

How Non-Violent Resistance Effects Positive Change Toward Protecting Indigenous Rights and Environmental Integrity in Guatemala

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Abstract

This note discusses the changing legal landscape in Guatemala and the positive impact of non-violent community resistance on protecting the environmental, social, cultural, political, and economic interests of indigenous groups. Examples of Maya resistance against the Kappas and Cassidy & Associates El Tambor gold mine and the Goldcorp Marlin Gold mine show that community resistance movements can play a role in effecting meaningful change. These indigenous movements have shown that resilient and peaceful protests by communities are having an effect on the behavior of transnational mining corporations that are polluting the environment and committing human rights abuses. The indigenous peoples of Guatemala, most of whom are Maya, have experienced decades of violence and oppression. However, recent Court rulings in favor of indigenous communities in cases against these two mines are hopeful signs that Guatemala is building a strong judiciary that is able to enforce the existing laws that should protect indigenous peoples' rights and the environmental integrity of the country. Communities are peacefully resisting violence and oppression, and fighting for their rights to protect and control their communal lands. Slowly but surely these movements are drawing international attention and pushing the government to meaningfully address corruption and instability.

Introduction

Over half of the population of Guatemala is indigenous Maya. The Maya comprise 21 distinct linguistic groups and thousands of communities throughout Guatemala.¹ The Maya identity is rooted in a strong connection to the earth as mother, maize as a sacred symbol, and the idea that humans are one part of a beautifully connected system.² Living in harmony with the

¹ Jan Arno Hessbruegge and Carlos Fredy Ochoa Garcia, *Mayan Law in Post-Conflict Guatemala*, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/event/wcms_084059.pdf.

² *Id.* at 10.

land is fundamental to their beliefs and values on how to live.³ The relationship between the land and Maya culture, lifestyle, and spirituality is at the core of Maya identity.

Indigenous peoples in Guatemala have sought recognition and protection of their human rights, land rights, and rights to judicial access for generations. Three factors shaping the current context of the fight for environmental justice include 1) a history of conflict and severe government oppression of indigenous peoples, 2) ongoing government corruption, and 3) a weak judicial system. The judicial system, which in the recent past was closely tied to government corruption, either does not enforce the laws that were put in place to protect indigenous people, or does not have the ability to enforce its rulings because the government lacks the necessary enforcement mechanisms to do so. Guatemalans still fear that the government, corporations, and private security will act with impunity. This has led to extreme distrust. Transnational corporations involved in resource extraction cut corners on environmental regulations, use deceptive methods of acquiring land use permits, and commit human rights violations.⁴ Despite the significant gap in power between these corporations and small indigenous communities, many communities have found ways to organize and resist extractive industry projects being imposed on their traditional lands.

Only recently has pressure from the international community and the tireless efforts of Guatemalan activists led to promising change. Recent decisions at the highest level of the Guatemalan courts, holding in favor of indigenous communities, show that a brighter future is finally possible. The resilience of these groups who have been resisting oppression, injustice, and coercion is astonishing. Their determination has brought international attention to the illegal and

³ *Id.* at 10.

⁴ See generally AMNESTY INT'L, GUATEMALA: MINING IN GUATEMALA: RIGHTS AT RISK 6 (2014), <http://www.amnesty.ca/sites/amnesty/files/mining-in-guatemala-rights-at-risk-eng.pdf>.

unjust actions of the transnational corporations and the Guatemalan government. The seemingly small, organized, and peaceful community movements play an important role in shedding light on the situation in Guatemala and effect real change.

First, this article will explain the historical context that has led Guatemala to where it is today. Next, this article will lay out the existing domestic and international laws that should protect human rights, indigenous peoples' rights, and environmental rights of Maya communities living on their traditional lands in Guatemala. The article will then discuss the extractive industry and look at two examples of how the relationship between mining projects and indigenous peoples actually plays out in Guatemala. These two examples, the La Puya resistance to the El Tambor gold mine, and the Sipacapa resistance to the Marlin gold mine, demonstrate the severe human rights violations that have occurred against communities standing up for their rights. These human rights violations include false imprisonment, intimidation, violence, and murder. The current situation is improving and this article will end with recommendations for continuing Guatemala's progress toward protecting and respecting the rights of its indigenous peoples.

I. History of Government Oppression and Genocide in Guatemala

Guatemala has a troubled history of military oppression, human rights violations, and lack of enforcement of international laws and norms to protect the environmental and land interests of its citizens.⁵ The indigenous Maya people of Guatemala share the all-too-familiar past of colonization and marginalization, the effects of which permeate today's context in which their indigenous rights are not respected. Today, the Maya peoples of Guatemala comprise more than 50 percent of the country's population.⁶ Though indigenous peoples make up the majority

⁵ See generally Hessbruegge & Garcia, *supra* note 1

⁶ *Timeline: Guatemala*, GUATEMALA HUMAN RIGHTS COMMISSION/USA, <http://www.ghrc-usa.org/AboutGuatemala/History.htm> (last visited Mar. 11, 2017).

of the country's population, they do not enjoy the same protections as other Guatemalans.⁷ They are economically and socially marginalized, lacking access to the courts and protection from law enforcement.⁸ The government, along with private security employed by corporations, uses intimidation, false imprisonment, and violence to silence activists who speak out against its actions.⁹

The unrest between the Guatemalan government and its citizens is the result of a brutal past. The Democratic Spring, when the government focused on social reforms in the country, occurred from 1944 to 1954.¹⁰ During these ten years, two successive presidents worked to close the disparity between the rich and poor.¹¹ Jacobo Arbenz Guzman, the later president, took unused land owned by the United Fruit Company and returned and redistributed it to the Guatemalan people.¹² In 1954 Guatemala experienced a United States-backed coup d'état that overthrew President Arbenz and put Colonel Carlos Castillo into power.¹³ The purpose of the coup was to put a military leader into power who would open Guatemala up to the United Fruit Company and other transnational corporations interested in exploiting Guatemala's rich natural resources.¹⁴

The justification given for the CIA-supported coup was that President Arbenze was a dangerous communist leader.¹⁵ 1960 began a 36-year civil war during which many of

⁷ AMNESTY INT'L, GUATEMALA: MINING IN GUATEMALA: RIGHTS AT RISK 6 (2014), <http://www.amnesty.ca/sites/amnesty/files/mining-in-guatemala-rights-at-risk-eng.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Elisabeth Malkin, *An Apology for Guatemalan Coup, 57 Years Later*, N.Y. TIMES (Oct. 20, 2011), http://www.nytimes.com/2011/10/21/world/americas/an-apology-for-a-guatemalan-coup-57-years-later.html?_r=0.

