

# Human Rights Assessment of Goldcorp's Marlin Mine

## EXECUTIVE SUMMARY

Commissioned on behalf of Goldcorp  
by the Steering Committee for the Human  
Rights Impact Assessment of the Marlin Mine

Prepared by  
On Common Ground Consultants Inc.  
Vancouver, BC, Canada



May 2010

## HUMAN RIGHTS ASSESSMENT OF GOLDCORP'S MARLIN MINE

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# Contents

<b>SECTION 1: INTRODUCTION</b> .....	<b>4</b>
Overview of the Assessment.....	5
Human Rights Framework.....	5
Assessment Process .....	5
Guatemalan Human Rights Context.....	7
Challenges .....	8
Overview of the Marlin Mine .....	9
<b>SECTION 2: SUMMARY OF FINDINGS AND RECOMMENDATIONS</b> .....	<b>11</b>
Consultation .....	12
Environment .....	14
Labour .....	17
Land Acquisition .....	20
Economic and social investment .....	23
Security.....	26
Access to Remedy .....	29
<b>SECTION 3: CONCLUSIONS</b> .....	<b>32</b>
Importance of International Standards .....	33
Implications of Indigenous Peoples Rights.....	33
Implications of Conflict.....	33
Ongoing Due Diligence for Human Rights .....	34
Final Recommendations for Goldcorp .....	36
Concluding Observations.....	37

# Introduction

This executive summary is a consolidated version of *Human Rights Assessment of Goldcorp's Marlin Mine*. It includes a brief introduction, the complete findings and recommendations of the assessment, and brief conclusions.

The full report can be downloaded from [www.hria-guatemala.com](http://www.hria-guatemala.com).

The Marlin Mine, located in the western highlands of Guatemala, is operated by Montana Exploradora de Guatemala S.A., a wholly-owned subsidiary of Goldcorp Inc., based in Vancouver, Canada. The mine has been controversial since its inception in 2004, and the source of continuing claims of human rights abuse, including isolated instances of violence.

In 2008, a group of socially responsible shareholders called on Goldcorp to undertake an independent human rights impact assessment of the mine. A steering committee was established to oversee the assessment process, comprised of a representative of the shareholder group, a Guatemalan representative, and a Goldcorp representative. The steering committee committed to the principles of independence, inclusivity and transparency, and in October 2008 selected On Common Ground Consulting Inc., to conduct the assessment.

The assessment sets out how the Marlin Mine's presence and operations have affected human rights, and the extent to which company policies, procedures and practices comply with international human rights standards. It provides findings and recommendations for improving respect for human rights at the mine, as well as more general lessons-learned for integrating human rights into Goldcorp's global operations. Goldcorp has committed to issuing a public response to the recommendations, including a detailed action plan for the Marlin Mine and potential future expansions.

The assessment does not make legal judgments about past performance; rather it identifies areas of concern, risk and impact to enable Montana and Goldcorp to implement changes necessary to ensure human rights are respected.

To protect the independence of the process, Goldcorp and Montana agreed to no editing control of the report, and no say about content, form or findings.<sup>1</sup>

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<sup>1</sup> The Memorandum of Understanding between Goldcorp and representatives of the socially responsible investors identified that the Steering Committee may designate some factual information as confidential. This occurred in relation to only one piece of information, and did not affect the relevant findings.

# OVERVIEW OF THE ASSESSMENT

## Human Rights Framework

The assessment is based upon international human rights standards applicable to Guatemala, including the International Bill of Rights;<sup>2</sup> the American Convention of Human Rights; and the International Labour Organization (ILO) conventions that protect labour and indigenous peoples rights.

A company's responsibility to respect international human rights is outlined in the three core principles of the "Protect, Respect and Remedy" framework:<sup>3</sup> States have the primary obligation to protect citizens from human rights abuses, including those committed by companies; companies have a responsibility to respect human rights; and States and companies have a shared responsibility provide effective access to remedy when there are harms to human rights. This framework clarifies that companies are responsible for respecting the full range of internationally-recognized human rights, and that respecting human rights requires a process of due diligence that must take into account the country and operational context, as well as a company's relationships with third parties.<sup>4</sup>

## Assessment Process

The assessment commenced in October 2008 and consisted of five phases, implemented over an 18-month period. Data collection began with a desk-based study and review of over 700 secondary documents, including several hundred company documents. The review included human rights, extractive industry best practices, the national and local context in Guatemala, and documents specific to the Marlin Mine from Montana, Goldcorp, human rights organizations, and others.

2 The International Bill of Rights includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the optional protocols to the International Covenant on Civil and Political Rights.

3 Ruggie 2008, para. 9. The "Protect, Respect and Remedy" framework was developed by the UN Special Representative to the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. The framework was unanimously welcomed by the UN Human Rights Council in June 2008.

4 Ruggie 2008, paras. 56 and 57.

Between November 2008 and June 2009, the assessors conducted 189 individual interviews, nine group interviews with 84 participants, eight informal discussions, and 10 focus groups with 95 participants. In parallel, the assessors conducted a corporate policy and management systems review examining policies that address human rights (explicitly or by intent). Principles of transparency, independence, and inclusivity were prioritized in the assessment. Informed consent was obtained from all participants, and their confidentiality respected. Information was reviewed and weighed to determine whether it was sufficient and credible. An overview of stakeholder participation is provided in Table 1.1.

Seven priority issue areas were identified from concerns raised by stakeholders: consultation, environment, land acquisition, labour, economic and social investment, security, and access to remedy. The overall environment of conflict was the concern raised most frequently by stakeholders; this was considered as part of the context that affected all seven issue areas in the assessment (see Table 1.2).

Once these areas were identified, the assessors used a four-stage process to develop the findings:

- Identification of Montana's responsibility to respect human rights;
- Review of relevant information;
- Review of Montana's management systems to identify gaps in their due diligence to respect rights; and
- Comparison of stakeholder concerns with those gaps to determine where human rights may have been harmed.

Questions and indicators from the Human Rights Compliance Assessment tool developed by the Danish Institute for Human Rights were used to guide the assessment of Montana's compliance with international human rights standards. This was supplemented by international good practice standards applicable to the mining industry, including the performance standards related to an International Finance Corporation loan for the Marlin Mine.

## Scope

The Marlin Mine, located in the northeast corner of the San Marcos Department, occupies 6.5 km<sup>2</sup> of land on the border between the municipalities of San Miguel Ixtahuacán and Sipacapa; (85 and 15 per cent, respectively), directly affecting the villages of San Jose Nueva Esperanza, Agel, San José Ixcaniche, and Tzalem.

The geographic scope for the assessment included three levels of influence:

- Four communities immediately adjacent to the mine that have sold land for the operation;

- Adjacent and downstream communities; and
- The municipalities of San Miguel and Sipacapa.

The primary stakeholders deemed critical to the assessment were defined by two characteristics:

- Physical proximity to the mining operations and associated facilities (including roads), which includes all land-sellers in and around the mine, but not necessarily people who have sold land or been affected by exploration activities in other areas; and

Table 1.1: Stakeholder Group Participation		
Key groups	Sub-groups	Number participating
This table sets out stakeholder groups that participated in interview and focus groups, by their primary designation for the purpose of data analysis. For example, a mine worker might also be a woman or a land seller, but is classified only once.		
Local authorities	Municipal mayors and corporations; indigenous (auxiliary) mayors	10 in individual interviews
Local public development organizations	COCODES (1st and 2nd level); COMUDES; other local authorities/leaders	6 in individual interviews
Land users	Land sellers; relocated families	9 in individual interviews
Workers	Current mine workers; senior management at Montana and Goldcorp; former employees	90 local people in individual interviews or medium-size groups; 9 managers
Contractors	Contractors; private security firms	25 in individual interviews or focus groups
Individuals/organizations in legal proceedings with Montana	Local; national	3 in individual interviews at local level; 2 in interviews with NGOs
Vulnerable groups	Women; seniors; youth	21 in individual interviews or medium-size groups
Participants in Sierra Madre Foundation programs	Beneficiaries; trainees; employees	29 in individual interviews or medium-size groups
Local businesses	Retail; services	3 in individual interviews
Local professionals	Health; education (including teachers paid by Montana); judicial; development	17 in individual interviews
Local Institutions	Justices of the peace	4 in individual interviews or group meetings
Local organizations	Women's groups; AMAC; others	17 in group meetings
Religious organizations	Catholic archdioceses; Catholic organizations; local parish priests and catequists; Protestant and Evangelical churches	14 in individual interviews or group meetings
Government	Government ministries, departments and agencies related to issues of mining, environment, water, and human rights; public security forces	23 in individual interviews
Human rights organizations and activist groups	Local; regional; national; international	9 in individual interviews
Environmental organizations	Local; national	12 in individual interviews
Research organizations	National	7 in individual interviews
Other community members	Communities adjacent to the mine; within watersheds; along roads; along the power line	6 in individual interviews or small group interviews (all other community participants are sub-categorized below)



- Interaction with the company in ways that directly affected people’s human rights, including employees, contractors, and project beneficiaries.

In addition, the assessment considered national level issues and impacts. Other stakeholders included individuals, groups, and institutions affected by the activities and presence of the mine, directly and indirectly.

### Guatemalan Human Rights Context

The assessment also focused on key gaps in the protection of human rights in Guatemala. While Guatemala has signed and ratified the principal international conventions that protect human rights, including labour and indigenous peoples rights, there are significant weaknesses in their implementation and enforcement.

As a result, the Marlin Mine’s human rights responsibilities extend beyond compliance with national law, and an ongoing process of due diligence internal to Montana and Goldcorp is required.

In terms of the human rights situation in Guatemala, primary concerns include:

- *Lack of protection of indigenous peoples rights:* The weakness of Guatemala’s framework for consultation with indigenous peoples, despite its ratification of ILO Convention 169 Concerning Indigenous and Tribal Peoples, is an important gap in the implementation and protection of indigenous peoples rights, as it gives rise to social conflict and political mobilization. In the context of mining and development, the issues of prior consultation land rights is of particular concern.

Table 1.2: Top 20 Issue Areas of Concern to Stakeholders			
	Issues	Score	Ranking
Security	Conflict	184 (53%)	1
Other Issues	Benefitting from Poor Governance (Taxes)	149 (43%)	2
Environment	Water Quality	134 (39%)	3
Consultation	Role of Guatemalan Government	128 (37%)	4
Consultation	Need to Address Negative Impacts	126 (36%)	5
Environment	Health	122 (35%)	6
Consultation	Information disclosure	119 (34%)	7
Environment	Land Pollution	118 (34%)	8
Labour	Basic Work Conditions	114 (33%)	9
Consultation	Timing and Clarity of Information	112 (32%)	10
Social Investment	Participation in Projects	110 (32%)	11
Consultation	Montana’s Public Relations Campaign	107 (31%)	12
Consultation	Quality and Quantity of Information	105 (30%)	13
Labour	Workers’ Health	101 (29%)	14
Consultation	Consultation Mechanisms	101 (29%)	15
Labour	Grievance Mechanisms	99 (29%)	16
Environment	Water Quantity	98 (28%)	17
Environment	Grievance Mechanisms	95 (27%)	18
Other Issues	Government Capacity and Relations	90 (26%)	19
Land Acquisition	Fair Price and Informed Decisions	85 (25%)	20

- *Lack of government resources to progressively realize economic, social and cultural rights:* Guatemala struggles against serious problems of poverty and social exclusion. The Guatemalan government needs to raise its tax base and undertake major fiscal reform if it is to live up to its obligations towards the progressive realization of these rights through more proactive social spending.
- *Violence and impunity:* The level of violence and insecurity in Guatemala represents a major human rights concern. The state has proven incapable of addressing this violence. There is little in terms of effective investigation, prosecution or convictions for violent crimes or human rights abuses. The risk of social protest turning violent is high, as can be seen by some of the incidents involving the Marlin Mine, as well as other industrial projects.
- *Lack of protection of labour rights:* There is weak enforcement of labour and occupational health and safety standards, and concerns about rights to a living wage, freedom of association and to collective bargaining. There is discrimination against women in terms of pay, benefits and occupation.

