

Corporate Social Responsibility in the Canadian Mining Sector: The Case of  
Guatemala's Marlin Mine

by

Georgina Elsie Nicoll  
B.S.Sc., University of Ottawa, 2009

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## **Supervisory Committee**

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## Abstract

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Corporate Social Responsibility (CSR) has become something of a “buzz word” for many corporations, including those in the Canadian mining sector. This term merits examination with a critical eye, since the strategic uses of voluntary CSR initiatives go far beyond the altruistic desire to improve corporate practices in the areas of human rights and environmental protection. Through a case study of the protest movement against Goldcorp Inc’s Marlin Mine in Guatemala, I will demonstrate that CSR alone, without a supporting framework of binding and enforceable regulations, is not enough to guarantee the protection of human and community rights in the global south.

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## **Dedication**

I dedicate this thesis to those brave people of Guatemala, Honduras, El Salvador, Peru, and Ecuador, to name but a few places, who at great personal risk have taken a stand against Canadian corporations to fight for the rights of their communities.

## **Chapter 1: Introduction and Literature Review**

In the past twenty years, corporate social responsibility (CSR) has become something of a “buzz word” in the mining industry, especially among transnational mining companies with operations in the global south. “CSR” appears on company websites, in promotional material, and at industry conferences. Many companies now have an executive position specifically related to CSR, with a title such as “Vice-President – Corporate Social Responsibility.” In short, mining companies are dedicating a lot of money and effort toward promoting CSR.

CSR in the mining sector has also become the subject of heated debate among Canada’s major political parties and concerned citizens’ organizations. A report by the Canadian Centre for the Study of Resource Conflict (CCSRC), funded by the Prospectors and Developers Association of Canada, found that mining companies from Canada are involved in three times more cases of community conflict and unethical behaviour concerning human rights and the environment than mining companies from any other country (2009, p.16). Most, if not all of these companies advertise codes of social responsibility on their websites and claim to be fostering sustainable development in local communities, yet reports of protests and environmental contamination continue (CCSRC, 2009, p.11).

CSR is also receiving attention in the international arena. In 2005, the United Nations Secretary General appointed the renowned Harvard University professor John Ruggie to be the UN Special Representative on business and human rights, with a mandate to develop a framework outlining the responsibilities of corporations and give recommendations to the UN on how to involve the business sector in strengthening

states' capacity to protect human rights (UN Business and Human Rights Resource Centre website). The UN has also developed the UN Global Compact, a voluntary initiative in which member companies commit to incorporating ten principles of ethical business into their operations (UN Global Compact website). There are many other initiatives that have similar goals, such as the Global Reporting Initiative and CSR International. Furthermore, corporate responsibility and sustainability have been the focus of numerous conferences and conventions around the world.

On the surface, CSR may seem like a fairly benign concept: companies and organizations are simply putting a lot of resources towards helping communities in need and ensuring companies respect people and the environment. Upon critical inspection, however, it is clear that CSR is not a simple concept, nor a necessarily benign one; it is a political concept, and a contested one at that. To understand the nature and significance of CSR, there are a series of questions that need to be answered.

Firstly, what is CSR? There are several definitions used by scholars, corporations and international organizations, and a history about how the concept developed. Secondly, why do transnational mining companies adopt and support CSR? There is considerable debate over this question in the literature. Some believe that companies adopt CSR policies because they genuinely care about the wellbeing of the communities and the environment that are affected by their mining practices. Others claim that companies support CSR in their discourse mainly because it gives them a better image. Thirdly, does the rise of CSR represent a positive step toward improving corporate behaviour in the global south? There is clearly more to understanding CSR than what is included in the value statements of mining companies. The mining sector presents CSR



as very positive and effective way to promote responsible practices, yet from other perspectives, the effectiveness of CSR is quite contestable. Some claim CSR is nothing but an exercise in promotional language, with few positive changes made in mining practices (Vogel, 2005). Others see CSR as a coordinated corporate strategy to pre-empt any binding regulations that governing bodies might seek to impose (Rowe, 2005).

This thesis will explore is the interaction between CSR and community protest movements. In what ways does CSR in the mining sector empower – or hinder – community stakeholders in the global south that are struggling for the protection of their human, community and environmental rights in the face of a powerful mining company?

In order to answer this question, I will discuss literature on CSR, social movements, and strategies for changing corporate and public policy. I will then examine the case of the Canadian company Goldcorp and the protest movement against its Marlin Mine in Guatemala. This case study will demonstrate how the theories apply to real situations. Furthermore, the unfortunate state of affairs which I will explain in the case study will underline the grave need to study CSR with a critical eye.

The case I will focus on is the Marlin Mine, owned by the Canadian company Goldcorp, which is a large open-pit gold mine situated in rural western Guatemala in the department of San Marcos. As indicated by referendums and protest demonstrations, many people in the surrounding indigenous communities are opposed to the mining operations, which are on their traditional lands and have a significant impact on their immediate environment and way of life. Many community members claim that they were never properly consulted before the government granted exploitation permits to the mining company in 2003. Since mining began there have been complaints about the

depletion and pollution of local water sources as well as structural damage to local buildings from ground vibrations caused by daily dynamite explosions. The presence of the mine has created social divisions and conflicts between members of the community, including death threats and physical attacks. Local people opposed to the mine formed a community coalition known as the San Miguel Defence Front to organize protests, petitions and legal action. This coalition has been supported by a network of Guatemalan and international non-governmental organizations. While each organization within the network is essentially an individual actor, there has been considerable communication and collaboration between the NGOs and the local protest coalition, creating a more-or-less cohesive protest movement.

The Guatemalan government has overall been very supportive of Goldcorp, and has resisted pressure from its own citizens and from international institutions to suspend mining activities. For its part, the mining company has denied that its operation is having a negative effect on the environment and the communities, and claims the anti-mining protests are unwarranted. It continues to operate the mine despite rulings by the Inter-American Commission on Human Rights and the International Labour Organization that call for the suspension of the mine. It claims that it is a responsible corporation, with CSR programs that contribute to sustainable development in the communities.

### **Examining the Concept of Corporate Social Responsibility**

Existing research on Corporate Social Responsibility provides some key definitions of this term and outlines key debates between scholars. In the following paragraphs I will outline some general perspectives on CSR in the mining sector. First of

all, I will explain the argument in favour of CSR from a business perspective. Next I will explain the view that CSR is something that should be pursued and promoted in the business sector, based on the assumption that corporations that adopt CSR policies will also improve their practices and thus improve the wellbeing of the environment and the people affected by their operations. Another, more sceptical position is that CSR is not necessarily a good thing, since companies are only adopting CSR policies in order to make their brand look attractive; they may make some superficial changes to their behaviour, but the potential for real gains with regards to human rights and the environment is limited. Different authors have brought different nuances to the issue, which I will explain. I will also outline my perspective on CSR in relation to the existing literature.

The term Corporate Social Responsibility began to appear in business literature as early as the 1940s (Carroll, 1999). In his 1999 article, Archie Carroll outlines the formation and development of CSR as a concept. He argues that the modern period of CSR developed in the 1950s, when it was referred to in fairly broad terms as the responsibility of business people to consider how their business affected society. A variety of definitions expanded in the 1960s and 1970s, which outlined more specific responsibilities that companies should take on. In the 1980s, Carroll explains, there were fewer original definitions, but a larger attempt to develop ways to measure and empirically study CSR. In the 1990s, he notes, alternative theories of CSR developed, such as stakeholder theory, business ethics theory and corporate citizenship that built upon previous definitions of CSR. The language of CSR increasingly appeared in

corporate language as a reflection of public expectations about the role of corporations in society (Carroll, 1999).

From a business perspective, as seen both in company value statements and in the writing of business scholars, CSR is often presented as being unquestionably good both for the wellbeing of affected communities and for business. As Hamann notes, multiple international business associations have formed to address concerns of responsibility and sustainability, including the World Business Council for Sustainable Development and Business for Social Responsibility. These organizations present CSR as a path of “enlightened self-interest” (2003, p.238). From this perspective, responding to global norms around human rights and the environment is beneficial for companies because it allows them to work together with NGOs and governments instead of against them. In the long term, so the argument goes, gaining the acceptance of local communities and respecting the environment as much as possible ultimately leads to larger profits for the company (Hamann, 2003, p.242). This is often referred to as obtaining a “social license” to operate; it enables the company to have a much smoother production process in the host area than if it had to deal with protests and security risks from unhappy residents (Nelsen and Scoble, 2006, p.1). Committing to CSR may also attract shareholders, especially those who invest with ethical considerations; after all, a good reputation is good for business (Hamann, 2003, p.242).

A notable exception to the business community’s promotion of CSR is of course the argument presented by Milton Friedman. In his negative response to CSR, Friedman famously argued in a 1970 *New York Times* article that the only responsibility of a business was to make a profit and serve its shareholders (Friedman, 1970). This view still

has support from some people in the business sector, but norms about the role of corporations have made this argument largely unacceptable. As corporations have become increasingly large and powerful, a global shift has taken place regarding their perceived role in society.

Kernaghan Webb discusses how evolving public expectations of corporate behaviour has led to a proliferation of voluntary codes of conduct (2002, p.8). He argues that the rise in prominence of voluntary codes is largely a result of increased globalization, which has been accompanied by a greater conscience among consumers in developed countries about the way multi-national corporations operate abroad. Webb explains that “it is increasingly seen to be no longer acceptable for corporations to behave well ‘at home’ while violating basic norms of consumer, worker, environmental and community protection elsewhere” (2002, p.8-9).

By the mid-1980s, according to Hogner, it was widely accepted that corporations were responsible to more than just their shareholders (2008, p.171). Even business scholars and company executives acknowledged that it is necessary to attend to the interests of community stakeholders in order to deliver profits for shareholders (Hemphill, 2004, p.356). This is known as “stakeholder theory.” In the 1990s, especially after the Rio Earth Summit, a further norm shift occurred when the notion of environmental sustainability entered into global discourse. This led to the business theory of the “triple bottom line,” a phrase coined by John Elkington, founder of the CSR think-tank SustainAbility. This theory claims that well-run businesses must be responsible for people (stakeholders) and the planet, as well as making a profit (Elkington, 2004). Corporate Social Responsibility is understood today as encompassing all three of these

bottom lines. Business for Social Responsibility, an international organization funded by corporations, defines it as “achieving commercial success in ways that honor ethical values and respect people, communities, and the natural environment” (quoted in Rowe, 2005, p.2).

James Rowe explains that a key defining aspect of CSR is its voluntary nature: “What makes CSR initiatives ‘socially responsible’ is that they are *not* mandated by governmental or intergovernmental institutions — they are voluntarily pursued” (Rowe, 2005, p.2). Some scholars claim that corporations have voluntarily adopted CSR norms, but only in response to pressure from civil society (Vogel, 2005). Others argue corporations have been proactive in establishing CSR norms (Dashwood, 2007; Rowe 2005).

When taken at face value, CSR as promoted by mining corporations may seem like a positive step towards protecting the well-being of stakeholders and the environment. There are mixed opinions, however, about the desirability of CSR and its potential to improve business practices. Some scholars see CSR as progress toward better practices, while others are sceptical of CSR and question the motives behind adopting such norms.

Hevina Dashwood writes about CSR in a positive light. She notes that by the early 1990s, NGOs and governments had embraced global norms around the protection of human rights and the environment. While companies in the extractive industry were in general slower to accept such norms, she argues that certain mining companies were actually influential in creating and spreading norms such as sustainable development and corporate responsibility (2007, p.129). Dashwood is optimistic about the ability of mining

companies to act in progressive and proactive ways to further the protection of human rights and the environment through CSR policies, though she admits that a company's actions depend greatly on the attitudes of its executive officers (2007, p.136). She argues that companies are not just adopting CSR policies because they are pressured into doing so by global norms and civil society actors; rather, they are central agents in promoting CSR (2007, p.131). Dashwood claims that mining companies like Noranda and Placer Dome found CSR policies and practices to be attractive because they would allow mining companies to engage with NGOs in a positive way using the same language, and thus gain more support for their activities. Also, she notes, Canadian companies quickly learned that showing leadership in CSR would give them a competitive advantage over other companies. It improves the company's reputation, which enables executives to gain a good standing with the Canadian government and have more of a voice at the bargaining table when mining policies and regulations are being formulated (2007, p.149). Dashwood also argues that companies that do behave responsibly have a strong motivation for promoting CSR initiatives to other mining companies, because a scandal caused by the irresponsible behaviour of one company tends to give the whole industry a bad reputation (2007, p.149).

Dashwood is fairly convincing in her argument that firms can help create CSR norms – that they are not always resisting norms of corporate responsibility. She explains two cases of companies that have displayed “a profound shift in thinking” about their responsibilities toward society, and have showed a considerable effort to establish CSR norms (Dashwood, 2007, p.145). She also identifies strong economic and political motives that explain why these companies have promoted such norms (Dashwood, 2007).

However, she focuses her study on only two companies that happen to have quite good records on ethical practices, and one cannot generalize their apparent altruism to all mining companies. Another note about Dashwood's study is that while she writes about how these firms adopted a *discourse* of CSR, she does not address in detail whether or not their practices actually changed in their mines in the global south. She briefly disputes the claim made by some authors that CSR is a "mere public relations exercise" (Dashwood, 2007, p.138), though she does acknowledge that "further research is needed on the effectiveness of these efforts in changing the behaviour of individual firms" (Dashwood, 2007, p.152).

Other authors address more directly the question of why CSR is an important concept, one worth promoting among corporations. Henry Mintzberg argues that CSR is absolutely necessary for creating and maintaining a humane society (1983, p.12). Since large corporations have such immense power in modern society, their decisions and practices undoubtedly have a social and political impact. Mintzberg claims that external regulations and pressure from government and civil society are not sufficient to ensure corporations consider the common good, since in some situations corporations are capable of using their superior knowledge to mislead or circumvent the government and stakeholders (1983, p.12). Therefore, corporations must internalize the ethics of CSR, and incorporate them into their practices. Mintzberg notes that CSR has its challenges; it is very difficult to embed ethical values into all levels of a corporation. Moreover, he asserts that "social responsibility can never be relied on alone" (1983, p.12). He also argues that the pure forms of CSR must be distinguished from less altruistic ones; CSR should be adopted and understood as an ethical position, akin to the concept of "noblesse oblige,"



and should not be adopted under claims of “enlightened self-interest” (Mintzberg, 1983, p.3-5).

Kernaghan Webb outlines the benefits of voluntary corporate codes, including CSR codes, compared to state regulations. He argues that states’ “command-and-control regulatory approach” has notable limitations, including expensive and slow processes, jurisdictional constraints on content and scope, and inflexible, legalistic and adversarial compliance mechanisms (Webb, 2002, p.3). In recognition of these weaknesses, both scholars and governments are exploring other governance techniques (Webb, 2002, p.4). According to Webb, non-governmental voluntary codes and standards have the advantage of being flexible, low-cost, and quick to develop and amend; furthermore, they encourage the internalization of responsibility (Webb, 2002, p.27). Another benefit of voluntary codes is that they give NGOs, stakeholders and citizens greater leverage to influence corporate behavior. Webb argues they can allow multiple interests and values to be heard - that they are “inherently bottom-up, cooperative and consent-based, working only when agreed to by the appropriate attentive publics” (Webb, 2002, p.16). With regards to the CSR code movement more specifically, Webb argues there is potential for these voluntary codes to achieve results in policy areas where states have shown a limited capacity to regulate through conventional approaches (2002a, p.399). However, Webb does note that voluntary codes such CSR policies are not a replacement for state-based legal frameworks altogether; the best results are achieved when legal and state decisions reinforce the effectiveness of voluntary codes, and ensure code behavior is acceptable (2002, p.16;27).

Chris Marsden argues that in the context of a globalized world and a neoliberal, free-market economic order, CSR is a necessary part of creating global sustainable development (2000, p.11). In the current global marketplace, Marsden explains, states are less capable of taking action on an international scale because political leaders are forced to deregulate their economies and cut back on state activities in order to make their countries competitive. In the case of smaller, poorer states, governments are even more at the mercy of global economic forces, which tempts them to accept short-sighted and sometimes corrupt economic deals at the expense of social and environmental issues (Marsden, 2000, p.11). In these countries, corporations have a very large impact, and there is potential for significant improvements in sustainable development if corporations adopt CSR principles and “triple bottom line objectives” (Marsden, 2000, p.22). Thus Marsden finds it very encouraging that business leaders are involved in global CSR initiatives to establish corporate codes of conduct (2000, p.12). Marsden argues that whereas the state is less able to act, transnational corporations are very well placed to act; therefore, NGOs and governments need to accept corporations as part of the solution to sustainable development, and encourage them to take leadership in creating corporate standards and accountability systems for the benefit of everyone (2000, p.23).

Not all scholars share this optimism on the potential benefits of CSR, however. There are several sceptical perspectives on CSR worth noting, which tend to be suspicious of the motives of corporations and doubtful about CSR’s potential for improving corporate behaviour. David Vogel maintains that companies may support responsible behaviour in their public relations campaigns and in their official policies, but in reality their behaviour is unlikely to improve in a meaningful way unless they are

pressured through external activist campaigns. In his view, CSR is part of a strategy to build a positive image of a company. He argues that corporations will only adopt CSR policies if they are pressured into doing so by NGO campaigns and negative media coverage, when they feel that their brand is suffering (Vogel, 2005, p.15).

Gordon and Webber are similarly doubtful that CSR is a viable solution to irresponsible corporate practices. They view the issue through an imperialist framework and state that it is useless to promote CSR and self-regulation since even if companies employ the rhetoric of CSR, they will still continue their predatory behaviour in the global south. CSR, according to these scholars, does nothing to address the deeper problems of expansion and over-accumulation brought on by the capitalist system (2008, p.64;72).

James Rowe argues that the principal reasons that corporations promote CSR is to further their self interest in the long run. Like Dashwood, Rowe agrees that firms have taken a proactive role in spreading CSR norms, but he sees it as problematic – an attempt to pre-empt regulations on business activities. While Marsden finds it encouraging that international councils have formed to promote CSR, Rowe finds this deeply worrying. He argues that corporations use these international organizations to lobby governments and promote CSR over other regulatory options for improving corporate behaviour, since from a big-business perspective, voluntary action is a favourable alternative to binding regulations that would force corporations to respect human rights (Rowe, 2005, p.4). Rowe argues that CSR is likely to impede the creation of binding regulations if everyone believes voluntary codes of conduct are a sufficient response. CSR, in this view, is a part of a political strategy (Rowe, 2005, p.4).