¹¹ *Id.*

¹² *Id.*

¹³ *Timeline: Guatemala*, *supra* note 6.

¹⁴ William Kakenmaster, *Autonomy of the People: Discourses on Indigenous Identity, Land Tenure, and Human Rights in San Miguel Ixtahuacán, Guatemala*, ILIOS UNDERGRADUATE JOURNAL OF POLITICAL SCIENCE AND PHILOSOPHY (Spring 2016), <https://dornsife.usc.edu/ilios/william-kakenmaster-autonomy-of-the-people/>.

¹⁵ Malkin, *supra* note 10.

Guatemalans resisted the military's forced displacement of them from their lands.¹⁶ The military used intimidation, fear, violence, and other terrible acts to silence or disappear those who resisted.¹⁷ From 1960 through the late 1980s, government forces killed over 200,000 people.¹⁸ Between 1980 and 1983, the Guatemalan government, under the orders of General Jose Efraim Rios Montt, committed genocide against the Maya population.¹⁹ He specifically targeted Maya peoples and wiped out entire communities he believed were supporting the resistance group, Unidad Revolucionaria Nacional Guatemalteca (URNG).²⁰ This operation destroyed 626 villages and displaced around 1.5 million people, 150,000 of whom fled the country entirely.²¹ Eighty-three percent of the victims were Mayan.²² During the 36-year civil armed conflict, over 200,000 men, women, and children were killed or disappeared.²³ Peace talks began in 1994 between the Guatemalan government and the URNG which eventually led to the signing of the Peace Agreements in 1996.²⁴

The Peace Agreements were negotiated over multiple years, but the end result was the government's commitment to reform its institutions, adopt human rights protections into law, and prevent the military and government from acting with impunity. The foundations for critical legal and governmental protections of indigenous rights, including the right to occupy their land, came from international treaties and laws that Guatemala signed and ratified into its own

¹⁶ *Timeline: Guatemala*, *supra* note 6.

¹⁷ *Id.*

¹⁸ *Guatemala: UN Rights Chief Welcomes 'Historic' Genocide Conviction of Former Military Leader*, UN NEWS CENTRE (May 13, 2013), <http://www.un.org/apps/news/story.asp?NewsID=44884#.WMd0EBBVt8>.

¹⁹ *Id.*

²⁰ *Genocide in Guatemala (1981-1983)*, HOLOCAUST MUSEUM HOUSTON, https://www.hmh.org/la_Genocide_Guatemala.shtml (last visited Mar. 13, 2017).

²¹ Victoria Sanford, *Violence and Genocide in Guatemala*, Genocide Studies Program, YALE UNIVERSITY, <http://gsp.yale.edu/case-studies/guatemala/violence-and-genocide-guatemala> (last visited Mar. 13, 2017).

²² *Id.*

²³ *Guatemala's Trial of the Decade in 10 Facts*, AMNESTY INTERNATIONAL (May 8, 2013), <https://www.amnesty.org/en/latest/news/2013/05/guatemala-s-trial-decade-ten-facts/>.

²⁴ *Timeline: Guatemala*, *supra* note 6.

domestic laws.²⁵ The Peace Agreements included the condition that Guatemala sign the United Nations' human rights and indigenous peoples rights conventions and treaties. The government and URNG also signed an Identity and Rights of Indigenous Peoples into the Peace Agreements and into the Guatemalan constitution, though these promising steps have yet to be legally enforced.²⁶

II. The Current Political Climate and the International Commission against Impunity in Guatemala

The civil war and genocide caused instability and extreme disparity in power and wealth in Guatemala. This created a situation in which criminal organizations have “co-opted nearly all spaces of state power to use institutions for their own interests.”²⁷ Between the financial influence over government officials and leaders of these organizations holding high level government positions, the government and powerful criminal organizations are deeply entangled.²⁸ Citizens, especially the most marginalized, cannot obtain meaningful protection or justice from the government.²⁹

In response to the international and internal pressures to address the troubling situation in Guatemala, the Guatemalan government invited the United Nations to join them in creating a solution.³⁰ The International Commission Against Impunity in Guatemala (CICIG) was agreed upon by the United Nations and Guatemalan government in December 2006, and ratified into the Guatemalan Constitution in August 2007.³¹ CICIG operates under the United Nations “to

²⁵ Hessbruegge & Garcia, *supra* note 1, at 7.

²⁶ *Id.*

²⁷ AMNESTY INT'L, *supra* note 4.

²⁸ THE WASHINGTON OFFICE ON LATIN AMERICA, *The International Commission Against Impunity in Guatemala* 6 (June 2015),

https://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ International Commission Against Impunity in Guatemala, *Mandate: Agreement to establish CICIG*, <http://www.cicig.org/index.php?page=mandate>, (last visited March 13, 2017).

promote accountability and strengthen the rule of law” in Guatemala.³² CICIG was put into place by the United Nations and operates under Guatemalan law to carry “out independent investigations into the activities of illegal security groups and clandestine security structures...[that] commit illegal acts that affect the Guatemalan people’s enjoyment and exercise of their fundamental human rights.”³³ CICIG can “act as a complementary prosecutor...and has legal standing to file administrative complaints against public officials.”³⁴ In recent years the government has been riddled with arrests of the highest-level officials, including former President, Otto Perez Molina, and the Vice President, Roxanne Baldetti.³⁵ In addition to its role in addressing government corruption and impunity, CICIG was created to promote political reforms and strengthen Guatemala’s judicial system.³⁶

In the first few years of CICIG’s existence there was predictable backlash from people in the government who had benefited from the corrupt system.³⁷ CICIG has the authority “to initiate administrative proceedings against public officials” who fail to do their job or who try to block CICIG’s work.³⁸ With this authority and the support of civil society, CICIG took significant steps toward achieving its mandate.³⁹ CICIG faced an extremely challenging task and struggled in its first years of existence.⁴⁰ With growing public support, CICIG has played a significant role in the recent dismantling and prosecution of widespread corruption schemes

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Amnesty International, *Annual Report: Guatemala 2016/2017*, <https://www.amnesty.org/en/countries/americas/guatemala/report-guatemala/> (last visited Mar. 13, 2017).