Opposition to mining has coalesced into an informal alliance of national and international environmental and human rights organizations, communal leaders, and local development and campesino organizations, with the Catholic Church taking a leadership role in many instances. Current advocacy is focused on reforming the 1997 Mining Law to strengthen environmental protection, strengthen the tax and royalties regime, and incorporate procedures for consultation with indigenous peoples.

## Challenges

Several challenges were encountered in the process of undertaking the assessment, including: the novelty of the field of human rights impact assessments; the assessment of an existing and controversial operation, making it difficult to obtain full participation of some stakeholder groups; and difficulties in making accurate determinations about impacts due to a lack of baseline data and ongoing monitoring of human rights and other relevant socio-economic indicators by the company.

During the course of the assessment, the situation in the municipalities where the mine is situated, San Miguel Ixtahuacán and Sipacapa, became more tense. Because the Marlin Mine is situated largely in San Miguel, and to a lesser extent in Sipacapa, under Guatemalan law economic benefits through royalty payments flow largely to San Miguel. The Marlin Mine's original Environmental and Social Impact Assessment also focussed primarily on San Miguel, and failed to fully contemplate the extent to which benefits and impacts would be experienced in Sipacapa. The Sipakapense Maya have a distinct culture from that of the Mam Maya of San Miguel Ixtahuacán, and cultural and historical distinctiveness means that issues of indigenous peoples rights associated with territorial, cultural, and linguistic aspects of human rights cannot be generalized from the Mam to the Sipakapense people.

The assessment appeared to be escalating tensions and increasing polarization both among and between the communities and undermining the conditions for carrying out a participatory human rights impact assessment as intended. Some stakeholders in Sipacapa and NGOs critical of the mine refused to participate. After consultation with the steering committee, in May 2009 the assessment shifted the focus to reviewing the extent to which the Marlin Mine's existing policies and procedures respected human rights, and addressing impacts that had already been identified.

The weakness of documentation provided by Montana in some areas significantly limited the assessors' ability to verify either stakeholder concerns or Montana's claims about how it responded. In some cases, there is reason to believe the lack of documentation was an unfortunate gap in management procedures; in others, the absence of data or documentation suggests the company made claims it could not substantiate.

Finally, due to the shift in focus during the assessment, recommendations for Montana and Goldcorp reflect the judgments of the assessment team, rather than the affected communities, and therefore may not be viewed as appropriate or adequate responses. This creates a requirement for the company to engage and consult, to the extent that those in the affected communities and other stakeholders are willing, before moving forward with an action plan.



## OVERVIEW OF THE MARLIN MINE

In 1999, Montana obtained an exploration permit for the current Marlin Mine area and in November 2003, following approval of an Environmental and Social Impact Assessment (ESIA), was granted an exploitation permit for 25 years by Guatemala's Ministry of Energy and Mines. In June 2004, the International Finance Corporation (IFC) approved a \$45 million loan to the project, which came with additional commitments including an indigenous peoples development plan. In 2005, Montana received approval to mine additional ore from La Hamaca (approximately 2 km from the mine), which is to be transported by truck to the existing processing facilities.

The Marlin Mine gold and silver mine began operating in October 2005, using a combination of open pit and underground mine technology. The gold and silver

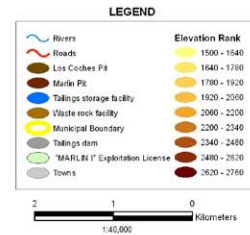
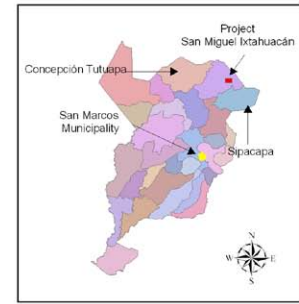
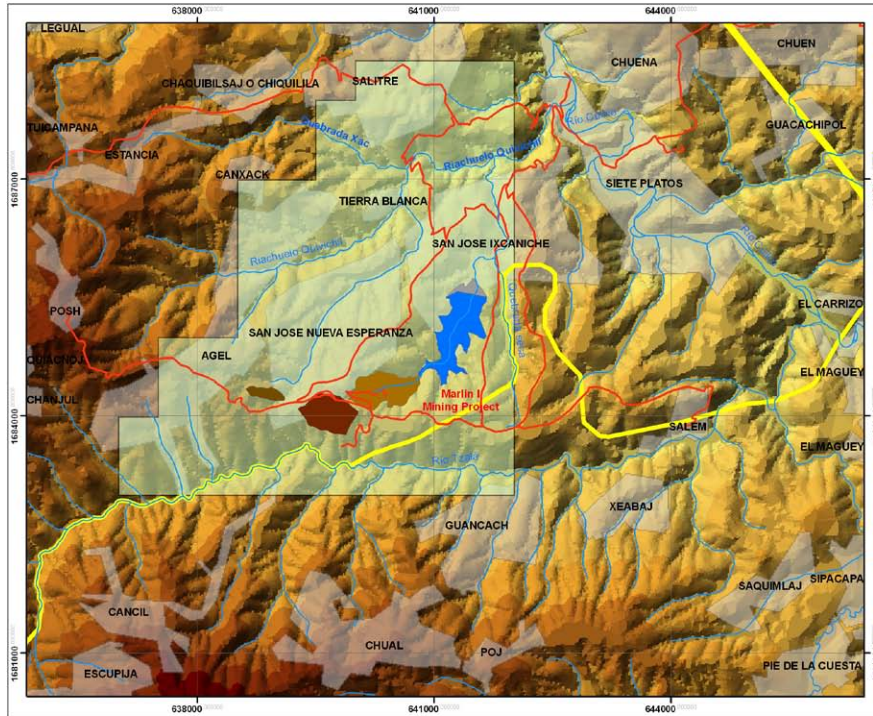
are leached using a cyanide process, with the cyanide removed from the tailings using the INCO process. The mine wastes (tailings and waste rock) are stored behind a cross-valley dam consisting of a rockfill shell with a low permeability core.

The mine has provided a significant economic contribution to the Guatemalan government and local municipalities in terms of tax and royalty revenues and employment. Table 1.3 presents a summary of relevant statistics.

Since 2004, a detailed annual monitoring report (AMR) is published and made available to the general public in English and Spanish on the Goldcorp website. The AMR reports on environmental and social issues considered relevant to compliance with the IFC's policies.

Table 1.3: Marlin Mine Operating and Economic Statistics				
Operating Statistics	2005	2006	2007	2008
Ore milled – tonnes	116,000	1,088,000	1,773,000	1,845,000
Total production gold – oz	23,900	161,000	227,200	241,400
Total production silver – oz	154,600	1,598,400	2,837,300	3,287,500
Total production cash cost – US\$/oz	\$217 (Q1,737)	\$209 (Q1,673)	\$144 (Q1,152)	\$191 (Q1,529)
Economic Statistics				
Total employment	2,339	1,132	1,149	1,609
Local employment <sup>a</sup>	56%	71%	68%	61%
Payroll	\$11 million (Q88 million)	\$8.6 million (Q69 million)	\$11.4 million (Q91 million)	\$16.9 million (Q135 million)
Local payroll	\$3.6 million (Q29 million)	\$3.8 million (Q30 million)	\$4.8 million (Q38 million)	\$6.9 million (Q55 million)
Corporate income taxes (31%)	0	\$3.4 million Q26 million	\$9.5 million Q77 million	\$12.5 million Q97 million
Royalties	\$130,000 Q1 million	\$1.3 million Q9 million	\$1.9 million Q14.6 million	\$2.5 million Q19.2 million
Revenue	\$11.7 million	\$109.9 million	\$203.7 million	\$258.1 million
<p>Notes: Financial data in U.S. dollars. Conversion to Guatemalan quetzales (in brackets) was calculated in April 2010, when U.S. and Canadian dollars were approximately at par. Figures have been rounded.</p> <p><sup>a</sup> Local refers to residents of San Miguel Ixtahuacán and Sipacapa municipalities</p> <p>Source: Montana Annual Monitoring Reports, Goldcorp Annual Reports, Goldcorp website, "Marlin", accessed September 14, 2009, <a href="http://www.goldcorp.com/operations/marlin/">www.goldcorp.com/operations/marlin/</a></p>				

Map 1.1: Marlin Mine



Source: Adapted from map prepared for Montana by Consultoria Y Tecnologia Ambiental, S.A.

Fuente: Adaptada del plano preparado para Montana por Consultoria y Tecnologia Ambiental, S.A.



# Summary of Findings and Recommendations

This section provides a brief summary of the issues in each of the major sections of the report, followed by the full findings and recommendations as developed in the larger report.

The full assessment report sets out analysis and discussion of the issue areas in greater detail and shows how the assessors arrived at findings. Each of the seven major sections of the full report focuses on one issue area important to stakeholders and assesses the human rights implications of the Marlin Mine's impacts in that area.

As discussed in the introduction, the assessors came to these judgements through a systematic process of

comparing company performance against what was defined as respect for the relevant human rights in each area. Based on that process, the assessors applied five classifications (see Table 2.1) to the findings and to prioritize the recommendations so that existing problems – where company practices have harmed human rights – are addressed first.

In addition to the recommendations for each issue area, some additional recommendations are addressed at Goldcorp both to strengthen oversight of human rights performance in Guatemala, but also for application to other and future projects. These recommendations are found on pages 36 and 37 in the Conclusions.

Table 2.1: Overview of Humans Rights Findings

Classification	Description
Violation	Action or inaction by the State results in human rights of individuals or groups not being protected or fulfilled.
Infringement	Action by company results in a worsening of the human rights situation for someone/group of people
Failure to Respect	Inaction by the company results in worsening of the human rights situation for someone/group of people.
Respect	Actions/due diligence by the company results in managing the risks of harm to human rights.
Enhancement/improvement	Specific actions by the company result in the improvement of the human rights situation for someone/groups of people.

## CONSULTATION

Consultation is a critical issue for mining and other major development projects. At the outset of a project, prior consultation is required to ensure that affected communities are informed and their input obtained on how activities will affect them; the intent is to obtain agreement wherever possible. This is particularly important when a project affects indigenous peoples. There are also issues about ongoing consultation and disclosure of information that ensure the transparency and accountability of the operations, and provide a foundation for genuine dialogue between a company and its stakeholders.

Consultation associated with permitting the Marlin Mine has been one of the most controversial aspects of the project, and figures prominently in the media and written material critical of the mine. The full range of stakeholders (community residents, employees, local and national authorities, and non-governmental organizations) raised concerns related to consultation, including access to information, and disclosure of the negative impacts of the project.

### Assessment C1: Did consultation prior to the permitting of the mine comply with the requirements of ILO 169?

Prior consultation is a fundamental element of indigenous peoples rights, notably with respect to the right to decide their priorities for development and the right to natural resources pertaining to their lands. This is particularly significant in Guatemala, since it ratified the International Labour Organization Indigenous and Tribal Peoples Convention (ILO 169) in 1996. Although there were requirements of public consultation as part of the approval of mining licences, notably with respect to the Environmental and Social Impact Assessment (ESIA) approval process, the ILO and other international bodies consider that the Guatemalan government was, and is, in violation of ILO 169 since it has never implemented an appropriate framework for consultation with indigenous peoples at a national level.

This is an area in which international human rights law has evolved since the mine was permitted and there is now clearer guidance about what is required for States

and companies to comply with ILO 169. In addition, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the UN General Assembly in 2007 has led to heightened awareness and expectations about the practices required for prior consultation with indigenous peoples.

