Mining, human rights and the socially responsible investment industry: considering community opposition to shareholder resolutions and implications of collaboration

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Mining, human rights and the socially responsible investment industry: considering community opposition to shareholder resolutions and implications of collaboration

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Canadian mining companies regularly face allegations of human rights abuses related to their global operations. This paper considers the human rights implications of responses by Canadian Socially Responsible Investment (SRI) firms to allegations of human rights abuses against mining companies whose shares they own, assess or recommend to clients. Shareholder resolutions are analysed in the light of recent opposition to implications of this corporate social responsibility vehicle by mining affected communities. The paper also explores consequences for community agency in defence of social and environmental values as a result of relationships that evolve between SRI firms and mining companies through collaborative undertakings. These issues are examined in the context of Goldcorp’s Marlin mine in Guatemala. The paper concludes that a relationship Goldcorp entered into with SRI firms through a shareholder resolution led to a flawed human rights impact assessment process that was protective of the company’s interests but harmed the ability of affected communities to defend their interests.

Keywords: mining; socially responsible investing; corporate social responsibility; Guatemala; Goldcorp; community agency; human rights; indigenous rights; human rights impact assessment; corporate partnerships

Introduction

In 2008, a group of Socially Responsible Investment (SRI) firms and pension funds (the SRI group)2 issued a press release praising Canadian mining company Goldcorp Inc. (Goldcorp) for agreeing to their request to conduct a human rights impact assessment (HRIA) at its conflict-ridden Marlin mine in Guatemala.3 Preceding this public announcement, a memorandum of understanding (MOU) had been signed between the SRI group and Goldcorp setting out the terms of the proposed assessment. One year later, one of the members of the SRI group, the Public Service Alliance of Canada, withdrew its involvement in the HRIA noting that it had

... become increasingly concerned with the HRIA process and its relationship with the local communities. We have been especially concerned about the lack of free and informed prior consent of the communities in regards to the HRIA, and that the interests of Goldcorp are being put before the interests of the local people.4
Shortly thereafter, a participant in the SRI group from the Ethical Funds Company is reported to have acknowledged that the HRIA had had the unintended consequence of “inflaming the situation” in Guatemala (Law 2009). In spite of the withdrawal of the Public Service Alliance of Canada, which necessitated the withdrawal of the Shareholder Association for Research and Education (SHARE) as advisor to the Public Service Alliance of Canada’s staff pension fund, the remaining three members of the SRI group decided to continue with the controversial HRIA.

A new target date for completion of the HRIA was set for the end of July 2009. The web site that was to provide transparency into the HRIA process provided its last update on 27 May 2009. This update affords glimpses into the turmoil going on behind the scenes. It announced a ‘change in scope’ that consisted primarily of abandoning an approach ‘founded on community participation’ as the consultants who had been hired to carry out the HRIA ‘concluded that the conditions necessary to engage local communities and organizations in open dialogue do not exist in the current circumstances’. This significant shift in methodology and focus was reflected in a name change to human rights assessment (HRA). The update also announced the departure, in January 2009, of a human rights specialist from the team that had been assembled to carry out the HRIA, but provided no explanation for this departure. Finally, the update noted the departure of the Public Service Alliance of Canada, also without providing an explanation. This was the last update to the web site until the much delayed release of the HRA on 17 May 2010.

In the last decade, there have been a number of shareholder resolutions, ‘guided by responsible investment policies’, presented to Canadian mining companies by members of Canada’s SRI industry. Placer Dome, Alcan, Barrick Gold and Goldcorp have all been targeted by shareholder resolutions. A number of these resolutions have been met with distress by community members who are affected by the specific mine projects featured in these resolutions. This undoubtedly unintended response to mining-related shareholder resolutions by the SRI industry is undertheorized and needs to be better understood. Furthermore, as SRI firms and institutional investors enter into agreements with mining companies as a result of shareholder resolutions, they enter into potentially multi-year relationships that may have further consequences for community activism.

In this paper, I explore community opposition to mining-related shareholder resolutions by the SRI industry. I situate this dynamic within the broader context of increasing interventions by a range of corporate social responsibility (CSR) actors on social and human rights issues at specific mining projects. I analyse these CSR efforts from the perspective of respect for human rights, in particular the right to participation, and from the related perspective of community ‘agency’, or right to self-determination, with respect to protecting local social, cultural and environmental values. I focus on characteristics of SRI firms and the dynamics and trends related to shareholder resolutions that are relevant to an understanding of community opposition to some shareholder resolutions. I also consider potential consequences for community activism as a result of relationships that evolve between SRIs and mining companies. The Goldcorp shareholder resolution provides a case study for an in-depth exploration of these issues.

The elusive ‘Social License to Operate’ and the human rights implications of CSR partnerships

United Nations (UN) Special Representative for business and human rights, John Ruggie (2008) studied 320 randomly chosen cases of human rights abuses by corporations (between February 2005 and December 2007) and found that of eight sectors studied, and a further category of ‘other’, the extractives sector dominated the cases of human rights abuses with 28%. Growing opposition to mining projects by local communities and increasingly by indigenous people is now widely acknowledged by the industry itself, by financial institutions and by governments.
Mining companies and industry associations recognize this reality when they refer to the need for a ‘social license to operate’ if they are to avoid reputational risk, costly delays and the potential loss of mining projects resulting from local opposition. Community-level conflict is increasingly catching the attention of the media, regulators, investors and downstream consumers such as jewellers and the electronics industry. Mining companies are also increasingly facing innovative legal challenges and quasi-legal proceedings.

Ruggie’s interpretation of his UN mandate was contested, particularly by advocates of the UN Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (U.N. Norms), who sought greater corporate accountability by extending to corporations the same obligations that states have to protect human rights. Ruggie (2008) firmly rejected this view of direct legal human rights obligations on corporations in favour of a position that corporations have a ‘responsibility to respect’ human rights, which he interpreted as ‘do no harm,’ as defined in national law provisions (see also UNHR 2011). Nevertheless, many critics welcomed Ruggie’s recognition that the ‘root cause of the business and human rights predicament today’ lay in the ‘governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences’ (2008, 3). Ruggie’s (2011) final report of his 6-year mandate has proven to be more controversial as he appears to favour some solutions to the human rights dilemma created by governance gaps over others. Critics argue, for example, that Ruggie has shied away from strong recommendations for enhanced regulatory measures to fill the governance gaps, for example by home states of multinationals, in favour of a more clearly defined and enhanced role for corporations themselves to, for example, exercise due diligence to avoid human rights abuses, provide local-level grievance mechanisms and provide remedy when human rights abuses occur (MiningWatch Canada, 2011; Amnesty et al. 2011).