³⁶ THE WASHINGTON OFFICE ON LATIN AMERICA, *supra* note 28, at 9.

³⁷ *Id.* at 11.

³⁸ *Id.* at 14.

³⁹ *Id.* at 18.

⁴⁰ Open Society Foundations, *Against the Odds: CICIG in Guatemala* (Mar. 2016), <https://www.opensocietyfoundations.org/reports/against-odds-cicig-guatemala>.

within the government, including the recent exposure of corruption of the former president, Otto Perez Molina, who served in office from 2011 to 2015.⁴¹ The former president was forced to resign and is now in prison facing criminal charges.⁴² Due to the success and growing support of CICIG, Guatemala has recently taken important steps to uphold its own laws that protect indigenous peoples' land rights, the rights of the people to be consulted before granting permits to transnational extraction companies, and other human rights.⁴³ The international spotlight and public demand to end corruption in Guatemala have begun to create the cultural and political shifts necessary to finally end decades of impunity and move toward creating a more fair and representative government.⁴⁴

III. Successes and Failures of Guatemalan Domestic Law to Protect Indigenous Peoples Rights

The Guatemalan court system currently consists of four court levels: the Justices of the Peace, Courts of First Instance, the Court of Appeals, and the Guatemalan Supreme Court.⁴⁵

There are multiple barriers to accessing the courts for the majority of the indigenous communities in Guatemala.⁴⁶ Many Maya communities are in rural areas and physically traveling to a city to access the court system is impossible for many.⁴⁷ Indigenous people in Guatemala speak many different languages and not all speak Spanish. This language barrier, in

⁴¹ Nina Lakhani, *Guatemalan President's Downfall Marks Success for Corruption Investigators*, THE GUARDIAN (Sept. 9, 2015), <https://www.theguardian.com/world/2015/sep/09/guatemala-president-otto-perez-molina-cicig-corruption-investigation>.

⁴² *Id.*

⁴³ Guatemala Human Rights Commission, *International Organizations Reiterate Support for Guatemalan Communities and Institutions Upholding Rule of Law and Respect for Human Rights in the Case of the Communities of La Puya and El Tambor Mine*, HUMAN RIGHTS UPDATE (May 24, 2016), <https://ghrcusa.wordpress.com/2016/05/24/international-organizations-reiterate-support-for-guatemalan-communities-and-institutions-upholding-rule-of-law-and-respect-for-human-rights-in-the-case-of-the-communities-of-la-puya-and-el-tambor-min/>.

⁴⁴ Open Society Foundations, *supra* note 40.

⁴⁵ Hessbruegge & Garcia, *supra* note 1, at 24-25.

⁴⁶ *Id.* at 26.

⁴⁷ *Id.* at 25.

addition to the inability to pay for court services, prevents many indigenous people from accessing the courts.⁴⁸ Lastly, mistrust and fear of government agencies, including the courts, is still potent, and many indigenous people are wary of pursuing any legal action for fear of retaliation.⁴⁹ CICIG has provided the justice system with support to meet its reform goals and try to address this problem.⁵⁰

The Peace Agreements contain provisions on constitutional reforms, ceasefire, and human and indigenous peoples' rights, including the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169).⁵¹ Also, in one of the Peace Agreement's provisions, the Agreement on Identity and Rights of Indigenous Peoples, the government acknowledged,

That all matters of direct interest to the indigenous peoples need to be dealt with by and with them and that the present agreement seeks to create, expand and strengthen the structures, conditions, opportunities and guarantees regarding participation of the indigenous peoples, with full respect for their identity and the exercise of their rights.⁵²

When the Peace Agreements were signed in 1996, the inclusion of these provisions was a tangible commitment by the Guatemalan government to fundamentally change the way it operated to respect human rights and uphold fair practices when interacting with its citizens, specifically its indigenous peoples.⁵³

⁴⁸ *Id.* at 26.

⁴⁹ *Id.* at 27.

⁵⁰ THE WASHINGTON OFFICE ON LATIN AMERICA, *supra* note 28.

⁵¹ United States Institute of Peace, Peace Agreements, Guatemala (Nov. 20, 1998), <http://www.usip.org/publications/peace-agreements-guatemala>.

⁵² *Id.*

⁵³ Hessbruegge & Garcia, *supra* note 1, at 6.

Although the Peace Agreements are Guatemalan law, very few of their provisions have been meaningfully implemented. Because of this, tension, mistrust, and fear continue to exist between the government and the Guatemalan people—especially indigenous peoples.⁵⁴

The government further expressed its commitment to uphold international human rights and indigenous peoples' rights agreements by ratifying them into the country's constitution.⁵⁵ Because the Guatemalan constitution contains Article 46, declaring the international human rights treaties that Guatemala has signed onto "take precedent over internal Guatemalan law," the Guatemalan courts can and should apply international human rights laws directly.⁵⁶ This should provide indigenous communities and individuals a way to seek justice for the many human rights violations that occur at the hands of large transnational corporations and the government, but these agreements have existed for over a decade without coming to fruition.⁵⁷

The ILO Convention No. 169 is a part of Guatemalan domestic law and requires recognition of indigenous laws and customs.⁵⁸ It is important to understand Maya customary law and the expectations and beliefs of the Maya indigenous peoples in Guatemala. Within the Peace Agreements, the government recognizes indigenous identity of the Maya and their belief that humans coexist with every other living and non-living thing on the earth.⁵⁹ Preservation of their environment is essential to living in harmony and maintaining the equilibrium of the "integrated order."⁶⁰ The Mayan culture values conservation of the natural environment out of respect and the people believe that they protect themselves by protecting nature.⁶¹ Environmental protection

⁵⁴ *Id.*

⁵⁵ *Id.* at 7-8.