Montana carried out extensive consultation efforts; however, it did not involve government directly in those efforts in a manner that would satisfy the requirements of ILO 169. There was no independent oversight of the process or the adequacy of the information. This was a failure to respect indigenous peoples rights.

Montana also has undertaken consultations about new activities without involving the government, and its policies or procedures have not been updated to take into account the requirements of ILO 169. If these new activities relate to expanding the mine or obtaining new permits, company-led consultations that do not involve the government also fail to respect indigenous peoples rights.

### Assessment C2: Does Montana's ongoing consultation and information disclosure practice respect the right to be informed?

Ongoing consultation and disclosure of information are a touchstone for the respect of all human rights, and are key components of transparent and accountable governance. Issues about ongoing consultation are discussed throughout the assessment in relation to land acquisition, environment, security, and social investment.

All stakeholders have a right to seek, receive and impart information under international human rights law. Recent Guatemalan access to information legislation also extends the obligation to disclose information to companies with a licence or concession to exploit natural resources.

The Marlin Mine applies a range of strategies and mechanisms to engage and communicate with stakeholders, in particular the local communities around the

operation. There are both strengths and weaknesses to Montana's ongoing consultation efforts; however, the interviews with stakeholders reveal they do not feel they are adequately informed or consulted with. Furthermore, Montana's engagement activities do not include structured opportunities to elicit the opinion and concerns of stakeholders on key issues. There is a need for further attention to more structured and formal consultation mechanisms and to improve transparency and information disclosure in order to respect stakeholders' right to be informed, as well as the other human rights discussed in the report.

#### RECOMMENDATIONS FOR IMMEDIATE ACTION

- ENSURE EFFECTIVE GOVERNMENT INVOLVEMENT. While respecting the appropriate role of companies in interacting with governments, encourage the Guatemalan government to implement an appropriate framework for consultation with indigenous peoples under ILO 169.

#### RECOMMENDATIONS THAT ADDRESS LEGACY ISSUES

- CONSULT ABOUT ESTABLISHMENT OF A MULTI-STAKEHOLDER DIALOGUE PROCESSES. The recent recommendation of the Congressional Transparency Commission presents an opportunity for Montana to participate in a renewed consultation with affected communities, local authorities and government representatives. The company should clearly signal its willingness to participate in good faith to all stakeholders and accept that it cannot control the result of such an attempt at dialogue and consultation.
- FULLY DISCLOSE AND CONSULT ON PROJECTS. Montana should fully disclose documents related to past and current projects, including the full ESIA for the Marlin 1 Mine which is not currently available on the Internet, and proposed project descriptions and EIAs of planned mine activities, including La Hamaca, West Vero expansion, and the potential second tailings facility.

#### RECOMMENDATIONS FOR ONGOING DUE DILIGENCE

- REVISE PLANS AND PROCEDURES FOR CONSULTATION AND INFORMATION DISCLOSURE. Revise Marlin and Montana's overall approach to consultation. Develop a new public consultation approach, with particular focus on increased information disclosure and formalized feedback processes. Involve affected communities and their representatives in review/redesign of ongoing consultation and information disclosure mechanisms. Ensure compliance with the requirements of Guatemalan access to information legislation. Include objectives and performance indicators that are measurable.
- EXPAND CONSULTATION EFFORTS ABOUT OPERATIONAL ISSUES. Effective consultation is required about land acquisition; environmental performance, including closure and post-closure issues; social investment; and security issues. This includes strengthening consultation efforts with the full range of stakeholders, including critics of the mine. Coordinate more effectively and ensure that Montana's diverse departments engaging with project-affected communities and other stakeholders meet regularly to complement their activities and response to community concerns. The current development of a new strategic sustainable development plan is an opportunity for significant consultation with affected communities.
- PROVIDE TRAINING ON ILO 169 AND INDIGENOUS PEOPLES' RIGHTS. Further training is required for Montana's management and relevant staff on these issues, with a focus on the importance of consultation to respect indigenous peoples rights under ILO 169.
- IMPROVE RECORD-KEEPING AND DOCUMENTATION-TRACKING SYSTEMS. Implement procedures to carefully document all interactions with community members and other stakeholders, ensuring that all concerns are recorded and information is provided back to stakeholders in transparent and predictable ways, on actions taken to address these concerns.
- ENSURE ONGOING REVIEW OF CONSULTATION AND INFORMATION DISCLOSURE PRACTICES. Undertake periodic reviews and ensure feedback from project-affected communities and stakeholders is incorporated into revised policies, procedures and practices.

## ENVIRONMENT

Environmental impacts from mining projects are experienced in the short and long term and are a serious concern for project-affected communities. From the human rights perspective, changes to the environment have ramifications for the right to health, right to food and water, right to an adequate standard of living, right to security of the person, and right to life.

Environmental concerns come from both technical issues and how they are being managed, and from perceptions people have of changes in their surroundings or well-being. An analysis of stakeholder interviews showed that concerns about the environment were the second most frequently mentioned, including concerns about water quality, health, and land contamination.

An independent technical review of the Marlin Mine's environmental management and principal environmental impacts was commissioned for the assessment, including a review of changes to surface water quality and quantity, water discharges and influences on groundwater, dust and other atmospheric emissions, noise, waste and tailings impoundments, and closure plans – including post-closure maintenance and financial resources to maintain the site in a sustainable condition.

The independent technical review found that at present, Montana has achieved performance consistent with good industry standards with regard to most issues having direct impact on human rights, including: air emissions monitoring and mitigation, dust mitigation, noise mitigation and monitoring, water monitoring – including establishing a community participatory monitoring committee (AMAC), erosion control, and mine and liquid effluent management.

Areas that require improvement include: disclosure and consultation with communities about health and safety issues, resolving the controversy over vibration damage to houses, coordinating emergency response plans with local authorities and civil organizations, and insufficient provision for closure and post closure monitoring and maintenance.

### Assessment E1: Has the mine affected the availability, quality and accessibility of water?

The right to water is protected in international human rights law. While the adequacy of water may vary according to different conditions, three factors apply in all circumstances: water availability that is sufficient and continuous for personal and domestic uses, water quality that is safe and free from pollutants, and accessibility without discrimination.

There is no evidence that there has been any infringement of the right to water by Montana. For the most part, Montana's environmental management is appropriate to avoid impacts to water availability, quality and accessibility.

The company's environmental management respects human rights from the perspective of technically strong management and access to adequate resources and expertise. However, there are areas where the company is failing to respect the right to water and further due diligence is required, particularly to ensure that community engagement and ongoing consultation address community fears and build trust in the company's environmental management.

- Full information about water users and water sources in all nearby and downstream communities has not been compiled, although five years has passed since this issue was identified as a gap in the baseline studies. Claims that springs in the area have been affected by the mine cannot be fully addressed without a more complete hydrocensus and groundwater monitoring program.
- Some households in Siete Platos depend for their water on the Txeshiwe Spring, located downstream of the tailings storage facility. A contingency plan for the users of Txeshiwe Spring has not been consulted on and completed, exposing them to the risk of potential changes to their water supply.
- AMAC's formation as a community monitoring committee and its auditing process is an example of industry good practice, but its links to Montana, including reliance on the company for funding, undermine its credibility with some local people and organizations.

- Independent, external auditing of the water monitoring program has not been implemented in accordance with international standards. Auditing by a third party would provide additional assurance that the mine is complying with environmental management plans.
- A positive step was recently taken by Montana for improving external verification and public confidence in water monitoring through an agreement with MEM for additional independent water monitoring.

### Assessment E2: Has the mine affected human health and well-being through its environmental impacts?

Rights to health, adequate food, adequate housing, and to own property are the international human rights relevant to the assessment of the mine's environmental performance as it affects human health and well-being.

There are widespread concerns about health-related impacts from mine contamination that are not being addressed by currently available information. Although there is no apparent increase in health-related problems, lack of public health data and insufficient diagnostic capacity do not allow the cause of current health problems to be determined. Technical issues of air, dust and noise have been addressed through environmental management programs, consistent with international good practice standards; however, there is insufficient information to determine whether the rights to health and adequate food have been infringed and additional due diligence is required.

By failing to identify the risks from blasting and heavy traffic, Montana failed to respect the right to adequate housing and the right to own property. Montana did not establish the necessary baseline studies or monitoring. Since complaints began in 2006, Montana has denied any potential for responsibility for impacts. While recent studies do not definitively establish that the mine has caused the damage, they eliminate all other reasonable explanations.

### Assessment E3: Has Montana ensured that closure of the mine will not result in long-term negative environmental impacts to communities and individuals?

Closure of a mine facility creates risks of negative impacts on all of the human rights discussed in this section. If proper environmental management systems are not maintained after closure, contamination from the mine and changes in land use could affect rights to water, food, housing and health. Adequate closure planning and financing is particularly important to prevent long-term human rights impacts on surrounding communities.

Closure best practice is an evolving area of mining standards, actively promoted by national and international agencies. The process of establishing an integrated closure plan should include study of closure options, consultative processes with all stakeholders, statement of closure objectives, estimate of closure costs, and studies and testing to confirm predictions of the closure plan.

Closure is the weakest aspect of the mine's plans and has the potential to leave the community vulnerable to long-term impacts on human rights. In particular:

- The closure timeframe is optimistic and doesn't contemplate potential for delay;
- Post-closure monitoring is very short and does not reflect any long-term site monitoring or maintenance;
- Closure costs are low compared to norms;
- Long-term maintenance costs are not considered in the present plan; and
- Insufficient financial assurance has been provided to ensure the availability of adequate funds to implement closure and post-closure plans regardless of what happens to Montana or Goldcorp.

There is a failure to respect the human rights of local communities due to the shortcomings of mine closure planning. The potential negative impacts associated with closure have not yet occurred, but would result in harm to human rights. The risk of this occurring can be addressed by promptly developing a more robust closure and post-closure plan in consultation with stakeholders. The inadequate financial assurance to cover the full cost of remediation in the event of an

unforeseen closure is a serious shortcoming at present and fails to respect human rights.

#### RECOMMENDATIONS FOR IMMEDIATE ACTION

- **PROVIDE ADEQUATE FINANCIAL ASSURANCE FOR UNANTICIPATED CLOSURE.** Post a bond to adequately cover closure cost or provide other mechanism of financial assurance for the full cost of closure.
- **REPAIR THE CRACKED HOUSES.** Develop a plan to repair, rebuild or compensate for the cracked houses. Consult with affected families about the plan and implement immediately where there is agreement.
- **COMPLETE A FULL WATER CENSUS.** Complete the hydrocensus of current communities in AMAC, and include other communities potentially affected by planned or potential expansion areas. Address community concerns about participating in the study, and develop a strategy with communities that addresses those concerns and allows collection of the required data. This may involve AMAC and the regulatory authorities carrying out such a study, with the community retaining control over the results, or engaging a credible third party to conduct it.
- **DEVELOP A CONTINGENCY PLAN FOR TXESHIWE SPRING.** To ensure Txeshiwe Spring water users have access to water as a priority, complete a contingency plan in consultation with the users to supplement or replace the water source in case of impacts to quality or quantity.

#### RECOMMENDATIONS THAT ADDRESS LEGACY ISSUES

- **INCREASE TRANSPARENCY.** There are an outstanding set of environment-related issues about which stakeholders have significant concerns and which have not been adequately addressed. These require specific ongoing consultation and information disclosure, including collaboration with public health officials to investigate and resolve uncertainty about existing health concerns. Work with public health officials to disclose the 2007 health baseline study and implement ongoing health risk monitoring for community health issues.

