental Cooperation

(CEC) for violating a Mexican court ruling by authorizing—for a second time—the Cerro de San Pedro gold/silver mining project of Metallica Resources' Mexican subsidiary Minera San Xavier (Pro San Luis Ecológico, 2007).

January 11

The first truck load of ore is delivered to the leach pad over the haul road at Cerro de San Pedro. Metallica estimates the 2006 mineral reserve “based on metal prices of \$400/oz for gold and \$6.15/oz silver and resulted in an estimate totaling approximately 70 million tons grading 0.55 g/t gold and 23.0 g/t silver, and containing 1.2 million ounces of gold and 51.7 million ounces of silver”. Its 2006 forecast estimates an average annual production of approximately 85,500 ounces of gold and 2 million ounces of silver, over the estimated nine-years that the mine will operate. Metallica reports to have spent \$20.5 million on pit development and construction (Metallica, January 11, 2007).

March 1

FAO blockades the Canadian Embassy in Mexico City (Roman, March 1, 2007).

April 1

MSX holds a public survey in San Luis Potosí in which 55% of 500 respondents support the mine. FAO discredits the MSX survey, claiming that the corporation prefaced its questions by saying that the mine would generate employment and economic gain and refraining from any mention of environmental impacts. The FAO also criticizes the sample size, claiming that the survey was limited to residents of the municipality of Cerro de San Pedro – many of whom are employed by the mine – instead of including San Luis Potosí. FAO spokesperson Mario Martínez holds that 50% of 500 people interviewed represents less than one quarter of the municipal population, while 100% should support the mine as a precondition of its operation. He states that, “whoever gets paid will say that they want it” (Guillén, April 2, 2007).

May 1

FAO activists Helios Barragán Beltrán, Francisco López López, Oscar David Reyes Medrano, Adrián Mireles Alonso and José Emilio Grimaldo Sánchez are detained by police and secret service agents from the Government Secretary General (*Secretaría General de Gobierno*) and the State Bureau of Public Security (*Dirección de Seguridad Pública en el Estado*) following a “May Day” demonstration. While the official charges are related to graffiti drawn during the demonstration, the arrestees claim to have been accused of being against MSX and the state government (Guadalajara, May 2, 2007).

May 29

More than 300 people march in San Luis Potosí to demand the withdrawal of MSX (Lucio, July 2, 2007).

June 25

In response to an access to information request filed by FAO, the Secretary of the Municipal Council (*Secretario del Ayuntamiento*) of Cerro de San Pedro confirms that it has not authorized the required permits for the operation of MSX. The Land Use Change License for MSX has not been authorized due to the existence of the Decree of 1993 (Reygadas Robles-Gil et al., 2008). The amendment to Article 115 of the Constitution that transferred responsibility for issuing state Land Use Change Licenses from the State Governments to Municipal Governments implies that the license issued to MSX by the San Luis Potosí governments is also invalid (FAO, 2007a)

June 29

The NAFTA CEC accepts a complaint from FAO demanding an explanation from the Government of Mexico regarding its violation of environmental norms (Reygadas Robles-Gil et al., 2008).

July 2

Pro San Luis Ecológico calculates that one third of San Luis Potosí's water supply is used by three corporations: The Federal Electricity Commission (*Comision Federal de Electricidad*), Minera San Xavier and Cementera Cemex (Lucio, July 2, 2007)

July 20

Acclaimed biologist Angelina Nunez Galvan states that the slums of Ciudad Satélite, La Florida, San Luis Uno, Cactus and Abastos are in grave danger of contamination by MSX. The consumption of water (64 million liters/day) and explosives (25 tons/day) presents additional dangers (Guillén, July 20, 2007).

August 7

Metallica reports that the Cerro San Pedro project produced its first gold-silver doré in April 2007 and officially commenced commercial production on May 1, 2007 (Metallica, November 13, 2007).

August 20

Amnesty International voices its concerns against recent "threats and aggressions" against the MSX opponents. It states that anti-mine residents of Cerro de San Pedro are exposed to harassment, acts of vandalism and surveillance (Alonso, August 26, 2007).