This enhanced role of the corporation in areas of governance that are traditionally the responsibility of states has been described as an aspect of CSR in Corporate Citizenship literature (Carroll 1999). Matten and Crane (2003, 10) note that ‘globalization has helped to shift some of the responsibility for protecting citizenship rights away from governments. Corporations, we would argue, have increasingly filled that gap’. Matten and Crane recognize that corporations are not accountable to citizens in the same way that governments are (2003, 16) and that ‘corporate “citizens” normally assume their roles only if it is in their self-interest to do so’ (2003, 15).

For these reasons, pressures to hold corporations themselves to account, including through regulation, have grown stronger as the power of corporations to cause harm with impunity has become more widely apparent, particularly in weak governance states or states that delegate some of their traditional functions to corporations (Matten and Crane 2003). It was this public pressure for corporate accountability that led first to the UN Norms and ultimately to Ruggie’s mandate. As pressure for regulatory and legal reform continues to grow, voluntary CSR approaches are increasingly embraced by mining companies. Particularly at the local level, CSR has become the industry’s response to the need to gain a ‘social license to operate’ – or at the very least to manage social conflict at mine sites. It is also the industry’s preferred alternative to increasing efforts to establish effective international or home country regulation and better access to legal sanctions and remedies for people whose rights have been abused.

Although voluntary CSR instruments have proliferated in recent years, alleged abuses associated with multinationals have not abated (Ruggie 2008, 3). As I have argued elsewhere, CSR is an inadequate response to long-term environmental and social harm that may be caused by sectors such as mining (Coumans 2010). Voluntary CSR approaches do not deal adequately with the problem of ‘laggards,’ companies that choose not to apply best practice standards at all, or do
not apply them consistently at a particular operation, or uniformly across all operations. Application of CSR programmes has often proven to be reflective of the commitment of a particular company’s CEO, or mine site manager. Therefore, these programmes are vulnerable to turn over of personnel at all levels, as well as to mergers and acquisitions that result in personnel changes. Many existing CSR codes and instruments are weak on human rights and CSR instruments generally do not provide for sanctions and remedies (Coumans 2010).

Two characteristics of CSR approaches need careful examination. As a voluntary approach, CSR puts a significant level of control in the hands of corporations. A mining company, or project level manager, may decide to adopt a CSR approach, or not, can choose between programmes, codes or standards, can decide to adopt CSR measures at all operations or only at some, whether and how to phase in application, and whether to stop application of CSR measures at any time and for any reason. Additionally, mining companies choose their CSR ‘partners,’ whether these are consultants, academics, development or conservation NGOs, SRI firms or any of a growing number of CSR experts. Mining companies also foot the bill both for the CSR measures to be adopted, as well as for the partners they recruit to help implement these measures. The financial dependencies and contractual aspects of CSR partnerships give mining companies considerable influence over what measures will be undertaken, how they will be undertaken and levels of transparency. The impact of power relationships, inherent in CSR partnerships, on the implementation and outcomes of CSR programmes at particular mine sites remains underexamined.14

Related, and also underexamined, is the potential impact of CSR partnerships in the mining industry on the right to self-determination, or agency, of mining-affected communities who are struggling to protect their social, cultural, economic and environmental values. Mining companies may use CSR programmes and partnerships strategically to stem community opposition. Fundamental to this concern is the fact that community members in situations of conflict with a mining company are rarely, if ever, included in the decision making surrounding CSR programmes to be adopted or partners to engage. Although CSR partnerships with mining companies may be empowering for mining companies, in situations of conflict they are inherently disempowering for the affected communities. It is, then, perhaps not surprising when communities-in-struggle around mine sites react negatively to the imposition of CSR strategies that they perceive as harmful.

The SRI group’s intervention in Goldcorp’s Marlin Mine in Guatemala illustrates some of these issues. Ruggie and others emphasize the need for corporations to exercise ‘due diligence’ with respect to their operations. HRIAs are an emerging tool in the corporate ‘due diligence’ toolkit. By requesting that Goldcorp carry out an HRIA and partnering with the company in this endeavour, the SRI group joined Goldcorp in ‘administering citizenship rights for individuals’ (Matten and Crane 2003, 13), However, the SRI group did so against the wishes of many of the affected people.

Goldcorp’s Marlin mine in Guatemala: conflict and opposition15

Background

Goldcorp’s Marlin mine is located in the Department of San Marcos in the western highlands of Guatemala. The silver-gold mine occupies an area of approximately 5 km², of which 85% lies in the municipality of San Miguel Ixtahuacan (SMI), composed of 19 villages, and 15% in the municipality of Sipacapa, composed of 13 villages (Compliance Advisor Ombudsman 2005; MiningWatch Canada 2007). The people of SMI and Sipacapa are predominantly indigenous, Maya-Mam and Maya-Sipacapense, respectively, and are predominantly poor.

The mine is located in a country whose people are still reeling from the after-effects of 36 years of bloody internal conflict during which Mayan communities in particular suffered severe violence. Fifteen massacres took place in the Department of San Marcos alone where the Marlin mine is located (Imai, Mehranvar, and Sander 2007, 122). In spite of the Peace Accord signed by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) in 1996 the country continues to suffer from high levels of violence, drug wars, government corruption and a weak justice system. Guatemala has also emerged impoverished from years of brutal conflict. In order to attract foreign investment in mining, the country passed a mining code in 1997 that allows 100% repatriation of profits by foreign firms and reduced royalties from 6 to 1%.17

This situation should thus signal loudly, to any mining company expecting to respect human rights in this environment, that it will need to exercise due diligence with great care.

A history of conflict and opposition to the Marlin mine

Conflict related to the Marlin project dates back to the first land purchases made in the mine lease area in 1999 and with the initial mining-related work done in that year. Local indigenous people soon raised concerns about environmental impacts (Imai, Mehranvar, and Sander 2007, 102–103). Conflict and opposition to the mine have escalated over time, particularly after 2003 when Glamis received its mining permit and when construction of the mine started in 2004.18 In 2004, following protests starting in February, the municipality of Sipacapa decided to poll its members with respect to the mine. A poll released on 4 November 2004 indicated that 95.5% of those surveyed opposed the mine. A meeting that was held in Sipacapa on 6 November resulted in a declaration against the mine stating: ‘We publicly declare at the national and international level, that the granting of a license for open pit metal mining violates the collective rights of the indigenous peoples who inhabit our territories’ (Imai, Mehranvar, and Sander 2007, 110). Importantly, the community was clear on its reasons for opposition based on a desire to protect the environment and to pursue alternative means of development (Imai, Mehranvar, and Sander 2007, 110).