⁵⁶ *Id.* at 8.

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 7

⁵⁹ *Id.* at 9-10.

⁶⁰ *Id.* at 10.

⁶¹Traditional Ways, MAYA VIEWKEEPER, http://mayaviewkeeper.com/TLMweb/traditional_ways.htm (last visited Mar. 13, 2017).

of their lands is important not only in the context of their cultural identity, but also for their subsistence and survival. Agriculture, especially corn, is an integral aspect of their livelihoods, culture, and spirituality.⁶²

The Maya people value their communal rights and customarily engage in traditional methods of decision making, including non-violent conflict resolution.⁶³ The process of “community consulta” is a process “of participatory decision-making.”⁶⁴ It is important culturally to the Maya to provide input on any project that would affect their land, culture, and livelihood, especially when the project may involve irreparable environmental harms.⁶⁵ Article 19 of UNDRIP also affirms the rights of indigenous peoples to be consulted in good faith by the government on any activity that could affect their rights.⁶⁶

IV. Significant International Laws that are Enforceable in Guatemala

When the Guatemalan Government signed the Peace Agreements, it also signed and ratified many international treaties and declarations into domestic law.⁶⁷ Included in the Peace Agreements were the previously mentioned ILO Convention No. 169 UNDRIP and other international treaties and conventions concerning human rights and the rights of indigenous peoples.⁶⁸ ILO Convention No. 169 is binding both because Guatemala ratified the Convention and because Article 46 of the constitution of Guatemala holds that “the international human rights treaties to which Guatemala is a party take precedence over internal Guatemalan law.”⁶⁹

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Jeff Abbott, *Mining Interests in Guatemala Challenged by Indigenous Direct Democracy*, WAGING NONVIOLENCE (Dec. 17, 2014), <http://wagingnonviolence.org/feature/mining-interests-guatemala-challenged-indigenous-direct-democracy/>.

⁶⁶ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

⁶⁷ *Timeline: Guatemala*, *supra* note 6.

⁶⁸ United States Institute of Peace, *supra* note 51.

⁶⁹ Hessbruegge & Garcia, *supra* note 1, at 7-8.

ILO Convention No. 169 requires the state to respect the customs of indigenous people by consulting with them, recognize and respect their connection to their lands, and safeguard their rights to own and protect their traditional lands.⁷⁰ Article 4 stipulates that “special measures shall be adopted as appropriate for safeguarding the person, institutions, property, labour, cultures and environment of the peoples concerned.”⁷¹ Article 6 requires that governments consult in good faith with indigenous peoples that would be affected by any possible “legislative or administrative measures...with the objective of achieving agreement or consent to the proposed measures.”⁷² Articles 13, 14, and 15 require the state to respect the special importance that the land has to the “culture and spiritual values of the peoples concerned” and gives indigenous peoples the “rights of ownership and possession...over the lands which they traditionally occupy.” These articles also protect indigenous peoples’ rights to protect or use the natural resources on their lands.⁷³

UNDRIP has provisions to protect the “human rights and fundamental freedoms” of indigenous peoples which are laid out in the Charter of the United Nations Universal Declaration of Human Rights and international human rights instruments.⁷⁴ UNDRIP requires that the Government of Guatemala protect the fundamental human rights of indigenous peoples, including their collective rights to their own means of subsistence, their culture, their spiritual practices, and their traditionally held lands.⁷⁵ UNDRIP also contains a consultation requirement which the Guatemalan government is obligated to apply to mining projects that affect uphold

⁷⁰ Concerning Indigenous and Tribal Peoples in Independent Countries, adopted Jun. 27, 1989, ILO No. 169 (entered into force Sep. 5, 1991), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::p12100_instrument_id:312314.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 66.

⁷⁵ *Id.*

indigenous communities.⁷⁶ Indigenous peoples, as stipulated in Article 10 of UNDRIP, cannot be forcibly removed from their lands without free, prior, and informed consent and “after agreement on just and fair compensation and, where possible, with the option to return.”⁷⁷ If the indigenous peoples agree to projects such as mining on their lands they are entitled to fair and just compensation under this Article.

Not only does Guatemala have an obligation to protect its peoples’ indigenous rights by enforcing consultation processes and other mechanisms before issuing mining permits to any company, but the home states where the companies are located are also accountable under international law. The UN Committee on Economic, Social and Cultural Rights (CESCR) oversees to ensure that governments follow the International Covenant on Economic, Social and Cultural Rights.⁷⁸ This Covenant provides that states “have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries if they are able to influence these third parties by way of legal or political means.”⁷⁹

The United Nations investigations into resistance movements against transnational corporate projects in Guatemala yielded a report from the Special Rapporteur on the human rights situation in Guatemala. The former UN Special Rapporteur on the rights of indigenous peoples, James Anaya, in his report, the “Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine,” found that,

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Comm. on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health, U.N. Doc E/C.12/2000/4 (2000).

⁷⁹ *Id.*

the government of Guatemala does not have the framework of processes in place to properly conduct meaningful consultations with indigenous groups about possible projects that are proposed to be implemented on their land... This absence of meaningful consultation leads to strong feelings of marginalization, discrimination, and dispossession by indigenous communities.⁸⁰

During the development of the Marlin Mine, the government of Guatemala was insufficiently engaged in the process to ensure that the company was participating in good faith consultations with the communities.⁸¹ The Special Rapporteur recommended that the Guatemalan government begin to mitigate the harms to the indigenous peoples from these mining projects by creating informational forums for the communities where they could receive objective and accurate information about the projects.⁸² He also recommended that the Guatemalan government and the company take the concerns of the community seriously, provide solutions to fix the already existing harms, and work to reduce future harm.⁸³

V. Extractive Industry in Guatemala

Guatemala is rich in natural resources, including gold, silver, and nickel.⁸⁴ After the signing of the Peace Agreements in the 1990s, mining investments by transnational corporations rose dramatically in Guatemala.⁸⁵ The Guatemalan government saw huge increases in revenue from mining and encouraged the growth of this industry.⁸⁶

⁸⁰ James Anaya, *Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the case of the Marlin Mine*, 2010, United Nations General Assembly, A/HRC/15/37/Add.8, http://www.unsr.jamesanaya.org/images/stories/flash/special/2010_special_guatemala_preliminary_note_sp.swf.