Rowe, among others, questions the potential of voluntary CSR policies to improve business practices. The question that he and many CSR critics ask is whether voluntary codes of conduct are sufficient to protect stakeholders from irresponsible corporate behaviour. Since companies' CSR policies and initiatives like the UN global compact and the Global Reporting Initiative are voluntary, they cannot be used to force companies legally to live up to their commitments. How can people be guaranteed protection from exploitation, human rights abuses, or environmental destruction when corporations are not legally required to meet certain standards of behaviour? Hamann and Acutt emphasize that corporate responsibility, when understood within a voluntary CSR framework, is not the same as corporate accountability, which would allow governments and stakeholders to legally force companies to live up to certain standards of behaviour (2003, p.257). These authors argue that CSR must be underpinned with binding regulations; they see the state playing a necessary role (2003, p.268).

Hamann and Acutt maintain that there are implicit dangers in the CSR agenda. Like Marsden, they emphasize that in many countries, especially in the global south, governments lack control over the private sector – sometimes because of free trade agreements – and therefore have less ability to ensure that their citizens' rights are being respected. But Hamann and Acutt warn that CSR cannot fill this void; it is the state that must maintain its responsibility to protect its citizens. They also warn that companies may make small changes to their mining practices to avoid or placate demands for more drastic improvements; in other words, they use CSR as a strategy for legitimisation (Hamann and Acutt, 2003, p.259). Heledd Jenkins also describes this legitimisation strategy. He outlines how companies can use “CSR language” in their discourse to frame

their activities in a positive light, and create the impression that the local community is dependent on them. Through narratives they can construct the company-community relationship on their own terms as a strategy to build their legitimacy (Jenkins, 2004, p.27-28).

Scholars disagree on how CSR affects the relationship between civil society and corporations. Like Webb, Hamann and Acutt argue that CSR can give civil society groups bargaining power, or leverage, against corporations. NGOs can publicly compare a company's actions against its language, making it look hypocritical; if a company is concerned about maintaining its reputation and image of responsibility, it will be more likely to meet civil society's demands (Hamann and Acutt, p.260). Like Marsden, Hamann and Acutt also argue that when companies commit to CSR policies, they can potentially become important allies for governments and NGOs to meet development goals (2003, p.261). However, they stress the need for "critical cooperation" with corporations; in other words, government and civil society must play a greater role in defining CSR programs so that they complement regulation and human rights (2003, p.260;268). They encourage governments and NGOs to "engage directly with the CSR agenda... beyond opposition and confrontational politics" (2003, p.260).

James Rowe, on the other hand, believes that the CSR cannot be separated or redirected from the corporate agenda, and thus should be ignored by civil society. He argues that voluntary corporate codes of conduct are given too much attention, which only plays into the hands of corporations. Contrary to Hamann and Acutt, his recommendation is to disengage from CSR: "by unpacking why business is so invested in

corporate codes of conduct, I aim to convince civil society organizations and concerned members of the business community to become disinterested” (Rowe, 2005, p.4).

Peter Lund-Thomsen brings up another problematic aspect of CSR, namely that it has been created by first-world academics, businesses and NGOs for application in the global south, and has largely excluded the voices of the very people and communities it is supposed to help (2008, p.1006). Contrary to Webb’s claims that voluntary codes are created in a bottom-up process, Lund-Thomsen argues that corporate codes of conduct are often applied in a top-down manner with little input from local stakeholders, and risk causing more harm than good since they are often ill-suited to the economic and social context in the global south (2008, p.1010-1011). He gives an example of an American sporting goods company whose CSR code limited the total number of hours that workers in its Chinese factory could work per week. This actually made the situation worse for the workers; since they were paid so little per hour, limiting their hours without increasing their pay meant they could not earn enough to provide for their families (Lund-Thomsen, 2008, p.1010). To make CSR useful, writes Lund-Thomsen,

It is vital to [...] incorporate the voices of suppliers, workers and communities in the design, implementation, monitoring and impact assessment of codes in order to ensure a better fit between what the latter groups actually prioritize as opposed to what Northern companies, trade unions, NGOs and consultants think they ought to prioritize (2008, pp.1012-1013).

As I have outlined above, CSR is a contested concept. There is disagreement over whether corporations are genuinely interested in improving the lives of stakeholders, or whether CSR is merely a publicity stunt that will not really lead to better practices. Some argue CSR has potential to further human rights and development, while others claim it is best ignored. As the case study of the Marlin Mine will demonstrate, my research

findings support the more sceptical theories about CSR. Goldcorp's use of CSR seems to confirm the arguments stated by Vogel and H. Jenkins that it is a tool for managing a company's image and trying to legitimise the place of a mine in the community. It also coincides with Rowe's argument that CSR can be used as part of a political strategy to prevent binding regulations. Moreover, it confirms Lund-Thomsen's critical view that CSR tends to be a top-down process, with little input from local stakeholders.

However, my conclusions about CSR are not entirely negative; the fact that Goldcorp is publicly committed to CSR did provide some leverage to the protest movement to raise awareness of their cause, and as will be discussed in later chapters, has influenced some of Goldcorp's stakeholders to take action in favour of meeting the protesters' demands of shutting down the mine. Besides, services that the company provides as part of its CSR program, such as the medical clinic, are providing beneficial services to the local people. Overall though, in the case of the Marlin Mine, CSR has not helped the protest movement to secure the local people's right to have a voice in industrial development projects on their territory. There is a need for a binding legal mechanism to accompany voluntary corporate responsibility codes, which people affected by Canadian mining companies can activate to defend their rights when CSR falls short. As Hamann and Acutt argue, CSR is no substitute for "corporate accountability" in the form of regulations.

### **Social Movement Theories**

The case study of the Marlin Mine that will follow in later chapters is in many respects a study of a social movement. It is therefore useful to outline some theories

about social movements that can be applied to this case. Mario Diani's definition of social movements is useful for this study since he specifically crafted a definition that would be acceptable to all the major approaches to social movement research. Diani states that "social movements are defined as networks of informal interactions between a plurality of individuals, groups and/or organizations, engaged in political or cultural conflicts, on the basis of shared collective identities" (1992, p.1).

There are several different approaches to social movement theory, which have developed mainly in the field of sociology. As J. Craig Jenkins explains, "traditional" theories viewed social movements as a response to grievances and discontent in society. Mass society theory, relative deprivation theory and collective behaviour theory, for example, all focus on the "structural strains" of changing societies that led to widespread movements (Jenkins, 1983, p.528). According to this perspective, the actors and agents of social movements are the most desperate classes of society that can no longer stand their miserable conditions. Social movements are thought of as spontaneous, unstructured and unorganized, and occur in moments of social and cultural breakdown (Morris, 2000, p.445). This way of thinking about social movements remained prevalent until the 1960s, when events such as the civil rights movement in the United States challenged traditional assumptions about social mobilization. New theories were developed by sociologists such as Oberschall, Tilly, McCarthy and Zald that questioned the strength of the relationship between discontent and the rise of social movements.

A notable approach that developed in the 1960s and 1970s was the resource mobilization theory (Jenkins, 1983, p.528). Resource mobilization theory focuses on the level of social organization as a key causal factor of social movements. It stresses the



importance of sophisticated organization, communication, and strategic interaction with the political system and other civil society networks (Cohen, 1985, p.674; Jenkins, 1983, p.528). According to Jenkins, movement organizations that are centralized and formally structured are better able to mobilize resources than organizations that are decentralized and informal.

Whereas earlier social movement theories focused on social conflict in terms of class structure, resource mobilization theory focuses on the availability of resources and the ability of movement entrepreneurs to mobilize those resources and channel discontent into effective organizational forms (Edelman, 2001, p.289). Turner and Killian add that “there is always enough discontent in any society to supply the grass-roots support for a movement,” yet a movement will only appear if there is sufficient organization and resources to support it (1972, p.251). McCarthy and Zald also emphasize the value of focusing on social resources instead of social problems as causal factors, though they approach the issue from a more constructivist perspective. Social problems, they note, may not necessarily have an objective existence. In their words, “grievances and discontent may be defined, created, and manipulated by issue entrepreneurs and organizations” (1977, p.1215).

Resource mobilization theory is not without its critics, however. In their critique, Piven and Cloward acknowledge that while it is important to consider the level of social organization (1991, p.435), the capacity to organize does not necessarily predict the formation of a social movement, since there are historical examples of social groups that mobilized to protest against adverse living conditions despite lacking cohesion and structure (1991, p.445). According to Piven and Cloward, social movements cannot be

seen as “mindless eruptions” with no relation to social organization, yet we cannot completely discredit traditional theories that view social movements as a response to social grievances (1991, p.436).

Another approach to social movements is known as the Political Process perspective, formulated mainly by Tilly, McAdam and Tarrow. It is a “synthetic” theory that has taken key insights from resource mobilization theory, such as recognizing rational human agency, but considers a broader range of causal factors (Morris, 2000, p.446). Political process theory focuses on mobilizing structures (such as networks and organizations), political opportunity structures (how the external political environment can be used to a group’s advantage), and cultural framing (Morris, 2000, p.446).

According to Tilly, the key to the success of a social movement is to gain access into the political system by making alliances with political actors (1978, p. 125-133).

Resource mobilization theory and the political process perspective are both useful in the case study of the protest movement against the Marlin Mine. The older theories that claim social movements form in a spontaneous and unstructured response to grievances have very little relevance to the events of the case study. While class structure and the existence of grievances cannot be completely ruled out as factors, it is evident that human agency and organizational capacity were essential to the creation of the protest movement against the Marlin Mine. Key concepts such as issue entrepreneurs, networks and organizations, and political opportunity structures that appear in social movement literature are also discussed and developed in public policy and agenda setting literature, which I will outline next.

## **Public Policy and Agenda Setting Literature**

A further body of literature that is essential to consider in my case study is in the field of public policy, and more specifically, agenda setting. Now that I have addressed what a social movement is and how it forms, I will discuss theories focused on how to push for changes in public policy. Many political scientists have developed theories around agenda setting and decision-making, in an attempt to explain why certain issues get onto the political agenda while others do not, and why certain alternatives are selected over others. Most theories on this issue have been developed by American authors and have been directed at explaining American political agendas; however I argue that some of these theories are also useful when applied to other countries, including Guatemala and Canada.

As Howlett, Ramesh and Perl explain, the most basic definition of political agenda setting is getting decision-makers to recognize that a certain problem needs to be addressed by government (2009, p.92). According to these authors, theories about agenda-setting can be grouped into two broad categories. In the first category, problems are seen as having an objective existence; they are there just waiting to be recognized by the government. Variables such as economic and political development are used to explain differences in agendas from place to place. In the second category, problems are seen as being socially constructed; they are not just waiting for recognition, they must be defined and framed in ways that attract the attention of government. In this view, agendas depend on people and their perceptions of what a problem consists of (Howlett, Ramesh and Perl, 2009, p.93).

Early theories about how governments make decisions view problems as being objective. For example, Ward Edwards outlined the rational model of decision-making, which posits that decision-makers choose policy options that will maximize their desired outcomes (Edwards, 1954). First of all, decision-makers identify a problem, establish a goal for solving it, then list and explore all alternative courses of action and evaluate their probable consequences, and finally select the alternative that can best maximize benefits while minimizing costs (Carley, 1980, p.11). However, over time some scholars found that the rational model did not accurately describe how decisions are really made in day to day politics, and developed new theories. For example, Charles Lindblom developed the incremental model of decision-making. According to Lindblom, decision makers do not work towards grand policy goals in a rational way; rather, they take a series of small, step by step decisions to address particular problems. Policy changes only marginally from the status quo each time, and builds on previous decisions (Lindblom, 1959, p.84).

More recent theories about policy change have challenged the notion that problems are objective. John Kingdon's theory, developed in the 1980s, holds that problems are often constructed. Kingdon developed a framework for studying agenda-setting and policy change that emphasizes the role of the policy entrepreneur, whose goal is to get a particular issue on the government's agenda and then convince decision-makers that a particular policy is the right one. A key notion in Kingdon's theory is that solutions are not necessarily tied to particular problems; in fact, a policy entrepreneur often has a solution first, and looks for a problem to apply it to (1995, p.173). Kingdon draws on the garbage can model of organizational choice developed by Cohen, March and Olsen; he argues that there are three streams that must be brought together for a

policy change to take place; problems, policy proposals, and politics (1995, p.19). The trick for policy entrepreneurs is to line up the policy they want (the solution) with a problem, and wait for the appropriate opportunity window to promote the policy. When the entrepreneur feels the time is right, he or she must convince others that their policy is the solution to a political problem that is currently receiving public attention. Kingdon argues that this artful ability to connect solutions to problems at the right time explains much of the policy process (1995, p.182-183).

Baumgartner and Jones are also important scholars in the literature on agenda setting and policy change. In their influential 1993 book *Agendas and Instability in American Politics*, they build on Kingdon's ideas about issue definition, but also incorporate theories about networks and institutions to form a synthetic theoretical framework. Baumgartner and Jones emphasize that defining problems in a strategic way will determine whether and how that problem will be addressed by political decision makers. Issue definition is related to agenda-setting, they argue, because a change in the way an issue is defined will often result in that issue appearing on the public agenda (2009, p.12). If an issue is defined in a way that links it to a larger societal concern, a symbolic theme or a "hot topic" that is already receiving public attention, it is more likely to attract attention and thus policy change is more likely. Moreover, Baumgartner and Jones argue that redefining an issue can also bring in new participants, since "issue definition has the potential for mobilizing the previously disinterested" (2009, p.16). If apathetic people can be mobilized, there is a greater possibility of a change in policy, since politicians will see it as an opportunity to increase voter support (2009, p. 21).

Another important concept in Baumgartner and Jones' theory is "venue shopping," which recognizes the significance of institutional rules in the decision making process. These scholars explain that the way an issue is defined has an impact on where it is dealt with by governments, courts, and other such institutional venues. The way an issue should be defined depends on the venue to which the interest group is appealing to support its cause; if the group is unsuccessful in one venue, it can redefine the image of their problem and present it to a different venue (Baumgartner and Jones, 2009, p.34). It is often necessary to tailor the definition of a problem to fit the jurisdiction and mandate of a particular decision-making institution.

Sarah Pralle has used Baumgartner and Jones' theoretical framework in her research on environmental advocacy groups and their attempts to change public policy. In her 2006 book, *Branching Out, Digging In*, Pralle addresses the tactics of protest movements in three different categories: issue definition strategies, participant mobilization strategies and venue shopping strategies. Her focus on the strategies of a network of small organizations has provided a useful model for my analysis of the Marlin Mine situation, which is developed in chapter three.

The work of Margaret E. Keck and Kathryn Sikkink is also highly relevant to my research. In their groundbreaking 1998 book *Activists Beyond Borders: Advocacy Networks in International Politics*, these authors study how transnational advocacy networks campaign at an international level. They define transnational advocacy networks as "communicative structures" characterized by "voluntary, reciprocal, and horizontal exchange of information and services" at an international scale, between activists bound together by shared values and principles (1998, p.3;200). Keck and

Sikkink identify four clusters of strategies that these networks use, which are information politics, symbolic politics, leverage politics, and accountability politics (1998, p.16).

They examine the factors that lead to the success or failure of transnational non-state actors to change policy outcomes of states and international organizations, and conclude that the key factors for success are the density and strength of the network, the vulnerability of the target policy venue, the structure of the domestic society and institutions, and the nature of the issue they are dealing with (1998, p.26-29).

For the case study of the Marlin Mine, the theories of Baumgartner and Jones, combined with Pralle, Keck and Sikkink's complementary research, provide the best framework to examine the strategies of the protest movement against the mine. All of these scholars acknowledge that strategies to change public policy are necessarily complex and multi-faceted, involving issue construction, recruiting supporters, and targeting institutional venues. Since my research is focused on how community members, NGOs and corporations go about pushing for policy change, these theories are very useful because they include networks of organizations and individual actors in their scope, and consider them important agents in effecting policy changes. Theories such as the rational decision making model and the incremental model are not very useful for my particular case study because they focus mainly on the actions of agents within governments who have decision-making power. Furthermore, these theories are based on the assumption that problems are objective. While there are definitely real, objective problems that need to be addressed in the communities around the Marlin Mine, for strategic purposes the issues are constructed and framed in subjective and varying ways depending on the targeted venue and audience.

## **Research Methods**

My research was carried out using qualitative methods. In order to understand the details of the case I am studying – the Marlin Mine in Guatemala – I have used what Collier, Brady and Seawright call “thick analysis.” This is when the analyst relies on detailed knowledge about the case or cases; it is the opposite of “thin analysis,” which is more often used by quantitative researchers relying on statistical tests. Thick analysis is an important tool of the qualitative tradition, and if used well, it can make description and causal inferences much stronger (Collier, Brady and Seawright, 2010, p.180-181).

My research focuses on the analysis of a variety of primary and secondary sources. The information in these sources was of course not originally produced for the purposes of my research, but as Henn, Weinstein and Foard outline in *A Critical Introduction to Social Research*, there are many naturally occurring sources of information that provide rich data for the qualitative researcher to analyse (2010, p.243). These authors further point out that one of the advantages of using naturally occurring sources is that they are contextually situated and thus are better suited for analysing meanings and motivations (Henn et al., 2010, p.245).

My sources include the following materials: news articles from Guatemalan, Canadian and international newspapers and news websites; radio and television programs from the website archives of media outlets; reports, statements, and press releases from Goldcorp’s website; annual monitoring reports; website updates, press releases, and reports released by the NGOs, Church organizations, and community organizations involved in the protest movement against Goldcorp; environmental and health studies



published by scientists and doctors who have done research around the Marlin Mine; and, academic books and journal articles analyzing the case from legal and political perspectives. I conducted original language research, using sources in Spanish as well as English.