In December 2004, an indigenous group 150-km away from the mine, in the town of Los Encuentros, began a 42-day blockade on the Pan-American highway to prevent passage of a ball mill for the Marlin mine. On 11 January 2005, the blockade was put down by government security personnel, who allegedly opened fire on unarmed protestors killing one and injuring some 20 others. Shortly later, Bishop Alvaro Ramazzini led 3000 people in a protest against the mine in San Marcos (Imai, Mehranvar, and Sander 2007, 110–111). Also, in January 2005, a formal complaint to the Compliance Advisor Ombudsman of the International Finance Corporation was launched by people from the municipality of Sipacapa, which claimed that water demand from the mine will deny access by communities to their water supply and will contaminate water supplies used by downstream people; the rights of indigenous people have been violated as a result of failure by the project to consult with them; the presence of the mine is
resulting in social conflict, violence and insecurity. The Compliance Advisor Ombudsman accepted that ‘the complaint raises concerns and apprehensions that are widely-held in the area’ (Compliance Advisor Ombudsman 2005, 4). The violent confrontation between villagers and Guatemalan forces at the blockade in Los Encuentros significantly raised the profile of the struggle and the level of international awareness and interest.

In 2005, the municipality of Sipacapa furthered plans to hold a ‘consulta,’ or referendum, to determine whether local people opposed or favoured the exploration and extraction activities of the Marlin mine. The International Labour Organization’s (ILO) Convention 169 formed a basis for the referendum, as it requires states to consult with indigenous peoples and achieve their consent before permitting activity on their lands through legislative or administrative measures (MiningWatch Canada 2007, 15). The referendum was organized in the context of strong public statements by the company discrediting the proposed community vote and increased violence (Imai, Mehranvar, and Sander 2007, 113). Ultimately, 11 communities voted against mining, one abstained and one voted for mining, with the outcome of the vote being announced on 21 June 2005 (MiningWatch Canada 2007, 15). The Municipal Council confirmed the decision of the citizens to reject mining exploration and exploitation and agreed to abide by the outcome of the referendum. Guatemala’s Constitutional Court confirmed the legality of the referendum in 2007, but also ruled that it was not binding on the state as authority for mining rests with the Ministry of Energy and Mines. Glamis continued exploration activities in Sipacapa after the consulta (Compliance Advisor Ombudsman 2005).

Since 2005, opposition to the mine, and associated conflict and violence, has continued not only in Sipacapa, but also in the municipality of SMI where 85% of the mine lease is located. This opposition led in 2009 to the filing of a Specific Instance Request for Review by The Front in Defense of San Miguel Ixtahuacan (FREDEMI) with the Canadian National Contact Point of the Organization for Economic Co-operation and Development (OECD Request for Review 2009). The Request for Review maintains that ‘Goldcorp’s activities are not consistent with Guatemala’s Human Rights Obligations’ and reiterates concerns the community has articulated and communicated over the years related to the violation of communal property rights and the right to free prior and informed consent (FPIC) of the people of SMI; violation of the right to property, including housing, as a result of structural damage to houses caused by Goldcorp’s use of explosives and heavy equipment; violation of the right to health as a result of water contamination related to Goldcorp’s mining activities; violation of the right to water as a result of the depletion of water related to Goldcorp’s mining activities; violation of the right to life and security of the person as a result of Goldcorp’s alleged retaliation against persons who oppose its operations. The outcomes sought by FREDEMI reflected concerns that have been articulated by community members of Sipacapa and SMI for many years. The Request for Review also called on the Canadian National Contact Point to investigate Goldcorp’s activities at the Marlin mine and to issue a statement, including recommendations to ensure the company’s compliance with the OECD Guidelines for Multinational Enterprises.

In 2010, the ILO urged the Government of Guatemala to ‘suspend the exploitation’ of the Marlin mine until studies to assess the impacts of the mine (ILO 169 Art. 7 (3)), and prior consultation of the affected people regarding operations (ILO 160 Art. 15(2)), could be carried out. Also in 2010, the Inter-American Commission on Human Rights (IACHR) responded to a request from 18 Mayan communities affected by the Marlin mine by issuing precautionary measures requiring the State of Guatemala to ‘suspend mining of the Marlin I project (…) until such time as the Inter-American Commission on Human Rights adopts a decision on the merits of the petition’ (IACHR 2010). The statement notes that precautionary measures are necessary in the light of a range of human rights violations related to alleged contamination by the mine of critical water resources.
Following a visit to the Marlin-affected communities in 2010, James Anaya, UN Special Rap-портeur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, found that ‘the State and the company Goldcorp should comply with the precautionary measures issued by the IACHR in relation to the situation of the communities affected by the Marline mine …’ (Anaya 2011, 28). Shortly thereafter, the Government of Guatemala committed to implementing the measures but instead initiated an administrative process that led to a decision not to suspend the mine and a request to the IACHR to modify or lift the precautionary measures.  

Case history conclusions

This brief history of opposition to the Marlin mine by members of the communities of Sipacapa and SMI provides the basis for a number of observations. 

Opposition to the Marlin mine by community members from Sipacapa and SMI started in the exploration phases and has expanded over the life of the mine. This opposition has been characterized by public manifestations and position statements, resulting from a series of strategic deliberations, decisions and actions taken by community members over many years. These actions are collective expressions of the ‘agency’ of these community members – their willingness and ability to take action on their own behalf, to act in shaping their own futures, even in dangerous circumstances and at great personal risk. Some key examples of this agency are activities, such as blockades; demonstrations and referenda that community members have undertaken; public statements they have made that articulate their positions and goals; alliances they have entered into, first with national and later international organizations and individuals (e.g. the Roman Catholic Church, NGOs, scientists29); local organizations the community formed to work towards common goals; and formal complaints community members have filed with government and constitutional bodies in Guatemala and with international organizations and grievance mechanisms. The formal complaints include the complaint to the World Bank in 2005 leading to a Compliance Advisor Ombudsman report; a petition that was filed to the IACHR in 2007; a complaint regarding degradation of water quantity to the Latin American Water Tribunal (2008); and the OECD Request for Review that was filed in 2009. 

As is the case with the Marlin mine, in community struggles against mines globally, most of the efforts by affected community members, particularly in the early years of the struggle, occur with little or no international awareness or attention. Concerning the Marlin mine, opposition to it began in 1999 but did not garner significant international awareness until late 2004 and early 2005, with the blockades and violence in Los Encuentros.

Once a local struggle is elevated to a level of international interest and becomes ‘high-profile,’ – usually at great cost to local community members – it is not uncommon for it to draw the attention of international CSR actors who, as I have argued elsewhere, ‘occupy spaces created by conflict’ by entering into negotiations with mining companies as ‘problem solvers’ and ‘risk managers’ (Coumans 2011).