September 13

The First Collegiate Court of the Ninth Circuit (*Primer Tribunal Colegiado del Noveno Circuito*) supersedes the appeal under review (Exp. 630/2004) and concludes that the environmental

authorization delivered by SEMARNAT to Mineral San Xavier on April 10, 2006 “does not represent an authorization to initiate the construction of the project”. It holds that the municipal delegates are authorized to grant or refuse permits (Reygadas Robles-Gil et al., 2008).

September 28

Protests are held in Montreal and Mexico. Protesters in Montreal present a petition signed by over 250 Canadians to representatives of the Mexican consulate. In Mexico, the Canadian embassy is blocked and shut down after demonstrators are denied an audience with Ambassador for a second time. The six-hour blockade ends at the INAH offices (Popovich, October 4, 2007).

October 11

The Latin America Water Tribunal addresses the case raised by FAO against MSX, SEMARNAT, the San Luis Potosí state government, and the Cerro de San Pedro municipal council. The Tribunal places “responsibility for the mine’s environmental and social harms with the mining company as well as the Mexican government. The Tribunal also noted that the Canadian Government should develop oversight, compensation, and reparation mechanisms for harms caused by Canadian mining companies abroad”. It recommends the immediate cessation of mining, an independent and rigorous environmental impact assessment, and the establishment of compensation measures. It calls for the corporation to conform to national and international standards for the protection of the aquifer (FAO - Montreal, October 26, 2007).

October 18

The Second Collegiate Court of the Ninth Circuit (*Segundo Tribunal Colegiado del Noveno Circuito*) cancels MSX’s state-level Land Use Change License following a demand filed by the *ejido* of Cerro de San Pedro (220/2007). The decision is based on the letter sent to FAO by the municipal government confirming that it had not granted a Land Use Change License (Reygadas Robles-Gil et al., 2008).

October 31

The *ejido* wins an *amparo* (455/2007) to recuperate 300 hectares invaded by MSX. It files – but fails to win – a writ of prevention/precautionary measure to halt the operations (“Desde el 2003”, October 13, 2008).

2008

March 6

The Cerro de San Pedro *ejido* wins an appeal at the First Collegiate Tribunal of the Ninth Circuit, which orders the Agrarian Tribunal Unit of the Twenty-Fifth District to emit a temporary injunction (*medida cautelar*) against MSX in response to Agrarian Ruling (*Juicio Agrario*) 454/2007 within 24 hours (Pedraza, 2008; Pérez, 2008).

2009

January 9

The Eleventh Court in Administrative Matters of the First Circuit in Mexico City resolves that it cannot address the appeal filed by MSX on May 20, 2008 and refers the case to the Ninth Collegiate Tribunal on Administrative Matters for the First Circuit (*Colegiado en Materia Administrativa del Primer Circuito*) (Pro San Luis Ecológico, 2009).

May 22

The Ninth Collegiate Tribunal of the Eighth Circuit in Administrative Matters (*Noveno Tribunal Colegiado del Octavo Circuito en Materia Administrativa*) in Mexico City adopts a resolution against the TFJFA and orders it to resolve the complaint against SEMARNAT filed by Pro San Luis Ecológico within 24 hours (González, May 22, 2009).

July 15

The NAFTA CEC rules that the complaint filed by Pro San Luis Ecológico does not warrant further investigation. It holds that the issues related to the environmental permits awarded by SEMARNAT are to be resolved in the judicial and administrative spheres (Pro San Luis Ecológico, 2009).

July 21

The FAO stages a 36-hour sit-in at the Canadian Embassy in Mexico City (Herman, 2009).

July 30

Cerro de San Pedro mine opponents submit a penal suit to the Attorney General against TFJFA President Francisco Cuevas and magistrate Alejandro Sánchez. The suit accuses the judges of failing to implement a Constitutional Appeal that voided MSX's environmental permits on May 22, 2009 (Ménde, July 30, 2009).

September 24

The TFJFA carries out its sentence, declares that SEMARNAT has already ignored a previous ruling issued on October 5, 2005 and declares that SEMARNAT has 20 days to comply with the sentence, which cannot be appealed ("Mexican environmental agency", November 20, 2009).

November 2

New Gold issues a press release stating that it holds all necessary documentation related to its environmental permit and that it has filed an appeal. It holds that the "latest decision does not affect Cerro San Pedro's other permits, including its operating permit or its ability to conduct business". The corporation quotes the Cerro de San Pedro municipal president as stating that: "New Gold is a welcome member of the Cerro de San Pedro community and has demonstrated its commitment to corporate social responsibility through meaningful support to our schools, health services and infrastructure improvement" (New Gold, November 2, 2009).

