

Overview of Legal Cases Involving the Marlin Mine

Case information	Issues and results
Criminal Court*	
<p>Criminal Court (San Miguel Ixtahuacán and San Marcos)</p> <p>Case #10-2007: Office of the Prosecutor (Ministerio Público) and Montana as Private Prosecutor v. Fernando Basilio Pérez Bámaca, Pedro Alejandro De León Castañón, Francisco Salomón Bámaca Mejía, Antonio Felipe Bámaca, Vicente Patrocino López Hernández, René Pérez Velásquez, Cristóbal Eduardo Pérez Hernández</p> <p>Filed: January 10, 2007</p>	<p>Public and private prosecutions against numerous individuals involved in the blockade of the Marlin Mine and injuries to company personnel.</p> <p>Two individuals are declared guilty of charges and sentenced to two years in prison. Five others are declared innocent.</p> <p>The defence appealed, which was denied.</p> <p>The defence filed a writ of “amparo” alleging human rights violations against those sentenced to prison. This writ is pending sentence.</p>
<p>Criminal Court</p> <p>Case #1227-2007: María Eugenia Solís de García v. Montana Exploradora de Guatemala, SA</p> <p>Filed: December 19, 2006</p>	<p>Individual involved with environmental NGO (Colectivo Ecologista Madreselva) claims that the mine’s activity has contaminated the Tzalá River.</p> <p>The court grants a warrant to visit the mine. The Office of the Prosecutor collects water samples, which are sent to a water laboratory to test for the presence of copper, aluminium, iron and magnesium. The results are submitted to the Ministry of Energy and Mining for analysis. The ministry concludes there is no evidence of contamination.</p> <p>A further investigation is undertaken to verify whether there is leaking or spillage of water into the Tzalá river. The Office of the Prosecutor indicates there is none.</p> <p>The Office of the Prosecutor requests the dismissal of the claim, which the Court grants.</p>
<p>*The assessors reviewed two additional criminal cases (#166-08 and #1080-2008). According to Guatemalan law, the files remain confidential as the cases are still in the investigation phase.</p>	

Case information	Issues and results
Constitutional Court	
<p>Civil Court and Highest Constitutional Tribunal</p> <p>Case # 87-2005 / 1643-2005 / 1654-2005: Montana Exploradora de Guatemala, SA v. Municipal Council of Sipacapa</p> <p>Filed: June 13, 2005</p>	<p>Montana files a writ of amparo challenging the constitutionality of the municipality's call for consultation about the mine and the by-laws that govern the consultation.</p> <p>The civil court issues a ruling suspending the consultations scheduled in Sipacapa. The court rules that ILO 169 does not have pre-eminence above the Constitution.</p> <p>The Constitutional Court revokes the amparo and rules that, since the consultations are not binding, there is no harm for which a writ of amparo can be granted.</p> <p>Completed: February 28, 2008</p>
<p>Highest Constitutional Tribunal</p> <p>Case #1179-2005: Group of lawyers challenge municipal by-laws for consultation</p>	<p>A group of lawyers associated with Montana challenge the constitutionality of the Municipality of Sipacapa's call for consultation about the mine and the by-laws that govern the consultation.</p> <p>The Court rules that the municipality is entitled to call for consultation. However, one article of the by-laws is unconstitutional: article 27, which establishes that the results of the consultation are binding.</p> <p>Completed: May 8, 2007</p>
<p>Constitutional Court</p> <p>Case #27-2005: Montana Exploradora de Guatemala, SA – writ of amparo against the PDH's office in San Miguel</p>	<p>Montana files a writ of "amparo" against the Human Rights Ombudsman (PDH), claiming that the company's rights were violated when the PDH issued a resolution declaring that Montana has committed human rights violations.</p> <p>Ruling in favour of Montana, which was appealed.</p> <p>The Constitutional Court denied the petition and did not grant the "amparo" on the basis that the PDH's resolutions are merely ethical and not binding, and therefore cannot cause damages, which is a prerequisite for granting an "amparo."</p> <p>Completed: March 16, 2006</p>
Human Rights Ombudsman	
<p>Procuradora Derechos Humanos</p> <p>Case #ORD.GUA 1453-2006/DESC: Maria Eugenia Solis Garcia (Colectivo Ecologista Madreselva) v. Montana Exploradora de Guatemala, SA</p> <p>Filed: December 6, 2006</p>	<p>Complaint filed with Human Rights Ombudsman (PDH) that mining activity is contaminating the Tzalá river, supported by report of Flavio Bianchini.</p> <p>PDH requests investigations from Ministry of Environment and Natural Resources and by Ministry of Public Health and Social Assistance.</p> <p>Montana contests the validity of the Bianchini report.</p> <p>Ministry of Environment and Natural Resources refer the complaint to the Office of the Prosecutor (Ministerio Público)</p> <p>Ministry of Public Health and Social Assistance present a memo from the School of Chemistry at San Carlos National University that critiques the Bianchini report.</p> <p>The PDH follows up with the Office of the Prosecutor, which indicates it has dismissed the complaint.</p> <p>The PDH suspends the file on August 13, 2008.</p> <p>N.B. Separate criminal proceedings involving the same parties above, and environmental proceedings below.</p>