Engaging Goldcorp: socially responsible investor intervention leads to partnership

Canadian SRI firms began to engage Glamis over the Marlin mine in 2005, shortly after conflicts surrounding the Marlin mine began to receive international attention. These engagements would appear to have contributed to the company entering into several commitments to meet international standards with respect to cyanide management, training of security personnel, and reporting standards, but did not diminish allegations of human rights abuses and environmental degradation at the Marlin mine.
A controversial collaboration with Goldcorp on a human rights impact assessment

In February 2008, a delegation of SRI representatives travelled to Guatemala for a site visit, an unusual undertaking for staff of SRI firms in Canada. The delegation met with a range of Marlin mine stakeholders. Shortly after the delegation’s return home on 20 February 2008, a decision was made to file a shareholder resolution asking the company to commission an independent HRIA of its operations in Guatemala. The filing date was 2 March 2008. There was no prior consultation about this course of action with any of the affected communities or their representatives and organizations in Guatemala. The shareholder resolution was filed by the Ethical Funds Company (Ethical Funds), the Public Service Alliance of Canada Staff Pension Fund and the first and fourth Swedish National Pension Funds.

After filing the resolution, the SRI group entered into a dialogue with Goldcorp about conditions under which they would agree to withdraw the resolution, in which case it would not be included in the management circular to shareholders prior to the annual general meeting (AGM) and would not be on the agenda of the AGM. It is common for SRI firms to use shareholder resolutions as a vehicle for drawing companies into dialogue around issues they believe to be important. Goldcorp agreed to commission an HRIA and a memorandum of understanding was signed on 19 March 2008 by the company, the members of the SRI group who had filed the shareholder resolution and the SHARE.

On 30 April 2008, Jantzi Research (now Jantzi Sustainalytics), also a participant in the fact-finding trip to Guatemala, referred to the findings of that trip, in addition to other sources, in recommending to investors ‘that the company be considered ineligible for SRI portfolios’. Jantzi Research highlighted ‘growing opposition from local indigenous communities to Goldcorp’s Marlin mine in Guatemala based on community compensation and land rights, inadequate consultation with indigenous peoples, threats to safety and security in addition to the environmental impacts of the mine’s operations’ as well as Goldcorp’s singularly negative environmental record. Jantzi Research also noted that Goldcorp had ‘refused to circulate another shareholder resolution filed by an individual shareholder on behalf of Breaking the Silence, a Canadian-based non-governmental organization. This resolution called on the company ‘to halt any plans to expand the [Marlin] mine and/or acquire new land in the Municipalities of Sipakapa and San Miguel Ixtahuacan without the free, prior and informed consent of the affected communities’. Although Jantzi Research commented on the agreement to conduct an HRIA as ‘a positive step’, it also found that Goldcorp’s implementation of any recommendations coming from that process would ‘not be measurable for a number of years’ and concluded that ‘Goldcorp should commit to attaining the free, prior and informed consent of affected communities prior to expanding the Marlin mine or acquiring new land in the region, respecting the results of the referendum in Sipacapa’.

The public announcement of the agreement between the SRI groups and Goldcorp unleashed significant and sustained concern about the arrangement and the pending HRIA process. Public response to the arrangement between the SRI group and Goldcorp was first registered by the organization RightsAction in an open letter to Goldcorp and Shareholders on 1 May 2008. RightsAction noted, as did later commentators, that statements praising Goldcorp in the 24 April 2008 press release were undeserved and/or unsubstantiated. In particular, RightsAction questioned a statement that found that by agreeing to take on the HRIA ‘Goldcorp is behaving responsibly and responding to local concerns raised by local stakeholders in Guatemala’. RightsAction questioned how the SRI group could come to this conclusion when they had not asked local people if they wanted an HRIA. There is no evidence that local communities had ever included such a demand in their various public statements. RightsAction also noted that the SRI group had failed to address the ‘clear and authoritative recommendations’ local community members were expressing with regard to the mining operations.
MiningWatch Canada met with staff of SHARE on 29 May 2008 to express concern that this latest shareholder resolution fell into a pattern of SRI shareholder resolutions on mining companies that did not reflect community demands and were opposed by mining-affected communities who saw them as harmful to their own stated aims and goals. MiningWatch raised concern that the HRIA would increase the burden on local community members already engaging Goldcorp and asked the SRI organization to open a space for dialogue about how SRI shareholder resolutions could better be matched to the demands of local communities in-struggle.  

At the time of MiningWatch’s meeting, a MOU between Goldcorp and the SRI group was mentioned but not provided. By 30 July 2008 the MOU had been made public and a Steering Committee for the HRIA process had been created. Both the text of the MOU and the composition of the Steering Committee caused further concern. In particular, the MOU set out that the objective of the HRIA was to ‘improve the opportunities of the company to continue to operate profitably in Guatemala by ensuring that the company has in place and is implementing effectively policies and procedures designed to mitigate the risks of potential conflicts with internationally recognized human rights standards and norms given the context in Guatemala’. This objective placed the HRIA at odds with the stated goals of community members who called for a cessation of mining.  

In Guatemala, community members of Sipacapa and SMI protested against the HRIA, as did civil society organizations that supported the struggle of these communities such as the Roman Catholic Church. On 4 September 2008, ADISMI (a Mayan community development organization of SMI) sent a letter to the SRI group questioning the project’s transparency, as well as its independence given the company’s position on the steering committee pointing out that ‘(m)eanwhile, none of the affected communities has a presence on this committee, even though this is our territory, these are our resources that are being robbed and these are our rights that we are demanding’.  

On 23 January 2009, Dr Douglass Cassel, director of the Center for Civil and Human Rights of Notre Dame Law School in the United States, wrote a letter to Goldcorp’s representative on the HRIA Steering Committee and copied the other members of the Steering Committee to inform them that Cardinal Quezada Toruno of Guatemala had asked the Center to form an Independent International Panel to conduct an HRIA of the Marlin mine. Cassel noted: ‘As you may be aware, I was invited to have the Center for Civil and Human Rights bid on the company’s RFP for the human rights impact assessment. After reviewing the RFP, we were not confident that the process assured us the full degree of independence we consider essential to our work. Accordingly we chose not to bid on the contract’.  

Members of significant organizations such as the Municipal Council of Sipacapa, ADISMI and the Indigenous Mayor’s Council of SMI (Consejo del Alcaldes Comunales) reportedly refused to participate in the HRIA. On 4 February 2009, the Indigenous Mayor’s Council of SMI met and the Mayors present decided unanimously that they would not participate in the HRIA.  

On 18 March 2009, following consultations with members of the SRI group and with the SRI group’s representative on the HRIA Steering Committee, the Public Service Alliance of Canada withdrew its involvement in the HRIA. As noted earlier, in spite of this withdrawal, and the reported acknowledgement by a member of Ethical Funds that ‘the HRIA had had the unintended consequence of ‘inflaming the situation’ in Guatemala’ (Law 2009), the re-named HRA project carried on. The delayed HRA report of May of 2010 recognized that ‘the assessment appeared to be escalating tensions and increasing polarization both among and between communities and undermining conditions for carrying out a participatory human rights impact assessment as
intended’ (HRA 2010, 8). As a consequence, the report acknowledged that ‘recommendations for Montana and Goldcorp reflect the judgments of the assessment team, rather than the affected communities’ (HRA 2010, 8).