The analysis of these sources has served three main objectives in my research. First, I used the information in the material to better understand the details of the events that have taken place in the case of the Marlin Mine, the actors involved, and the historical, cultural and political context of the Mayan communities involved, and of Guatemala as a whole. These sources enabled me to piece together a timeline of events. Second, I used the source material to explain the strategies used by the various actors involved, including Goldcorp, the indigenous communities, and the NGOs that have participated in the protest movement.

The qualitative research style is best suited for this type of research project. As Henn, Weinstein and Foard explain, the logic of qualitative research is often to develop an understanding of the motivations behind people's actions. It aims to uncover people's perspectives and intentions, and understand the meanings that people have of the world and how they govern their behaviour (2009, p.175-176). Meanings and motivations are important in the topic I am studying since there are competing opinions on what corporate social responsibility means. Further, in my case study there are contrasting perspectives and ideas between the actors about CSR, development, and community needs. Finally, since I am examining how CSR is used as part of a corporate strategy, it is essential that I try to understand the motivations behind both the discourse and the actions of the mining company, Goldcorp.

Qualitative methods have also defined the way I chose the case to study. While quantitative methods often emphasize choosing a sample of cases that is statistically representative of the population, qualitative methods favour theoretical sampling, in which the researcher chooses only cases that are relevant to the theoretical focus of the study. Cases are chosen for study if they can advance the development of the theory (Henn et al., 2009, p.182-183). Following this sampling method, I have chosen a case that is representative of the concepts I am studying and allows me to observe and understand a particular social process in detail. Quantitative researchers want a representative sample because they want to make their findings generalisable to all cases. However, Henn, Weinstein and Foard argue that the findings of qualitative research on a small theoretical sample are also generalisable to a certain extent (2009, p.182-183). Scholars like Ward Schofield would have generalisability defined differently for qualitative research; he argues that it “is best thought of as a matter of the ‘fit’ between the situation studied and others to which one might be interested in applying the concepts and conclusions of that study” (quoted in Henn et al., 2009, p.210). Defined in this way, the findings of my study will be generalisable: my research focuses on one case, but it will resonate with other cases in which similar social processes are taking place. For example, the complaints expressed by community members around the Marlin Mine over the lack of consultation prior to and during the operation of the mine are similar to complaints reported by other communities affected by mining, and hold valuable lessons to consider for the future construction of mines or other operations.

My choice of the Marlin Mine for the case study is based on several reasons. First of all, Goldcorp is a good case in which to observe CSR, since this mining company has

worked hard to build up its image as a socially responsible company. It spends millions of dollars each year on community projects and glossy reports about its CSR policies and achievements. Also, the Marlin Mine itself was a project that was supposed to be a good example of responsible practices. Before the protest movement erupted, the World Bank praised the company for its generous allocation of community improvement funds, calling it a “good corporate citizen” (Imai et al., 2007, p.119). The Marlin Mine controversy has undoubtedly eroded Goldcorp’s reputation. Yet at the same time, the company has continued its efforts to portray itself as a leader in CSR.

Second, the Marlin Mine situation is a good case in which to observe the activities and strategies of a social movement that aims to protect the rights of the people in communities affected by mining. The community members opposing the mine formed a coalition with other groups and communities in Guatemala, and built a network of supporters in international institutions and NGOs. This case thus allows me to study the relationship between CSR and social movements.

Thirdly, I chose this case because it has been publicized and documented in such a way that it is possible to trace the activities of the social movement as well as follow the company’s moves. Both sides have published documents on the internet, the media has covered the case, international institutions have produced reports, and scholars in fields such as law, political science, environmental science and health science have written papers about different aspects of the case.

Finally, the Marlin Mine case bears important similarities to other cases where a community in the global south is in conflict with a foreign mining company. The findings of this study will have significance beyond the particular events in Guatemala, especially

resonating in communities where Goldcorp operates other mines. The Marlin Mine case is similar to the San Martin Mine in Honduras, the Porgera Mine in Papua New Guinea and the Pascua-Lama Mining project in Chile and Argentina, to name but a few (Rights Action, 2008). These and many other cases have followed an unfortunate pattern: A powerful mining company from Canada or another industrialized country has taken advantage of a weak or corrupt national government, lax regulations, and poor rural communities in the global south. The result is a large open-pit mine in operation despite the opposition of the local people whose lands and lives are negatively affected. Though the company claims to follow CSR principles and provide development opportunities, a situation of conflict and tension has developed between the communities and the mining company. I am not claiming that all companies and all mining projects follow this pattern, but the frequency of this type of situation is high enough that my research on the Marlin Mine will be useful for analyzing a range of other cases.

### **Chapter Outlines**

In the next chapter, I will explain in detail the events of the case study. Goldcorp's Marlin Mine has been a source of conflict and contention in the surrounding communities, and has sparked an international protest effort. I will discuss why the mine has created conflict in the community, and why Goldcorp has not been able to establish good relations with the community despite having a CSR program and investing in community development projects. This chapter will reveal some of the limitations of CSR programs in establishing harmonious community relations.

Chapter three follows with an analysis of the strategies used by the protest movement to change public policy and corporate practices, and by the mining company to contain the protest movement and keep in place the government policies that allow it to continue mining. I will apply the theories of Baumgartner and Jones, as well as the framework established by Sarah Pralle, to explain how the situation has evolved. This chapter demonstrates that it is extremely difficult for civil society groups to fight against transnational mining companies in the global south, due to the lack of regulations controlling TNCs and the inability of international human rights institutions to enforce their rulings. I argue that overall, CSR is not a useful tool to enhance the bargaining position of human rights activists, and is in fact used as an effective political strategy by transnational mining companies to further their interests at home and abroad.

In chapter four, I will discuss the conclusions that can be drawn from the case study. I will also examine what light this case study sheds on the concept of CSR in general, and point to the greater political implications. The Marlin Mine is one localized case, but there are enough similar situations occurring elsewhere to warrant a critical look at the concept of CSR and at the current lack of binding regulations on Canadian mining companies working in the global south.

## Chapter 2: The Case of the Marlin Mine

This chapter will outline how the protest movement against the Marlin Mine developed, and describe some key events since the protests started in 2004. It will also describe the mining company's efforts to provide services and support to the local people through its Corporate Social Responsibility program. Finally, this chapter will compare what the protest movement is demanding with what Goldcorp is offering and discuss why the company's CSR program has not resulted in harmonious relations with the local communities.

The main complaint that people in San Miguel Ixtahuacán and Sipakapa have with the Marlin Mine is that they were never properly consulted about the project. This is a right they are entitled to under the Guatemalan constitution and international treaties on indigenous rights to which Guatemala is a signatory. Other complaints involve a decline in water quality and quantity as well as damage that daily mining explosions are causing to local houses. The local protesters and their international NGO supporters demand that mining activities be suspended until these problems are properly studied and addressed. Meanwhile, Goldcorp is funding community improvement projects in the nearby municipalities and also providing health care and education as part of its commitment to CSR.

Though the corporation claims it is responsible to community stakeholders, it has not succeeded in creating good community relations, and has infringed on the rights of the community members in several areas that I will discuss. I argue that the main reason for the community conflict is that Goldcorp's CSR program has been largely designed and implemented without community input, and does not directly engage with the

demands of concerned community members. Mining companies like Goldcorp tend to promote their CSR initiatives as if they were proof of their commitment to stakeholders, but I argue their standards of “responsibility” are sometimes too low.

### **Local Campaigns and Conflicts**

The protest movement against the Marlin Mine began in the rural communities of San Miguel Ixtahuacán and Sipakapa, located in the department of San Marcos, Guatemala. San Marcos is in the western highlands region of the country, and is largely undeveloped and impoverished. A high percentage of the population are indigenous Mayan people that practice subsistence farming and have limited connection to the rest of Guatemala (Fulmer et al., 2008, p.95-96). In 1999, the government granted the company Montana Exploradora an exploration license for the area near the communities of San Miguel Ixtahuacán and Sipakapa, and the company began to acquire land. In 2002, the American mining company Glamis Gold bought Montana Exploradora, and exploration in the area intensified. In 2003, the government granted the company a twenty-five year mineral exploitation license. In 2006, the Canadian mining company Goldcorp acquired Glamis Gold, but Montana Exploradora continued to run the operation (Imai et al., 2007, p.109).

Montana Exploradora first focused on buying land in the community of San Miguel Ixtahuacán. There is some dispute as to how the buying process was carried out. According to Goldcorp, all the land was purchased at a generous price from willing buyers (Imai et al, 2007, p.124). However, Yagenova and Garcia report that much of the land the company acquired was through fraudulent deals and manoeuvres. According to

their research, the company took advantage of the low levels of education, the lack of awareness about the effects of large-scale mines and the precarious economic situation of the local people (2009, p.160). Declarations from two associations representing local farmers claim that their members were repeatedly pressured by company representatives to sell their farmland, and in some cases threatened. They were reportedly told that ultimately they had no choice in the matter, because their land would be taken regardless (Imai et al, 2007, p.124).

According to a report prepared by Peace Brigades International, information about the mine and its potential impacts was not communicated to the local peoples before construction of the mine began. Information that was available was not written in the local indigenous languages (Castagnino, 2006, p.19). Since the company had not shared its plans with the community, most people were not aware of the size or nature of the project that was being planned. The mayor of Sipakapa stated in an interview with Peace Brigades International that the municipal government was not aware of the company's intentions to extract minerals until 2004, when the mine construction began (Castagnino, 2006, p.20). The extraction license had been issued the previous year by the national government, but the local government had not been informed. Some information regarding granting of the exploitation license apparently was published in one national newspaper, but that particular newspaper was not circulated in San Miguel Ixtahuacán or Sipakapa, which are quite isolated areas (Castagnino, 2006, p.20). Mayor Mario Tema stated that even after mine construction began, the company would share only vague information about the extraction phase of the project, and the Environmental Impact Assessment (EIA) that the government of Guatemala had approved was never shown to



the municipality. The company claimed it had distributed information, including the EIA, and even claimed it had produced a summary of the documents in the local indigenous language. However, neither copies of the documents nor recollections of them were to be found in the surrounding communities (Castagnino, 2006, p.19).

By 2004, many local community members began to realize that the mine would have significant negative effects on their way of life, and they started to protest against this development. A particular concern for residents was the environmental impact of having an open pit mine located so close to their communities. The Marlin Mine uses a cyanide leaching process to separate precious metals from the rock, a practice that is banned in some U.S. states because of the risk of poisoning water sources. Since the mine is very close to key water sources that supply irrigation for agriculture in that region of Guatemala, the local people feared for their crops and livelihoods (Fulmer et al., 2008, p.93). Residents and environmental groups were also worried about the supply of water. According to the Marlin mine's EIA, the mine needs 250,000 litres of water per hour of operation (Castagnino, 2006, p.13). The mining company's contract allows it unlimited use of the local water supply, with no responsibility for compensating the local communities for using this resource (Fulmer et al., 2008, p.93).

The tension between the mining company and the communities of San Miguel Ixtahuacán and Sipakapa has been a recurring problem, and occasionally conflicts have erupted. For example, in January 2007 dozens of local people blockaded the access roads to the mine to protest the unfair compensation they had received from the company for their land (Imai et al, 2007, p.124). According to a report by the NGOs Rights Action and Mining Watch, violence broke out between the protestors and the private security forces

at the mine, and seven protestors were accused by the company of assaulting an employee. Two were found guilty of assault and five were released (Rights Action, 2008, p.10).

In another incident in 2008, one woman tried for months to convince the mining company to remove a power pole that had been installed on her property without permission. When the mining company repeatedly refused, she and a group of friends managed to block the flow of electricity in the power lines over her house, cutting off power to the mine's processing plant. Goldcorp subsequently filed a complaint to the police against eight women and one man, which resulted in warrants for their arrest (CIEL, 2009, p.12).

Incidents such as this caused distrust and conflict between community members and the mining company. It also caused conflicts among community members, some who supported the mine and others who opposed it. The fact that community complaints were rarely addressed by authorities, yet the police were quick to react to the company's complaints against community members with arrests and teargas, made some people fearful about voicing their opposition to the mine (CIEL, 2009, p.12). Furthermore, some community leaders and church officials who spoke out against the mine received death threats by phone and mail (CIEL, 2009, p.12).

As well as local protest demonstrations in the streets, the anti-mining cause was also taken up by the Colectivo Madre Selva, an environmentalist organization that operates at a national level in Guatemala. The Colectivo organized conferences and other information campaigns directed at surrounding communities as well as other sectors of civil society. It also put pressure on the president of Guatemala, Oscar Berger, to declare

Montana's mining concession in San Marcos as being harmful to the public good (Hurtado and Lungo, 2007, p.71). This pressure was largely ignored by the government. However, leaders of the Catholic Church in Guatemala also pressured the president, with greater success. The bishop of San Marcos, Álvaro Ramazzini, organized a 3,000 person march to protest mining in San Marcos; Cardinal Quezada Toruño also openly criticized President Berger. Probably due to the influential position of the Catholic Church in Guatemalan society, the president saw fit to address their concerns (Castagnino, 2006, p.22).

President Berger agreed to create a commission to analyse the effects of mining in Guatemala, which led to heated debates between many sectors of society (Castagnino, 2006, p.22). Journalists, civil society groups and religious organizations took positions in a debate about mining; those in favour argued that mining would increase economic development, those opposed pointed to the many situations elsewhere in Central America where mines had caused social and environmental damage (Castagnino, 2006, p.7). The ministry of energy and mines organized a conference in late 2004 to hear different opinions on mining, but there was so much distrust of the process that members of the social movement against mining organized a separate, parallel conference. The conferences did not lead to any conclusive findings; the debate continued, and so did the mining (Hurtado and Lungo, 2007, p.72).

Indigenous communities in other rural areas of western Guatemala joined their voices to the protest movement against the Marlin Mine, especially in the departments of Solalá and Totonicapán. On December 4, 2004 at least two thousand local people gathered in Los Encuentros, Solalá to protest mining in San Marcos. A shipment of

mining equipment destined for the Marlin Mine was passing in convoy through the town of Los Encuentros, but was delayed because a pedestrian bridge over the road was too low for one of the trucks to drive under. The local people descended on the area and refused to allow the bridge to be disassembled to let the truck pass. At least two of the convoy vehicles were burned by demonstrators during the confrontation that day (Hurtado and Lungo, 2007, p.71). The municipality of Los Encuentros declared it was acting in solidarity with the anti-mine protestors in San Miguel Ixtahuacán and Sipakapa by not allowing the mining equipment to reach the Marlin Mine. For forty days, the large truck stood parked on the side of the road. On January 11, 2005 however, the government sent hundreds of police officers and soldiers to dismantle the pedestrian bridge and escort the equipment on its way. Once again, people came out to protest. In the ensuing melee, one protestor was killed, sixteen others seriously injured, and the leaders of the protest were arrested on charges of terrorism (Yagenova and Garcia, 2009, p.161).

The protest at Los Encuentros increased national attention on the Marlin Mine and the issue of mining in Guatemala in general. The government's position was clearly in favour of the mining companies; the president was quoted in the press claiming that the government had to maintain the rule of law and protect foreign investors (Fulmer et al, 2008, p.91). But Hurtado and Lungo explain that the public debate was very polarized (2007, p.71).

The events at Los Encuentros also led to the formation of the Regional Council of Indigenous Authorities of the Western Highlands. From March 31 to April 1, 2005 the Council held a conference called "Mining and the Patrimony of Indigenous Peoples," which brought together representatives from six departments. The representatives spoke

out against the way the state was treating indigenous protestors like criminals, and demanded that the government respect the rights of indigenous peoples that are guaranteed by the constitution and by international law (Yagenova and Garcia, 2009, p.161).

According to Article 46 of the Guatemalan constitution, as decided by the Constitutional Court in 1996, indigenous communities must be consulted about developments taking place within their territory (Sieder, 2007, p.228;230). According to the laws on mining, it is the responsibility of the national government to arrange such a consultation before granting exploitation rights to a mining company (Castagnino, 2006, p.18). Furthermore, the International Labour Organization's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, to which Guatemala is a signatory, guarantees indigenous communities the right to consultations about industrial developments that will affect their way of life (Fulmer et al., 2008, p.99).

The Ministry of Mines and Montana Exploradora claimed they had consulted with the communities, but the people living around the Marlin Mine insisted that they had never been consulted. In order to clarify their position, the communities of the municipality of Sipakapa held referendums on June 18, 2005. Montana Exploradora tried to prevent the vote from happening – the company applied for a legal injunction that would force the municipality not to hold the referendum – but the municipalities continued anyway (Sieder, 2007, p.234). Community members were asked whether or not they supported mining on their traditional territory. Of those who voted in the referendum, 98% were against the mining project (Castagnino, 2006, p.20). An estimated 45% of residents participated (Castagnino, 2006, p.20). As a comparative figure, 54% of

the population in the same area turned out to vote in the 2004 federal elections (Imai et al., 2007, p.114). The referendum results were ratified by the municipal government and presented to the national government. The Ombudsman's Office for Human Rights declared the results were valid, and urged the government to recognize the referendums (Yagenova and Garcia, 2009, p.161).

The mining company Montana Exploradora was quick to react to the vote, filing an appeal against the referendum. A court from the San Marcos department agreed with the appeal, ruling that mining company's rights had been violated by the Sipakapa municipality (Yagenova and Garcia, 2009, p.162). The company also presented a complaint to the constitutional court of Guatemala claiming that the referendum was illegal (Seider, 2007, p.234). In a series of complicated rulings, the constitutional court declared that while the referendum could not be deemed illegal, the existing legislation on referendums was unconstitutional and therefore the results of the vote against mining could not be considered binding (Loarca, 2008, p.9). As Loarca explains, the court's decisions created much confusion, and the legality of the referendum was a topic of much debate among Guatemalan politicians and journalists (2008, p.9). Meanwhile, in San Miguel Ixtahuacán and Sipakapa, mining continued. For the protestors, it became clear that the government and the justice system were not going to help their struggle against mining.

The indigenous peoples around the mine and their supporters in other departments started to organize and campaign even more after the constitutional court's decision. Yagenova and Garcia write that "indigenous peoples have decided to exercise their right to self-determination with or without the 'approval' of the Guatemalan state – an

important step both symbolically and politically” (2009, p.162). The local protesters felt that the mining company’s CSR program and claims of economic improvement were not meeting the needs of the community, and that their rights were being violated. Their situation is an example of what Lund-Thomsen identifies as the great paradox of corporate codes of conduct: the supposed beneficiaries have little influence over the CSR initiatives that are meant to help them (2008, p.1016).