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Ministry of Environment and Natural Resources	
<p>Ministry of the Environment and Natural Resources</p> <p>Resolution #1999-2009/ECM/GB: Ministry of the Environment and Natural Resources v. Montana Exploradora de Guatemala, SA</p> <p>Initiated: May 20, 2009</p>	<p>Further to an inspection conducted in April 2009, the ministry issued a resolution of non-compliance of environmental commitments against the company.</p> <p>The company appealed this administrative process, claiming that due process was not followed and that the company was not provided with an opportunity to respond to the allegations.</p> <p>Pending resolution.</p>
<p>Ministry of the Environment and Natural Resources</p> <p>Case #402-2008: Ministry of the Environment and Natural Resources (ex officio) v. Montana Exploradora de Guatemala, SA</p> <p>Initiated: June 2, 2008</p>	<p>Claim of non-compliance since water reservoir is not in same location as stipulated in the Environmental Impact Assessment. Montana presented its counter-arguments that the actual location of the water reservoir was known and agreed upon.</p> <p>File is pending resolution.</p>
<p>Ministry of the Environment and Natural Resources</p> <p>Case # 708-2008: Maria Eugenia Solís García (Colectivo Ecologista Madreselva) v. Montana Exploradora de Guatemala, SA</p> <p>Filed: September 6, 2008</p>	<p>The Environmental Commission of the Congress alleges that the company is extracting mercury in addition to gold. The information gazette is referred for investigation and a technical report.</p> <p>In addition, an individual with an environmental NGO claims that the mine's activity involves chemicals (mercury, copper, aluminium, iron and manganese) that are polluting the Tzala' river and posing a threat to human health.</p> <p>The Departmental Delegate for the Ministry of Environment and Natural Resources conducts an investigation of the mine and observes the treatment plant and does not detect any mercury.</p> <p>File is pending as it has not been served upon Montana.</p>
<p>Ministry of the Environment and Natural Resources</p> <p>Case #156-2008: Municipality of Sipacapa v. Montana Exploradora de Guatemala, SA</p> <p>Filed: February 27, 2008</p>	<p>Municipality of Sipacapa complaint that water springs have dried up in village of Agel; that entrance was denied to expert Robert Moran; that dike is reaching its storage capacity with potential discharge into rivers Quivichil and Cuilco.</p> <p>An investigation and technical report is requested to verify the mitigation measures in the Environmental Impact Assessment (EIA).</p> <p>Two inspections are conducted which conclude that the mitigations measures in the EIA are being complied with and that there is no residual or industrial water discharge into the nearby rivers. A controlled discharge planned for 2009 is to receive prior treatment.</p> <p>File is pending until served upon Montana.</p>
<p>Ministry of the Environment and Natural Resources</p> <p>Case #623-2007: Central Latinoamericana de Trabajadores y Comisión Latinoamericana por los Derechos Humanos y las Libertades de los Trabajadores y Pueblos v. Montana Exploradora de Guatemala, SA</p> <p>Filed: August 21, 2007</p>	<p>Claim that residual waters are discharged into the rivers close to the Marlin Mine.</p> <p>The same inspection report from case #156-2008 is produced, which concludes that the mitigations measures in the EIA are being complied with and that there is no residual or industrial water discharge into the nearby rivers. A controlled discharge planned for 2009 is to receive prior treatment.</p> <p>File is pending until served upon Montana.</p>