⁸¹ *Id.* at 7.

⁸² *Id.* at 8.

⁸³ *Id.*

⁸⁴ Joris van de Sandt, *Mining Conflicts and Indigenous Peoples in Guatemala*, Amsterdam University of Law Faculty and Cordaid, at 5, THE HAUGE (Sept. 2009), https://www.cordaid.org/nl/wp-content/uploads/sites/2/2012/12/Mining_Conflicts_and_Indigenous_Peoples_in_Guatemala.pdf.

⁸⁵ *Id.*

⁸⁶ *Id.*

According to a 2014 Amnesty International report, the mining industry in Guatemala was valued at 600 million US dollars, with 95 percent of that value coming from the mining of metal.⁸⁷ This report also states that “land tenure is a particular problem, with indigenous communities bearing the brunt of acute inequality in the distribution of land and ineffective mechanisms for addressing land disputes.”⁸⁸ The Guatemalan government, in its desire to increase mining investment, passed the Mining Law Decree 48-97 (Mining Law) in 1997.⁸⁹ This law allows for “mining companies [to] receive 99% of the profits, leaving just 1% to be split between the state and municipal governments of Guatemala.”⁹⁰ Not only did this give companies a huge incentive to invest in operations in Guatemala by receiving 99 percent of the profits, but it also provided them “100% ownership of mining enterprises and [they] are exempted from paying various taxes,” including on water they use.⁹¹ The passage of the Mining Law, like many other actions taken by the government, occurred without fulfilling the constitutional requirement of public consultation.⁹² The law also did not include proper environmental regulations, standards, or accountability provisions to ensure that the mine operators act responsibly.⁹³

Even though Guatemala’s mining profits have continued increase annually, indigenous communities directly affected by the mines do not see much, if any, of this money.⁹⁴ Many

⁸⁷ AMNESTY INT’L, *supra* note 4.

⁸⁸ *Id.* at 6.

⁸⁹ van de Sandt, *supra* note 84, at 11.

⁹⁰ *The Peaceful Environmental Justice Movement at 'La Puya': Violence, Repression and Resistance at the El Tambor Gold Mine in Guatemala*, THE GUATEMALA HUMAN RIGHTS COMMISSION/USA (Nov. 2014).
<http://www.ghrc-usa.org/wp-content/uploads/2014/11/Puya-report-final.pdf>.

⁹¹ van de Sandt, *supra* note 84, at 11.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Anita Isaacs and Rachel Schwartz, *Repression, Resistance, and Indigenous Rights in Guatemala*, AMERICAS QUARTERLY, Issue: Natural Resource Extraction in Latin America (Winter 2013),
<http://www.americasquarterly.org/content/repression-resistance-and-indigenous-rights-guatemala>.

mining projects are promoted in nearby communities as beneficial community development projects that provide jobs, education, and an overall boost to the local economy.⁹⁵ The negative effects on the environment and human health caused by mining practices in indigenous communities usually greatly outweigh any financial profit that they see.⁹⁶

VI. La Puya Resistance to the Kappas, Cassiday & Associates' El Tambor Gold Mine

The El Tambor gold mine in La Puya, San Jose, is operated by a U.S. company based out of Nevada: Kappas, Cassiday & Associates.⁹⁷ The gold deposit was discovered in 2000 by the Canadian mining company Radius Gold, Inc.⁹⁸ In early 2012, Radius obtained a license to mine the area from the Guatemalan government and began operations,⁹⁹ but by August had sold the entire interest in the company to Kappas, Cassiday & Associates as a “corporate strategy to divest problematic assets.”¹⁰⁰ Currently, the operating company Exmingua (a subsidiary of Kappas, Cassiday & Associates) runs the mine.¹⁰¹

The mining project directly affects members of the Maya villages of San Jose del Golfo and Dan Pedro Ayampuc who were never consulted before the project began.¹⁰² Many community members feared environmental degradation, depleted water resources, and the loss of control over their lands.¹⁰³ In response to the mining project beginning without community consultation, the community members organized the “La Puya” resistance movement.¹⁰⁴

⁹⁵ van de Sandt, *supra* note 84, at 11.

⁹⁶ Isaacs and Schwartz, *supra* note 94.

⁹⁷ KAPPES, CASSIDAY & ASSOCIATES, <http://www.kcareno.com/> (last visited Mar. 13, 2017).

⁹⁸ *The Peaceful Environmental Justice Movement at 'La Puya': Violence, Repression and Resistance at the El Tambor Gold Mine in Guatemala*, *supra* note 90.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Guatemala Human Rights Commission, *supra* note 43.

¹⁰² *The Peaceful Environmental Justice Movement at 'La Puya': Violence, Repression and Resistance at the El Tambor Gold Mine in Guatemala*, *supra* note 90.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Beginning in March 2012, community members organized to create a blockade with their bodies to prevent mining machinery and mining employees from entering the mining site.¹⁰⁵ This movement maintained a 24-hour presence at the blockade site for over two years.¹⁰⁶ The activists underwent many horrific struggles, including one woman being shot in the back after finishing her shift at the blockade.¹⁰⁷ In December of 2012 the activists holding the blockade were threatened by a large group of riot police who tore down signs, destroyed the camp, and attempted to evict the activists.¹⁰⁸ The La Puya “sang, prayed and lay down in the road as the police attempted to forcefully evict them.”¹⁰⁹ Nevertheless, the protests endured through altercations with riot police, confrontations with hundreds of mine workers, and the company bringing huge mining equipment to the blockade while trying to intimidate the protestors with police and mine officials.¹¹⁰ In May of 2014, the community protesters were “violently evicted from the entrance to the site by Guatemalan riot police...at least 20 were injured and 7 were taken to the hospital.”¹¹¹ The state police broke up the peaceful protest with tear gas and flash bombs used to remove the women that had placed themselves at the front of the blockade.¹¹² Riot police beat other protestors, leaving 23 more people injured, including women and children.¹¹³ Leaders of the La Puya were arrested and charged with illegal detention, coercion, and threats against mine employees.¹¹⁴