#### RECOMMENDATIONS FOR ONGOING DUE DILIGENCE

- **IMPROVE GOVERNMENT CAPACITY FOR WATER MONITORING.** Work with the government to establish an independent audit/monitoring function to provide reliable and credible information for regulators on issues related to water, including water quality measurements, flows and a basin wide monitoring of contamination sources. Consult in an ongoing way with communities about monitoring results. The recent agreement with MEM could provide a vehicle to accomplish this objective.
- **SUPPORT GREATER INDEPENDENCE FOR AMAC.** Increase support for AMAC to become a more recognized independent community-based monitoring committee, including support for other institutions to work with AMAC, further training, and autonomy to determine scope and breadth of their work. Support efforts to expand to other communities in the watershed and to address other community concerns related to environmental issues. The recent agreement with MEM could provide a vehicle to accomplish this objective;
- **REVIEW MINE CLOSURE TIMEFRAME AND COSTS.** Conduct an internal review of post-closure management plans incorporating international good practice. Evaluate long-term funding, technical, and administrative support necessary to ensure that the Sierra Madre Foundation, or another appropriate institutional arrangement, has adequate resources to successfully manage post-closure challenges. Consult with communities about closure and ensure substantial and sustainable funding, depending on the communities' interests, capabilities, and long-term commitments.
- **SUPPORT REGIONAL WATERSHED MANAGEMENT.** Provide leadership and funding to assist government to develop a multi-stakeholder initiative for basin-wide water management. Upstream sources of contamination should be identified and progress made on returning the river basin to a more healthy state that supports multiple uses.



## LABOUR

Access by the assessors to company representatives, employees, and documentation allowed the examination of labour rights to be an important facet of the assessment. Labour is a central issue in any human rights assessment given the wide range of positive and negative impacts a company can have both on its own workers and on local employment generally.

In local interviews, labour concerns were raised by residents, labour specialists, past and present employees, and on a few topics, by the Catholic Church. Labour rights are the only issue where local and national concerns are not convergent: locals were more concerned about labour issues than national or international stakeholders. Some interviewees claimed that local employees were reluctant to speak out because they were fearful of losing their jobs, which could explain why concerns are not more generally publicized.

### Assessment L1: Has Montana respected the right to work and non-discrimination in the workplace?

The mine has respected the right to work by providing employment to people from the local communities as well as elsewhere in Guatemala. Efforts to preserve employment for temporary and rotational workers have respected both the right to work and to protection against unemployment. Marlin respects the right to freedom from forced labour or child labour at the mine. Montana is compliant with the Guatemalan law prohibiting children under 18 to work in mines.

The ability to hire and retain local, indigenous workers with lower levels of literacy or formal skills is made possible in large part through the focus Montana has given to on-the-job training rather than formal qualifications. In this regard, measures that respect the right to education also support the right to work and to non-discrimination in employment.

Despite the lack of formal policies and procedures, or a long-term strategy, Montana has respected the right to work and non-discrimination in employment through the significant hiring of local indigenous people. To ensure that respect for this right is sustained, it should

be formalized by the development of policies, procedures, and associated support programs.

It is not possible to determine whether in practice the Marlin Mine is respecting the rights of women employees because of the lack of information or analysis by the human resources department of the status of women in the workplace. There are positive indications in some aspects of female employment, but no data on retention of women, promotions, access and retention of non-traditional jobs, review of job categories and pay equity. Further due diligence is required through assessment of the current situation and implementation of formal policies and procedures about the employment and advancement of women in the workforce.

There is insufficient information to determine whether specific firings were infringements of the right to non-discrimination in firing. Failure to follow due process is a failure to respect for the right to non-discrimination in firing.

Existing practice at the mine does not provide adequate protection of workers against harassment in the workplace. Although Montana has taken action in individual cases, stronger policies and procedures are required for the elimination of harassment. Sexual harassment is not addressed in national laws; failing to address it through company policies and procedures is a failure to respect.

There is a lack of due diligence about the labour and human rights practices of contractors. This represents a failure to respect because it is an area of responsibility that company's need to address because of the risks presented by the actions of third parties – in this case contractors.

### Assessment L2: Has Montana provided just and favourable working conditions?

There are divergences between wages provided within and between job categories that are not based on objective criteria or performance evaluations. This is an infringement on the right to equal pay for equal work

and raises concerns about discrimination in employment and occupation.

The minimum wage in Guatemala does not provide for a “living wage” that would respect the right to just and favourable remuneration and other human rights (e.g. adequate food, housing, and standards of living). Some full-time employees at the mine receive wages under the living wage threshold, even when overtime wages are included, and others only surpass the living wage threshold when their overtime wages are included. This represents a failure to respect the right to just and favourable remuneration.

Given the time and distance most workers must travel to work, there is a risk that 12-hour rotations infringe on the right to just and favourable conditions of work and the right to a family life.

The assessors did not have sufficient information to identify whether other existing working conditions were adequate or constituted infringements. Concerns were raised by some employees, so further due diligence is required to identify and address any gaps.

Montana lacks adequate due diligence in contracting practices to ensure respect for human rights by its contractors.

### **Assessment L3: Has Montana ensured that working conditions are healthy and safe?**

Prior to mid-2008, health and safety procedures were deficient in some areas and it is probable that there were infringements in the past on the right to healthy and safe working conditions. However, there is insufficient material evidence to identify the extent of such infringements, nor is there information to determine whether they led to infringements of the right to health or life of employees. The Marlin Mine is addressing past gaps in safety and shows steady improvement over the last two years, indicating respect for the right to a safe work environment.

Montana has failed to respect the right to health of employees through adequate due diligence in the form of employee health baseline testing on entering employment, and routine testing for known industrial illness indicators during employment. Improvement in the attention to worker health has dragged behind

safety, and does not yet show a level of due diligence that can be qualified as respect for the right to health. The lack of material evidence that this failure resulted in health impacts prevents the assessors from identifying this as an infringement on the right to health or the right to life, but a thorough health risk assessment, including a review of past exposure, is required to address the information gaps, including review of the illnesses and deaths of workers to date.

Further due diligence is required to review past incidents and risk levels, determine whether there are ongoing health impacts, and ensure company commitment to non-repetition of past gaps.

### **Assessment L4: Are there adequate mechanisms to protect workers interests and rights?**

Montana has infringed the right to freedom of association and collective bargaining because there are no mechanisms in place that safeguard those rights. There is reasonable evidence that during 2006 Montana infringed on the right to freedom of association by taking retaliatory action up to and including dismissal against employees that attempted to form a union. This action has had a lasting effect on employees who continue to believe they would face retaliation from the company if there were attempts to unionize. Montana continues to infringe on the rights of all workers by allowing this climate of intimidation to persist.

The mine does not have an effective internal mechanism for workers to raise concerns and have grievances addressed. This represents a failure to respect the right to remedy, and has implications for all relevant labour and human rights that might need to be addressed. This is a major shortcoming in the mine’s ongoing due diligence on labour rights.

### **RECOMMENDATIONS FOR IMMEDIATE ACTION**

- **ADDRESS FOUR URGENT AREAS OF CONCERN FOR LABOUR RIGHTS.** The following four issues require a serious review of labour relations at the marlin mine, and must be carried out by creating an environment of open dialogue and non-retaliation of workers who bring problems forward. Specific protections and assurances will need to be put in place, and a corporate commitment to transparent and

ongoing dialogue to address workers' concerns and complaints. The assessors conclude that given the current environment, these internal labor issues require Goldcorp leadership and oversight.

- **INDUSTRIAL HEALTH PROBLEMS IN THE WORKFORCE.** Address immediately the situation of any employees with blood tests indicating heavy metals at problematic levels, or any other indicator of industrial health problems. Provide them with access to support and independent second opinions from health care specialists. Review the deaths that have taken place in the labour force to establish that no industrial exposure could have been the cause.
- **ADDRESS WORKPLACE ISSUES.** Take immediate action and problem-solve with employees on issues of concern, workplace logistics, and access to basic facilities. The dialogue on specific issues can evolve into a more formal structure for collective bargaining in the medium term.
- **SUPPORT FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING.** Support development of an employee-based workers' association (not management run) to promote and address workers' rights on an ongoing basis. Facilitate external advice and resources to educate workers on labour rights and collective bargaining processes. Ensure effective measures to prevent management taking retaliatory action against workers that exercise those rights. Train and raise awareness at all levels of management to respect freedom of association and collective bargaining.
- **ESTABLISH A WORKERS' GRIEVANCE MECHANISM.** Provide an internal grievance mechanism as part of the proactive management of labour rights issues, with final recourse to an external or third party review considered legitimate by employees. Ensure confidential means for making and pursuing complaints.

#### RECOMMENDATIONS THAT ADDRESS LEGACY ISSUES

- **CONDUCT AN INDEPENDENT REVIEW OF FIRINGS.** Establish an independent review panel with credible third parties to review the files of employees that have been fired by Montana. Where there is inadequate evidence to establish that due process

was followed in firing, provide alternatives to restore employment or compensate for damages.

- **COMPLETE A REVIEW OF WAGES.** Undertake a thorough review of existing wage structures and identify problems in equity of pay for equivalent jobs. Develop a plan to respond to the need for employees to have a living wage. Commit to and implement pay equity for the same or equivalent job. Review wages paid to contractors.

#### RECOMMENDATIONS FOR ONGOING DUE DILIGENCE

- **IMPLEMENT HUMAN RESOURCES PROCEDURES THAT PROMOTE NON-DISCRIMINATION AND DIVERSITY.** Implement objective, transparent procedures for hiring, promotion, discipline and firing to address the risk of bias, discrimination or favouritism/nepotism. Ensure due process for all decisions, and integrate the objectives of the new strategy across all departments. Pay particular attention to policies and procedures related to respecting the rights of women and indigenous peoples in the workplace. Develop disaggregated tracking of indigenous and female hiring, firing, promotion, pay status and raises, to report on effectiveness of indigenous and female employment commitments. Support management to implement these in practice through training, monitoring, evaluation, and incentives.
- **MAINTAIN AND FORMALIZE COMMITMENT TO HIRE LOCALLY.** Identify current barriers to female and indigenous employment and advancement and initiate programs to address these. Develop specific educational strategies and processes for people with low literacy levels. Training is one of the keys for employment and advancement of local, indigenous men and women. Ensure that training materials are culturally appropriate and supported by translation in local languages (an indigenous and cultural rights issue, but also a health and safety issue). Link the human resources and sustainable development departments operationally so there is a coherent program to fulfil commitments from land acquisition and to ensure that local employment and contracting objectives are aligned with a long-term sustainable development strategy.
- **IMPROVE WORKERS' ACCESS TO HEALTH CARE.** Review employee perceptions and satisfaction with health care at the on-site clinic, and identify barriers

to providing effective care and treatment for workers. Investigate the appropriateness and accessibility of the private health insurance with a Q300 (\$38) deductible. Determine who has been using it, for what kinds of treatment, and develop adjusted insurance coverage as required, considering the results of the investigation into employee deaths. Engage and collaborate with local health care providers to determine the reason for ongoing use of the public system by mine employees. Review social investment commitments to community health as a contribution to employee health.

- **CONDUCT UNSCHEDULED AUDITS FOR SAFETY AND HEALTH ISSUES.** Contract a qualified external company or specialist to undertake unscheduled, documented, third-party audits.
- **ENSURE CONTRACTORS RESPECT LABOUR RIGHTS.** Extend improvements in labour standards to contractors and their employees, including wages, and include these standards in contracts. Provide support and training to help local contractors respect these standards. Conduct periodic inspections of contractors to ensure respect for human rights.
- **RETRAIN THE WORKFORCE.** Anticipate the end of the mine life through training opportunities that provide transferable skills that will provide further opportunities to exercise the right to work and to maintain an adequate standard of living after the

mine closes. Develop a strategy for how to support contractors to prepare for mine closure and reduce dependency on mine economy over upcoming years.