November 10

The FAO files a complaint with the British Columbia Securities Commission and the Toronto Stock Exchange accusing the corporation of “withholding and misrepresenting information that ‘is of central importance to shareholders (“Mexican environmental agency”, November 20, 2009).

November 13

SEMARNAT formally informs MSX and New Gold that their environmental permit has been revoked (“Mexican environmental agency”, November 20, 2009).

November 17

Local representatives from PROFEPA go to the mine to enforce the revocation of the permit. PROFEPA conducts a 12-hour inspection and enforces the shut-down of blasting and extraction but allows the cyanide leach pads to complete their cycles before terminating the operation (“Mexican environmental agency”, November 20, 2009).

November 20

The corporation issues a “Fact Sheet” declaring that it is pursuing all legal appeal options in collaboration with Mexican authorities and that it holds “overwhelming local support” (New Gold Inc., November 19, 2009).

November 20

New Gold’s share price falls to 69¢ in a day and closes at \$3.85 from a trading range of 94¢ to \$4.76 (“Mexican environmental agency”, November 20, 2009).

December 15

New Gold announces that it has been granted a temporarily injunction, allowing it to resume operations at CSP (New Gold, December 15, 2009). The injunction, granted by a Judge from the First District (*Primer de Distrito*), is accepted by PROFEPA’s San Luis Potosí office (PROFEPA, 2009, December 15).

December 18

The Núcleo Agrario Cerro de San Pedro wins a Constitutional Appeal (1344/2009) filed by *ejidataria* Ana Maria Alvarado Garcia, which implies a definitive suspension of the use of explosives by MSX, in accordance with the LGEEPA. MSX continues mining (Argüelles, December 19, 2009).

Annex 3: “Responsibility”, “community”, and “support” in corporate documentation

1997

Metallica releases its first Annual Report that includes the Cerro de San Pedro project. It states that it is “committed to embracing a role of responsibility that assures a safe and healthy environment, as well as respect for the culture and heritage of the areas in which we operate” (p. 8) and establishes a foundation to “preserve the village in a manner that will ensure sustained cultural and economic viability to Cerro de San Pedro after the completion of mining activities” The Annual Report mentions that there was a “general agreement” reached with inhabitants of La Zapatilla, but does not say same for Cerro de San Pedro. It holds that the “temporary relocation of some residents [of Cerro de San Pedro] is required” (Metallica, 1997, p.8).

2000

In 2000, Metallica Resources’ Annual Report states that:

MSX is committed to assisting in the sustainable economic and social development of the area surrounding the project. MSX has formed a non-profit foundation to supervise and administer the funds that the Company will donate to preserve the village of Cerro de San Pedro and assist the surrounding communities Metallica, 2000, p.4).

2003

In 2003, Metallica reports on progress with various permits and writes that:

In addition, although it is not required to do so, Metallica desires to complete several other projects prior to the commencement of construction as part of its commitment to

develop the project in a socially and culturally responsible manner (Metallica, September 8, 2003).

Metallica's press release after receiving a permit for church stabilization claims that:

We are very grateful for the support and confidence shown in MSX by the local residents, the various federal agencies and particularly the Governor of the State of San Luis Potosí and his staff in securing this authorization” (Metallica Resources Inc., October 23, 2003)

It continues to state that:

In addition, MSX has been actively satisfying a number of other conditions contained within its permits. Among these was the completion of an archeological study over the heap-leach pad and processing site. MSX is also finalizing the restoration and refurbishing of the 400 year-old San Nicolas Church in the community of Cerro de San Pedro. Additionally, MSX has photo documented and encased in packed earth several historical stone buildings in the area of the proposed haul road and is in the process of relocating and transplanting approximately 16,000 protected cacti from the mine and heap leach areas. The cactus relocation project will be completed by the end of this year. Ritch Hall, President and CEO of Metallica, stated, "We are pleased to have secured the approval of the Archdiocese as well as federal and state agencies to start the desired work on the Cerro San Pedro Apostle Church through the trust fund. We are very grateful for the support and confidence shown in MSX by the local residents, the various federal agencies and particularly the Governor of the State of San Luis Potosí and his staff in securing this authorization” (Metallica Resources Inc., October 23, 2003).