Overall, the HRIA report’s recommendations focused on improving performance and did not reflect community members’ calls for cessation of mining. Nevertheless, the report did discuss unaddressed impacts from the Marlin mine raised previously by affected communities, and its recommendations support some important community demands. In particular, the report found ‘allegations of coercion and pressure in the land sales that would undermine the voluntary nature of transactions and would infringe upon the right to own property’ (HRA 2010, 21–22). The HRA also recommended immediate action to ‘adopt a moratorium on land acquisition’ (HRA 2010, 21–22). Goldcorp has responded selectively to the HRA’s recommendations. In particular, in its second update of 29 April 2011 Goldcorp notes that the mine ‘continues to acquire land’ (Goldcorp 2011, 33).

Jantzi Research noted in 2008 that the HRIA process would only delay actions that the company should take immediately, notably to abstain from further land acquisitions without the FPIC of affected indigenous peoples. It is now clear that the HRA process not only delayed action on this key issue but also failed to persuade Goldcorp to commit to abstaining from land acquisition. Nor has Goldcorp adopted the principle of FPIC. A Human Rights and Corporate Social Responsibility policy adopted by Goldcorp in 2011 does not commit the company to FPIC (Mandane 2011).

**Implications of collaboration between SRIs and Goldcorp**

The decision by Goldcorp to carry out an HRIA as requested by SRI group led to the signing of a MOU in 2008 between Goldcorp and the SRI firms. This agreement solidified a relationship between these parties that lasted not only until the delayed completion of the HRA in 2010 but beyond, with ongoing implications for efforts by Marlin-affected communities to achieve recognition for, and a positive response to, their as yet unaddressed concerns.

In 2011, two individuals jointly filed a shareholder resolution, following consultation with affected community members and their representative organizations.45 Referencing the ILO and IACHR recommendations to the Government of Guatemalan of 2010, the resolution asks Goldcorp to voluntarily suspend operations at the Marlin mine, pending further investigation into alleged human rights and environmental abuses. The resolution also references Goldcorp’s own HRA calling for a halt to the project’s expansion ‘until it complies with international law . . . ’.46 Goldcorp advised its investors to vote against the resolution and referenced its relationship with the SRI group, the HRA and its new Human Rights and Corporate Social Responsibility policies47 as evidence of positive action regarding the Marlin mine.48 Significantly, while protestors, including members of the Marlin mine’s affected communities, protested outside Goldcorp’s AGM and spoke in support of the resolution inside, a representative of Northwest and Ethical Investments L.P. (NEI) read out a statement opposing the resolution. The statement by NEI explained its opposition to the resolution as ‘ultimately’ a ‘question of tactics and how best to achieve change for the benefit of all stakeholders’.49 NEI asserted that ‘respectful dialogue can achieve the results we are looking for, as it has since Goldcorp bought the Marlin mine and especially since the full HRA was published last May’.50 NEI added that ‘we are assured that Goldcorp is moving forward on the recommendations in the report and on its obligation to respect human rights wherever it operates’.51 The NEI statement concludes that

*It seems to us, as shareholders that care about human rights issues, that we should all support a strategy that is based on dialogue, mutual respect, meaningful action, and that includes the voice of*
governmental authorities nationally and locally. Shutting down the Marline Mine does not support this strategy and has the potential to cause even more conflict.52

NEI has recently indicated that it is reconsidering the shareholder resolution tool. In its news publication of February 2011, NEI questions whether shareholder resolutions are the best tool for corporate engagement, calling it a ‘blunt instrument’ that can lead to ‘not always the best possible result’ (NEI Investments 2011a). Positioning itself as a problem solver interested in ‘thinking through solutions’ with corporations, NEI notes that ‘[n]obody likes being backed into a corner, and filing a proposal can have a chilling effect on dialogue over the longer term’ (NEI Investments 2011a). NEI also indicates that the firm is ‘seeing results in many dialogues without the need to focus public attention through a shareholder resolution’ (NEI Investments 2011a).

NEI has also taken aim at shareholder activism by those outside the SRI industry. In a publication titled ‘AGM Season: Will The Real Investors Please Stand Up?’ NEI implies that some shareholders or shareholder actions are more legitimate than others (NEI Investments 2011b). Corporate law clearly sets out eligibility criteria for the submission of shareholder proposals. Those who meet these criteria are considered ‘real enough’ from the perspective of the Canadian Business Corporations Act. According to NEI, ‘[a] new type of shareholder activism has become increasingly common with individual shareholders filing proposals while seeking support from other investors. (…) the demands tend to be more closely linked to the campaigns of social and environmental groups than to the corporate objective of sustainable value creation’ (NEI Investments 2011b). Referencing the 2011 Goldcorp resolution, NEI suggests that such resolutions are ‘frivolous’, ‘risk doing more harm than good’, are unlikely ‘to attract much support from institutional shareholders’ and ‘[w]orse still, they make it more difficult for responsible investment institutions to progress soundly – argued proposals on similar issues . . .’ (NEI Investments 2011b).

The relationship Goldcorp entered into with the SRI firms in 2008 has been protective of the company’s interests in a number of ways. It provided immediate praise for the company’s willingness to undertake the HRA at a time that the company was experiencing international criticism over the Marlin mine. It provided a response to ongoing criticism for the duration of the HRA process, even in the face of increased local tensions and conflict associated with the HRA itself. And in the aftermath of the publication of the HRA, Goldcorp’s partnership with SRI firms has provided it an ally that has been willing to speak for the company on its behalf in opposition to efforts by community members and allies to further community demands.

CSR, SRI, and human rights

Limitations of CSR

The voluntary nature of CSR initiatives means that a company is empowered to shape significantly a CSR process that it initiates, or in which it volunteers to participate, in ways that may serve the company’s interest, as well as those of its partners, but not those of affected community members. This empowerment is most immediately apparent in a company’s choice of CSR partners. In the case of SRI firms there is an existing ‘alignment of interests’ in ‘the company’s financial performance’ making SRI firms often a preferred CSR partner (Sosa 2011).

As a process, the HRA met the goals of the SRI group, as well as Goldcorp’s short-term goals, but proved damaging for community members struggling to protect their rights as they found themselves having to devote time and energy not just in opposing the negative social and environmental impacts of the Marlin mine, but also in opposing what they called ‘Goldcorp’s HRIA’,53
which they saw as polishing the company’s image, even as they continued to seek international recognition for the harm they experienced. Community opposition to the HRIA also became an additional source of division and strife within the communities, which was costly to some community members.