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

After this, the community continued to resist peacefully and demanded that El Tambor mine stop operations and engage in proper consultations with them.¹¹⁵ During this time the Guatemalan government engaged in negotiations with the La Puya resistance under the observation of the UN Office of the High Commissioner for Human Rights and the Guatemalan Human Rights Commission.¹¹⁶ Eventually the Government halted the negotiations and the agreements made between the government and the La Puya were not upheld by the government.¹¹⁷ The La Puya group continues to maintain a physical presence at the mine entrance though the human blockade no longer exists.¹¹⁸

Not only are the communities concerned about environmental degradation and water contamination, water scarcity is also a concern.¹¹⁹ San Jose del Golfo and Dan Pedro Ayampuc are located in an arid region and mining operations consume massive quantities of water every day.¹²⁰ The La Puya resistance calls for the Government of Guatemala to engage in good faith consultations with affected communities before giving mining permits to transnational corporations and to protect their environment and their right to clean water.¹²¹ Experts found the Environmental Impact Assessment of the El Tambor mine conducted by Kappas, Cassidy & Associates to be “severely inadequate...and was full of misleading information, faulty or absent data, and concerning omissions and ambiguities.”¹²²

The La Puya have continued to pursue other legal and political avenues to stop the mining operations and have their rights restored and respected.¹²³ The La Puya filed a complaint

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

against the Guatemalan Director of Energy and Mines “for approving the mining license without having previously consulted with the affected communities.”¹²⁴ The government granted the original mining permits to Radius Gold without informing or consulting the local communities, as required by ILO Convention No. 169, UNDRIP, and the Peace Agreements.¹²⁵ In 2015, the highest court in Guatemala ruled in favor of the community of the La Puya, agreeing that the community was not properly consulted about the project.¹²⁶ The court granted a provisional injunction, which ordered that the license for gold and silver extraction be suspended for the El Tambor mine.¹²⁷ The ordered the operating company, Exmingua, to suspend all construction and mining activities.¹²⁸ The company ignored the court order, however, and continued to operate the mine.¹²⁹ The Guatemalan Ministry of Energy and Mines (MEM) intervened in March 2016 to enforce the injunction.¹³⁰ The MEM suspended the company’s license for mineral extraction.¹³¹ The MEM conducted an inspection in April 2016 and found that mining was continuing, leading to the arrest of four Exmingua employees who were charged with “illegal resource extraction.”¹³²

Further investigation by CICIG also suggests a connection between former Vice President, Roxana Baldetti, and the possibly illegal operations of Exmingua.¹³³ This investigation is a promising step.¹³⁴ As CICIG works to investigate and hold political officials accountable, government agencies, such as the MEM, show a new commitment to enforcing court rulings that uphold the Guatemalan and international laws that protect indigenous communities.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Guatemala Human Rights Commission, *supra* note 43.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

VII. Sipacapa Resistance to the Goldcorp Marlin Gold Mine

The gold deposit that became the Marlin Mine was discovered in 1998 in the Sipacapa and San Miguel Ixtahuacan municipalities in San Marcos.¹³⁵ Montana Exploradora de Guatemala S.A., a subsidiary of the Canadian-based Goldcorp Inc, discovered the gold deposit.¹³⁶ The World Bank partially funded Goldcorp's Marlin Mine project.¹³⁷ In 2003, the Guatemalan government granted mining permits to Goldcorp, and the Marlin Mine has become the largest gold mine in Guatemala.¹³⁸

The majority of the 18,000 inhabitants of the area are indigenous Maya represented by the Mayan Council of Sipacapa.¹³⁹ Their land title gives them collective ownership over their territory.¹⁴⁰ The government never consulted the indigenous community on the permits it issued for the mine but instead invited the community to a *post hoc* meeting where the plans for the mine were crassly announced.¹⁴¹ In 2005, after the mining permit had already been granted and mining was about to begin, the Sipacapa community organized its own meetings and referendums to decide if it would allow the mining company into their collective lands.¹⁴² The vast majority of the community, about 99 percent, voted against the mining project, but the government and the company ignored their decision and mining activities continued.¹⁴³

¹³⁵ AMNESTY INT'L, *supra* note 4.

¹³⁶ Christin Sanderg, *Guatemalan Court Rules in Favor of Indigenous People Over Goldcorp Mining in Sipacapa*, UPSIDE DOWN WORLD (Jul. 31, 2014), <http://upsidedownworld.org/archives/guatemala/guatemalan-court-rules-in-favor-of-indigenous-people-over-goldcorp-mining-in-sipacapa/>.

¹³⁷ van de Sandt, *supra* note 84, at 29.

¹³⁸ Sanderg, *supra* note 136.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ J. Malcolm Garcia, *Gold Mine's Closing Leaves Uncertain Legacy in Guatemala Mayan Communities*, GLOBAL SISTERS REPORT (May 23, 2016), <http://globalsistersreport.org/news/environment/gold-mines-closing-leaves-uncertain-legacy-guatemala-mayan-community-39986>.

¹⁴² Sanderg, *supra* note 136.