Case information	Issues and results
Labour Court / Ministry of Labour and Social Welfare	
<p>General Inspection of Labour from the Ministry of Labour and Social Welfare</p> <p>Case #R1-2096-2008: Montana Exploradora de Guatemala, SA</p> <p>July 2, 2008</p>	<p>Notice of suspension of labour contracts as a result of damage to electric power lines, causing disruption in extraction and production of ore.</p> <p>Minister of Labour and Social Welfare authorizes the total collective suspension of labour contracts from August 1, 2008 to October 31, 2008. If the power lines are repaired, work at the mine should resume immediately.</p> <p>Concluded: August 27, 2008</p>
<p>Labour Court (San Marcos)</p> <p>Case # 45-2008: Julio César Robledo Ortiz v. Montana Exploradora de Guatemala, SA</p> <p>Filed: May 22, 2008</p>	<p>Claim by a worker for compensation and damages caused by a work accident.</p> <p>Company responded with a defence that the case should be held in the civil court and not the labour court.</p> <p>The court denied Montana's request and Montana appealed.</p> <p>The case is in progress.</p>
<p>General Inspection of Labour from the Ministry of Labour and Social Welfare</p> <p>Case #R1-3304-2007: Julio César Robledo Ortiz v. Montana Exploradora de Guatemala, SA</p> <p>Filed: September 20, 2007</p>	<p>Claim by a worker for compensation and damages from work-related accident.</p> <p>Parties must pursue the matter in the case that had previously been initiated in the Labour Court in San Marcos.</p>

Case information	Issues and results
International Tribunals	
<p>Specific Instance Complaint submitted to Canada's National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises Concerning: The Operations of Goldcorp Inc. at the Marlin Mine in the Indigenous Community of San Miguel Ixtahuacán, Guatemala</p> <p>Submitted by: Frente de Defensa San Miguelense (FREDESMI)</p> <p>Submitted: December 9, 2009</p>	<p>Complaint to Canada's NCP about lack of compliance with OECD Guidelines on Multinational Enterprises, including allegations of infringements on: (1) collective property rights and the right to free, prior and informed consent; (2) cracked houses; (3) water quality; (4) water consumption; and (5) retaliation against anti-mine protesters.</p>
<p>Inter-American Commission for Human Rights</p> <p>Petition for Precautionary Measures by the Association for the Integral Development of San Miguel Ixtahuacán, the Guatemalan Association of Mayan Lawyers and Notaries and the Multicultural Centre for Democracy of Guatemala</p> <p>Initiated: June 12, 2009</p>	<p>Petition asks for precautionary measures to protect the families of Saqmuji in the community of Agel after the confrontation over and destruction of the company's drilling equipment on June 10, 2009.</p> <p>The company responds by a letter to the Executive Secretary of the IACHR dated July 3, 2009.</p>
<p>International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (CEACR)</p> <p>CEACR: Individual Observation concerning Indigenous and Tribal Peoples Convention 1989 (No. 169), Document #062006GTM169, published in 2006.</p> <p>Document #062007GTM169, published in 2007</p> <p>Document #062009GTM169, published in 2009</p> <p>Initiated by the Central Union of Guatemalan Workers (CGTG) and the Union of Guatemalan Workers (UNSITRAGUA)</p>	<p>Communications to the ILO by Central Union of Guatemalan Workers (CGTG) and the Union of Guatemalan Workers (UNSITRAGUA) regarding consultation about the Marlin Mine in accordance with ILO 169.</p> <p>The CEACR makes a series of recommendations to Guatemala, notably about the need to pass legislation that establishes mechanisms for the consultations envisioned in ILO 169.</p> <p>CEACR continues to follow-up on its observations pending the passage of such legislation.</p>
<p>Office of the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC)</p> <p>Municipality of Sipacapa (with the assistance of the Colectivo Madre Selva) v. Glamis Gold / Montana Exploradora de Guatemala, SA</p> <p>Complaint initiated on January 28, 2005</p>	<p>The complaint was addressed to the CAO since the Marlin Mine had received financing from the IFC. The complaint alleges issues with (1) water access for surrounding communities; (2) contamination of the local water supply; (3) lack of consultation about social and environmental impacts; and (4) an increase in social conflict, violence and insecurity.</p> <p>The CAO presented a first assessment report on September 7, 2005 in which it made a number of recommendations to the company.</p> <p>A follow-up assessment report was released in May 2006.</p>