Arguably, persistent local opposition and calls for the mine to close – even at great cost to some community members – provided the SRI group leverage to bring Goldcorp to the table. However, the power imbalance in favour of Goldcorp inevitably shaped the HRIA process from its earliest conception in ways that alienated community members and constrained the SRI group from seeking outcomes sought by the affected communities, and later by international rights bodies, that would be unacceptable to the company. A glimpse into this power dynamic and the resulting ‘real politik’ on the part of the SRI group is evident in a written statement by the SRI group’s representative on the HRIA steering committee. In a passionate defense of the SRI group’s engagement with Goldcorp, just ahead of the withdrawal of the Public Service Alliance of Canada from the HRIA, he wrote in a file called ‘hitting back’ that the SRI group had based its approach on the determination ‘that (sic) Marlin mine is a reality that is not going to go away (…) most certainly, Goldcorp Inc. will not voluntarily close up shop and vacate the premises’.

Constraints of SRI firm interventions

As noted above, SRI firms become interested in a particular mine site when a local struggle becomes of high profile such that it is enough to draw sustained international attention. SRI firms note the elevation of a local level struggle to a ‘high-profile’ struggle in part because they know that the implicated mining company may be feeling enough pressure to be willing to sit down with a SRI firm to discuss its options. Additionally, high-profile community conflict concerning a company the SRI firm holds is problematic for the SRI firm as it may lead to concerns being raised by the SRI’s investors.

The primary focus and the primary interlocutors of SRI firms are not communities-in-struggle, they are (1) corporations in which they hold shares; (2) investors in the SRI firm, in this case Canadians who want a positive return on investment while making sure the money they have to invest does not contribute to environmental harm or abuse of human rights (Welker and Wood 2011, S60–61); and (3) other investors and organizations that may be willing to support a shareholder resolution.

It is the interests of these stakeholder groups that shape shareholder proposals put forward by SRI firms. With respect to their clients, socially conscientious investors, SRI firms need to be able to argue that they are actively engaging companies and positively changing their behaviour. Otherwise, clients may demand that an SRI firm simply divest from lucrative corporations if these corporations are causing serious environmental and social harm. The argument SRI firms make for holding these corporations, is that they are making them ‘better’. One of the SRI firms engaged in the Goldcorp HRA used catchy phrases on its web site to make this point. Under the heading ‘Make money. Make a difference’ the Ethical Funds Company (Ethical Funds) described its engagement with companies as ‘making good companies better’ and with money as ‘money is energy … to create change’. Ethical Funds called itself ‘the conduit’ for ‘empowering our investors’ with a view to ‘reshaping the way it [a company] does business.’ Ethical Funds explained that: ‘You can’t change a company you don’t own. Thus, the power of shareholder action lies not in divesting or avoiding companies with poor practices, but by helping to improve them’.

In order to maintain credibility with socially conscientious investors, as agents of change through effective leverage on corporations, SRI firms must get significant shareholder support for a vote on a resolution that demands ‘transformative action’ from a corporation. Such a vote
is typically followed by a press release from the SRI firm claiming to have brought significant pressure to bear on the company. Alternatively, the SRI firm must persuade a corporation to take a particular course of action thus allowing the SRI firm to withdraw its resolution before the vote and issue a press release saying the corporation has been persuaded to take the action required by the SRI firm. These strategies require a degree of cooperation from other investors (typically institutional investors) to support a resolution. These relationships necessarily command a lot of the attention of SRI firms.

SRI firms need to be able to exert enough pressure, or use the pressure created by, for example, communities-in-struggle, to bring a corporation to the table. But once there, SRI firms need to put forward a set of issues to discuss, and propose courses of action, on which the company will be willing to engage. This negotiation with companies forms the basis for carefully crafted shareholder proposals. It also sets the scene for the withdrawal of those shareholder proposals and the conditions under which this will occur.

‘Successful’ shareholder proposals have quite narrowly defined boundaries. They need to suggest courses of action that companies may be willing to take in return for good press, potential risk reduction and relief, even if temporary, from pressure from communities, regulators or consumers. But shareholder resolutions also need to be seen to be pushing the company towards more responsible practices in order to satisfy the clients of SRI funds and persuade others in the SRI community to vote in favour of the resolution. None of these conditions for success necessarily require a shareholder resolution to align with demands of the affected communities. In fact, they may explain, in part, why this alignment has been missing in recent SRI firm resolutions on mining.

Shareholder proposals have commonly been put forward without anyone from the SRI firm setting foot in the community. They are typically based on desk research, information gathering from NGOs who are engaged with the communities-in-struggle, reports from SRI research firms, and dialogue with the mining company in question. Recently, some SRI firms have started to make limited field visits, as noted in the case provided above, but, as this case demonstrates, such a visit alone will not necessarily change the nature of the resolutions put forward, or their lack of convergence with community goals.

This lack of convergence between the ‘asks’ of shareholder resolutions and the demands from mining-affected communities is particularly marked in cases in which SRI firms develop shareholder resolutions that relate to conflicts in which community members have clearly articulated a demand that a company not mine, cease to mine, or not expand mining in a particular area. This is, of course, the case in the Marlin mine struggle and was also the case in similar shareholder resolutions regarding Barrick Gold’s planned Pascua Lama project in Chile and Alcan’s planned Utkal project in India. From the perspective of the communities concerned, these resolutions did not reflect their demands and tended to harm their struggle.

**Conclusions**

Professionalization of shareholder activism and its evolution into a lucrative SRI industry in Canada has coincided with greater scrutiny over the human rights impacts of the SRI industry itself. Ruggie (2008) defined the corporate ‘duty to respect’ human rights as the obligation to ‘do no harm’. In recent years, community members affected by Canadian mining companies have complained about activities taken by these mining companies in order to comply with requests in shareholder resolutions from Canadian SRI firms.

In these cases, exemplified by the 2008 resolution regarding Goldcorp’s Marlin mine, local opposition was based on the fact that the SRI firms’ resolutions did not reflect community members’ wishes. Furthermore, these resolutions undermined community agency in several
ways, by (1) providing the company with immediate praise and good press for dialoguing with the SRI firms and agreeing to carry out activities requested by the firms while nothing had changed for the affected communities, effectively undermining their efforts to communicate the ongoing harm they were experiencing; (2) shifting the focus of home and host country decision makers and media away from community actions, messages and goals to those of the SRI firms and the companies with which they were engaging – sometimes for years; and (3) asking the companies to undertake activities that were seen to be duplicating or directly undermining work the community itself had already done, or was doing, on its own or with experts of their choosing.

In addition to these concerns, the Goldcorp case highlights the fact that in partnering with a company in a particular course of action, an SRI firm’s interests may become further aligned with those of the company against its critics. This became evident at Goldcorp’s Annual General Meeting in 2011 when NEI aligned itself with Goldcorp in opposition to a resolution on the Marlin mine by individual shareholders. NEI spoke against the resolution at the shareholder meeting, even though it reflected community demands.