2004

Metallica Resources writes, in its 2004 Annual Report, that its scheduled nine-month construction period was suspended after 3 months due to issues that included “the legality of the surface rights agreement between Metallica and the local ejido, delays in receiving the blasting permit, and problems with renewing the construction permit” (Metallica, 2004, p. 3).

The corporation holds that:

Metallica continues to enjoy a good working relationship with local, state and federal authorities, as well as a good working relationship with residents of the local communities. MSX is very aware of the need to earn and maintain its social license to work within the municipality of CSP and takes this responsibility very seriously. With these relationships, Metallica is hopeful that the issues that have surrounded the CSP project for the past year will soon be behind the Company so that it can move forward in developing a project that will help sustain the economy of the local community for a number of years to come (Metallica, 2004, p.9).

When seeking to overturn an Agrarian Court decision to nullify the ejidatario contract, Metallica writes that:

In addition to appealing the Agrarian Court decision, MSX is pursuing several other options in order to establish a long-term legal basis for using the land. MSX is confident that it will prevail in this matter; in part due to Mexican law recognizing mining as a preferred use of the land and also because the project has the support of the people who

are recognized as the historical possessors of the disputed land. Additionally, MSX has a good working relationship with federal, state and local authorities. However, MSX can make no assurances that it will succeed in either its appeal or in the other options being pursued. In the event that MSX does not prevail, and the contesting group is granted legal authority to represent the ejido, MSX will be required to negotiate a new lease agreement with the ejido with no assurance that these negotiations will be successful...MSX has been dealing at all times with the persons who actually have had historic possession to the land being leased, while the contesting group consists of several people who do not reside on the land and obtained legal recognition as ejidatarios through their family lineage (Metallica, April 14, 2004).

When a land use nullification suite is overturned in favour of the mine, Metallica reports that:

It is gratifying to see that the possessors of the ground, the people who have lived on this ground for generations, are progressing in their efforts to prevail over the absentee *ejidatarios* who would take away both the right of the people to administer and make a livelihood from the ground that they live on (Metallica, November 4, 2004).

2005

Upon receiving its Temporary Occupancy Agreement (TOA), Metallica writes that:

With the receipt of the TOA, MSX will now have federally mandated secure land tenure in terms of accessing its mineral rights for the life of the mine. The receipt of the temporary occupancy agreement, an important milestone for the project, is a long and involved process which includes soliciting comments from all affected parties and land

owners in the area; detailed surveys and land evaluations; and paying restitution to the land owners in the form of annual payments. In this particular case, it also involved overcoming a number of legal challenges put forth by opponents of the project (Metallica Resources Inc., June 10, 2005).

2006

In its 2006 Annual Report, Metallica states that:

Our success at Cerro de San Pedro San Pedro is testimony to the hard work and perseverance of our employees, the cooperation and support of the Mexican government, regulatory agencies and Cerro de San Pedro community, and the trust and confidence of our shareholders (Metallica, 2006, p.1).

It also maintains that:

We are continually striving to promote and maintain dialog with the community in order to address concerns as they arise (Metallica, 2006, p.3).

Metallica refers to “absentee ejidatarios” in a statement regarding a case it lost in the Agrarian Tribunal:

It is disappointing that this small group can continue to utilize Mexico’s legal system for the political gain of themselves and others, while at the same time jeopardizing the economic well being of the local communities; the livelihoods of the more than 200 employees and subcontractors who are currently working on the project and the greater business environment of the State of San Luis Potosi and United States of Mexico itself (Metallica, April 7, 2006).

When its environmental permit is reinstated in May 2006, Metallica's President and Chief Executive Officer, Richard J. Hall states:

“We are very pleased with the results of the Federal environmental authorities' review of the CSP environmental authorization. We believe that this authorization, with only a few minor modifications, further validates the company's long held contention that the CSP project meets the highest environmental and community standards” (Metallica, May 15, 2006).