¹⁴³ *Id.*

The Sipacapa community has peacefully resisted the presence of the Marlin Gold Mine since its production began in 2005.¹⁴⁴ The Guatemalan government granted Goldcorp another mining permit in 2012 for a separate mining project in the area called Chocoyos, again without consulting local indigenous communities.¹⁴⁵ In 2014, the Mayan Council of Sipacapa brought a claim to the Guatemalan Appellate Court in Guatemala City arguing that the granting of the permit was illegal because the Maya have collective land rights to the territory.¹⁴⁶ In July 2014, the court ruled in favor of the Mayan Council of Sipacapa, and, according to a representative of the Mayan Council, the “ judgement states the obligation of the Guatemalan government to respect the indigenous territories, in accordance with both United Nations Declaration on the Rights of Indigenous People and International Labor Organization Convention 169.”¹⁴⁷ Preparations for the Chocoyos mining project should have halted as a response to this court ruling.¹⁴⁸ Moreover, because the mining permits were granted illegally, operations at the Marlin Gold Mine should have ceased and “the territory returned to its proper land holder, the local Mayan Sipacapense people.”¹⁴⁹

The community of Sipacapa, like the La Puya community, is concerned about the environmental harms the mine will cause and the health risks of water pollution and scarcity.¹⁵⁰ The process of extracting gold from the mined rock requires that the rock come into “contact with highly toxic cyanide-water solution” and then the tailings are stored in a “refuse lake” where the toxic chemicals are supposed to slowly settle to the bottom and “decompose and

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ van de Sandt, *supra* note 84, at 21.

detoxify.”¹⁵¹ After the tailings ponds became too full, contaminated water discharges into nearby rivers, putting the surrounding and downstream communities and environment at great risk.¹⁵²

One of the funders of the Marlin Gold Mine is the World Bank, which has its own accountability requirements for projects it funds, such as the Compliance Adviser Ombudsman (CAO).¹⁵³ When the municipality of Sipacapa filed a complaint with the CAO, the internal mechanism that monitors project compliance, it received a response that dramatically played down the possible harm from this water contamination. The response stated that “there is no possibility that (planned or unplanned) discharges from the processing plants will affect the river system in the Sipacapa municipality.”¹⁵⁴ This inadequate response to their complaint led to more suspicions from the community about the mine’s actions.¹⁵⁵ It therefore completed, with the help of various NGOs, an independent analysis of water quality risks and other environmental impacts.¹⁵⁶ These independent studies found that the opposite of what the CAO had reported was true and there was a reasonable probability that the mining actions would cause serious harm to the water supplies.¹⁵⁷ Another report found that the downstream water from the mine had “elevated levels of heavy metals exceeding drinking water standards as determined by the World Bank” that had been caused by “acid drainage from waste rock facility.”¹⁵⁸ The Guatemalan Vice-Minister of Energy and Mining claimed to the media that these reports were unfounded and denied that the project caused health or water quality issues.¹⁵⁹

¹⁵¹ *Id.* at 29.

¹⁵² *Id.*

¹⁵³ *Id.* at 30.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 30.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 41

¹⁵⁸ *Id.* at 42.

¹⁵⁹ *Id.*

In 2010, an environmental health study found “higher levels of lead, mercury, arsenic, zinc, and copper in the urine of those living near the mine. ... [E]xposure to these metals can cause severe health problems.”¹⁶⁰ Independent experts who reviewed the Marlin Mine environmental management plan found that the corporation had “grossly underestimated risks of contamination and cumulative impacts on local water availability.”¹⁶¹ Water contamination, dried-up wells, and subsequent impacts to human health led the Inter-American Court on Human Rights (IACHR), in 2010, to grant precautionary measures to Maya communities on whose lands mines operated.¹⁶² The IACHR is part of the Organization of American States system that was established to protect and promote human rights in the Americas.¹⁶³ The IACHR can grant precautionary measures (requests to a government to address and mitigate urgent situations that could cause serious harm) to individuals or groups that petition the IACHR for a review of possible violations of the American Convention on Human Rights.¹⁶⁴ Gregoria Cruz, a community member and activist, explained how the mining operation has left them with no reliable water supply, “Sometimes we have water, sometimes we don’t...we don’t have a constant, daily supply of water, and it’s contaminated.”¹⁶⁵ The IACHR called on the government of Guatemala to stop the mining operations and address the immediate health and environmental

¹⁶⁰ *Goldcorp: Mining in Guatemala*, Facing Finance, http://www.facing-finance.org/en/database/cases/goldcorp/#identifier_1_20248 (last visited Mar. 13, 2017).

¹⁶¹ van de Sandt, *supra* note 84, at 21.

¹⁶² David Mercer, *Gold mine drives wedge in Guatemala community: Supporters say Marlin Mine Creates Jobs, but Critics See it as Exploitative and Environmentally Unsound*, AL JAZEERA (Oct. 25, 2012), <http://www.aljazeera.com/indepth/features/2012/10/2012102591134181236.html>.

¹⁶³ Inter-American Commission on Human Rights, ORGANIZATION OF AMERICAN STATES, <http://www.oas.org/en/iachr/mandate/what.asp> (last visited Mar. 11, 2017).

¹⁶⁴ *Id.*

¹⁶⁵ Hayley Woodin, *Goldcorp’s Marlin mine: A Decade of Operations and Controversy in Guatemala*, MINING.COM (May 3, 2015), <http://www.mining.com/web/goldcorps-marlin-mine-a-decade-of-operations-and-controversy-in-guatemala/>.

concerns stemming from the Marlin mine.¹⁶⁶ However, the government did not respond to the recommendations from the IACHR and the mine continued to operate.¹⁶⁷

This convoluted and corrupt relationship between the mining corporations and the Guatemalan government creates a situation ripe for abuse. Until recently, the Goldcorp mine did not have any incentive to meet environmental standards or norms that would be expected in more developed countries. With the Guatemalan government prioritizing economic gain, the communities affected by this project were left with no option but to resist and seek international attention.¹⁶⁸

Along with the irreparable health and environmental consequences, the loss of land devastated the culture and livelihood of the people.¹⁶⁹ Land ownership in many Maya communities is communal instead of private.¹⁷⁰ The indigenous community holds legal “collective title” to the land that Goldcorp and the Guatemalan government either overlooked or ignored when Goldcorp acquired the land, bringing into question the legitimacy of the title.¹⁷¹ The land is ancestral Maya land that holds cultural, spiritual and practical significance for the community.¹⁷² When communicating with its investors, Marlin Mine reported that the “cultural attachment to the land is not strong...[and] much of the land is minimally used.”¹⁷³ The report disregards the significance of this land to the communal culture and ways of living of the Mayan people whose interest in the land is “collective and socio-cultural in nature.”¹⁷⁴ Numerous people

¹⁶⁶ Mercer, *supra* note 162.

¹⁶⁷ *Id.*

¹⁶⁸ van de Sandt, *supra* note 84, at 44-49.