In analysing why some shareholder resolutions by SRI firms have been met with dismay by community members in conflict with Canadian mining companies, this paper argues that SRI firms may use a high-profile community struggle to encourage corporations to enter into dialogue with them. SRI firms in effect ‘occupy a space’ created by the conflict generated by community struggle (Coumans 2011). But they occupy that space by presenting themselves to companies as ‘problem solvers’ and ‘risk mitigators’ in a manner that is not necessarily reflective of community aims. Furthermore, the primary focus and the primary interlocutors of SRI firms are not communities-in-struggle against a mine, they are (1) the corporations in which they hold shares; (2) investors in the SRI firm, in this case Canadians who want to make a return on their investment but also assure that their investment does not contribute to environmental harm or abuse of human rights; and (3) other investors and organizations that may be willing to support a shareholder resolution, for example, through their votes. It is the interests of these stakeholder groups that primarily shape shareholder proposals put forward by SRI firms. For these reasons, in the case of a mine project that community members are trying to stop from going ahead, or stop from continuing or expanding, it is highly unlikely that a shareholder resolution or any other engagement by an SRI with a company on that project will reflect and advance community goals.

As actors in the CSR arena, SRI firms are subject to some of the same restrictions as other CSR actors that engage or partner with mining companies. As an inherently voluntary relationship with significant power differential, mining companies have considerable influence over the outcomes of these engagements. When a mining company is in conflict with a particular community, CSR engagements or partnerships with that company may negatively impact on community members’ right to self-determination, or agency, in their struggle to protect values of critical importance to them (Coumans 2011).

Given the history of shareholder resolutions by SRI firms that have been opposed by communities in conflict over a mining project, and the analysis provided in this paper, the following recommendations intend to contribute to assuring that SRI firms’ engagements with mining companies embroiled in community conflicts do not harm community agency. While communities are not primary interlocutors of SRI firms, it is important that SRI firms understand the history of struggle in a community and the stated aims of significant segments of a community to assure that they do not propose courses of action, through resolutions or in dialogue with the company, that may undermine community agency in pursuit of their own goals. If a shareholder resolution calls for a company to undertake activities (such as an HRIA) that may directly affect a community’s struggle, or requires community engagement, or will extract data from a community, this should only be done with the FPIC of the community. Finally, SRI firms should avoid shareholder resolutions aimed at ‘problem solving’ or ‘mitigating risk’ at a particular
project site if a significant segment of the community has expressed a clear opinion against a project. In other words, SRI firms need to recognize that if a community conflict around a mine is focused on stopping operations from starting or continuing, it is unlikely that the SRI firm’s resolution can be aligned with community objectives.

Notes

1. Earlier versions of this paper were presented at a meeting of the Canadian Business Ethics Research Network (CBERN) on Responsible Investment, Ethics and the Global Financial Crisis in May 2009, at the Expert Meeting on Corporate Law and Human Rights held in conjunction with the work of the Special Representative of the UN Secretary-General on Business and Human Rights, John Ruggie, in November 5–6, 2009, at CBERN’s Human Rights and Business Symposium in February 2010, and at a symposium on Socially Responsible Investment and Canadian Extractive Industries hosted by the University of British Columbia’s Faculty of Law, in September 2011. The author thanks the participants of these symposiums for their feedback, in particular Wes Cragg, Aaron Dhir (2012), and Sara Seck, as well as colleague Jennifer Moore for her careful read of the Goldcorp case study.

2. The SRI group was composed of The Public Service Alliance of Canada Staff Pension Fund (an institutional investor), the Ethical Funds Company (now Northwest and Ethical Investments L.P. (NEI)) (a Socially Responsible Investment firm that sells screened mutual funds and engages the companies it holds regarding their social, environmental and governance risks); the First Swedish National Pension Fund and the Fourth Swedish National Pension Fund; Shareholder Association for Research and Education (SHARE) (an organization that consults and advises shareholders on responsible investing and corporate engagement); GES Investment Services (an organization that consults and advises shareholders on responsible investing and corporate engagement).


8. For the purposes of this paper, ‘SRI firms’ are companies that sell investment products screened on the basis of environmental social, and governance (ESG) criteria and engage companies they hold on this basis (such as the Ethical Funds Company), as well as firms that provide research, advice, and proxy voting services (such as SHARE), and firms that provide research and advice based on ESG evaluations of companies (such as JantziSustainalytics).

9. The single most significant public recognition by the global mining industry of the social challenges it faces came through the 2-year international industry-led Mining Minerals and Sustainable Development process that culminated in a final report (2002).

10. For information on the Ok Tedi case of Papua New Guinea villagers against BHP see Kirsch (1997). For information on the case of the Philippine Island of Marinduque against Barrick Gold see www.diamondmccarthy.com. For information on the case of Ecuadorian villagers against Copper Mesa see www.ramirezversuscoppermesa.com.


12. Positions taken against regulation and against legal reform by mining industry associations during the National CSR Roundtables, and in response to Bill C-300, support this line of argument.

13. The author recognizes that corporations still have the obligation to adhere to existing laws in the jurisdictions in which they operate, but agrees with Ruggie that this obligation does not sufficiently curtail abuses in weak governance zones.

14. For an important recent publication that starts to address this issue see Welker (2009).

15. This case study is by no means comprehensive. For more detailed accounts the reader is directed to source materials for this section, particularly: Specific Instance Complaint Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises Concerning:

16. In 2008, the United Nations signed an agreement with the Government of Guatemala to create the International Commission Against Impunity in Guatemala to assist in the investigation and prosecution of organized crime that is tied to the failure of the justice system to enforce the rule of law and protect the rights of its citizens, especially as it relates to human rights defenders (OECD Request for Review 2009). In June 2010 the first head of the Commission, Carlos Castresana, quit citing lack of adoption of the Commission’s recommendations by the Colom administration and the appointment of an attorney general with alleged ties to organized crime.

17. A newly released report on the economic benefits and environmental costs of the Marlin mine concludes that ‘when juxtaposed against the long-term and uncertain environmental risk, the economic benefits of the mine to Guatemala and especially to local communities under a business-as-usual scenario are meager and short-lived’ (Zarsky and Stanley 2011). An important master’s thesis by Pedersen (2011) discusses the Marlin mine struggle in the context of an examination of Mayan perspectives of development.


19. See also a communication from Guatemalan civil society organization Colectivo Madre Selva to the President of the World Bank, 28 January 2009.

20. The question put out to the communities was ‘Are you in favour of mining on the territory of the Sipakapense people?’ (Imai, Mehranvar, and Sander 2007, 113).

21. See in particular ILO 169 articles 6, 15, 17, 22, 27, 28 on the right to be ‘consulted’; Article 7 on the right of indigenous peoples to ‘decide their own priorities’; Article 6 on the obligation to seek ‘agreement or consent’ from indigenous peoples; Article 16 on the obligation to seek ‘free and informed consent’ from indigenous people.

22. The number of people who participated in the referendum was 2502. In total, 2426 persons voted against mining, 35 persons voting for mining, 8 ballots were illegible, 1 was blank and 32 abstained (Imai Mehranvar, and Sander 2007, 114).