## CORPORATE-LEVEL RECOMMENDATIONS

- **REVIEW OCCUPATIONAL HEALTH AND SAFETY POLICIES, PROCEDURES AND PRACTICES.** Ensure that international standards are being met across the board, not just with respect to the International Cyanide Code. Undertake an operation-wide health risk assessment, including a review of potential health exposure risks incurred by employees since initiating operation.
- **REVIEW LABOUR RELATIONS.** Put in place a comprehensive review of labour relations and compliance with corporate policies, lead by an internal Goldcorp champion reporting directly to either the CEO or Board of Directors. Set a timetable for a review.
- **STRENGTHEN INDUSTRIAL HEALTH PROGRAM.** Establish a best practice preventive health maintenance program for all workers, including scheduled monitoring for exposure to any measurable risks, an approved action plan for responding to any identified issues, and an annual public disclosure and reporting process upward to Goldcorp's CEO or Board of Directors.

## LAND ACQUISITION

Land acquisition is a priority issue for the assessment because of the location of the mine in a poor, rural area of Western Guatemala populated by indigenous subsistence-level farmers. General concerns about land acquisition by mining companies include whether there is involuntary relocation, whether land sellers are fairly compensated, and whether they maintain their standard of living over time. When the land being purchased belongs to indigenous peoples, there are collective dimensions of land rights that must be respected by a company's land acquisition process, including access to common property resources such as firewood. Specific concerns about land acquisition for

the Marlin Mine were raised by international NGOs, municipal authorities, and community representatives; some allege that Montana's land acquisition practices have led to conflict between the mine and the surrounding communities.

Montana has purchased over 600 parcels of land from hundreds of Mam and Sipakapense land-holders within the 20 square kilometres of its mining license and continues to acquire land around the Marlin Mine. The land acquisition process is formally carried out by Peridot, S.A., a Glamis and now Goldcorp company. Land sales are conducted through negotiations between the

company and individual land sellers, frequently initiated by the land sellers.

### Assessment LA1: Was the land acquisition process fair, transparent and equitable?

Certain aspects of the land acquisition for the Marlin Mine respected the right to own property. There was no forced resettlement or government expropriation associated with the land acquisition for the Marlin Mine. A small number of land exchanges were conducted, which provided for extra land and better quality houses, also enhanced the right to adequate housing.

Montana's practice of providing a consistent above-market price of Q4,000/cuerda (\$4,635/acre) respected the right to own property; however, the adequacy of the price is now in question because of inflation in land values.

Montana's practice of negotiating payments for the improvements on the land on an individual basis and without independent valuations is inadequate to ensure the equal treatment and just compensation of all land sellers. This constitutes a failure to respect the right to own property.

Unfulfilled commitments related to employment, contracts and social investment projects represented a significant inducement for the land sellers. The non-fulfilment of these commitments deprives sellers of anticipated benefits from the sale and infringes upon the right to own property.

There is a pattern of allegations about coercion and pressure in the land sales that would undermine the voluntary nature of the transactions and would infringe upon the right to own property. Although the specific allegations could not be verified, Montana nonetheless fails to respect human rights as it lacks the policies and procedures to ensure that coercion does not occur, including an effective grievance mechanism for land sellers. There is also a lack of policies and procedures to ensure that the consent of women is obtained for land sales or resettlement decisions, which fails to respect the rights of women.

### Assessment LA2: Have land sellers maintained or improved their standard of living from the land sales?

The land sales resulted in substantial payments that provided an opportunity for the enhancement of the social and economic rights of the land sellers and their dependents. Some individuals, potentially the majority, had their rights enhanced as a result of the land sales, but their number and degree of enhancement cannot be determined. At the same time, other land sellers were not able to sustain their standard of living and have had their rights infringed upon.

The assessors are unable to make an accurate determination of whether land sellers had positive, neutral or negative impacts on their standard of living and other associated human rights because no baseline study or subsequent monitoring of the land sellers and their families has been undertaken by the company. A new program for liaison with land sellers initiated in 2009, which has no program funding, is not an effective response. The absence of due diligence about the long-term impacts of the land sales fails to respect human rights.

### Assessment LA3: Are collective rights being respected in the land acquisition process?

There are legitimate concerns about the collective dimensions of land rights of indigenous peoples. ILO 169 provides safeguards for the transfer of lands outside their community, including a requirement that consultation be undertaken with the communities.

Although there were some meetings with groups of land sellers to establish the initial price of land, Montana's land acquisition procedures are framed in terms of individual negotiations between "a willing seller and a willing buyer." The fact that no participatory diagnostic was conducted for Sipacapa means that the assumptions about individual ownership and land tenancy were not validated for this community. There is no indication that Montana undertook prior consultation with land sellers in Sipacapa. These land acquisition procedures failed to respect indigenous peoples land rights.

Common property resources and religious and cultural practices associated with land were not addressed by

Montana's land acquisition procedures, which failed to respect indigenous peoples rights.

An ongoing concern relates to the titulación supletorio process of converting the usufruct (use and possession) rights into full ownership rights, which may serve to extinguish underlying collective rights of indigenous people. Given the complexity and uncertainty about collective indigenous title to lands in the municipalities of San Miguel and Sipacapa, there may be an opportunity for Montana to address concerns about indigenous peoples rights through consultation and agreement about return of lands at the end of the mine's operations. Beyond the technical legal issues about land title, this will inevitably entail dialogue and commitments regarding the long-term environmental sustainability, restoration, and future productive use of the land.

#### RECOMMENDATIONS FOR IMMEDIATE ACTION

- **ADOPT A MORATORIUM ON LAND ACQUISITION.** Halt all land acquisition, exploration activities, mine expansion projects, or conversion of exploration to exploitation licenses, pending effective State involvement in consultation with local communities, and agreements put in place with communities to structure future land acquisitions. This would particularly include any project that requires an EIA, such as La Hamaca.
- **ADOPT A MORATORIUM ON USING THE TITULACION SUPLETORIO PROCESS.** This process risks extinguishing collective land titles of the indigenous communities around the mine, and should not be used until individual and collective land usage and rights are thoroughly understood and documented, including any differences between San Miguel Ixtahuacán and Sipacapa.
- **IDENTIFY AND SUPPORT AT-RISK FAMILIES.** Identify as a priority any land sellers and their dependents considered 'at risk' and address immediate subsistence and basic service gaps.

#### RECOMMENDATIONS THAT ADDRESS LEGACY ISSUES

- **CONVENE AN INDEPENDENT REVIEW OF HISTORICAL LAND ACQUISITION.** Develop an independent review process to resolve complaints about land sales (e.g. inequitable payments for improvements,

unfulfilled commitments related to employment, and allegations of coercion); recommended would be a three-member commission including PDH representation, Peace Judge from the local area, President of the Alcaldes Auxiliares, or other authorities of importance. The commission may require additional technical expertise or advisors.

- **IMPLEMENT A REVISED LAND SELLER FOLLOW-UP PROGRAM.** Develop and implement a land seller support program that assesses impacts of land sales on sellers and provides for targeted income restoration programs. Allocate adequate resources to the Community Relations Group ("new associates" position) to implement such a program.
- **DEVELOP A PROGRAM TO ENSURE ACCESS TO WOOD.** Determine how the cost and availability of wood have changed as a result of land acquisition, or as a loss of access to common property resource, and implement a replacement program.

#### RECOMMENDATIONS FOR ONGOING DUE DILIGENCE<sup>1</sup>

- **IMPLEMENT A LAND ACQUISITION POLICY WITH REFERENCE TO INTERNATIONAL BEST PRACTICE.** Ensure comprehensive due diligence on indigenous peoples land rights issues, including inheritance and collective resource issues. Ensure appropriate documentation and follow-up on all commitments made in the land acquisition process.
- **ADJUST LAND PRICES.** Adjust future land compensation from the previously paid standard above-market price of Q4,000 per cuerda to take into account inflation in the local land market.
- **ENSURE FAIRNESS IN VALUATIONS OF IMPROVEMENTS.** Review current land acquisition procedures ensuring that all forms of compensation for land acquisition respond to clear and transparent criteria for evaluation and compensation. Establish a transparent and independent mechanism for valuation of improvements on land to be purchased.

<sup>1</sup> The following recommendations are premised on the existence of community-level consultation and agreement for continued land acquisition for the mine.

- **PROVIDE ACCESS TO INDEPENDENT ADVISORS.** Facilitate access of potential land sellers to independent representation and advice during land negotiations to enhance the integrity of the process, protect the rights of the land sellers, and protect the company against any allegations of coercion or pressure on the land sellers, as well as undocumented verbal

commitments. Goldcorp should adopt this as a matter of standard practice for future land sales.

- **CLARIFY PROCESS FOR LAND TRANSFER AT CLOSURE.** Clearly set out the intention and modality for transferring the titles to the land acquired by Montana to the communities at closure of the mine.

## ECONOMIC AND SOCIAL INVESTMENT

Economic and social investment is an area where mining companies have the opportunity to enhance human rights. Furthermore, social investment plays a role in respecting indigenous peoples rights to participate in the benefits of the exploitation of natural resources on their lands. Commitments related to social investment serve as an incentive to obtain project approval from local communities. Increasingly, social investment is related to corporate social responsibility objectives. Given the corporate responsibility to “do no harm,” social investment also plays a critical role in addressing a project’s negative impacts on human rights. Provision of targeted social investment plans is often required as a condition for permitting or financing, and become a company commitment for the project.

Local stakeholders interviewed for this assessment recognized the mine’s contributions, particularly the economic contributions for the people who have direct employment with the mine. Most also recognized the positive impacts of social investments in the communities. However, at both the local and national level, there were concerns about both the distribution and the adequacy of these benefits. At the same time, questions were raised regarding distribution of “windfall profits” from the high price of gold and Marlin’s low operating cost: most stakeholders, including many employees interviewed, do not feel that enough benefit is being returned to the local communities; some local interviewees and most national stakeholders feel more should be returned to the country as a whole as well.

### Assessment SI1: Have economic investments contributed to the fulfilment of human rights?

Montana has enhanced the human rights of individuals through efforts to maximize the local content of employment, purchases and contracting, and by strengthening the local government’s ability to administer revenue. This is known to enhance the right to fair remuneration; however, the extent of the impacts to other human rights cannot be quantified.

Montana contributes new revenue streams to the national and municipal governments through taxes and royalty payments; these economic contributions have only an indirect relationship to the fulfilment of rights, depending on how various levels of government use the additional resources.

Montana’s contributions to municipal revenue through royalties and local taxes provide a significant increase in the ability of the municipality of San Miguel Ixtahuacán to fulfill human rights obligations. Montana’s investment in institutional strengthening has supported the capacity of municipal authorities to administer royalties and other increased tax flows from economic growth. This is a respect for human rights.

Montana’s contribution of a voluntary royalty payments for use by the Municipality of Sipacapa in spite of not being a legal requirement respects human rights and provides Sipaca with the opportunity to enhance rights fulfilment. However, as the contribution has not accepted the voluntary royalty payment, no actual positive impact has occurred.

Montana's relinquishment of the tax exemptions in 2006 increased the revenue flows to national government and improved the government's ability to fulfil its human rights obligations. However, as noted by the Office of the High Commissioner for Human Rights in Guatemala, a very low proportion of national revenue is invested into social programs that enhance human rights, and there currently is no effective tracking of the positive impacts.

### Assessment SI2: Has social investment contributed to the fulfilment of human rights?

Montana enhances economic, social and cultural rights by upgrading local infrastructure and providing financial support for community development through community projects and social investment initiatives, but with limitations to being able to quantify these. Specific findings include:

- The social investment activities of the Sierra Madre Foundation and Montana's Social Development Department have had discrete, positive impacts on the fulfilment of human rights for the beneficiaries of the projects.
- The right to education has been enhanced through funding of additional teachers, some training of teaching staff, improvement of facilities, and additional scholarships.
- Company contributions to health programs and a significant contribution for building a health centre have also provided an enhancement in the right to health, but there is insufficient information to measure the extent of the impacts.
- Projects that improve access to potable water systems have enhanced the right to water.