### **International Campaigns**

Community members continued to protest locally, but at the local level they had been unable to get a response from the mining company addressing the substance of their complaints. The next step for the protesters was to seek the support of national and international NGOs and focus their campaign on international bodies that might support their cause.

Since 2005, the protest against the Marlin Mine has attracted the attention of the International Labour Organization (ILO). The ILO’s Convention 169 on Indigenous and Tribal Peoples states that indigenous peoples have the right to be consulted on projects that affect their territory and livelihood. Reports from the ILO in 2005, 2006 and 2007 chided Guatemala for not respecting indigenous rights around the Marlin Mine. In its 2009 annual report, the ILO again referred specifically to the Marlin Mine and expressed its frustration that despite previous warnings and complaints, the government had continued to renew the company’s mining license without consulting the people and had failed to compensate the indigenous communities for damages caused by the mine (ILO, 2009, p.680). The ILO issued a message to the government of Guatemala, requesting that

it “neither grant nor renew any licence for the exploration and exploitation of natural resources... while the participation and consultation provided for by the Convention [169] are not being carried out...” (ILO, 2009, p.680). In 2010, the ILO repeated its message, and called for the suspension of the Marlin Mine until it can be thoroughly studied under Convention 169.

In March 2005, the Guatemalan environmental organization Colectivo Madre Selva filed a complaint to the World Bank’s Compliance Advisor Ombudsman on behalf of the residents of Sipakapa (Fulmer et al., 2008, p.102-103). The Marlin Mine had been built in part with a \$45 million loan from the World Bank, and the project was supposed to meet certain standards in order to be eligible for such funds (Fulmer et al., 2008, p.107). One of the criteria was to prove that the local communities had been consulted about the project. The Colectivo Madre Selva called on the World Bank to remove funding from the Marlin Mine since these requirements had not been met. The Colectivo also accused the government of Guatemala and the mining company of violating ILO Convention 169, since the local communities had not been properly consulted nor informed of the dangers associated with the mining operation, such as water contamination (Mines and Communities, 2005). The office of the Compliance Advisor Ombudsman at the World Bank investigated the situation and in September 2005 released a report. It concluded that the people around the mine would not be significantly affected by the mining project, but it recommended to the company and the government that including the local people in a more meaningful way would benefit the situation (Sieder, 2007, p.235). It did not withdraw its funding from the project (CAO website). In 2006,



Goldcorp paid off the \$45 million loan in full, meaning the World Bank's corporate conduct rules no longer applied to the Marlin Mine (Imai et al., 2007, p.131).

In 2007, community members affected by the Marlin Mine submitted a petition to the Inter-American Commission on Human Rights (IACHR), an independent body of the Organization of American States (OAS). They claimed that their right to prior consultation about the mine as well as their right to a healthy environment had been violated by the government of Guatemala and the mining company. In May 2010, the IACHR ruled that the government should suspend all mining activities at the Marlin Mine until proper consultations and environmental studies were carried out (MiningWatch, 2010). Guatemala's President Alvaro Colom announced in June 2010 that his government would comply with the IACHR ruling to suspend the mine, but that it would delay taking action for up to three months while administrative procedures were completed (Mining Watch, 2011a). In fact, over a year went by and the government had still not taken any action to suspend the mine. In July 2011, despite having initiated no further environmental studies, the Ministry of Mines declared that there was insufficient evidence of environmental contamination to close the mine. The Guatemalan government then requested that the IACHR modify or remove its ruling that the government should take precautionary measures and close the mine (Mining Watch, 2011a).

In September 2008, representatives of the communities presented a case to the Latin American Water Tribunal (TLA), an independent, international environmental justice institution established in 1998 to investigate situations where water security is at risk and international environmental law has been breached (TLA, 2009). Residents of San Miguel Ixtahuacán and Sipakapa complained that the Marlin Mine had contaminated

their water sources and posed a threat to human health. The Marlin mine uses 250,000 litres of water per hour of operation, according to the mine's environmental impact assessment (Castagnino, 2006, p.6). Most of this is drawn from the company's wells, though residents have also reported seeing Goldcorp's tanker trucks pumping water directly from the river (Loarca, 2008, p.17). This has taken a noticeable toll on the local water table; at least six wells have dried up since the mine opened, which had each supplied water for around forty families (TLA, 2008, p.2). The Tribunal investigated the case, and found there was a high probability that acid rock drainage from the mine could contaminate local sources of drinking water, especially in the rainy season (CIEL, 2009, p.10). It recommended that the mining company pay compensation for the damage it had caused the local population and the environment, but to date there has been no agreement from the company to act on this ruling (CIEL, 2009, p.10). The TLA also found that the Guatemalan government had failed to fulfill its responsibility to protect the rights of the local people, and recommended revisions to the mining law and further environmental studies (TLA, 2008, p.4).

In 2008, the Comisión Pastoral Paz y Ecología (Pastoral Commission for Peace and Ecology) conducted an independent water quality study. The results showed that the rivers near the Marlin Mine had high levels of arsenic; in some places, the arsenic levels were seven times higher than the allowable limits in the United States (FREDEMI, 2009, p.11). Geologists and environmental scientists from Belgium also conducted a study of arsenic levels in the groundwater around the Marlin mine. In their report, these scientists explain that when the groundwater near the surface is used extensively and the water table drops, wells draw water from deep below the surface that is often richer in arsenic

and other soluble minerals, depending on the geological make up of the area (Van de Wauw et al., 2010, p.2). Although the Marlin Mine's original Environmental Impact Study claimed that the mine would rely only on rainwater collection and river water, Van de Wauw et al. found that in practice the mine draws extensively on groundwater (2010, p.2). In the wells used by the mining company, the study found that arsenic levels had increased by 400% from 2006 to 2009, and were far over the safe drinking limit (Van de Wauw et al., 2010, p.3). The local people do not drink water from that well, but it has an effect on the surrounding water supply; water in several other wells located downstream from the mine also recorded arsenic levels that were unsafe for human consumption (Van de Wauw et al., 2010, p.3). The report concluded that groundwater extraction for mining purposes should be suspended until wider studies and proper monitoring systems are put in place (Van de Wauw et al., 2010, p.3). Moreover, the study concludes that since the concentration of arsenic in deep wells is rising, and superficial wells appear to be drying up, there is greater potential for arsenic-related illnesses among the local people (Van de Wauw et al., 2010, p.4-5).

A study by environmental health scientists from the University of Michigan and Physicians for Human Rights has shown that the people living in the villages closest to the mine have higher levels of metal contamination in their bodies compared to people living farther away. Blood and urine samples of the local people revealed higher levels of mercury, copper, arsenic, and zinc; furthermore, the study found that “[l]evels of blood aluminum, manganese, and cobalt were elevated in comparison to established normal ranges in many individuals” (Basu and Howard, 2010, p.3). Basu and Howard note that the lack of comprehensive baseline data both for human health and water quality in the

area make it difficult to draw conclusive findings about the effects of the mine on the local people. However, based on their findings, they strongly recommend a rigorous human epidemiological study as well as an expanded ecological study to determine more conclusively the effects of the Marlin Mine over time (Basu and Howard, 2010, p.17).

In December of 2009, an organization called the Front in Defence of San Miguel Ixtahuacán (FREDEMI) took their complaints about the Marlin Mine to the Canadian government. FREDEMI is the principal advocacy group organizing protest activities in the local communities; it is a grassroots coalition made up of community members from education, development, indigenous and religious groups in San Miguel Ixtahuacán (CIEL, 2009, p.2). With the help of the Washington-based Centre for International Environmental Law (CIEL), FREDEMI submitted a Specific Instance Complaint to the Canadian National Contact Point (NCP). The NCP is a committee within Canada's Department of Foreign Affairs and International Trade (DFAIT) that was established in order to promote awareness of the OECD's Guidelines for Multi-National Enterprises (MNEs), as well as to ensure that these guidelines are implemented effectively. All country signatories to the OECD's Guidelines for MNEs are expected to have a national contact point of some kind, though its administration may vary from country to country. It is designed to serve as a forum where companies, non-governmental organizations and labour organizations can discuss best practices and voice their concerns (DFAIT website). As FREDEMI and CIEL note in the complaint, the NCP is really the only avenue available for communities in other countries to complain about the behaviour of Canadian corporations, as there is no legislation in Canada that governs how its corporations act outside of its borders (CIEL, 2009, p.4). Canada does not have the

equivalent of the United States' Alien Tort Statute Act, which has been interpreted to allow foreign citizens the right to sue American corporations in American courts for human rights abuses committed outside the U.S. (Hufbauer and Mitrokostas, 2004, p.249).

Paragraph 2 of the MNE Guidelines' General Policies states that companies should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments" (OECD, 2008, p.14). In its complaint, FREDEMI accused Goldcorp of violating and continuing to violate Paragraph 2, and called on the NCP to investigate Goldcorp's activities at the Marlin Mine. Furthermore, the complaint requested that the NCP seek Goldcorp's commitment to suspend mining operations, stop its expansion plans, cease the intimidation of community members, submit to third party water monitoring, establish a fund for environmental restoration, and adopt an official policy to respect indigenous peoples' right to prior consultation and consent (CIEL, 2009, p.3-4).

So far the NCP has not proved to be overly helpful. While it has agreed that the Marlin Mine issue is a serious one that deserves examination, it would not agree to investigate Goldcorp as requested; instead, it offered to facilitate a confidential, closed-door negotiation session in Ottawa between Goldcorp and FREDEMI representatives to find an alternate dispute settlement. FREDEMI declined the offer in a letter to the NCP and demanded an open and transparent investigation process that community members could trust (FREDEMI, 2010).

The controversial events at the mine were worrisome to several Goldcorp shareholders that were committed to ethical, socially responsible investments. In

February 2008, a group of Canadian and Swedish investors, along with a research analyst from Jantzi Research,<sup>1</sup> visited the Marlin Mine to investigate the claims that the mine was harmful to the health and environment of the local communities. The group met with Goldcorp employees, community members, and Guatemalan and Canadian government representatives. After the investor trip, the Public Service Alliance of Canada (PSAC) Staff Pension Fund, The Ethical Funds Company, The First Swedish National Pension Fund and The Fourth Swedish National Pension Fund filed a shareholder resolution with Goldcorp and requested that the company do a formal assessment of its human rights impact in Guatemala (Sustainalytics website). Under pressure from these large shareholders at the 2008 Annual General Meeting, Goldcorp negotiated the withdrawal of the resolution in March 2008 by agreeing to commission a third-party review of the human rights impacts of the Marlin Mine. A committee to oversee the Human Rights Assessment (HRA) was formed with Bill Brassington from the PSAC at its head. The HRA contract was awarded to On Common Ground, a human rights consulting agency based out of Vancouver, which was given eight to twelve months to evaluate the company's policies, procedures and practices.

Not everyone was convinced, however, that the HRA was really going to improve relations between Goldcorp and the Mayan communities around Marlin Mine. Grahame Russell, from the NGO Rights Action, was unimpressed by the HRA and the shareholder committee. In an interview with the BBC he pointed out that nobody from the local communities was at any time consulted about the HRA, and the communities were not

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<sup>1</sup> Jantzi Research is probably best known for providing the assessments and analysis for the Jantzi Social Index (JSI), a respected Canadian index which rates companies on their level of social responsibility. This index was developed in response to the Socially Responsible Investment (SRI) trend which grew through the 1990s and 2000s.

represented on the HRA committee (Law, 2009). Other critics argue that Goldcorp was merely trying to avoid further embarrassing shareholder reactions at the 2008 AGM by offering to pay for the assessment (Law, 2009).

The shareholder resolution from the large group of investors mentioned above was not the only resolution to be filed, however. Jantzi Research reports that another resolution was filed by an individual shareholder on behalf of a Canadian NGO called Breaking the Silence. This resolution called on Goldcorp to halt the Marlin Mine's expansion and stop acquiring land in San Miguel Ixtahuacán and Sipakapa until the affected communities gave their free, prior and informed consent. However, Goldcorp refused to even circulate this resolution to management at the 2008 Annual General Meeting, arguing that it was not relevant in any significant way to the affairs of the company (Sustainalytics website). Although Jantzi approved the HRA proposal as a positive step, it expressed concern about the company's refusal to address the resolution about community consent, and said it does not reflect a true willingness to engage with communities in an effective and responsible manner (Sustainalytics website).

In April 2008, Jantzi recommended that Goldcorp be removed from Socially Responsible Investment portfolios, citing among other reasons inadequate community consultation mechanisms and poor environmental compliance records (Sustainalytics website). In an interview with the BBC, Jantzi Research representative Irene Sosa said "We want to see them being more pro-active. Goldcorp needs better consultation with the community. The company needs to look at addressing grievances, not dismissing them" (Law, 2009). Goldcorp had been placed on Jantzi's "monitor" list since 2006 when the corporation took over Glamis Gold. Goldcorp's operation in Guatemala was not the only

source of problems that led to the company's removal from the Jantzi Social Index – water pollution and local opposition at the San Martin Mine in Honduras were also referenced – but the timing corresponds closely with shareholder complaints about the Marlin Mine situation.

In May 2010, On Common Ground released its Human Rights Assessment of the Marlin Mine, which contained a series of observations and recommendations. The report found that in several areas, the mining company Montana Exploradora had failed to respect the rights of community members. One of the report's many findings was that the company had "failed to respect the right to adequate housing and the right to own property" by not identifying or monitoring the effects of heavy blasting, and recommended that Montana Exploradora repair the cracks that have formed in local buildings since mining started (On Common Ground, 2010, p.15-16). Additionally, the report found that there were major shortcomings in the mine's closure plan, which will result in harms to human rights if left uncorrected. It recommended immediately setting aside enough money to cover the cost of land reclamation and watershed protection (2010, p.15). Furthermore, On Common Ground found that the land acquisition process was flawed, since the practice of buying from individual residents did not take into consideration the indigenous legal concept of community-owned territory. It recommended a moratorium on land acquisition and mine expansion until an agreement and legal framework could be established between the communities and the company (2010, p.22).

Through interviews with community members, the assessors from On Common Ground found that one of the biggest stakeholder concerns was the atmosphere of conflict



and tension that the mine had created in the community (2010, p.33). Perhaps the most valuable insight brought forward in the HRA is that the main obstacle for resolving the environment of conflict is the lack of access to remedy. The report acknowledges the weak Guatemalan judicial system as a contributing factor, but squarely blames the mining company for failing to establish a formal grievance mechanism that meets international standards (2010, p.28;33). The assessors state that “perhaps the most serious pattern identified is the systematic failure to address grievances in the communities, allowing them to accumulate and exacerbate” (2010, p.34). They also note that “Montana [Exploradora] has mainly been in a reactive and defensive mode when dealing with many of the complaints identified in this assessment as affecting human rights” (2010, p. 37). The report recommends that the company set up a formalized system for dialogue with the community and engage the Guatemalan government in the consultation process (2010, p.13).

The recommendations of the HRA reflect many of the same issues and demands that local activists in the Front in Defense of San Miguel Ixtahuacán (FREDEMI) have presented. FREDEMI, along with other community organizations, have called on Goldcorp to suspend all mining operations, stop all plans to expand the mine, stop the intimidation and persecution of community members, allow third-party monitoring of water contamination, and establish a fund with enough money for environmental restoration and ongoing water treatment after the mine’s closure (CIEL, 2009, p.3). Activists also want Goldcorp to adopt a corporate policy on respecting indigenous rights, including the right of free, prior and informed consent (CIEL, 2009, p.4).

In June 2010, Goldcorp published its initial response to the HRA. The 32-page document acknowledged that the Marlin Mine had not met the expectations of shareholders and stakeholders (Goldcorp, 2010a, p.1). It addressed each recommendation made by On Common Ground, and identified what actions the company would take to improve its practices. Among the promises for improvement, Goldcorp committed to design a more effective system for two-way stakeholder dialogue and make information and reports about the mine more accessible (2010a, p.4-6). It also committed to adopting a corporate human rights policy (2010a, p.26).

Despite these commitments, activists from the Center for International Environmental Law point out several weaknesses in Goldcorp's response. Firstly, the company stated it would not increase the amount of money currently set aside for mine closure (CIEL, 2010). The company's justification was that the current amount of one million dollars had already been reviewed and approved by a third-party financial auditor as being sufficient to cover necessary environmental costs (Goldcorp, 2010a, p.6-7). Secondly, Goldcorp refused to pay for repairs to damaged houses in the community, stating that a review was currently being undertaken by the Guatemalan government on the issue, and the company would comply with the recommendations of that review (Goldcorp, 2010a, p.7). Lawyers at CIEL assert that the costs of these repairs would be nominal for Goldcorp, the second largest mining company in the world (2010). Thirdly, Goldcorp did not make any commitments on the most crucial issues identified by the HRA, the recommendation of a moratorium on land acquisition and mine expansion. In the response, it states merely that the company will examine the issue and respond to it in

a further report (Goldcorp, 2010a, p.18). CIEL senior attorney Kristen Genovese asserted that “Goldcorp’s plan lacks real action” (CIEL, 2010).

In October 2010, Goldcorp followed through on its promise to adopt a human rights policy (Mining Watch, 2011a). That same month it also released an update report on the company’s progress implementing the recommendations of the HRA. However, concerning the question of land acquisition and mine expansion, all Goldcorp had to report was that the issue was still being studied (Goldcorp, 2010b, p.2). Meanwhile, expansion of the mine continued; in September 2010, the Marlin Mine expanded its operation into Saqmu, a village within the municipality of San Miguel Ixtahuacán (Russell, 2010). Several community groups protested this move, complaining that the company had bought community-owned lands from individual residents without consulting the community as a whole. This runs contrary to the indigenous custom of collective decision-making on issues that affect the entire community, and is one of the very practices the HRA warned was problematic (Guindon, 2009). The October 2010 report was supposed to be “the first in a series of regular updates” from Goldcorp about its progress toward meeting the HRA recommendations, but the company has stopped giving updates (Goldcorp, 2010b, p.1).