¹⁶⁹ *Id.* at 25.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 24-25.

¹⁷³ *Id.* at 26.

¹⁷⁴ *Id.*

who sold these rights were also not truly aware of what they were agreeing to.¹⁷⁵ Many people have been forced to subsist on the small fractions of their land that was not destroyed or dug up by the mine.¹⁷⁶ The mine “excavate[d] 5 thousand tons of rock each day,” drastically changing the landscape and usability of the area.¹⁷⁷

Community members opposed to the mines have been peacefully resisting for over a decade.¹⁷⁸ The community took action by setting up road blocks, holding protests, and blocking the heavy mining equipment from coming through on the roads with their bodies.¹⁷⁹ The community activists resisting the mining operations of Goldcorp have been threatened, attacked, and even killed.¹⁸⁰ The government has not responded adequately to these events and has failed to protect community members from such dangers.¹⁸¹ This has added to the distrust and conflict between these small indigenous communities, the mine, and the Guatemalan government.¹⁸² One of the leaders of the Sipacapa Council said, “Why do I continue with the struggle? Why do we continue the struggle? Because we love our water. We love our land, we love our natural resources. This is why we’re in the struggle.”¹⁸³ Another activist working to stop the Marlin mine, Diadora Hernandez, was shot in the face by two men, severely injuring her and causing her to lose her eye.¹⁸⁴ She believes that she was shot because she refused to sell her land to the mining company.¹⁸⁵ Even after such violence and intimidation, Diadora will stay on her land because, as she says, “Where else would I go? This land is part of me. It’s where I was born. And

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 24-25.

¹⁷⁷ *Id.* at 24.

¹⁷⁸ AMNESTY INT’L, *supra* note 4.

¹⁷⁹ *Id.* at 11.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Woodin, *supra* note 165.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

it's where I'll die.”¹⁸⁶ The resilience of the communities that have stood up for their land rights and human rights even when their own government did not is astounding.

VIII. Corporate Social Responsibility and How to Move Forward

Not only do states have an obligation to supervise the projects of transnational corporations within their borders, but transnational corporations have a responsibility to act conscientiously and respect human rights everywhere that they operate.¹⁸⁷ This includes the responsibility to respect indigenous peoples' rights, which is often complicated by the state's lack of recognition of these rights.¹⁸⁸ According to the 1974 UN Charter of Economic Rights and Duties of States, the state has the right “to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies.”¹⁸⁹

Though these norms exist, there is a plethora of examples of transnational corporations taking liberties with projects in countries with less developed infrastructure or regulation where they often commit environmental and human-rights violations. There must be international pressure on transnational corporations to be transparent, to prioritize corporate social responsibility, and to respect the domestic and international laws and regulations that apply to their projects. Furthermore, transnational corporations need to be held accountable in their home country. The home country must compel corporations that operate in foreign countries to follow

¹⁸⁶ Mercer, *supra* note 162.

¹⁸⁷ U.N. Secretary-General, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, ¶93, U.N. Doc. A/66/288 (Aug. 10, 2011).

¹⁸⁸ *Id.*

¹⁸⁹ Karl P. Sauvart, *The Negotiations of the United Nations Code of Conduct on Transnational Corporations*, THE JOURNAL OF WORLD INVESTMENT & TRADE (2015), <http://ccsi.columbia.edu/files/2015/03/KPS-UN-Code-proof-2-Journal-of-World-Investment-and-Trade-March-2015.pdf>.

international regulations and laws requiring sustainable practices, preservation of human rights, and respect for the local communities in which they operate.

Along with stricter domestic regulation of transnational companies, there needs to be continued international pressure on the Guatemalan government to implement the provisions of the Peace Accords, especially honoring the requirement to meaningfully consult with indigenous communities before selling mining companies, or other industries, the rights to their lands. The first step to develop systems to assure meaningful consultations between indigenous communities and the proponents of any proposed projects that may affect them.

The recent response from the Guatemalan court system has been favorable to the indigenous communities' fight to stop these mines, including injunctions and court orders; however, the challenge remains of enforcing these court orders. The history of the Guatemalan government has been one of corruption; the current political situation is the result of years of unchecked abuse by the political elite. There is a strong need for government re-structuring to allow for a mechanism to enforce court rulings and orders. The presence of CICIG, the United Nations backed anti-impunity commission, is a step in the right direction.¹⁹⁰

Conclusion

Empowerment and support of local movements by the Guatemalan government, not just by international observers or organizations, will go a long way toward building trust between indigenous communities and the government. The relationship between Guatemala and the UN, mediated through CICIG, should be maintained, including UN financial support and consistent monitoring. The steps that have been taken by CICIG to build trust between indigenous people

¹⁹⁰ *Country Reports on Human Rights Practices for 2011*, UNITED STATES DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, <http://www.state.gov/documents/organization/186728.pdf> (last visited Mar. 11, 2017).

and the government are critical and are providing genuine hope for the future. Supporting Guatemala's cooperation with the United Nations on an experiment like CICIG is essential, as it is the first time that there have been concrete steps to build an efficient and strong judiciary in the country.

The recent steps taken by the MEM to enforce the court-ordered injunction against the El Tambor mine should be followed with continued government efforts to enforce prior injunctions against other mines, including the Marlin mine. The court system should also conduct strong and transparent hearings for other indigenous communities affected by transnational extraction companies.¹⁹¹

Existing international standards to hold transnational companies accountable, especially those based in the United States and Canada, are not influential enough. The local and international public can play a significant role in this. Consumers must be informed about the unethical actions of corporations operating out of their country and demand change. International corporations already have a legal and moral obligation to respect human rights and follow international norms, but there is a need for stronger incentives or punitive measures to be enacted to motivate corporations to act in accordance with these obligations.

Lastly, education of communities all around Guatemala about how to access their local judicial systems or the international courts to seek justice is essential. Community organizing can have lasting and meaningful effects, not only for local communities, but also for global awareness. When communities, no matter how small, have knowledge of the resources and tools available to them, such as the United Nations and the Inter American Systems, they can be their own best advocates.

¹⁹¹ Guatemala Human Rights Commission, *supra* note 43.