Some project planning and execution is based on good participatory mechanisms that enhance local capacities and ensure input into decisions that affect local indigenous communities, but this is uneven between programmes. FSM's attention to this aspect of indigenous peoples development is weak.

Social investment spending is not accounted for internally within Montana in a way consistent with industry or development agency standards for program reporting or fiscal accountability.

- Lack of clarity about FSM's actual and yearly contributions to partnerships and collaborative relationships makes it difficult to determine the extent of its contribution to improvements in social indicators.
- Lack of results-based objectives, social indicators, monitoring and programme evaluations hinder the assessment of effectiveness of Montana's social investments and their actual enhancement of human rights.

The current pattern of making funding of social projects, donations and other contributions contingent on the mine not being shut down by social protest risks undermining rights-based development principles and fails to respect the rights to freedom of expression and freedom of peaceful assembly.

### Assessment SI3: Have social investments addressed negative impacts that could affect human rights?

Montana has failed to respect human rights of affected communities by not developing sufficient due diligence on the potential negative social and cultural impacts of mining, or undertaking meaningful monitoring of social impacts and changes in the communities.

Montana has not identified either direct or indirect negative impacts from the presence of the mine that are affecting human rights. There are infringements, but the extent cannot be verified because of the absence of data.

### RECOMMENDATIONS FOR IMMEDIATE ACTION

- IDENTIFY AND SUPPORT families in need or at risk due to potential project impacts. Investigate and create medium to long term solutions.
- DELINK SOCIAL DEVELOPMENT INVESTMENT FROM SOCIAL LICENSE. Montana's commitment to social development programs should not be contingent upon social acceptance by all segments of the population. Develop an effective grievance procedure to address the problems of social protest.

### RECOMMENDATIONS THAT ADDRESS LEGACY ISSUES

- REVIEW whether there are outstanding commitments for social investment projects.



## RECOMMENDATIONS FOR ONGOING DUE DILIGENCE

- **FINALIZE A LONG-TERM AND RIGHTS-BASED SUSTAINABLE DEVELOPMENT PLAN.** Adopt a right-based framework and principles for the sustainable development plan currently being drafted at the Marlin Mine. Ensure that specific objectives and targeted programs are included to address the key areas of negative human rights impacts, as well as vulnerable segments of the project-affected communities. Ensure extensive consultation and participation as part of the development of the new sustainable development plan. Establish a comprehensive social baseline for effective monitoring and evaluation.
- **BUILD UPON PROGRAMMING THAT ENHANCES HUMAN RIGHTS:**
  - Improve community and worker health. Implement a program to improve the general health and well-being of the communities where workers and their families live, with the objective of addressing secondary health issues that also affect health and safety in the workplace.
  - Expand teacher training.
  - Expand scholarship programs to support leadership.
  - Support programs that enhance access to water.
- **REVIEW THE EFFECTIVENESS, TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY** of current mechanisms and programs, including the different roles for the FSM and SDD. Direct SDD programs should be focused on addressing the negative impacts of the mine, which is the company's direct responsibility, while the FSM could contribute to building local capacity and enhancing community-level impacts. FSM should not be an additional mechanism for Montana's engagement and consultation, and should transition to be a community-based development foundation.
- **STRENGTHEN FSM'S CAPACITY TO FULFIL A LONG-TERM ROLE AFTER CLOSURE.** If the FSM is to provide ongoing programming after mine closure, it must evolve as a community-based development foundation. This requires strengthening the independence of the Board of Directors; ensuring an adequate and sustainable funding mechanism such as an endowment; improving the professional capacity of the staff; and ensuring appropriate evaluation and reporting standards.
- **DEVELOP A CLEAR RATIONALE FOR INVESTMENT LEVELS.** Ensure the amount of investment is sufficient to create sustainable impacts and commensurate with a reasonable level of expectation of the communities to have benefits from the success of the mine. Include factors such as industry best practice, mine profitability, current tax and royalty contributions, and other indirect forms of social investment. A more clearly articulated strategy would also foster more effective management of community expectations.
- **ADOPT RESULTS-BASED MANAGEMENT.** Adopt clear objectives, monitoring and evaluations in order to determine the effectiveness of the strategies chosen and the funds being spent.
- **CONTINUE TO INVEST IN STATE AND MUNICIPAL CAPACITY.** Continue to strengthen municipal institutions' capacity to administer revenues from mining. Continue and expand initiatives with Ministry of Energy and Mines or other government departments and regulatory agencies to build capacity.
- **ENSURE TRANSPARENCY OF REVENUE FLOWS.** Work alongside government to ensure greater transparency in the way revenues and royalty payments from mining are invested in social programs to enhance the economic, social, and cultural rights of project-affected communities. Express support for the Extractive Industries Transparency Initiative (EITI) and encourage the Guatemalan government to participate as well.

## SECURITY

Security is a priority issue for the assessment as the Marlin Mine operates in an environment with significant human rights risks associated with public safety and the ongoing pattern of social actions against the mine. Montana has employed private security contractors since the construction of the mine, and there have been several confrontations that have involved the mine's private security guards and/or the public security forces. The company's interaction with the police and military in Guatemala is a particular concern given their poor human rights record and reputation. Furthermore, general indicators related to crime and violence are deteriorating throughout the country and the region where the mine is located.

In 2005, two separate incidents related to the mine resulted in loss of life and raised the profile of concerns associated with security. In the interviews for this assessment, stakeholder concerns were focused on the general environment of conflict and public safety issues, rather than on allegations about the conduct of the private security guards or public security forces. Nonetheless, significant human rights risks remain, and ongoing concerns about intimidation and harassment must be taken seriously.

Security is the primary area in which Montana has been explicitly addressing human rights, notably through the implementation of the Voluntary Principles on Security and Human Rights since 2006. A number of positive steps have been taken by Montana to improve the company's interaction with private security contractors and public security forces, verified by external assessments of the implementation of the Voluntary Principles. While there are some gaps and challenges for their full implementation, this is a good example of the type of ongoing due diligence that is required for the company to respect human rights.

### Assessment S1: Has Montana's interaction with public security forces respected human rights?

Montana initially failed to respect the right to life and security of the person as it lacked the policies and procedures to govern its interaction with public security forces.

The company began to implement the Voluntary Principles only after the fatal incident in Sololá, in which a person participating in a blockade of the mine's equipment was killed by public security forces. None of the police or military officers involved have been prosecuted or disciplined in relation to the Sololá incident. Allegations of human rights violations by the public security forces also have been made when they have responded to social actions and confrontations at the mine or tried to enforce arrest warrants in related criminal proceedings.

Given the fact that allegations of human rights violations by public security forces are not effectively investigated or resolved by the State, Montana's failure to press for investigation by the State into the specific allegations about the public security forces is a failure to respect human rights and to provide access to remedy. The company's inclusion of the Human Rights Ombudsman (PDH) as observers of police actions in recent events is a positive step toward respecting human rights.

Montana's involvement in criminal cases puts the company in the position of pressing for investigation of the conduct of community members rather than for the investigation of the conduct of public security forces. Montana lacks of effective procedures to reduce the use of public security forces by ensuring timely treatment of concerns or grievances, and de-escalation of conflicts is a failure to respect human rights.

Montana's implementation of the Voluntary Principles is an area of improved ongoing due diligence and respect for human rights, but is not currently supported by a formal human rights policy or commitment to the Voluntary Principles by Goldcorp. There has been some success in including public security forces in Montana's human rights training initiatives; however, challenges remain in terms of reaching a formal agreement with the police and military about human rights.

Some prior recommendations from external assessments of the Voluntary Principles have not been implemented, including the need to strengthen and formalize risk assessments as well as integrating community consultation and participation into the process. Broader engagement should be initiated with municipal

authorities and organizations, NGOs and human rights organizations about security measures and ways to avoid human rights violations. There is no evidence of a formal consultation process with local communities to identify and address concerns about the presence or behaviour of private security contractors.

### **Assessment S2: Has Montana's interaction with private security contractors respected human rights?**

Montana currently has contracts with three private security firms for different aspects of security at the Marlin Mine. Montana has respected the right to life, liberty and security of the person, as well as the right to just and favourable working conditions, by protecting the safety of its employees through the deployment of private security contractors and undertaking additional security measures in response to incidents. There are significant external threats to the safety of employees that have manifested in at least one incident of kidnapping, in shots being fired at buses transporting employees and resulting in injuries, in shots being fired into the mine site at company equipment, and in armed robberies of employees on pay-day.

An off-duty security guard murdered a local resident in 2005. At the time of the incident, Montana failed to respect human rights as it did not have policies and procedures in place to govern its interaction with private security contractors. After the incident, the private security firm's contract was not renewed and Montana began to implement the Voluntary Principles, which is an appropriate framework for ongoing due diligence for human rights related to private security firms. Montana respected human rights when it initially pressed for investigation and prosecution of the incident; however, the security guard has not been apprehended.

Steps taken by Montana to implement the Voluntary Principles include the adoption of guidelines on use of force and respect for human rights, their inclusion in the contracts with the private security firms, and the revision of standard operating procedures for security at the mine. There is also screening of prospective security guards, and training on human rights. More advanced training would be useful to address some specific human rights concerns, such as harassment, women's rights, and employee privacy issues.

Expanding training should prioritize all managers and employees involved in community engagement and responding to complaints and security-related incidents.

The assessors reviewed one case of alleged sexual harassment filed by a local woman through the company's grievance mechanism regarding a private security guard. The complaint was investigated by the company, but was later withdrawn when the woman was not able to identify the culprit. Other than this case, the issue of sexual harassment did not arise at all; nonetheless, further attention to this issue is recommended as part of the human rights training of private security contractors, as well as the general employment policies at the mine.

The majority of stakeholders interviewed in 2009 confirmed that the private security contractors are conducting themselves appropriately and fulfil their proper functions. The recent incident at Coral demonstrated a commitment to a defensive role that respects human rights. However, to reduce the risks of human rights infringements by private security contractors, including allegations of intimidation, greater efforts are required to proactively resolve complaints and grievances before they escalate into confrontation or violence. If there are confrontations, independent monitoring of the private security contractors is a means to ensure that their conduct respects human rights.

Montana's security personnel report that recommendations of the external evaluations of the Voluntary Principles continue to be implemented; however, there was no documentation, action plan, or reporting on the steps taken to address identified gaps. Improved documentation and performance tracking is important to facilitate review and establish internal accountability; it will also help demonstrate the progress Montana has achieved and its commitment to addressing existing gaps.

Overall, an important gap exists in the policy framework for human rights and security given the lack of a comprehensive human rights policy and the formal adoption of the Voluntary Principles at the level of Goldcorp that would strengthen commitment and attention to their implementation at the Marlin Mine.

The practice of having regular external assessments of the implementation of the Voluntary Principles is also a

good management practice for improving the human rights performance of the company and private security contractors. Compliance with the Voluntary Principles, and respect for human rights, includes ongoing consultation with stakeholders about risk assessments and security issues. Montana's consultation mechanisms with the community about security-related issues currently lack formality and internal coordination.

The assessors find that the security incidents at the mine follow a pattern related to unresolved grievances – such as land acquisition, consultation, right of way agreements, and the environment – and that the company has failed to undertake a serious review of these grievances. The lack of access to remedy has led to confrontation and escalation of violence, and thus creates human rights risks for community members, as well as for the safety of private security contractors and employees of the mine. Reducing this risk requires that Montana address legacy issues with stakeholders, strengthen the effectiveness of its grievance mechanism, and make continued efforts to engage with the public security forces about the protection of human rights.