Local activists did not allow their cause to be forgotten, though. On February 28, 2011, the San Miguel Ixtahuacán Defence Front organized what was meant to be a peaceful protest, blocking off a main access road to the Marlin Mine. In a press release, the group stated its objective was to pressure the Guatemalan government into complying with the IACHR ruling of May 2010, which included suspending the mine (FREDEMI, 2011). The protest resulted in a conflict between mine protesters and mine supporters.

One of the protest leaders was assaulted and beaten during the road blockade, by a group of about twenty people. After the protest, which lasted around twelve hours, a bus full of protesters traveling home from the site was stopped by a group of around seventy people, who forced the protesters off the bus (FREDEMI, 2011). Amnesty International reports that many were beaten and robbed, and the leaders were taken hostage for several hours and severely injured (Amnesty International, 2011).

It is evident that Montana Exploradora and its parent company Goldcorp have failed to satisfy the demands of many community members, shareholders, and NGOs. This has resulted in protests in the local municipalities, at the national level in Guatemala, and internationally through NGOs and shareholders. Yet the company does have a CSR plan in place, and contributes considerable sums of money every year to projects and programs in the communities around the Marlin Mine. In the next section, I will outline how the company is contributing to the communities through CSR initiatives, and discuss the strengths and weaknesses of these activities.

### **The Company's Corporate Social Responsibility Program**

According to Goldcorp and Montana Exploradora, the Marlin Mine has helped the local communities to develop by providing economic opportunities and support for social projects. Yet despite the allocation of resources to CSR programs, relations between the mining company and local stakeholders have been tense and at times violent. To understand why CSR has not satisfied many local people, I will explain what the company has offered the communities, and which community demands have not been met.

In 2004, Montana Exploradora – owned by Glamis Gold until 2006 – created the Fundación Sierra Madre, an organization funded by the mining company that implements social programs in the communities around the Marlin Mine. It has operated ever since, and its programs are a central focus of the mining company's CSR plan. The foundation has a "Programa Integral de Desarrollo Comunitario" (Comprehensive Community Development Program, or PIDECC) which implements health care and education programs, projects in agriculture and forestry as well as various job training programs that teach skills like making bread and sewing (Castagnino, 2006, p.16). Fulmer et al. describe the community development plan that was implemented in 2004 as "an unusually generous package of incentives" compared to other mining projects at the time (2008, p.93).

Through Sierra Madre, the company funded the construction and equipment of a 24-hour medical clinic in 2004, along with an ambulance and a helicopter rescue unit (Imai et al., 2007, p.119). As well as offering health care to the public through the clinic, the Sierra Madre Foundation employs trained health care outreach workers who run community workshops in health and hygiene, and make follow-up home visits (Goldcorp, 2008, p.26). The mining company also funds education in the communities of San Miguel Ixtahuacán and Sipakapa through Sierra Madre; in 2007, Goldcorp paid the salaries of 37 teachers and purchased supplies and equipment for various schools (Goldcorp, 2008, p.22). The Sierra Madre Foundation also provides support for communal banks and solidarity groups, funding micro-credit programs and financial management training sessions for women (Goldcorp, 2008, p.28).

The company contributes millions of dollars each year to communities in the San Marcos department, through employment of local people, local purchasing of materials, grants to municipalities, infrastructure development and community programs (Goldcorp, 2008). The company offers technical training programs to indigenous people in the region to further its goal of employing local people; in 2007, approximately 52% of the Marlin mine's payroll expenditures went to workers from San Marcos department (Goldcorp, 2008, p.25). The company also has a local purchasing policy; in 2007, it spent US \$4 million in San Marcos department on supplies for the mine according to the *Environmental and Social Performance Annual Monitoring Report* (Goldcorp, 2008, p.25). Goldcorp's *2010 CSR Highlights* pamphlet notes that \$154 million was spent annually on local materials around the Marlin Mine in 2010, of which at least \$324,500 was used to purchase from businesses owned by women (Goldcorp, 2011a, p.2).

As part of its Corporate Social Responsibility plan, Goldcorp also contributes grant money to municipal governments in the region, which is used by the municipalities for a variety of projects such as constructing schools, extending electrical lines to remote areas, renovating community centres and building playgrounds. In 2007, a total of US \$300,000 was distributed through these grants (Goldcorp, 2008, p.30-31). The mining company has also directly invested money in improving local infrastructure; for example, in 2004 Montana Exploradora built a bridge and constructed a road connecting the Marlin Mine to the Pan American Highway. After Hurricane Stan hit the region in 2006, the company rebuilt damaged roads connecting San Miguel Ixtahuacán and Sipakapa to surrounding communities. In 2007 and 2008, the company invested US \$5 million to upgrade and pave 20 kilometres of the main road leading to the department's capital city,

San Marcos (Goldcorp, 2008, p.27). The company has also funded water delivery infrastructure and water chlorination systems (Imai et al., 2007, p.119).

There is little doubt that the mining company's CSR programs are creating some positive changes in the community, providing social services that were previously unavailable in this isolated and underdeveloped region. Montana Exploradora's Sustainable Development Manager James Schenk affirmed in an interview with Fulmer et al. in 2006 that the company has a commitment to CSR principles, and wants to foster long-term development through the Sierra Madre foundation (Fulmer et al., 2008, p.111). He stated that Montana Exploradora could provide some of the services that the Guatemalan government was unable or unwilling to provide to the local communities (Fulmer et al., 2008, p.111).

There are some community members who criticize the company's CSR spending, though. The mayor of Sipakapa, Mario Tema, questions the effectiveness of the programs offered by Sierra Madre. He says that they have not produced conclusive results; in his opinion, the main objective has not been to truly foster alternative development. Rather, he believes the true goal of the Sierra Madre programs is to rally community support for mining (Castagnino, 2006, p.16). A representative from a Mayan rights organization also criticized Sierra Madre, stating that the foundation has only funded small, insignificant projects. From his observations, the foundation is just trying to pacify the local people, and is not addressing the real problems that have arisen since the arrival of the mine, like health problems that are linked to chemicals used in the mining process (Fulmer et al., 2008, p.112).

In the Human Rights Assessment funded by Goldcorp, assessors from On Common Ground commended the mining company for furthering human rights in the community through funding health programs, extra teachers and scholarships. They also note that local infrastructure upgrades and support for the nearby municipal governments have improved the social and economic rights of community members. However, they criticized the lack of program reporting, monitoring and fiscal transparency in Fundación Sierra Madre's social investing initiatives, which make it difficult to assess its overall effectiveness (On Common Ground, 2010, p.24). The assessors also object to the mining company's pattern of threatening to stop social spending should the mine be shut down by protesters. They write that this practice runs contrary to the principles of freedom of expression and freedom of peaceful assembly; "Montana's commitment to social development programs should not be contingent upon social acceptance by all segments of the population" (2010, p.24).

The HRA recommended creating a formal policy on the company's human rights commitments, and in response, Goldcorp adopted a new Human Rights Policy and a CSR Policy in April 2011. Prior to this, CSR and human rights commitments had been included in other Goldcorp documents including its Environment and Sustainable Development Policy, Occupational Health and Safety Policy, and Code of Business Conduct and Ethics (On Common Ground, 2010, p.34). The Human Rights Policy is a two-page document that states Goldcorp will "operate in a way that respects the human rights of all employees and the communities in which we operate our business" and "seek constructive dialogues and partnerships with a variety of stakeholders on our human rights performance, especially those impacted directly by our operations" (Goldcorp,



2011d, p.1). Goldcorp's CSR policy is a one-page statement of the company's commitment to conduct its business in a responsible manner that generates sustainable economic development, protects the environment, and respects the safety, health and human rights of its employees and the community members around its operations (Goldcorp, 2011e).

Renu Mandhane, Director of the International Human Rights Program at the University of Toronto's Faculty of Law, commends Goldcorp for updating its CSR policy and creating a comprehensive policy on human rights. He notes that the company's commitment to work closer with community stakeholders is a positive step, but he criticizes the policy for not mentioning the principle of free and informed prior consent, which local communities have a right to according to the UN Declaration on the Rights of Indigenous Peoples (Mandhane, 2011, p.5-6). In his analysis, Mandhane calls on Goldcorp to take the next step and put its policies into action; he argues that by keeping the Marlin Mine open despite the rulings of the IACHR and other institutions, Goldcorp is essentially disregarding its own human rights policy (2011, p.3). Mandhane emphasizes that the human rights terminology used by Goldcorp needs to better correspond with the language and principles used by the UN and existing international human rights laws (2011, p.6).

From the perspective of international human rights organizations, Goldcorp's CSR practices are problematic because they do not always comply with international human rights standards established by institutions such as the IACHR and the ILO (Mining Watch, 2011a). More specifically, the lack of community consultation on the Marlin Mine project is seen as a violation of international treaties such as the ILO's

Convention 169 regarding the right of indigenous people to consultation. Amnesty International and many other human rights organizations have also called for the mine to be suspended until outstanding issues can be resolved. Despite the criticism of these international human rights groups, Goldcorp still claims it is a responsible corporation when it comes to the Marlin Mine. François Guindon, a spokesperson for the NGO Network in Solidarity with the People of Guatemala, asks, “What is your human rights policy worth if you disregard the findings of international human rights bodies?” (Mining Watch, 2011a).

And yet, other institutions and international CSR organizations praise Goldcorp for its human rights and sustainability practices. In May 2011, Goldcorp was recognized by NASDAQ as one of the top 100 companies in the world for responsible practices, based on its practices at mines around the world (Goldcorp, 2011c). The company is a signatory in good standing in the UN Global Compact, the Extractive Industries Transparency Initiative, and the International Cyanide Management Code (Goldcorp, 2011a, p.1). In Goldcorp’s *2010 CSR Highlights*, the company claims that its CSR policy is “aligned with international standards,” and that its Human Rights Policy is “consistent with the International Council on Mining and Metals, UN Global Compact principles, the Voluntary Principles on Human Rights and Security, and the Global Reporting Initiative” (Goldcorp, 2011a, p.1).

As Hamann notes, there is now a plethora of international CSR initiatives and reporting guidelines, each with varying levels of voluntary commitment (2003, p.238). Companies like Goldcorp have a wide selection of programs to choose from. Some, like the UN Global Compact, only require a statement of commitment to general principles of

respecting human rights and the environment, making it fairly easy for companies to stay in good stead with the organization. Others, such as the Global Reporting Initiative, require more rigorous self-reporting or self-monitoring. Still other organizations have third-party auditors or researchers who determine which companies deserve to be classified as socially responsible. In its CSR promotional material, Goldcorp has listed the CSR organizations whose requirements it meets, and simply not listed all the organizations that criticize its practices. Selectively choosing to list endorsers is not extraordinary in itself; it is standard practice in marketing campaigns for various companies and products. The point is that Goldcorp's CSR material, while serving a promotional purpose, is not giving an accurate picture of the company's overall reputation concerning human rights and the environment.

What is clear in the case of the Marlin Mine is that despite having a CSR policy, a human rights policy, a foundation for community development, and recognition from CSR bodies based in North America and Europe, in the eyes of many community members and human rights bodies like the IACHR Goldcorp has abused the rights of the local people. What the company is offering the community through its CSR program does not make up for this violation of rights.

## **Conclusion**

Archie B. Carroll wrote that "the CSR concept... addresses and captures the most important concerns of the public regarding business and society relationships" (1999, p.292). But his assertion does not ring true in the case of the Marlin Mine. Goldcorp's CSR policy has not resulted in positive community relations because it has not been

designed or implemented in such a way as to address community concerns. The company's CSR programs in San Miguel Ixtahuacán and Sipakapa have been designed by the company alone. Lund-Thomsen writes that one of the paradoxes of corporate codes of conduct is that the supposed beneficiaries – the community stakeholders in the global south – have almost no influence over CSR initiatives (2008, p.1016). According to this author, “there must be an emphasis on incorporating their concerns and voices in the design, implementation, monitoring and impact assessment of the codes” (2008, p.1016). This applies directly to the situation at the Marlin Mine; perhaps if Goldcorp's CSR policies included the input of community members, the company could establish better relations with the community.

Goldcorp has a CSR program and is considered a leader in CSR by industry-led organizations, yet the company's record of community relations in Guatemala is mixed at best. While it is true that the company has made an effort to establish its CSR program (and its CSR image), this does not mean that it has made a genuine effort to meet community needs. Its CSR program may serve its public relations purposes with investors, governments and the public in the developed world, but it has not resolved the actual problems around the mine in Guatemala that have been identified community leaders, NGOs and human rights tribunals. Furthermore, it is important to consider that the amount of money spent on community projects as part of CSR programs is not a complete indicator of a company's overall level of responsibility. As Mandhane notes, “corporate social responsibilities willingly undertaken (i.e. philanthropic in nature) do not necessarily fulfill human rights responsibilities which are binding” (2011, p.10).

It is clear from the case of Goldcorp's Marlin Mine that CSR, as measured and recognized in the mining industry, is not necessarily an accurate indicator of "responsible" relations with communities. Corporate Social Responsibility generally implies that the corporation is going to act responsibly toward local community stakeholders, but some corporations have a very narrow definition of CSR, and apparently feel they can be responsible to community stakeholders without addressing the complaints expressed by community members in protests and referenda.

Human rights organizations and community members generally have a very different definition of what "responsible practices" entail, a definition which includes engaging the community in meaningful dialogue, addressing its concerns, and respecting its rights. As Hamann and Acutt advocate, CSR discourse should not be shaped only by business organizations and corporations; civil society groups such as human rights organizations need to play an active role in defining CSR so that it becomes a more meaningful indicator of corporate practices (Hamann and Acutt, 2003, p.267).

### Chapter 3: Analysis of Political Strategies

The previous chapter introduced the case of the Marlin Mine, explaining the concerns of community members and activists as well as the mining company's CSR initiatives. Anti- Marlin Mine protest activities started with local demonstrations and evolved into regional, then national and international campaigns, creating what Keck and Sikkink would call a "transnational advocacy network" (1998, p.1). This chapter examines the strategies used by the protesters and the mining company as each side has struggled to achieve results in their favour.

To analyse the events of the protest movement against the Marlin Mine, it is useful to apply the theoretical framework developed by Sarah Pralle in her 2006 book, *Branching Out, Digging In*. Pralle uses theories from public policy literature on agenda setting to analyse how advocacy movements and their opponents employ strategies of issue definition, actor mobilization, and institutional venue shopping. She shows that combining these three strategic approaches can be an effective way to advocate for policy change; furthermore, these approaches can explain the choice of scale at which policy is discussed. Pralle draws on theories developed by Baumgartner and Jones, Kingdon, and Schattsneider, among other policy scholars, and uses them to analyze two controversial activist campaigns against logging in British Columbia and California (Pralle, 2006). While she does not specifically address CSR in her work, she does discuss the related issues of corporate image and reputation, and how they can be used strategically by both sides.

Applying this theoretical framework to the Marlin Mine brings to light the strategies used by the protesters to try to change mining policy and practices, as well as the strategies of the mining company to try to maintain the status quo. This chapter will explain how members of the protest movement against the Marlin Mine used strategies of issue definition, participant mobilization and venue shopping to expand their campaign, and how the mining company and its allies responded. Furthermore, it will identify how CSR has been used strategically by each side.

Even though the protest movement has attempted to redefine the problem, mobilize new supporters, and bring its issues to new decision making venues, the mining company has still maintained its advantageous position with the government of Guatemala, whose Ministry of Energy and Mines is a key venue with authority over mining. Goldcorp has also maintained the support of another key venue – its body of voting shareholders. International pressure from other venues has not succeeded in pressuring the Guatemalan government or Goldcorp into halting mine operations, which is the main goal of the protest movement. The Marlin Mine case demonstrates that there are few legal and institutional tools that social movements in the global south can mobilize to effectively counteract large corporations, and corporate CSR policies are not a useful substitute.

### **Protest Movement - Issue Definition Strategies**

At different phases in the protests against the Marlin Mine, it is clear that the activists were engaged in defining and redefining the problem according to the venue and the audience they were trying to convince. It must be noted that the definition of the

problem did not evolve in a linear fashion over time; rather, it changed as a result of pragmatic decision-making processes, depending on the specific campaign. Different actors were sometimes simultaneously using different definitions of the problem while campaigning in different venues. This is not to imply that the campaigners were twisting facts or not being truthful in their representation of the situation. There could hardly be a single correct definition of this complex issue. Rather, they strategically emphasized certain aspects of the issue over others to make their cause more relevant to the different circumstances they faced.

In the early days of protest activities around the Marlin Mine, in 2004 and 2005, the Guatemalan environmental organization “Colectivo Madre Selva” was raising local awareness about the consequences of open pit gold mining and defined the problem in environmental terms (Hurtado and Lungo, 2007, p.71). The Colectivo held information sessions with local groups as well as conferences on a national level that focused on environmental degradation that had occurred in other places in Central America where similar mining practices were used. It emphasized that the Marlin Mine was going to use a leaching process that relied on large quantities of cyanide and pointed to mines in Honduras and El Salvador that had poisoned rivers and groundwater (Hurtado and Lungo, 2007, p.71). Framing the issue in this way was effective for garnering support from Mayan people in the local communities as well as in nearby regions, since in traditional Mayan culture, the environment is understood as something sacred that must be respected (Fulmer et al. 2008, p.94). Furthermore, many of the nearby communities depend on the water supplied by the Cuilco, Tzala, and Quivichil rivers that pass near the Marlin Mine for drinking and crop irrigation (Van de Wauw et al., 2010, p.2). Indeed,



environmental contamination of water sources continues to be one of the main reasons why so many local people oppose the mine.

Framing the issue as an environmental problem was also a strategy in some international campaigns, especially when it was linked to international conventions about the human right to a healthy environment and the right to clean water. When community members filed a complaint with the Latin America Water Tribunal (TLA) in 2008 for example, the environmental aspect was emphasized to fit the jurisdiction of that venue. The complaints focused on the large quantity of poisonous waste created by the mining operations and the high risk of cyanide spills and acid rock drainage that could leach into local water sources. The complaint also highlighted the growing scarcity of water (TLA, 2008, p.4). Framing the problem in terms of the environment was effective to win support in this venue, though admittedly the TLA does not have any coercive ability to force compliance with its recommendations.