In June, when a court upholds the suspension of the blasting permit on ejido lands, Metallica reports that:

Since 2004, this group of five absentee *ejidatarios* has filed a variety of legal actions against various state and federal agencies over the CSP project. Of the cases receiving final rulings, all have been found in favor of the governmental agencies. The same court that upheld the suspension on SEDENA from authorizing the use of explosives has also ruled that the five non-resident ejido members can no longer bring legal actions in the name of the ejido of Cerro de San Pedro without the agreement of the people living on the land, or the “possessors” of the land. The vast majority of the possessors, as well as members of their families, are long time supporters of the CSP project with many currently working at the CSP project...Metallica's President and Chief Executive Officer, Richard J. Hall stated, “We are pleased with the decision from the court regarding the non-resident ejido member's inability to bring legal actions on the part of the ejido. This should go a long way in eliminating the frivolous lawsuits brought by this group and hopefully will annul the existing legal actions that are hindering the project.” (Metallica, June 7, 2006).

When Metallica receives its blasting permit, the corporation remarks that:

The Court's ruling confirms MSX's long held belief that SEDENA has the legal right to issue an explosives use permit to MSX on land where MSX has the legal right to access and mine the land by virtue of its lease with the Possessors and its Federal permits. The ruling also confirms MSX's belief that the Possessors have the right to enter into legal agreements over land that the ejido controls, but where the absentee ejido members have no legal control over any of the ground." said Metallica Resources' President & CEO, Richard Hall (Metallica, November 21, 2006).

2007

In 2007, Metallica publishes on its first corporate responsibility profile in its Annual Report:

In the 10 years since Metallica was formed, we have made it a priority to act as a responsible mining company – from our safety practices to our environmental stewardship. We care about our community and the environment – for ourselves and the people who live and work in our communities. And with a tradition of giving, we reach out to our neighbors through special programs ranging from infrastructure initiatives, including roads and housing, to local school improvements, free community medical and dental services and extensive land reclamation programs... We are committed to making Cerro San Pedro and the surrounding rural areas healthy and thriving communities (Metallica, 2007, p. 12).

The Annual Report presents a revised corporate mandate:

We are committed to playing a vital role in the responsible stewardship of our planet. We use a multi-dimensional approach that not only considers the physical and biological

factors, but one that understands and engages the human communities that live in and around the world's mineral rich landscapes. Our work is complex. Our success is clear (p. ii).

The McGill Daily prints a letter received from Metallica:

Had the reporter made the modest effort to do this, she would have learned – verifiably through extensive legal documentation – that Metallica's mine in Cerro de San Pedro has always operated legally, with all required permits strictly enforced. Metallica has also committed to 100 additional social and economic benefits to the local community beyond what's required.... 19 out of 24 families in the town have signed letters supporting the mine because of the social and economic benefits it provides...why does the FAO – with almost no representation from the local village – think it's acceptable to ignore the wishes of the local residents and seek to condemn them to a life of poverty? (Rowan, 2007).

2008

Metallica Resources' website contains the following paragraph:

Corporate responsibility is an integral part of our business. Together with our employees and representatives, our commitment is to act responsibly in all phases of our activities to minimize environmental impacts while maximizing social and economic benefits in the communities where we are active.

Since the first days of the Company's involvement in the project, Metallica has engaged in community dialogue with the principle of respect for the culture and heritage of the people of the village of Cerro de San Pedro and the surrounding communities (Metallica, 2008).

2009

On November 2, when New Gold is faced with mine closure, it writes:

Over the last ten years a small group opposed to the mine has conducted an ongoing series of challenges, appeals and counter appeals related to the EIS approval process...."New Gold is a welcome member of the Cerro de San Pedro community and has demonstrated its commitment to corporate social responsibility through meaningful support to our schools, health services and infrastructure improvement," stated Mr. Santos Loredo Tenorio, President of the Cerro de San Pedro Municipality. "The company's contribution to sustainable community development and our future is greatly appreciated."

Robert Gallagher, President and CEO of New Gold stated: "We are committed to operating in a socially responsible and sustainable manner in all the regions where we operate. New Gold is confident that all legal requirements related to its Cerro San Pedro Mine are being achieved or exceeded and that ongoing legal activities do not impact the continued operation of the mine."

New Gold's Cerro San Pedro Mine has had excellent operational performance in 2009 and has an enviable record of meeting its environmental and social responsibilities. The operation achieved ISO 140001 certification of its Environmental Management System to ensure globally recognized standards are achieved and routine third party monitoring and

reporting is performed in accordance with the ISO requirements (New Gold Inc., November 2, 2009).