23. FREDEMI is a coalition of four community organizations in the municipality of San Miguel Ixtahuacan. The OECD Request for Review was prepared on behalf of FREDEMI by the Center for International Environmental Law in Washington, DC. For a copy of the complaint see http://www.ciel.org/Publications/FREDEMI_SpecificInstanceComplaint_December%202009.pdf.

24. On 3 May 2011 the Canadian National Contact Point (NCP) issued a final statement and closed the file, which did not progress past the Initial Assessment phase. For the NCP’s final statement see http://www.miningwatch.ca/sites/miningwatch.ca/files/Canadian%20NCP%20Final%20Statement,%20May%202011.pdf.


26. The IACHR noted that the petitioners had raised the fact that the mine was granted a concession and mining rights without the ‘prior, complete, free and informed consultation’ of the affected communities and ‘has produced grave consequences for the life, personal integrity, environment, and property of the affected indigenous people...’ Inter-American Commission on Human Rights, Precautionary Measures Granted by the Commission. during 2010 – PM 260-07 Communities of the Maya People (Sipakenpense and Mam) of the Sipacapa and San Miguel Ixtahuacan Municipalities in the Department of San Marcos, Guatemala (http://www.cidh.oas.org/medidas/2010.eng.htm).

27. A scientific study by Physicians for Human Rights (2010) found elevated levels of metals in water, soil and humans in the area affected by the mine and recommended a ‘rigorous human epidemiological study’ for the populations near the mine.
28. For more info see http://www.miningwatch.ca/article/what-you-may-not-know-about-goldcorps-


30. International Cyanide Management Code; Voluntary Principles on Security and Human Rights (Goldcorp is not a member); and Global Reporting Initiative.

31. The members of this delegation included the following shareholders: The Ethical Funds Company; Public Service Alliance of Canada (PSAC) Staff Pension Fund; and Swedish National Pension System’s Ethical Council. The delegation also included shareholder representatives and research firms: SHARE; Jantzi Research (now Jantzi Sustainalytics); GES Investment Services (Sweden) and PSAC Humanity Fund.

32. Ethical Funds merged with Northwest Funds to create Northwest and Ethical Investments LP (NEI) on 26 October 2009.

33. A copy of the shareholder resolution used to be available on the Ethical Funds web site but following merger with the NEI Investments’ web site (22 November 2010) past resolutions appear to no longer be available. The resolution is also not available on the web site of the HRIA – http://www.hria-guatemala.com/en/default.htm.

34. Corporations prefer not to circulate shareholder resolutions that call attention to shortcomings in their operations as these affect corporate reputation and may signal risk to investors, analysts and brokers.


36. Ibid.

37. Ibid. In 2010 this shareholder again asked the company to ‘create and adopt . . . a corporate policy on the right to free, prior and informed consent (FPIC) for its operations impacting indigenous communities and all communities dependent on natural resources for survival’. See Maritimes-Guatemala Breaking the Silence Network http://arsncanada.blogspot.com/2010/03/resolution-submitted-to-goldcorps.html. Following sustained protest, the resolution was circulated in 2010, albeit without the ‘whereas’ statement that provided the rationale for the resolution. The resolution won 10% of the vote.

38. Ibid.


40. For more detail regarding the concerns MiningWatch Canada raised at this meeting, see Mining Watch’s subsequent letters to the SRI group of 4 December 2008, and 16 March 2009, http://www.miningwatch.ca/letter-shareholder-group-re-human-rights-impact-assessment-goldcorps-guatemala-mine.

41. In March 2009 the MOU was revised to better reflect the objective of the HRIA as a means to determine human rights impacts of the Marlin mine and on the basis of findings of the HRIA to provide recommendations to Goldcorp. See http://hria-guatemala.com/en/docs/Impact%20Assessment/Revision_to_RFP_objectives.pdf.

42. The Guatemalan representative was Manfredo Marroquin, Executive Director of Accion Ciudadana.


44. The HRIA web site states that PSAC ‘did not discuss with the Steering Committee any matter regarding the Assessment prior to the PSAC making its decision’ http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf. The author is of the view, based on her personal involvement in this case, that this statement is inaccurate.

45. For press release see http://www.miningwatch.ca/news/shareholders-announce-resolution-suspend-

46. The requests of the 2011 shareholder resolution were: Pursuant to Goldcorp’s own HRA, the company halt all land acquisitions, exploration activities, mine expansion projects, or conversion of exploration to exploitation licenses, until it complies with international law; the Board of Directors require that Goldcorp’s Human Rights Assessment be made easily available on Goldcorp’s main web site; the Board of Directors announce its commitment to voluntarily implement recommendations of international human rights bodies; the company suspend operations at the Marlin mine in accordance with the recommendations of the Inter-American Commission on Human Rights. The resolution received approximately 6% of the shareholder vote.
47. In April 2011, Goldcorp’s Board of Directors approved new Human Rights and Corporate Social Responsibility policies. For a critique of these policies by the International Human Rights Program of the Faculty of Law at the University of Toronto see (Mandane 2011) at http://www.utorontoihrp.com/index.php/resources/reports.


49. See http://www.neiinvestments.com/Pages/ESGServices/EngagingCompanies/ProxyVoting.aspx. Also, e-mail from Jennifer Coulson of NEI to sio-professionals list serve of 19 May 2011.

50. Ibid.

51. Ibid.

52. Ibid.

53. Author’s notes based on communications with community members affected by the Marlin mine.


55. A ‘significant’ number of votes are usually considered to be 20% or more, as it is thought that this level of shareholder support will put enough pressure on a company to assure further dialogue on the investors concerns.

56. Ethical Funds merged with Northwest Funds to create NEI Investments on 26 October 2009. Quotes in this paper from the Ethical Funds website were accessed before the site was taken down on 22 November 2010.


59. NEI has prepared a Code of Conduct for its engagement with external parties. See http://www.neiinvestments.com/NEIFiles/PDFs/5.1.2%20Accountability/3%20SI_Program_Code_of_Conduct%203.pdf. While undated, the file name would suggest it was developed in 2009, as critiques over the Goldcorp HRIA were being publicized and raised with the SRI group by, among others, the author of this paper. This Code of Conduct addresses key concerns raised with the SRI group and highlighted in this paper. However, the code is drafted in such a way that it would not require that NEI withdraw from or abandon activities that ‘may be in direct conflict’ with the ‘objectives’ of ‘those affected’ by their ‘Program Implementation,’ only that NEI ‘will ‘remain open to a dialogue to determine if or how our strategies may be reconciled’. The Code did not cause NEI to withdraw from further involvement in the HRIA.

60. By the end of 2008, responsible investments in Canada had grown to over CAN$609 billion (Sosa 2011).

61. NEI has endorsed FPIC as a principal to be followed by extractive companies, see http://www.neiinvestments.com/neifiles/PDFs/5.4%20Research/FPIC.pdf. This paper argues that FPIC should also apply to SRI firms.

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