In other circumstances, however, the environmental impact of the mine was downplayed and the issue was defined in terms of Indigenous rights. In framing the problem this way, the protesters linked their issue to a wider international Indigenous advocacy movement that was receiving a lot of attention on the world stage at that time. Indigenous struggles and successes around the world were attracting significant attention, such as the 2005 election of Latin America's first Indigenous president, Bolivia's Evo Morales. Indigenous Rights were also a topic of discussion at the United Nations: in 2007, all but four nations of the General Assembly approved the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Member governments committed to consult with Indigenous people and obtain "free and informed consent prior to the approval of

any project affecting their lands or territories and other resources” (Art. 32). In short, Indigenous Rights were a well accepted topic in international circles.

There were other ways advocacy groups could have framed the Marlin Mine problem. For instance, they could have defined the community members affected by the mine as an oppressed lower class and emphasized the capitalist exploitation of a poverty-stricken hinterland. In the past, poor rural people in Central America often defined themselves as *campesinos* and aligned themselves with international labour movements and other socialist organizations. This definition of their identity was very present in Guatemala during citizen protests against the military regimes of the 1960s to 1980s (O’Kane, 2006, p.24). However, during the decades-long civil war which ended in 1996, left-leaning groups that used this class-based discourse were violently repressed. The country’s elites tended to classify the opposition as being communist to justify “disappearances” and massacres of people in rural communities (Jonas, 1991, p.41). It would not be to the advantage of present-day activists to evoke the imagery of Guatemala’s brutal past. Furthermore, class-based discourse is not always well received by trade-focused politicians and diplomats in developed countries, due to its historical association with communism. For a successful campaign it is important to have an issue that resonates with current discourse and perceptions (Keck and Sikkink, 1998, p.27). Currently, Indigenous movements are gaining momentum on an international scale and have been positively received by international institutions. While not all of them have successfully achieved their objectives, many have found opportunities to voice their concerns. Strategically, therefore, external trends favoured an Indigenous definition of

the Marlin Mine problem in order to take advantage of the attention presently focused on this broader issue.

Defining the problem in Indigenous terms also allowed protesters and their network of supporters to strengthen the legitimacy of their case by citing national and international laws on Indigenous Rights. This strategy was most notably employed in a complaint to the World Bank's Compliance Advisor Ombudsman (CAO) in 2005 and in a petition to the Inter-American Commission on Human Rights (IACHR) in 2007. Activists have most frequently referred to the International Labour Organization's (ILO) Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries. Article 7 of this convention states that Indigenous communities have the right to be consulted prior to the approval of major industrial projects that affect their way of life. Convention 169 is particularly applicable to the Marlin Mine situation because Guatemala is a signatory. The Guatemalan government ratified the convention in 1996 as part of the peace process at the end of the civil war (Castagnino 2006, p.11). The Constitutional Court of Guatemala confirmed in a December 21, 2009 ruling that this convention is a binding component of the Guatemalan constitution (Centro de Politicas Publicas, 2009). There are also domestic legal commitments to protect Indigenous interests, such as the Agreement on Identity and Rights of Indigenous Peoples that was also adopted as part of the 1996 Peace Accords in Guatemala. By adopting this doctrine, the government formally agreed to respect a substantial list of Indigenous people's rights, including the right to communal land tenure (Sieder, 2007, p.218). However, transgressions of these rights have been particularly blatant in cases of large industrial projects such as the Marlin Mine. On multiple occasions the government has failed to

consult with Indigenous communities before approving mines and hydroelectric projects (Sieder, 2007, p.236).

Thus there exists a gap between the government's stated commitments to Indigenous people and its practices. This can actually give advocacy groups leverage to push their demands forward when they frame their problem in terms of Indigenous rights, since it opens up opportunities for strategies that Keck and Sikkink refer to as "accountability politics," in which advocacy groups pressure their opponents to live up to their own stated goals (1998, p.24). Activists have striven to make the Guatemalan government look hypocritical in the eyes of the domestic population as well as the international community in the hope that it will be embarrassed enough to change its practices.

The activists have also put pressure directly on the mining company, Goldcorp. To do so, they have framed the issues of environmental rights and Indigenous rights as being corporate responsibilities, not just state responsibilities. In reports and news releases written by NGOs, for example, the issue is framed in terms of poor, vulnerable, third-world people being exploited by a powerful, money-hungry, first-world multinational mining corporation. This framing of the issue is clearly evident in a May 2, 2007 letter sent to the shareholders of Goldcorp from the local organization Asociación para el Desarrollo Integral San Miguelense (San Miguel Association for Integral Development), which urged Goldcorp to stop treating peaceful community protesters with legitimate complaints like criminals (Imai et al., 2007, p.124). FREDEMI's complaint to the Canadian National Contact Point (NCP) in 2009 was also framed this way, accusing Goldcorp of not complying with international guidelines for corporations

(CIEL, 2009). Demonstrations held outside Goldcorp meetings in Vancouver and Toronto since 2007 have also evoked the theme of corporate accountability (Lissner, 2010).

Goldcorp claims that it is a socially responsible company; on its website, in its promotional material, and through its representatives the company has consistently maintained that it is committed to sustainable development and respecting the rights of stakeholders (Goldcorp, 2011b). By building up this reputation as an ethical mining company, it has attracted investment money from socially conscious investors such as The Ethical Funds Company, the Canadian NGO “Breaking the Silence,” as well as other private funds channeled through Socially Responsible Investment portfolios offered by banks across North America (Sustainalytics website). The advocacy network activists have used these claims of corporate responsibility as a source of leverage in their campaign, using the tactics of “accountability politics” like they have against the Guatemalan government –pushing the company to live up to its own stated goals. They have contrasted Goldcorp’s CSR discourse with the instances of environmental contamination and human rights abuses caused by the Marlin Mine, in order to show that there is a large gap between what Goldcorp says it does, and what it really does on the ground.

Framing the Marlin Mine issue in terms of corporate behaviour was an effective move as it took aim at Goldcorp’s ability to keep investment money flowing from a certain population of investors it had worked hard to attract. This type of framing would not have been as effective with a different mining company that perhaps had not built up the same ethical reputation, and did not fear losing investors if it received bad press for

its behaviour: companies with positive reputations are often more vulnerable to activists (King, 2008, p.417). As Rowe observes, “condemning an organization for unethical behavior is easier when said organization has already and openly agreed that ethical behavior is virtuous” (2005, p.3). It is effective both for tarnishing the reputation of the organization, and for attracting media and public attention to a case: as Bama Athreya of the International Labor Rights Fund put it, “hypocrites are far more interesting than mere wrongdoers” (quoted in Klein 2000, p.432 and Rowe 2005, p.3). As Pralle and others have emphasized, issues must be framed in a way that maximizes the pressure on opponents, and this will be different for each situation. An advocacy group’s success depends on the ability of its actors to be creative, flexible and innovative and tailor their strategy to best fit their audience and venue (Pralle, 2006, p.231).

By linking the local situation at the Marlin Mine with the wider problem of transnational corporate behaviour, the activists were effectively trying to expand the scope of the problem. Pralle explains that expanding an issue’s scope is a strategy for bringing in new participants and making new venues available. To do this involves changing the definition of the problem and convincing others to accept this new definition (2006, p.60). By framing the problems in terms of the behaviour of Multinational Corporations – as opposed to the failure of the Guatemalan state to protect the rights of its citizens – the activists were associating their problem with much larger international problems that have recently received considerable attention internationally. The question of CSR and the possibility of introducing international regulations on transnational corporations have been topics of heated debate at the UN and the International Chamber of Commerce in the last decade. As a sign of the importance of

this issue, in 2005 the UN Human Rights Council created the position of Special Representative of the UN Secretary General on Human Rights and Transnational Corporations, and appointed the renowned Harvard professor John Ruggie to serve in this role (Ruggie, 2010, p.1).

Yet in this case, expanding the scope of the issue was not just about raising its profile and making it seem more important. It was also about changing the understanding of where the responsibility lies. Framing the Marlin Mine issue solely in terms of Indigenous rights and environmental protection tends to place the responsibility with the Guatemalan government since under international law, the nation state is responsible for protecting human rights, and is responsible for conducting consultations with Indigenous people. Moreover, it is the national government that has jurisdiction over mineral resources, approves environmental impact assessments, and grants exploitation licenses. In contrast, framing the issue in terms of corporate accountability focuses on the responsibilities of the corporation to uphold certain standards of behaviour, opening up a new venue in which to lobby for change at the Marlin Mine: Goldcorp and its shareholders.

Furthermore, by focusing on the fact that this transnational mining company is based in Canada, activists have expanded the scope of the issue past Guatemala's borders and argue responsibility also ought to lie with the Canadian government. Critics have criticized Canada's lax policies concerning the behaviour of its corporations operating abroad. This type of framing was present in the 2009 complaint to the Canadian National Contact Point (CIEL, 2009). Demonstrations held outside Goldcorp Annual General Meetings (AGMs) in Vancouver and Toronto since 2007 have also evoked this message,

calling on the government of Canada to discipline Goldcorp in some way. Some protesters have linked the Marlin Mine issue with Canada's national image abroad, holding placards reading “Gone is Our Legitimacy, Destroyed by Canadian corporations Operating without Respect and with imPunity” (Lissner, 2010).

The NGO Rights Action affirms on its website that the scope of the issue extends far beyond the local scale: “This is not a local, Guatemalan issue. This is an issue of the governments of Canada and Guatemala, of Goldcorp, [and] of the major investors (like the Canada Pension Plan)...” Activists have emphasized the fact that a large amount of public money is invested in Goldcorp, to show that the Marlin Mine is a problem in which all Canadian citizens are implicated. In a report entitled, “Investing in Conflict - Public Money, Private Gain: Goldcorp in the Americas,” Canadian NGO Rights Action explains that the Canada Pension Plan, the Ontario Municipal Employees Retirement Plan, the British Columbia Investment Management Corporation, and the Ontario Teachers Pension Plan have all invested money in Goldcorp. Rights Action argues that these investor groups and are thus complicit in the abuse of human rights and the environment. The report goes on to argue that the Canadian government's support for “development” projects like the Marlin Mine is partially to blame for human rights abuses and corporate impunity. The report claims that a new relationship between the developed world and the developing world is necessary, but that this “will only be possible when people of the rich and powerful nations hold Canadian, US and European companies, institutions, investors and governments accountable for the policies and actions that violate human rights and destroy the environment” (Rights Action, 2008, p.22).



This type of framing changes the scope of the issue, sending the message that the Marlin Mine and many other projects like it are not just “their” (Guatemalans’) problem, but also “our” (Canadians’) problem since we are allowing our companies and government to behave irresponsibly. It also defines the problem as something larger than corporate behaviour; it is a problem of public policy and government behavior, as well as the structure of the global economy. It invokes the language of imperialism, trying to communicate to the public that in the mining sector especially, Canada’s role greatly resembles that of an imperialist power.

### **Goldcorp – Issue Definition Strategies**

The mining company, not surprisingly, has had a very different definition of the issue. It claims that the Marlin Mine represents economic opportunities for employment and infrastructure development in a remote, poverty-stricken region of Guatemala. This definition of the issue has been embraced by the Guatemalan government, and is also supported by international financial institutions such as the World Bank. The company has denied that it has acted irresponsibly, and whenever it is accused of misconduct it points to its CSR code of conduct and the funding it has provided for the local medical clinic, teachers’ salaries and community development projects. The company also stresses that it is the single largest tax payer in the country (Imai et al, 2007, p.118). Goldcorp portrays the protests as the result of misinformation campaigns and “fabricated” social problems (Imai et al, 2007, p.124). In response to local protests about health problems, water contamination, and cracks in local houses, Goldcorp has denied that the mine is to blame. In a 2011 post on its website, the company reiterates that “there

is no evidence of negative impacts to public health or the environment as a result of operations at Marlin.” In the documentation on Goldcorp’s website there is no apparent mention of alternative causes of health problems, water contamination, or cracked buildings. In an interview with reporters from CTV who visited the mine, Goldcorp’s vice-president for Latin America Eduardo Villacorta-Haddad blamed the cracked houses on seismic activity and poor construction of local buildings (W5, 2010).

However, Goldcorp did modify its stance at least slightly when the protest movement targeted the company’s shareholders. A group of concerned shareholders led by Bill Brassington from the Public Service Alliance of Canada Staff Pension Fund formed a committee to investigate human rights concerns around the Marlin Mine. Other members included The Ethical Funds Company, The First Swedish National Pension Fund and the Fourth Swedish National Pension Fund (Sustainalytics website). In March 2008 this shareholder group put forward a resolution at the company’s AGM calling for a third-party Human Rights Assessment (HRA) on the Marlin Mine. The company agreed, and commissioned On Common Ground to complete the assessment (Goldcorp, 2010a). In its response to the HRA, the company admitted for once that it may have been the cause of some of the problems around the Marlin Mine, stating that “Goldcorp acknowledges and accepts that its performance to date has not met the company’s or its stakeholders’ expectations” (Goldcorp, 2010a).

Commissioning the HRA has in some ways worked in Goldcorp’s favour, though. The company has portrayed it as evidence that it is committed to transparency and responsible practices. Even though the HRA found serious shortcomings in the overall human rights situation at the Marlin Mine, it also found that Goldcorp had performed

very well in certain areas, such as promoting worker safety. In Goldcorp's *2010 CSR Highlights* brochure, the HRA's positive findings on the Marlin Mine's worker safety record were listed as an achievement, though the issue of worker safety was only a very minor focus of the HRA (Goldcorp, 2011b). None of the negative findings, which made up the bulk of the HRA report, were mentioned in the brochure.

As discussed in the previous chapter, Goldcorp's response to the HRA has been highly criticized by international human rights experts, who doubt the sincerity of Goldcorp's commitment to implement the report's recommendations. They claimed the company's call for further studies on many of the issues was merely a stalling tactic, a strategy to avoid taking real action on the recommendations. They could be right. Since early 2011 Goldcorp announced that it would no longer report on its progress implementing the HRIA's recommendations. Many of the main issues, such as the damaged houses, questions of consultation and mine expansion, remained unaddressed (Mining Watch, 2011a). The company has proceeded to develop two new mining projects in Guatemala – Cerro Blanco and Escobal – once again without prior consultation with local communities (CIEL, 2010).

The activists' strategy of attacking Goldcorp's reputation as a socially responsible investment has resulted in concerted efforts from the company to rebuild and reinforce its good image. For instance, in 2007 the company began publishing annual CSR factsheets, which describe the community projects it has funded and are full of colour pictures of smiling Indigenous children and women with babies (Goldcorp, 2011b). It advertises its participation in voluntary CSR initiatives, such as the Global Reporting Index, the International Cyanide Code, and international best practices associations like the

International Council on Mining and Metals (Goldcorp 2011b). In 2009, Goldcorp joined the UN Global Compact, a network of companies that agree to follow ten non-binding principles of responsible business practices. One of the benefits of joining the Compact – as critics have argued – is that it offers companies “a free forum to polish their images” and “bluewash” their activities by associating themselves with the UN (Soederberg, 2007, p.508). Goldcorp defines itself as a responsible company because of its involvement with these international organizations and because of the contributions it makes to education, healthcare and infrastructure in the community (Goldcorp, 2011b).

CSR initiatives are not just about helping communities in need, however. In the case of Goldcorp, there are reasons to think that these initiatives are also an important part of its business strategy. Thomas Hemphill asserts that most corporations engage in voluntary charitable work as part of a strategy to increase their “reputational capital” (2004, p.341). Corporate philanthropy serves a dual purpose, in his opinion; it contributes needed funds and resources to the community and it benefits the company’s bottom line (2004, p.340-341). He calls this “strategic philanthropy,” and explains that it has become “an integral part of a firm’s competitive strategy,” helping the company to negotiate relationships with suppliers, customers and policy makers (Hemphill, 2004, p.341). Dashwood likewise notes that keeping a good behavioural track record can also give corporations more influence in policy formation (2007, p.149).

If Goldcorp’s CSR initiatives are not a very effective strategy for satisfying the protest movement – which demands deeper changes – it has satisfied most shareholders, and improves the company’s image (Mining Watch, 2011a). This helps make the company more competitive in its field, and probably makes its relationships with

governments smoother, as Hemphill would suggest. Goldcorp undoubtedly has an interest in being seen in a positive light by the Canadian government. This will allow it more sway when the company seeks to influence policy decisions, which it has tried to do in the recent past. Engaging in CSR initiatives allows Goldcorp to define itself as a responsible company committed to sustainable community development, which in turn is part of a strategy to make the company more economically competitive and politically influential.

### **Protest Movement - Participant Mobilization Strategies**

The ability to engage participants and mobilize them to support a cause is an important factor in the success of an advocacy group or movement (Pralle, 2006, p.109). Engaging public support and large numbers of new participants can be an effective strategy for influencing political decision makers, as are making alliances with influential individuals and organizations and tapping into existing networks (Pralle, 2009, p.96). Such participant mobilization strategies are evident in the campaign against the Marlin Mine. However, the social and political context of Guatemala has presented distinct challenges in creating networks at the national level.

The protest movement began at a local level, but activists recognized the need to bring other existing organizations on board as allies and to try to mobilize public support. Within the municipality of San Miguel Ixtahuacán, four community organizations came together to form a coalition called the Front in Defence of San Miguel Ixtahuacán (FREDEMI), which is made up of the Association for Integrated Mayan Development, the Association for the Integral Development of San Miguel, Strengthening Bilingual

Education in San Miguel, and the local Catholic parish (CIEL, 2009, p.2). This coalition has been very active in leading protests in local communities against mining, and engaging the local population. While they have undertaken direct initiatives such as petitions to the national government, much of their work at the national and international level has been carried out with the support of other organizations.

The Guatemalan environmental organization Colectivo Madre Selva has been an important ally, raising awareness in rural communities by educating people about the negative effects of open-pit mining. The Colectivo had existing connections with organizations throughout Guatemala, and organized information fairs and campaigns which drew public attention to the issue of the Marlin Mine as well as the role of mining in Guatemala in general (Hurtado and Lungo, 2007, p.71). The Catholic Church has also been an important ally, and has used its influential position in Guatemalan society to try to mobilize political actors as well as public opinion (Castagnino, 2006, p.22).