The corporation released several versions of a “Fact Sheet” stating the following:

- New Gold’s permits and authorizations are subject to more than 100 environmental conditions that are audited each year and have consistently been 100 per cent compliant.
- Over the last 10 years, a small group opposed to the mine has conducted a series of challenges, appeals and counter appeals to the EIS. This is the latest in a decade of legal tactics that have yet to be successful.
- There is overwhelming local support for New Gold because the local residents appreciate the benefits it brings to them and their community.
- Opponents to the mining operations are almost exclusively from outside of the immediate community.
- Each week, the company provides free medical services, including doctor visits, ambulance service and dental care, to Cerro de San Pedro and 10 neighbouring communities.
- New Gold has spent hundreds of thousands of dollars paving roads, building sewage lines and flood drains to better the lives of local citizens.
- New Gold has improved the local environment and preserved the historic character of the town
 - o cleaned up mining waste abandoned by previous miners
 - o built new homes and schools for residents
 - o rehabilitated historic churches that had suffered from many decades of neglect

- o built a new church building.
- o trade skills training,
- o equipped schools with computers
- o supported cultural festivals
- o provided jobs to a significant percentage of the population.
 - New Gold has the support of the local community, both its leaders and its residents for being a good neighbor.
 - New Gold has a history of operating in a socially and sustainable manner in all three countries where it has a mining presence.

(New Gold, November 19, 2009).

Annex 4: Application form for temporary occupations³⁶

DIRECCIÓN GENERAL DE MINAS

SECRETARÍA DE ECONOMÍA **SE**

SOLICITUD DE EXPROPIACIÓN, OCUPACIÓN TEMPORAL O CONSTITUCIÓN DE SERVIDUMBRE

Antes de llenar esta forma, lee las consideraciones generales al reverso. En caso contar con la constancia de acreditación de personalidad, no será necesario llenar los campos marcados con asterisco (*).

No. de folio: USO EXCLUSIVO DE SE
Fecha de recepción:

Expropiación Ocupación temporal o constitución de servidumbre

Registro Federal de Contribuyentes

I DATOS GENERALES DEL TITULAR DE LA CONCESIÓN MINERA O DE QUIEN LLEVE A CABO LAS OBRAS Y TRABAJOS DE EXPLORACIÓN O EXPLOTACIÓN MEDIANTE CONTRATO

1.- Nombre de la persona física o moral(*):

2.- Domicilio(*):
Calle No. Exterior No. Interior
Colonia Código Postal
Ciudad, Municipio o Delegación Entidad Federativa

3.- Teléfono(*):

4.- Fax/Correo Electrónico(*):

II DATOS DEL REPRESENTANTE LEGAL

5.- Nombre(*):

6.- Domicilio (*):

7.- Teléfono (*): 8.- RUPA:

9.- Fax/Correo Electrónico (*):

III DATOS DE INSCRIPCIÓN EN EL REGISTRO PÚBLICO DE MINERÍA DEL ACTO, CONTRATO O CONVENIO POR EL QUE SE TRANSMITIERON LOS DERECHOS QUE DERIVAN DE LA CONCESIÓN, DE SER EL CASO

10.- Inscripción: Acta Volumen Libro Fecha

IV DATOS GENERALES DEL LOTE QUE AMPARA LOS DERECHOS DEL SOLICITANTE

11.- Nombre: 12.- Número de Título

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DATOS DE LA AFECTACIÓN QUE SE SOLICITA

13.- Clase: Expropiación Ocupación Temporal Constitución de Servidumbre Superficial Constitución de Servidumbre Subterránea

14.- Duración de la ocupación temporal o constitución de servidumbre, que no excederá de la vigencia de la concesión :
Del Día Mes Año al Día Mes Año

15.- Superficie del terreno que se pretende afectar: Has

16.- Si se trata de constitución de servidumbre subterránea, datos de la concesión por afectar:
Nombre No. de Título

VI DATOS RELATIVOS AL PUNTO DE PARTIDA Y SUS COORDENADAS CORRESPONDIENTES A LA LÍNEA O LÍNEAS AUXILIARES Y AL PERÍMETRO DEL TERRENO OBJETO DE LA AFECTACIÓN Y LA LÍNEA AL PUNTO DE PARTIDA DE LA CONCESIÓN O ASIGNACIÓN MINERA BENEFICIARIA DE LA MISMA