#### RECOMMENDATIONS FOR IMMEDIATE ACTION TO ADDRESS INFRINGEMENTS

- **STRENGTHEN INTERNAL PROCESSES.** Ensure that a clear protocol exists for convening all relevant managers and departments to discuss human rights risks associated with all situations that involve a threat of confrontation or violence.
- **ENSURE INDEPENDENT MONITORING.** If a situation requires the intervention of private security guards or public security forces, provide for independent monitoring as a deterrent for and witness of human rights infringements or violations. The recent example of including the PDH to monitor actions of the police is a positive step.

#### RECOMMENDATIONS THAT ADDRESS LEGACY ISSUES

- **STRENGTHEN FOLLOW-UP OF PAST INCIDENTS.** As part of monitoring of the Voluntary Principles, pay particular attention to the follow-up and results of investigation into potential infringements by private security guards and/or violations by public security forces. Ensure that Montana is taking appropriate

steps to investigate and discipline private security guards, and to press the Guatemalan government for investigation, prosecution and remedy for violations by public security forces.

#### RECOMMENDATIONS FOR ONGOING DUE DILIGENCE

- **OBTAIN AN AGREEMENT WITH PUBLIC SECURITY FORCES.** Despite turnover of military and police personnel, the dialogue with the Guatemalan public security forces about security arrangements must continue with a view to obtaining a transparent agreement that security be provided in a manner consistent with human rights by personnel with adequate and effective training. Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.
- **CONTINUE TO SCREEN PRIVATE GUARDS.** Focus primarily on in-depth reference checks for past human rights concerns rather than national databases. Complement screening mechanisms with ongoing supervision and evaluation for good human rights performance. Hire more female guards and improve gender balance in the security force by hiring and training more women.
- **EXPAND HUMAN RIGHTS TRAINING.** Reinforce and build upon early achievements in human rights training for public security forces and expand to include all relevant actors that may be involved in public security responses (e.g. unit responsible for carrying out arrest warrants). Build upon early achievements in human rights training for private security firms by strengthening and verifying training, with clear objectives and goals. Implement an appropriately-designed evaluation program to measure effectiveness, and adapt as needed. Expand current training initiatives for security guards to management and then other staff and employees. Content on human rights and the Voluntary Principles should be expanded to cover risk areas such as intimidation, sexual harassment, and privacy rights of employees.
- **ENGAGE STAKEHOLDERS ON SECURITY ISSUES.** Expand formal consultation with community members and other stakeholders about security-related matters. As the conduct of the public security forces

and broader issues of public safety are shared concerns for the company and the community, there is an opportunity for engagement and dialogue with community members that can be expanded over time to other areas of mutual concern. Implement a more formal process to welcome and address concerns of community members, moving next to engagement and accountability with external stakeholders and critics.

- **UNDERTAKE PERIODIC RISK AND CONFLICT ASSESSMENTS.** Strengthen risk assessments in light of repeated use of public security forces. Strengthen and institutionalize an interdepartmental process of analyzing risk and conflict concerns in particular with decision-makers at the mine, including identification of internal and external strategies to manage and reduce risks and conflict. This should focus on expanding the number of managers involved,

and deepening understanding and capacity to manage human rights and security risks. Include in risk assessments consultation with all relevant internal departments and managers, as well as the public security forces, community members, and other relevant stakeholders.

- **CONTINUE EXTERNAL REVIEWS.** The practice of periodic external evaluations of the implementation of the Voluntary Principles, including the company's interaction with public security forces, should be continued. Given the risks identified in previous VP assessments, as well as some of the gaps in current implementation, such assessments should be undertaken on a regular basis (e.g. every 18 months). The development of more formal plans to implement recommendations from assessments is also recommended.

## ACCESS TO REMEDY

In law, it is said that there is no right without a remedy. When individuals or groups believe their human rights have been harmed, there must be appropriate and credible means to have their concerns or allegations addressed or the concept of rights becomes meaningless. In the context of business and human rights, access to remedy is the third pillar of the "Protect, Respect and Remedy" framework: States and companies share a responsibility to provide access to remedy to address human rights impacts and violations. In general terms, access to remedy may be sought through both judicial and non-judicial mechanisms, including courts and other tribunals; administrative bodies and regulatory agencies; international tribunals and review processes; as well as company-based grievance mechanisms.

This assessment looks in most sections at the existence and functioning of the company-level recourse. That focus emphasizes what the company can do because decisions and actions are under its control. However, stakeholders should not be prevented from using other legal mechanisms. This also implies that companies can and will make use of various legal mechanisms to

protect their interests and to respond to allegations or complaints against them. However, given their relative economic strength and legal sophistication, companies' use of legal mechanisms may create additional barriers for stakeholders to access remedies.

### **Assessment AR1: Are there effective and credible mechanisms that provide access to remedies for stakeholders?**

There is significant lack of public confidence in the judicial system in Guatemala, and community members are in general not using the Guatemalan judicial system to seek redress from complaints against Montana.

Montana has undertaken capacity-building efforts with regulatory agencies, particularly with MEM, which may enhance access to remedy through improved technical capacity for oversight of mining. At the same time, legal and administrative challenges against the rulings of MARN and the PDH have delayed or impeded access to remedy related to environmental and human rights complaints.

Complaints to international organizations have raised the profile of issues related to Marlin Mine and in several instances findings or judgements have been given. Montana has taken some positive actions in response, notably to the recommendations in the IFC Compliance Advisor Ombudsman report. However, recommendations addressed to the Guatemalan government by multilateral organizations have not been implemented resulting in a continued gap in access to effective remedy.

Montana's grievance mechanism does not meet international standards for an effective, credible and rights-compatible grievance mechanism to address the existence of numerous outstanding complaints and grievances. In particular, there has been no third party or community involvement in the design, investigation, adjudication, review or evaluation of the mechanism. As currently designed, the grievance mechanism does not facilitate improved access to remedy and fails to respect human rights, including the right to remedy.

The absence of an effective company-level grievance mechanism has contributed to the persistence or escalation of conflict with some stakeholders (e.g. land sellers or the residents along the power line), increasing the risks of infringements or violations of other human rights.

### Assessment AR2: Has Montana's use of the judicial system enhanced or impeded access to remedies?

By the end of 2009, at least 15 community residents and some members of local organizations had either criminal charges outstanding against them, or had been brought to trial. The use of legal means by Montana in dealing with confrontations with protestors has been viewed critically by national and international human rights NGOs and the media.

Underlying and preceding these legal actions are a series of problems and complaints between Montana and a number of local people. Complaints are not uncommon in the relationships between mining companies and rural communities, but it is a concern that they have culminated in criminal charges against community members.

Although there is no evidence there have been actual violations of the right to a fair trial in the cases

involving the company, Montana does not currently have policies and procedures in place to address the risks associated with the Guatemalan judicial system – particularly in cases of criminal prosecutions against individuals who have undertaken social action against the mine: this represents a failure to respect human rights.

### RECOMMENDATIONS FOR IMMEDIATE ACTION

- **REVIEW CURRENT GRIEVANCE MECHANISM.** There is considerable guidance on international standards for rights-compatible, company-based grievance mechanisms that Montana can draw upon to improve access to remedies. The company should re-evaluate and redesign the existing grievance mechanism, according to the key principles of legitimacy, accessibility, predictability, equitability, rights-compatibility, transparency, and dialogue or mediation. Final resolution should be by an independent third party or commission rather than a unilateral decision by the company. It is critical to involve representatives of the local communities and independent third parties in the (re)design, operation and evaluation of the grievance mechanism. This step could be an opportunity to signal a new approach to community engagement and dispute resolution around the mine.

### RECOMMENDATIONS TO ADDRESS LEGACY ISSUES

- **ESTABLISH A 'COMMISSION' TO ADDRESS OUTSTANDING GRIEVANCES.** While Montana is reviewing and revising its grievance mechanism, consider and consult upon options for the establishment of a commission of independent and credible individuals or officials (e.g. PDH, Justices of the Peace, President of the Auxiliary Mayors) who can receive, review and resolve outstanding grievances through a process of dialogue and mediation.

### RECOMMENDATIONS FOR ONGOING DUE DILIGENCE

- **SUPPORT REGULATORY AGENCIES.** Montana should develop a strategy to reduce contentious proceedings with regulatory agencies, and to work to strengthen the capacity of regulatory agencies to proactively protect human rights, labour and the environment. This will enhance the protection of human rights, as well as the company's compliance

with the relevant international best practice standards. Respond to the need of relevant regulatory agencies for capacity-building. Explore opportunities to collaborate with international development agencies and other actors and to leverage additional resources.

- DEVELOP A POLICY ON USE OF LITIGATION SPECIFIC TO GUATEMALA. Such a policy should favour the use of alternative dispute resolution and non-judicial

mechanisms (including company-level mechanisms) to favour the early identification and resolution of disputes. Where resort to litigation and the formal judicial system is unavoidable, prohibit any conduct on the part of the company or its legal representatives that may infringe upon the right to a fair trial or other human rights. Ensure greater oversight and guidance for the conduct of litigation from Goldcorp's corporate headquarters.

# Conclusions

In rural subsistence communities, the economic benefits flowing to the more than 900 individuals employed from local communities, and the additional benefits from local purchasing and service contracting, cannot be underestimated or ignored. By rough estimate, one in 10 households would work at the Marlin Mine if employment were evenly distributed between local families. These positive contributions can be observed by the casual visitor to the area of the mine; other opportunities for the enhancement of human rights such as improved educational infrastructure, roads, and some aspects of health care can also be observed. At the municipal and national levels, the Marlin Mine makes additional economic contributions through taxes and royalties. Stepping back from these financial flows, the assessment examined the priorities and concerns identified by stakeholders that spanned the different operational departments of the mine and the full range of internationally-recognized human rights.

The assessment contained elements of both a human rights impact as well as a human rights compliance assessment. In some cases, the assessors had sufficient levels of information and participation to make judgments about specific infringements or enhancements of human rights. Where the assessors were not able to determine the full extent or nature of human rights impacts, findings were focused on whether Montana is respecting or failing to respect international human rights standards. The fact that specific findings about infringements or enhancement of some human rights could not be determined does not mean that impacts have not occurred. In some cases, multiple activities

affected the same human right, with the nature and extent of the impacts changing over time.

Because the Marlin Mine is affecting the full spectrum of internationally recognized human rights, Goldcorp and Montana need to address human rights explicitly, comprehensively, and as a matter of ongoing due diligence. The recommendations above were organized to highlight:

- *Areas of actual infringements* on human rights, or failure of due diligence coupled with significant risk, which must be addressed immediately. This relates to the basic corporate responsibility to “do no harm.”
- *Legacy issues* associated with the Marlin Mine. These must be addressed immediately; however, many of these issues have become entrenched, polarized or politicized, and solutions may require a multi-stakeholder approach and a longer time horizon.
- *Areas of failure to respect* must be systematically addressed by ongoing due diligence. Developing a comprehensive system of due diligence for human rights at the Marlin Mine has the potential to inform Goldcorp’s global operations.
- Although numerous *positive impacts* were observed and acknowledged by stakeholders, the extent of human rights enhancement could not be ascertained for lack of adequate baseline data and ongoing monitoring.
- Finally, while a *lack of strategies* to enhance human rights does not constitute a failure to respect



human rights, it is a significant missed opportunity to strengthen positive outcomes through a more explicit focus and commitment to the rights of the most vulnerable groups, communities and other stakeholders.

### Importance of International Standards

Throughout the assessment, issues related to the national context of Guatemala have reinforced the importance for Goldcorp and Montana to adopt international standards.

The Marlin Mine's human rights performance is negatively associated with significant gaps in the Guatemala government's implementation and enforcement of international human rights instruments. Montana's compliance with Guatemalan legal norms is inadequate from an international human rights perspective, especially in a country like Guatemala, with weak governance and enforcement capacity.