The municipal governments of San Miguel Ixtahuacán and Sikapaka have also reached out for external support. They have organized with other municipalities in the region to form alliances and raise awareness; they sent a warning to other towns in the western region that they were all susceptible to similar treatment from foreign mining interests. This type of mobilization led to the formation of the Regional Council of Indigenous Authorities of the Western Highlands. It also resulted in acts of solidarity in other areas, such as a road blockade to prevent mining equipment from passing through the town of Los Encuentros on its way to the Marlin Mine in 2005 (Yagenova, 2005, p.189). The 2005 protests, along with the lobbying work of the Catholic Church, succeeded in attracting national attention, sparking debate all over Guatemala about

mining. However, the debate across the country was very polarized; the business sector and the Guatemalan president were vocal in their support of mining as a tool for economic development, while some sectors of civil society argued that the social and environmental costs were too high (Hurtado and Lungo, 2007, p.72).

A major problem hindering the Marlin Mine campaign has been the inability to build alliances with political actors within the government. The Ministry of Energy and Mines in the national government holds jurisdiction over mining licenses, so political allies at the national level would be extremely useful to represent the views of this isolated indigenous community and push for policy change. So far, the government has ignored the opinions of local critics of the mining company, and has disregarded the municipal referendums that have clearly rejected mining. However, when one considers the historical social barriers in Guatemala this is not overly surprising. Deep social divisions, some dating from colonial times, are still very visible, and a small but powerful class of business and military elites continue to control the state. Though nominally it is a democratic country, Katherine Isbester claims that Guatemala is effectively run as an oligarchy (2011, p.144). For centuries, rural, indigenous Guatemalans – who make up over 50% of the population – have faced widespread discrimination, often violent repression, and have largely been excluded from politics (O’Kane, 2006, p.23; Isbester, 2010, p.138; Sieder, 2008, p.69). Laws that required forced labour for indigenous people were abolished in 1947, but the state openly continued to oppress them until recent decades (O’Kane, 2006, p.18). During the military dictatorship in the 1980s, hundreds of rural villages were burned and tens of thousands of indigenous people were massacred by

the armed forces during their campaign to exert control over rural areas (O’Kane, 2006, p.27).

Despite the transition to civilian government in 1986, those atrocities have gone largely unpunished and the military has retained a powerful influence over political and legal institutions (Sieder, 2008, p.70). Sieder writes that while some progress has been made in human rights and the treatment of indigenous people since the mid 1990s, racism and severe socio-economic inequalities are still prevalent in the 21st century. There remains a legacy of mistrust of the state among indigenous people, and there continues to be a lack of political willpower to implement human rights reforms and address the social exclusion of indigenous Guatemalans (Sieder, 2008, p.79). This context presents a challenging environment for the Marlin Mine activists to lobby the Guatemalan government. Hurtado and Lungo note that other social movements and environmental campaigns originating in rural Guatemala have faced similar challenges; they are generally unable to raise their issues at the national level, and focus instead on political engagement at the more accessible levels of municipal and departmental government (2007, p.57).

A further weakness of the Marlin Mine protest movement has been its inability to mount a unified campaign on a national level that would bring more civil society groups into an alliance behind its cause and be able to put real pressure on the government. The referendums and roadblock demonstrations have attracted national attention, have brought civil society groups together at national forums and conferences, and have succeeded in garnering support from some influential organizations. However, Hurtado and Lungo write that some of the main environmental groups in Guatemala are divided



on the subject of mining and have not supported the campaign. Some groups are of the opinion that the economic benefits of mining outweigh the environmental costs, as long as environmental standards are upheld, whereas others are opposed to all mining (Hurtado and Lungo, 2007, p.72). Though there would likely be divided opinions about mining in Guatemalan society regardless of a unified ecological movement, this type of division among environmental groups has made it even more difficult to convince the wider public and politicians to support the campaign against mining. Yagenova and Garcia write that the Marlin Mine protest movement faces a kind of crisis because it has been unable to develop mechanisms of representation and it has not been able to create cross-sector linkages on a national level. The authors note that there are other indigenous communities in Guatemala that are also dealing with unwelcome industrial projects, but they have not coordinated their actions in meaningful ways (Yagenova and Garcia, 2009, p.157-158).

It would be inaccurate to simply blame the lack of civil society coordination on the ineptitude of Marlin Mine protest leaders. The historical and cultural context of Guatemala is again an important factor in explaining why building civil society alliances at a national level is such a challenge. First of all, according to O’Kane it is really only in the last two decades that grassroots organizations in Guatemala have been allowed to develop again after being decimated by military purges in the early 1980s (2006, p.29-32). In the late 1980s, returning refugees were influential in starting to rebuild social networks after thirty years of particularly intensive repression. Yet O’Kane explains that in 1989 and 1990 there was another violent backlash against grassroots organizations, including many murders and disappearances of human rights activists that were linked to

the military and the government (2006, p.29-32). Even though Guatemala has held elections since 1986, liberal democracy is still weak and organized civil society is a very small sector (Sieder, 2008, p.75). Social networks and civil society structures have been rebuilt slowly since the 1990s, despite a lack of support from the government. Political activism and human rights advocacy is still quite a dangerous activity though; even in the late 1990s and 2000s, numerous activists have been assassinated and kidnapped (Carmack, 2008, p.60). According to O’Kane, there is still a culture of self-censorship, and many people are afraid to participate in politics and protests. This makes it challenging to mobilize participants to support campaigns.

A second challenge, as Hurtado and Lungo report, is the lack of communication between organizations in rural, indigenous Guatemala and those in urban areas, making unified action very difficult. There are major cultural, geographic, linguistic, and class divisions between these two sectors of Guatemalan society. These authors explain that the majority of environmental organizations are in the urban areas and are made up of middle class professionals of European and mixed descent, or *Ladinos*. The geographical distance between these groups and the rural areas directly affected by mines may explain the openness of some urban environmentalists to mining development. These groups do go to the countryside on occasion to try to coordinate their actions with rural groups, but these relations are usually temporary and only for specific campaigns (Hurtado and Lungo, 2007, p.79).

While the national network of allies is somewhat weak, the anti-mine movement has succeeded in mobilizing a strong contingent of international allies. A number of international NGOs were recruited to the cause, such as the Canadian NGOs Mining

Watch, Rights Action, The Halifax Initiative, and Solidarity Response, which have raised public awareness, put pressure on the Canadian government and organized protests in North American cities. The Center for International Environmental Law (CIEL), based out of Washington D.C. has provided valuable support, drafting complaints to the Canadian National Contact Point and advising FREDEMI on legal options. Amnesty International has raised awareness about the Marlin Mine situation through its newsletters and website.

Academic institutions and scientific experts have also lent their support. In a joint initiative, the Center for Civil and Human Rights of Notre Dame Law School and Oxfam Americas created the Independent International Panel on the Human Rights Impacts of the Marlin Mine, and engaged Physicians for Human Rights and a team of environmental health scientists from the University of Michigan to conduct a health study of the people in the communities around the mine (Basu et al., 2010). As well, a group of geologists and environmental scientists from Ghent University in Belgium carried out a study of arsenic levels in the groundwater around the Marlin Mine (Van de Wauw et al., 2010). Not only have their studies raised awareness of the problems at the Marlin Mine, but their status as expert scientists has increased the legitimacy of the communities' complaints about health and environmental problems, which the mining company has consistently questioned.

As Pralle explains, international organizations are often important allies because they bring resources, media attention and established networks to help raise the profile of protest movements (Pralle, p.96). The strategy of recruiting international allies in the case of the Marlin Mine served to expand the scope and profile of the conflict. This strategy

was undertaken because, as discussed earlier, the community protesters were unable to communicate with and influence their national government from within their country.

Therefore they formed alliances with international groups in a classic example of what Keck and Sikkink have termed the “boomerang pattern of influence”:

When channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside (1998, p.12).

Through pressure from Canadian NGO allies such as Mining Watch and Rights Action, the advocacy network against the Marlin Mine and other contested operations has been able to win some political allies in Canada. While there is still no sense that the Canadian government has accepted the view that it should bear responsibility for the actions of its corporations, there are some Members of Parliament that have. For example, Liberal backbencher John McKay has been in direct contact with these NGOs, and has pushed for government action. In February 2009, McKay introduced Bill C-300 to the House of Commons, titled An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries. This law would have permitted the government to remove public subsidies and other support from Canadian mining companies that did not comply with certain human rights and sustainability standards in their operations abroad (Keenan, 2010, p.34). There was a strong campaign against this bill, led by the mining sector in Canada, and the bill was defeated in the House of Commons by six votes on October 27, 2010 (Lui, 2011). A more recent bill was tabled in the House in October 2011 by MP Peter Julian of the NDP. Bill C-323, titled the International Protection and Promotion of Human Rights Act, would allow Canadian federal courts to hear cases in which a foreign citizen’s human rights have been violated

by a Canadian corporation or individual in a foreign country. Considering the current Conservative majority government though, it will be difficult to gain the support of the House of Commons (Dirmeitis, 2011).

As well as reaching out to NGOs and politicians, activists have also tried to build support for their cause among Goldcorp's shareholders. In May 2007, the San Miguel Association for Integral Development sent a letter to shareholders to notify them of the problems Goldcorp was creating in local communities. Specifically, they complained that the Guatemalan army had arrested two people from their homes in the middle of the night and had arrest warrants for fourteen other activists after the company had complained to the authorities about a protest over land prices (Imai et al., 2007, p.24). A delegation of community representatives also attended Goldcorp's Annual General Meeting (AGM) in 2007, along with an activist from Rights Action (Rights Action, 2007). Since then, protests have occurred outside almost every AGM, in Toronto and Vancouver.

In one sense, the protesters have succeeded in mobilizing support from certain shareholders. As previously mentioned, in 2008 a shareholder committee pressured Goldcorp into accepting a third-party Human Rights Assessment (Sustainalytics website). On the other hand, there is a feeling among the community members and NGOs that these shareholders are not necessarily allied with them since there are no community representatives on their committee and they have not coordinated their efforts with local demands (Coumans, 2008). Most of the communities and local protest groups have refused to participate in the HRA process, since they feel it has been externally imposed on them. When the Vancouver-based contractors On Common Ground arrived in San Miguel Ixtahuacán and Sipakapa to conduct their assessment, they faced opposition from

local people; the consultants were not perceived to be independent of Goldcorp since they were paid by the company, and were therefore not trusted (Rights Action, 2009). Mining Watch and Rights Action criticized the concerned shareholder committee for failing to consult with the affected communities and gain their consent before passing the resolution to conduct the HRA. Even if their communication and collaboration with FREDEMI and community stakeholders was weak, the concerned shareholders could be considered allies in the sense that they were promoting the protesters' cause.

The shareholder committee continued to put pressure on Goldcorp after the HRA was completed. In March 2011, the committee of concerned shareholders put forward a motion to suspend the Marlin Mine in order to comply with the rulings of international human rights bodies like the IACHR. However, only 6% of shareholders at Goldcorp's AGM voted to suspend the mine, showing that their potential as allies to the anti-mine protesters is limited (Mining Watch, 2011a).

### **Goldcorp – Participant Mobilization Strategies**

The anti-mining protesters are not alone in seeking to mobilize supporters. The mining company Goldcorp also has allies in this confrontation. The Guatemalan government, as mentioned previously, has been very supportive of the company (Fulmer et al., 2007, p.91). It has supported the Marlin Mine by approving Environmental Impact Assessments, and overturning its 2010 decision to suspend the mine (Amnesty International, 2011). The government has also supplied security forces; during the 2005 protest at Los Encuentros, it sent hundreds of army and police officers to disperse the

demonstrators and escort mining equipment through the roadblock (Yagenova and Garcia, 2009, p.161).

The Canadian Embassy in Guatemala has also been supportive of the Marlin Mine, and has actively tried to sway Guatemalan public opinion in favour of mining. In November 2004, the Canadian Ambassador James Lambert wrote a controversial article in a national newspaper arguing in support of Canadian mining projects; he claimed they had improved Canadian First Nations communities immensely and would likewise benefit indigenous communities in Guatemala (Imai et al., 2007, p.131). The embassy co-sponsored a National Mining Forum in December 2004 to showcase the mining industry and promote Canadian companies (Halifax Initiative website). The timing of the forum is telling; it took place during the forty-day Los Encuentros roadblock protesting the Marlin Mine, when public debate about mining in Guatemala was in full swing.

Goldcorp also has some supporters in the communities around the mine, especially the locals that are mine employees and their families who enjoy the economic benefits. The community development councils in several towns are in favour of the mine. This division within the communities has caused significant tension. Many of the beatings, kidnappings, shootings and harassment of protesters that have taken place in the communities have not been carried out on orders from the mining company, but by the community members that are in favour of mining. For example, Amnesty International reported on its website that on February 28, 2011 a busload of people who had been at a protest organized by FREDEMI were attacked and robbed by other community members. The leaders of the protest were taken to a local mayor's office in San Jose Ixcaniche where they were beaten, robbed and threatened with death for opposing the mine

(Amnesty International, 2011). Some local governments are in favour of mining, as are several influential families in the area (FREDEMI, 2011). There are clearly active supporters of the mining company among the population in the local communities, though past referendums and surveys strongly suggest that they are in the minority (Castagnino 2006, p.20).

Goldcorp has used its CSR initiatives in San Miguel Ixtahuacán and Sipakapa as part of its strategy to gain supporters among the community members, as well as among shareholders and international CSR organizations. The programs offered by the Fundación Sierra Madre, such as funding for schools, health care and career training, are all examples of Hemphill's "strategic philanthropy" discussed above (2004, p.341).

While it is difficult to say how many local people have benefitted and now support the mine because of these CSR initiatives, it is probable that some have been convinced. It is clear that others are not at all convinced by these initiatives, and are sceptical about the company's motives for implementing them. The mayor of Sipakapa stated in an interview in 2006 that he believed the primary motive behind the CSR programs was to win community support for the mine (Castagnino, 2006, p.16).

### **Protest Movement - Venue Shopping Strategies**

Venue shopping is a concept developed by Baumgartner and Jones that refers to the active search by advocacy group actors for new institutional arenas in which to lobby for policy change (2009, p.31). Pralle draws on this concept, and explains that groups will shop for new venues when they are blocked from participating in decisions or when rules are biased to their opponent's advantage (2006, p.27). The key is to find a decision



setting that will hear their case and is likely to rule in their favour. In the case of the Marlin Mine protest, it is clear that the protesters were trying to find new venues to voice their concerns, since their efforts at the national level were not yielding results. The weaknesses in Guatemala's institutions, such as weak environmental standards and government resources for law enforcement, put the protesters at a disadvantage. Furthermore, even though Guatemala has signed treaties like the ILO Convention 169 to respect indigenous rights, these commitments have not been translated into enforceable domestic laws (Fulmer et al., 2008, p.99). This along with the weak state of representative democracy in Guatemala, the control held by the business elite, and the social divide between indigenous communities and the state means the protesters have been unable to open effective channels of communication with their government.

The national venue is quite favourable to the mining company, for several reasons. First of all, the mining industry enjoys structural advantages and access to political power because of its perceived economic contribution to this financially vulnerable country. Mining is actually only a very small part of Guatemala's GDP, around 3%, and the mineral royalty rate is only 1% (Castagnino, 2006, p.10). Nevertheless, the government is making some money from the Marlin Mine in the form of royalties and taxes. Second of all, in the last fifteen years Guatemala has increasingly embraced neoliberal economic policies which are favourable to transnational corporations (TNCs) like Goldcorp. Katherine Isbester explains that this has led to policies that privilege the business elite by lowering taxes for corporations, privatizing public services, and discouraging wage increases (2010, p.146). In 2005, the country signed the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA)

with the US and surrounding countries, liberalizing and deregulating trade. Castagnino points out that Guatemala has faced significant pressure from the World Bank since the mid-1990s to make itself more attractive to Foreign Direct Investment (FDI) and especially to the international mining sector, in the name of economic development (2006, p.21). The government has fully adopted the ideology and rhetoric of the World Bank and the Canadian Embassy that mining will boost the economy, create jobs and improve infrastructure. A third and related reason that Goldcorp has an advantageous position in Guatemala is that mining regulations are limited, and the government lacks the legislative and technical capacity to enforce what rules do exist. The forces of globalization and neoliberalism have further weakened the state (Isbester, 2010, p.152). In other words, in the national venue Goldcorp has a strong position since “the state does not provide an effective counterbalance to a large corporation” (Imai et al., 2007, p.128).

The protesters also failed to win a favourable outcome through the Guatemalan judicial system. After the community referendum in Sikapaka in 2005, in which the communities rejected mining on their lands, the mining company launched a law suit first with a regional court in San Marcos and then in the Guatemalan Constitutional Court in an attempt to obtain a ruling that the referendum was illegal. After much deliberation, the Court ruled in May 2007 that the referendum was legal, but that it was not binding. The judges found that the existing national legislation that stated community referendums to be binding was actually unconstitutional (Loarca, 2008, p.9). Rachel Sieder writes that such legislative confusion is commonplace in Guatemala, where the justice system is very weak. Reportedly, the majority of Guatemalans mistrust the official justice system and perceive it as only benefitting the rich and powerful (2008, p.70-72). For good

reason, Sieder explains, since it is largely ineffective, corrupt and vulnerable to pressure from the military and business elite (2008, p.79-80).

As the protesters were having little success in national venues, they turned to international options. With the help of NGOs, they brought their case to a variety of international political and economic institutions, searching for a ruling that would force the government and the mining company to halt mining activities. These international campaigns are described in detail in Chapter 2, but I will outline them briefly here. In 2005, with the help of Colectivo Madre Selva, residents of Sipakapa filed a complaint with the Office of the Compliance Advisor Ombudsman (CAO) at the World Bank. The CAO investigated the situation, and criticized both the company and the national government for the lack of community consultations, but it did not withdraw its funding (Fulmer et al., 2008, p.102-103).