Datos relativos al perímetro del terreno objeto de la afectación (en el caso de servidumbre subterránea, es el de la planta de la obra minera proyectada en la superficie del terreno):

17.- Coordenadas del punto de partida: COORDENADAS U.T.M. m, N m, E

18.- Es el mismo punto de partida del lote minero en que se pretende la afectación: SI NO

19.- Ligas topográficas:
A).- Del vértice geodésico no.: al punto de partida Rbo. Gra. Min. Seg. Mts.
B).- Del punto de partida de la afectación al punto de partida de la concesión minera: Rbo. Gra. Min. Seg. Mts.

20.- LÍNEA AUXILIAR DEL PUNTO Rbo. Gra. Min. Seg. Mts. LÍNEA AUXILIAR DEL PUNTO Rbo. Gra. Min. Seg. Mts.

Lados Rbo. Gra. Min. Seg. Mts. Lados Rbo. Gra. Min. Seg. Mts. Lados Rbo. Gra. Min. Seg. Mts.

1-2 8- 15-
2-3 9- 16-
3-4 10- 17-
4- 11- 18-
5- 12- 19-
6- 13- 20-
7- 14- 21-

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VII DATOS DEL PROPIETARIO DEL TERRENO O DEL TITULAR DE LA CONCESIÓN OBJETO DE LA AFECTACIÓN

21.- Nombre de la persona física o moral:

22.- Domicilio fiscal:
Calle No. Exterior No. Interior
Colonia Código Postal
Ciudad, Municipio o Delegación Entidad Federativa

23.- Teléfono:

24.- Fax/Correo Electrónico:

VIII JUSTIFICACIÓN

25.- Obras y trabajos que se ejecutarán:

26.- Uso que se dará al terreno:

27.- Razones que fundamenten la afectación:

Firma del solicitante o de su Representante Legal

PARA USO EXCLUSIVO DE SE

SELLO DE LA SECRETARÍA

No. DE REGISTRO

FECHA

HORA

NOMBRE Y FIRMA DEL TITULAR DE LA UNIDAD RECEPTORA

NO. DE TANTOS

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Consideraciones generales para su llenado:

- Esta forma es de libre reproducción.
- Debe llenarse a máquina o a mano con letra de molde legible.
- Debe presentarse en original y 2 copias, una para el acuse de recibo.
- Se deben respetar las áreas destinadas para uso exclusivo de la SE.
- La firma del solicitante debe ser autógrafo en cada solicitud.
- Los datos de teléfono y fax/correo electrónico son opcionales.
- Los documentos oficiales que se presenten con alteraciones, raspaduras o enmendaduras no tendrán validez alguna.
- Se encargarán las hojas necesarias para la información que se requiere, en su caso.
- En caso de contar con la constancia de acreditación de personalidad no se deberán requerir los siguientes datos: Nombre o razón social, domicilio, teléfono, fax y nombre del representante legal; ni se deberá presentar ningún otro documento relativo a la comprobación de la personalidad.
- Dado presentarse en la ventanilla de recepción y entrega de documentos de la Subdirección de Control Documental de la Dirección General de Minas, en el Calle Acapulco de la Unidad de Estructura Social C.P. 11550, planta baja o bien en la Subdirección de Minería de la Delegación Federal de la SE que corresponde a la jurisdicción del lote minero de lunes a viernes de 9:00 a 14:00 horas.
- Todo documento original podrá acompañarse de copia simple, para cotejo, caso en el que se le registrará si interesado el documento original.

Protección de Datos Personales

- Los datos personales recabados serán protegidos y serán incorporados y tratados en el sistema de datos personales "Domicilio de Solicitante y Titular de Concesiones Mineras", con fundamento en la Ley Minera y cuya finalidad es recabar el domicilio de los solicitantes de Concesiones Mineras para notificarles diversas resoluciones de carácter legal de la Normatividad Minera, el cual fue registrado en el listado de sistemas de datos personales ante el Instituto Federal de Acceso a la Información Pública (www.ifi.org.mx), y podrán ser transmitidos a servicios de mensajería con la finalidad de enviar notificaciones diversas al solicitante de conformidad con la Normatividad Minera, además de otras transmisiones previstas en la Ley. La Unidad Administrativa responsable del Sistema de datos personales es la Dirección General de Minas, y la dirección donde el interesado podrá ejercer los derechos de acceso y corrección ante la misma es la Unidad de Estructura de la Secretaría de Economía, con domicilio en Av. Insurgentes Sur No. 1940 P.B., Colonia Florida, C.P. 01030 México, D.F. teléfonos: 01 800 410 2000, 52-5616 00 Ext. 31300, 31433, correo electrónico sistemas@economia.seg.mx. Lo anterior se informa en cumplimiento del decimoctavo de los Lineamientos de Protección de Datos Personales publicados en el Diario Oficial de la Federación el 30 de septiembre de 2005.