The International Labour Organization (ILO) has repeatedly notified Guatemala that the lack of community consultation about the Marlin Mine constitutes a contravention of international laws on the rights of indigenous peoples, specifically Convention 169 to which Guatemala is a signatory. These laws are supposedly binding, but the clear weakness of this venue is that the ILO does not have a mechanism to enforce its warnings, which the national government has repeatedly ignored. Rulings by the Latin American Water Tribunal (TLA) to pay for damaged houses and water resources have also been ignored, both by Goldcorp and the Guatemalan government. Community members sent a petition to the Inter American Commission on Human Rights (IACHR), a body of the Organization of American States (OAS), whose rulings are also binding on Guatemala, like on all member states. Once again, while this venue has ruled

in favour of suspending the Marlin Mine, it has little power besides diplomatic pressure to enforce its decisions. However, even if these international human rights venues have not enabled the protesters to achieve their goal of closing the Marlin Mine, they have given strength and legitimacy to their case. They have also increased the public conscience of the case around the world.

In 2009, the community coalition FREDEMI with the help of CIEL began to target a new political venue, the Canadian National Contact Point. This represents a shift in strategy, since the previous venues outside of Guatemala had all been international institutions, and this is a venue controlled by another country's national government. One of the challenges involved with targeting the Canadian government is that it has been deeply involved in promoting and defending its own mining companies, since it has an interest in their success. It has also been influenced by the development policy of the World Bank, and supports FDI and free trade agreements as a pathway towards development. A reversal of its foreign policy is not likely to happen suddenly, though it is not inconceivable. Furthermore, dealing with complaints from grassroots movements in foreign countries is not normally seen as being within the Canadian government's jurisdiction. As was made evident by the rejection of Bill C-300, there is no consensus that the government should play a role in monitoring the activities of its corporations overseas.

However, Pralle writes that institutional venue shopping often involves convincing an institution to expand its jurisdiction to include an issue that it does not normally deal with (2006, p.27-28). This is definitely part of the activists' strategy; in their specific instance complaint they point out that past complaints of a similar nature

have not been successful, yet they explain how according to the NCP's legal mandate their case does fall within the institution's jurisdiction. They point to the NCP procedures in the UK, which have been more effective at engaging with complaints similar to FREDEMI's, and request that Canada adopt similar procedures for addressing their complaint (CIEL, 2009, p.4). Despite these challenges, FREDEMI and its Canadian allies have not given up on the Canadian government as a useful venue, and continue to lobby for regulations on mining companies working in the global south.

In 2007, activists began targeting economic venues as well as political ones when they focused on reaching Goldcorp's present and potential shareholders. Pralle writes that moving an advocacy campaign into the marketplace can be a very effective strategy, since unlike political and judicial venues there is relatively open access and few rules. Moreover, it is not necessary to have the majority of consumers on your side to influence the market (Pralle, 2006, p.131). It is important to keep in mind, though, that the marketplace for shares is different from the marketplace for products. In the advocacy campaigns that Pralle examined in her 2006 book, activists were targeting the forestry industry, which produced wood and paper products used by millions of consumers in the general public. Mobilizing consumers to change their buying habits through the use of boycotts, puts pressure on this type of company because it diminishes its potential revenue (King, 2008, p.399). Industry sectors such as the mining sector operate quite differently, though; they are often less vulnerable to consumer pressure because they do not have an identifiable retail exposure (Webb, 2002, p.20). However, Webb notes that corporations in this sector can still be pressured through actors such as shareholders, investors, pension fund managers and insurers (2002, p.20). Thus instead of targeting

consumers, in this case it was more strategic for Marlin mine activists to try to mobilize Goldcorp's shareholders.

Sending letters to shareholders, sending delegations to infiltrate meetings, and organizing protests outside Goldcorp offices first of all had the desired result of gaining the support of large Canadian and Swedish shareholders who pressured for better practices from the inside. Second of all, the critical attention that Goldcorp was receiving because of these tactics also put market pressure on the corporation from the outside, since it discouraged socially responsible potential investors from buying shares in the company. In 2008, Jantzi Research removed Goldcorp from its list of recommended responsible investment options, an influential investment index used by financial institutions across Canada (Sustainalytics website). In September 2011, Goldcorp was also removed from the Dow Jones Sustainability Index (SAM Sustainability Investing, 2011). Gold mining companies compete against each other for investors, and anything that detracts from their competitive edge is a potential threat to their bottom line. However, socially responsible investors represent only a small percentage of shareholders overall. This venue has not allowed the protesters to achieve their goal of halting the mine, though it has brought public attention to the cause of the protesters and has resulted in negative media coverage about Goldcorp.

### **Goldcorp – Venue Shopping Strategies**

Pralle writes that as advocacy groups try to shift issues to new policy venues, their opponents who benefit from the present institutional context will often actively try to maintain the status quo and prevent the issue from moving to new venues (2006, p.112).

For Goldcorp, the preferred decision making arena would be limited to Guatemala, where the process and rules of the venue were working in their favour. They have made attempts to contain the issue at that level, emphasizing that they are complying with Guatemalan laws and standards.

Furthermore, Goldcorp has actively lobbied against bringing the issue into the political venue of the Canadian government. In 2008, along with Barrick Gold and Kinross Gold, Goldcorp submitted a report to the Standing Committee on Foreign Affairs and International Development regarding the regulations proposed by Bill C-300. The report strongly urged against the adoption of this legislation, arguing that it would harm the international competitiveness of Canadian mining companies, harm the Canadian economy since it would encourage mining companies to relocate, and undermine the collaborative CSR processes that companies are already engaged in (Barrick Gold et al., 2008, p.3). These companies argue that imposing “severe sanctions” on mining companies working overseas does not and should not fall under the jurisdiction of the Canadian Government. They argue that the best venue to address business practices is not in government, but instead in the marketplace through voluntary initiatives: “we recommend that Canada continue to support the multifaceted, multi-stakeholder and collaborative approach to CSR that has generated real progress and value and which continues to be developed and refined internationally” (Barrick Gold et al, 2008, p.4). In other words, while NGOs and anti-mining advocates are trying to convince the Canadian government to expand its jurisdiction, the mining industry is trying just as hard to convince it not to. So far it has been successful.

Goldcorp executives have not been so successful in keeping the issue out of a venue very close to home: their shareholder meetings. In this venue they are at their most vulnerable since they are directly accountable to their investors. They have tried to discourage investors from bringing forward complaints; while they did address the complaint by the large coalition of Canadian and Swedish public pension plan investors, they refused to circulate a complaint by a smaller shareholder organization, “Breaking the Silence,” in 2008 (Sustainalytics website). This backfired on the company though, as it caught the attention of social investment organizations. Jantzi Research cited this as one of the reasons it decided to remove Goldcorp from its index of companies eligible for socially responsible investment portfolios (Sustainalytics website).

Another strategy Goldcorp has used to gain support amongst its shareholders is to downplay the severity of the community conflicts around the mine, and pre-empt shareholder unrest by assuring them that the company is either not implicated or has already taken the actions necessary to resolve the situation. For example, in the days following the February 2011 protest near the Marlin Mine, Goldcorp’s public relations office sent letters to shareholders with the company’s version of what happened (Goldcorp, 2011a). The version of events reported by Amnesty International and FREDEMI is that on the afternoon of February 28, a bus carrying protesters home from a demonstration was stopped by approximately 70 mine supporters, who forced the protesters to get out of the bus before beating and robbing them. Two of the protest leaders were detained and taken to the mayor’s office of the closest village, San Jose Ixcaniche, where they were severely beaten, robbed and threatened with death. All the



protesters were released later on that evening; at least one person was hospitalized because of the beatings (Amnesty International, 2011; FREDEMI, 2011).

The version of events circulated to shareholders on March 1<sup>st</sup> by Goldcorp claims that the protesters' rights were not violated when they were detained on February 28<sup>th</sup> (Goldcorp, 2011a). It alleges that the protesters had forced the bus driver to drive them home from the demonstration, that the bus was stopped by "community leaders" in San Jose Ixcaniche, and that the protesters initiated a physical confrontation when they got out of the bus. The company's statement mentions no injuries among the protesters, but emphasizes that a baby died because its parents could not get past the demonstration that day to see a doctor, and that an injured bystander was immediately treated in the mining company's medical clinic. It claims the protesters' actions "were planned with the intent of generating conflict in the local communities" (Goldcorp, 2011a).

The company's statement sent a message that shareholders need not get upset, since the company is not responsible for what happened and is actually helping community members, and the protest was illegitimate anyway. Nevertheless, these communication efforts were not enough to satisfy some shareholders. On March 16, 2011, two independent shareholders submitted a resolution to Goldcorp demanding that the company voluntarily comply with the rulings of the ILO and the IACHR and suspend the Marlin Mine. The resolution states that the reason why Goldcorp should suspend the mine is because of rulings and recommendations of international institutions, as well as very critical press stories that are damaging the company's credibility and business reputation. The shareholder venue has thus been influenced by the results of previous work carried out by the network of activists in other institutional venues. Company

executives did circulate the resolution to all shareholders, though they actively encouraged their shareholders not to support it. They assured shareholders that the company's CSR policy and human rights policy were effective; that suspending the mine was not necessary (Mining Watch, 2011a). The majority of shareholders agreed with the company, and voted against the resolution (Mining Watch, 2011a). While the activists successfully brought debate about their cause into this decision-making venue, they were unable to achieve a ruling in their favour.

## **Conclusion**

After examining the various attempts to bring about policy change by redefining the problem, engaging new allies and targeting new institutional venues, I have come to the conclusion that the mining company Goldcorp continues to be in a strong position to contain the protest movement. It still retains more influence over the key venue that has the authority to shut down the mine – the Guatemalan government. The hope of the protesters was that with enough international pressure the government would be shamed into closing the mine, but it would seem that pressures to keep the mine running – both domestic and international – have prevailed. The Canadian government has not pressured Goldcorp either, despite community complaints to the National Contact Point, due in part to a strong lobbying effort by Goldcorp and other mining companies.

The strategies used by the protesters and their allies were effective in the sense that they were able to define their issue in a way that attracted substantial national and international attention, they gained influential international allies, and numerous international institutions ruled in their favour. However the case of the Marlin Mine

protest movement highlights the fact that there are very few international institutional venues that have the power to enforce international laws that protect human rights. There are even fewer that have the power and the will to enforce corporate accountability among transnational companies, due partly to the fact that there is very little international legislation covering TNCs. It demonstrates the power that TNCs wield – and the immense difficulties that grassroots activists face – in the global south where the state is either incapable or unwilling to protect the rights of its citizens.

Furthermore, this case shows that CSR policies, while somewhat useful in providing leverage for tarnishing the reputation of hypocritical companies, are not useful tools for community human rights activists who aim to hold companies accountable. To the contrary, in this case, CSR policies and programs were strategic tools for the corporation to gain supporters and lobby against regulations that would truly hold it accountable.

CSR is voluntary; it does not guarantee that the rights of stakeholders will be respected. Therefore, if community stakeholders in the global south are to be guaranteed that their rights will be respected by TNCs, there is a great need for regulations – either at an international level or in developed countries like Canada – that apply to TNCs, as well as institutional venues that are accessible to stakeholders and have the power and will to enforce their own decisions. Canadian mining companies claim that legislation such as Bill C-300 is “unnecessary” since they are already held to account by CSR rules and guidelines (Barrick et al., 2008, p.3), yet the Marlin Mine case shows otherwise. In the words of Hamann and Acutt, “CSR needs to be underpinned by corporate accountability” (2003, p.268).

## Chapter 4: Conclusion

In the preceding chapters I have examined how voluntary CSR policies in the Canadian mining sector are used as part of political strategies, both by mining companies and by community stakeholders protesting the presence of a mine in their community. I set out to find whether or not CSR policies are helpful for community protesters and their allies who are struggling to protect human rights, community rights, and the environment. To answer my research question, I undertook a case study of Goldcorp's Marlin Mine in San Marcos, Guatemala and analyzed the strategies used by the network of protesters and the mining company.

The situation at the Marlin Mine reveals that the CSR policies and funding initiatives that the mining company has implemented have failed to prevent or remedy the tense and conflictive relationship between the company and members of the local communities. I argued in chapter two that this is mainly because the CSR initiatives have been designed and implemented by the company alone and do not respond to the needs or demands of local residents. Furthermore, the company has consistently failed to listen to the concerns of local citizens about the protection of their rights and the local environment, and it does not have a process in place to address their grievances. Community consultations have been inadequate throughout all stages of mine development and expansion, though this is partially the responsibility of the Guatemalan state. To respond to my research question, Goldcorp's CSR initiatives have not been useful to community activists in their struggle to have their concerns addressed by the mining company.

The analysis of the strategies used by Goldcorp and the protest movement in chapter three shows that both sides have attempted to use the company's CSR policy and reputation to their advantage. In strategies of issue definition, participant mobilization, and venue shopping the network of anti-mine activists contrasted Goldcorp's actions with its image as a responsible company. To some extent, Goldcorp's reputation as an industry leader in CSR gave the protesters leverage to raise the profile of their case and mobilize new participants in a variety of venues, including Goldcorp shareholders. However, in the end, CSR has not enabled the activists (or international human rights and environmental bodies) to change government or corporate policy. They have not achieved their goal of suspending the mine and addressing the concerns about stakeholder rights.

Goldcorp has successfully used CSR as part of its strategy. To be fair, it must be noted that some of Goldcorp's community projects have provided real benefits to the population. However, they have also fulfilled other strategic objectives. Investing in community projects in San Miguel Ixtahuacán and Sipakapa has helped Goldcorp gain the approval and support of some community members, as well as allowing the company to bolster its claim that it is fostering sustainable development and progress in local communities. Producing annual CSR reports, along with joining international CSR initiatives such as the UN Global Compact have helped Goldcorp build a reputation as a leader in CSR. This is a strategic move both to attract conscientious investors and convince existing ones that Goldcorp has responsible policies and practices. Furthermore, Goldcorp has used its CSR reputation in political lobbying efforts to influence Guatemalan and Canadian politicians. Along with other mining companies, Goldcorp

argues that binding regulations on Canadian mining companies overseas are not necessary because voluntary CSR regimes are more effective (Barrick Gold et al., 2008).

So what does the case of the Marlin Mine tell us about CSR in general? Beyond the events that I have outlined in this case study, there are lessons to be drawn and applied to other cases and to theories about CSR. First of all, this case demonstrates that having a CSR policy, CSR projects, and a reputation as a CSR leader is not a guarantee that a mining company is able or even willing to respect the rights of local communities and establish a genuine, mutually beneficial relationship with local community stakeholders. It is problematic that CSR efforts do not necessarily include engaging and consulting with stakeholders in order to address community concerns. Simply having a CSR policy and reputation is not sufficient evidence of a company's commitment to dialogue; scrutiny of on-the-ground practices on a case by case basis is necessary.

Second of all, as many scholars have already argued, CSR must be understood as serving multiple purposes and strategies, not all of them altruistic. One purpose of CSR is to build community infrastructure and pay for education and health care that improve the living conditions of the local people. Another purpose of CSR is to build support and legitimacy for the mining company in the community. Yet another purpose is to build a corporate image in the developed world, aligning the company with norms about the corporation's role in society. This can serve a business strategy of attracting investors, and a political strategy of influencing public policy decisions. CSR is a complex, political concept, with inherent conflicting interests. It needs to be treated as such.

Third of all, in the context of a nation in the global south where the state is either unable or unwilling to stand up for the rights of its citizens, CSR alone is not sufficient to

guarantee the protection of human rights, indigenous rights, community rights, and the environment. Barrick Gold, Kinross Gold and Goldcorp, among other companies, have presented CSR as being a viable substitute for laws, yet in the case of the Marlin Mine I have clearly shown that community members have not been able to use CSR policies as an effective tool for addressing human rights and environmental concerns. Existing international laws on human rights and the environment, such as the OECD's Guidelines for Multinational Enterprises, the ILO's Convention 169, and IACHR rulings, have not proved useful either.

Therefore, I argue that it is necessary to put binding legislation in place that regulates transnational mining companies. At the very least, there needs to be a venue with the capacity to enforce its decisions that is accessible to community stakeholders whose rights are being abused. Whether this is located at the international level, or at the level of national governments such as Canada where mining companies are based, or in countries like Guatemala where they operate, is a question that needs to be studied and determined. The details of its design and constitution are beyond the scope of my research; this is an area for further study.

Ideally, this type of international regulation would not be needed. States such as Guatemala would be proactively facilitating proper consultation and dispute settlement procedures, and invigilating mining projects to ensure all national and international human rights obligations were respected. In a perfect world, foreign states such as Canada would support and encourage countries in the global south to pressure mining companies into respecting rights, instead of defending mining companies with questionable practices. As it stands however, the Guatemalan state like so many others in

the global south is struggling with political and judicial corruption, high levels of crime and violence, and limited financial resources. Entering the globalized economy and adopting neoliberal policies has left many developing states reduced and weakened (Isbester, 2010, p.147). Furthermore, under the rules of international free trade agreements, states can be fined for interfering with corporate activities and causing financial damages to foreign investors. The structural disadvantages faced by developing states in the present global economic order have been widely documented elsewhere; my point is that in the present context, states such as Guatemala cannot be relied upon to protect the rights of their citizens against powerful transnational corporations.

And what, you may ask, of CSR? Should it be abandoned, discouraged, or perhaps ignored as Rowe advocates? Unlike Rowe, I argue that CSR has a place in the overall scheme of improving transnational business practices in the global south. Mining corporations should be encouraged to report and share their achievements in softening their impact on the environment, promoting work safety and human rights. However, there are many improvements needed to make CSR initiatives more meaningful, three of which I will mention here. First, instead of glossy CSR brochures with vague descriptions, the focus should be on rigorous monitoring and measuring, using industry-wide reporting standards (Hamann and Acutt, 2003, p.259). Second, the definition of what corporations mean by “social responsibility” needs to necessarily include engaging in meaningful consultations with local stakeholders and addressing their concerns. Third, the definition of CSR should incorporate the standards that have been established by international human rights bodies; as Hamann and Acutt argue, NGOs and international



institutions need to engage directly with the CSR agenda and make sure it truly advances human rights (2003, p.260).

Above all though, it is important that CSR is kept in its rightful place. Civil society, academics and policy-makers alike need to recognize that CSR is not a substitute for regulations. Corporations have a tendency to use voluntary CSR initiatives for self-advancing purposes, as part of political strategies. Corporate Social Responsibility needs to be viewed with a critical eye, and needs to be buttressed by a sturdy international legal framework in order to guarantee that the rights of community stakeholders are upheld.

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