Trámite al que corresponde la forma:

- Obtención de ocupación temporal o constitución de servidumbre con la conformidad del afectado, de los terrenos indispensables para llevar a cabo las obras y trabajos de exploración, explotación y beneficio.
- Obtención de ocupación temporal o constitución de servidumbre sin la conformidad del afectado, de los terrenos indispensables para llevar a cabo las obras y trabajos de exploración, explotación y beneficio.
- Expropiación de los terrenos indispensables para llevar a cabo las obras y trabajos de exploración, explotación y beneficio.

Número de Registro Federal de Trámites y Servicios: SE-10-007, SE-10-008, SE-10-032
Fecha de autorización de la forma por parte de la Oficina Mayor: 19-I-2007
Fecha de autorización de la forma por parte de la Comisión Federal de Mejora Regulatoria: 25-X-2000

Fundamento jurídico-administrativo:

- Artículo 21, fracción VII, 15 fracción IV, y 21 de la Ley Minera (DOF 26 de junio de 1992, reforma 24 de diciembre de 1998);
- Artículo 55 del Reglamento de la Ley Minera (DOF 15 de febrero de 1999); y
- Artículo 97, fracción VII, y 67 de la Ley Federal de Derechos (DOF 31 de diciembre de 1981, última reforma 31 de diciembre de 2000).

Documentos anexos:

Ocupación temporal o constitución de servidumbre:

- Avalúo practicado a costa del interesado por la Comisión de Avalúos de Bienes Nacionales, si se trata de ocupación temporal o servidumbre superficial.
- Documentación que acredite fehacientemente (ante fedatario público) la conformidad del afectado, y en el caso de ocupaciones temporales o constitución de servidumbre sobre tierras ejidales o comunales, en los términos previstos por la Ley Agraria, en su caso.
- Carta poder ratificada ante fedatario público o instrumento público, o exhibir copia de la constancia de acreditamiento de personalidad expedida por la Unidad de Asuntos Jurídicos de la SE, o indicar en el momento de su presentación la clave de R.F.C. de la persona acreditada ante la SE en dicho registro.

Expropiación:

- Carta poder ratificada ante fedatario público o instrumento público, o exhibir copia de la constancia de acreditamiento de personalidad expedida por la Unidad de Asuntos Jurídicos de la SE, o indicar en el momento de su presentación la clave de R.F.C. de la persona acreditada ante la SE en dicho registro.

Tiempo de respuesta:

- Trámites de ocupación temporal o constitución de servidumbre: 15 días hábiles, contados a partir de la recepción de la solicitud, siempre que se acredite fehacientemente la conformidad del afectado.
- Cuando no se acredite fehacientemente la conformidad del afectado o se trate de expropiaciones: 30 días hábiles contados a partir del desahogo de pruebas, de conformidad con el procedimiento previsto en el artículo 37 del Reglamento de la Ley Minera.

Número telefónico del responsable del trámite para consultas: 52-02-66-07 fax 52-02-24-81

Número telefónico para quejas: Órgano Interno de Control en la SE 5629-95-52 (línea) 5629-95-00 (computado) 5629-95-00 (computado) Para cualquier aclaración, duda y/o comentario con respecto a este trámite, sírvase llamar al Sistema de Atención Telefónica a la Ciudadanía-SACTEL, a los teléfonos: 1-800-112-0584 en el D.F. y áreas metropolitanas, del interior de la República sin costo para el usuario al 1-800-112-0584 o desde Estados Unidos y Canadá al 1-800-475-2395.

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³⁶ Source : <http://www.economia-dgm.gov.mx/formatos/docs/FSE-10-007.doc>

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