This reinforces the need for due diligence about the country context prior to developing projects or acquiring concessions or operations, as well as the need to support efforts to strengthen the capacity of government institutions to implement their international commitments to protect human rights at the national and local levels.

### Implications of Indigenous Peoples Rights

The area of indigenous peoples rights has seen an important evolution in the standards against which Montana's performance is measured due to developments of international law and industry practice since the mine was permitted. Globally, there are heightened expectations about indigenous peoples rights after the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007.

Ratification of ILO Convention 169 by Guatemala also provides an additional level of protection for indigenous peoples rights in the context of the Marlin Mine. There are concerns that Montana has inadequately addressed requirements of this convention by focusing on compliance with Guatemalan law. The emphasis on individual rights over collective rights – for instance,

when dealing with land acquisition and ongoing consultation for exploration – may weaken community institutions and in the past have resulted in complaints, protest, and even conflict.

Furthermore, the failure of Montana to acknowledge and treat the Sipakapense as a distinct indigenous people from the Mam was a significant failure to respect indigenous peoples rights. Indigenous peoples rights will continue to be the focus for mining opposition as long as the State and Montana are not fulfilling their respective responsibilities to protect and respect those rights.

The systematic integration of additional due diligence about indigenous peoples rights should be viewed by Goldcorp as an opportunity to inform a more robust approach throughout its global operations; reviewing and learning from industry best practice for mining on indigenous peoples' lands and territories, as well as integrating experiences from Goldcorp's other mines, will contribute to this process.

### Implications of Conflict

The number one stakeholder concern relates to the environment of conflict, tension, and fragmentation in the project-affected communities. The social and psychological effects of conflict are inseparable from the overall perceptions and impacts of the mine's human rights performance. While conflict has direct negative impacts on the right to security of the person and the right to health, it also has serious implications for all human rights discussed in the assessment. A vicious circle is created when conflict leads to human rights violations and infringements, which in turn lead to further conflict.

The environment of conflict has existed for several years; however, mine personnel and Montana management do not appear to be knowledgeable about specialized techniques or effective strategies to manage conflict. Without tools to assess and address conflict more effectively, personnel may not be able to reframe and potentially transform the situation. This is an important area where Montana must invest in capacity building and commit to redefining how managers of both Montana and at the mine relate and respond to conflict. Montana cannot resolve or address the environment of conflict by itself; in the current

context it will also be difficult to move directly into a multi-stakeholder process.

There is a pattern of polarization between community members supporting and opposing the mine. This tension was also expressed within the labour force, with suggestions that internal pressure to be pro-mine inhibited employees from raising concerns, either as employees or as community members. The company should discourage and actively investigate any allegations of pressure, intimidation or violence by mine supporters as well as opponents.

Perhaps the most serious pattern identified is the systematic failure to address grievances in the communities, allowing them to accumulate and exacerbate. When this happens, new incidents then spark reactions of community members that may be interpreted by mine managers as being out of proportion to the incident or extremism.

Although the challenges created by conflict are large, they could be surmounted if the company takes meaningful steps to address legacy issues; adopts a proactive approach to dispute resolution; identifies and addresses impacts; and provides more effective and equitable social investment. This is not to say that Montana alone is responsible for conflict; however, the mine is the principal cause of change in the communities, and it does not currently have capacity or tools to deal with the current situation.

### Ongoing Due Diligence for Human Rights

The “Protect, Respect and Remedy” framework states that to discharge the responsibility to respect requires due diligence.<sup>1</sup> The basic human rights due diligence process should include policies, impact assessments, integration, and performance tracking, adapted to the country and operational context, as well as the overall company structure and culture.

The assessors further conclude that ongoing consultation and grievance mechanisms should be considered as fundamental parts of the due diligence required for the Marlin Mine.

<sup>1</sup> Ruggie 2008, para. 56.

### Human Rights Policy

There is no comprehensive human rights policy at Goldcorp, Montana or the Marlin Mine. While various Goldcorp and Montana policies (i.e. business ethics, sustainable development, environment and human resources) provide guidance for specific functional areas, there is an overall lack of specific policies to comply with international human rights standards. These policy gaps resulted in a number of findings of failure to respect human rights, and were a specific indicator of non-compliance for many questions in the DIHR tool.

The mine has implemented an explicit human rights policy in relation to security (the Voluntary Principles on Security and Human Rights) with positive results in terms of due diligence and stakeholder perceptions. However, Goldcorp has not formally adopted the plan, which limits fully compliant implementation at the mine.

Goldcorp has made public commitments related to human rights, including adherence to the Global Compact and the ICMM Sustainability Development Framework. However, corresponding corporate policies have not been approved by the Board of Directors, which formally bind the corporation and its subsidiaries. Without a greater degree of formality, public commitments can be used to promote external relations without necessarily being implemented internally.

As in other areas (e.g. Voluntary Principles), a pattern appears whereby Montana “implements” international standards at the mine without formal adoption. This limits Board of Directors accountability and oversight, and avoids the requirements for external auditing that come with formal adoption of international standards.

### Impact Assessment

There has been no previous human rights impact assessment of the mine; some of the limitations of the present assessment are related to the practical and methodological challenges of conducting an *ex post* human rights impact assessment in a conflict situation.

Furthermore, a number of important human rights issues could have been identified by the ESIA, even if

not explicitly focused on human rights. However, as discussed throughout the report, the weaknesses of the ESIA have meant that critical issues have not been – and are not currently being – addressed.

As one of the pillars of ongoing due diligence, human rights impact assessments should be undertaken periodically at the Marlin Mine to measure improvements in performance. They should also be used throughout Goldcorp's global operations, particularly when developing new projects or acquiring new concessions and operations.

### *Integration*

Human rights are explicitly addressed only in the area of security at the Marlin Mine. This reduces the responsibility for human rights to the level of the mine's security department, rather than identifying how it pertains to all operational areas, and situating responsibility at the highest levels of management and the Board of Directors of Montana and Goldcorp. An indicator of this narrow focus is that training for human rights is only being provided to the security department, but not to managers and personnel in other departments that are responsible for important human rights issues. This has led to inconsistent, uncoordinated, and even contradictory efforts.

Internal change within Montana will require internal leadership and clear commitments and statement from Goldcorp about prioritizing human rights and dealing with the legacy issues identified at the mine. Leadership and commitments from Goldcorp will need to drive this process because of the decentralized structure of the corporation, as well as entrenched attitudes and dynamics in the relations with local communities and other stakeholders in Guatemala.

Goldcorp has already effected positive change within the mine's operating culture in the area of Occupational Health and Safety over the last two years. A similar process of "driving down" human rights to the operational level of the mine needs to be undertaken. There are some positive indicators that human rights are being addressed at the senior levels of Goldcorp, including support for the current assessment, the creation of a new Vice-Presidency in Corporate Social Responsibility at corporate headquarters, as well as

recent public commitments to the Global Compact and ICMM.

Another measure for integration relates to personnel incentives and evaluation. Incentives appear to be focused primarily on production and cost-cutting, as well as safety and environmental performance, and are not necessarily aligned with human rights performance. While these are legitimate corporate objectives, there are risks that employee financial incentives may be in contradiction with corporate-level commitments to human rights. Montana and Goldcorp lack key performance indicators and systematic performance evaluations that would ensure responsibilities for human rights issues are effectively implanted and measured for the relevant personnel.

Finally, effective integration of corporate policies and commitments to human rights must be supported by the necessary financial resources, human resources, and expertise.

### *Performance Tracking*

A decentralized corporation such as Goldcorp must have stronger mechanisms of monitoring and performance tracking to demonstrate ongoing human rights due diligence. External auditing and reviews are necessary to assure accountability. Some operational areas of the mine have robust external auditing (e.g. Voluntary Principles) and monitoring (e.g. environmental management), while other areas currently rely upon internal monitoring. The lack of baseline assessment and monitoring of many important social and health impacts has prevented meaningful tracking – in some cases, even when public commitments were made to monitor. The lack of reliable data prevented a determination of the nature and extent of both negative and positive human rights impacts.

Internal and external grievance mechanisms are required to address employee and stakeholder concerns and grievances; effective grievance mechanisms also provide information to track patterns. Furthermore, effective ongoing consultation provides a mechanism for feedback from community about concerns, impacts, and areas of improvement.

Public reporting about the Marlin Mine is achieved through Annual Monitoring Reports and about

- **PREPARE AND CONSULT UPON A RESPONSE TO THE ASSESSMENT.** Prepare a detailed response and action plan with clear objectives and timelines to address the findings and recommendations of the assessment with a view to implementing a system of ongoing due diligence for human rights at the Marlin Mine. Consult with stakeholders about the action plan prior to its implementation.

### *Policy*

- **DEVELOP A FORMAL, COMPREHENSIVE HUMAN RIGHTS POLICY FOR GOLDCORP** and implement it at the Marlin Mine. Have the Goldcorp Board of Directors formally adopt the policy and have it or a committee of Directors oversee its implementation.
  - The policy should cover the full range of internationally-recognized human rights and support implementation of Goldcorp's commitments to the Global Compact and the ICMM.
  - The policy should provide specific guidance about each of the issue areas identified in the assessment, including ongoing consultation and access to remedy. In particular, the policy should provide guidance on compliance with ILO 169 and other indigenous peoples rights instruments.
  - Consider adopting a human rights-based approach to social investment activities.
  - Other Goldcorp policies should be reviewed to integrate or cross-reference the human rights policy commitments.

### *Impact Assessment*

- **UNDERTAKE A FOLLOW-UP ASSESSMENT.** Undertake a follow-up human rights impact assessment of the Marlin Mine on a periodic basis (e.g. every three years) to analyse progress made and challenges faced in improving the mine's human rights performance.

- **ADDRESS INFORMATION GAPS.** Undertake the additional focused assessments or reviews identified in the assessment to address gaps in information and risks (e.g. labour rights and contractors).
- **UNDERTAKE HUMAN RIGHTS ASSESSMENTS FOR NEW PROJECTS AND ACQUISITIONS.** Apply HRIAs throughout Goldcorp's global operations, particularly when developing new projects or acquiring new concessions and operations. Follow developments in the field of HRIAs to understand how these can be integrated into or complementary to other assessment processes.

### *Integration*

- **EXPAND HUMAN RIGHTS TRAINING TO ALL MARLIN MINE EMPLOYEES.** Begin with managers, supervisors and employees with responsibilities for consultation and engagement with the communities. Adapt and expand the content of current human rights training as required to provide specific and practical guidance for human rights compliance. Ensure that training programs are evaluated for effectiveness and periodically updated.
- **PROVIDE CULTURAL TRAINING.** As part of broader efforts to respect indigenous peoples rights and ensure effective implementation of policies against discrimination and harassment in the workplace, provide cultural training to managers and foreign employees.
- **REVIEW RESPONSIBILITIES AND INCENTIVES FOR HUMAN RIGHTS AT THE MINE.** Review management systems at Montana, as well as the key performance indicators and economic incentives for managers and employees at the Marlin Mine, to ensure responsibilities are clearly delineated and incentives are properly aligned to support human rights performance, and that legitimate cost-cutting targets do not result in gaps in due diligence for human rights.



- **SUPPORT INTEGRATION EFFORTS WITH APPROPRIATE EXPERTISE.** With due consideration for building and supporting local capacity, ensure that appropriate expertise and experience with international good practice standards are engaged for external audits and reviews, including for the Sierra Madre Foundation.

#### *Tracking Performance*

- **REPORT TO THE BOARD.** Install a senior Goldcorp manager, or independent party with a mandate from the Board of Directors, at the Marlin Mine to assist with and report on the implementation of Goldcorp's response to the assessment and all new human rights policies or commitments.
- **ENHANCE EXTERNAL AUDITS AND INDEPENDENT REVIEWS.** Maintain the current practice of under-

taking periodic external audits and reviews of the Voluntary Principles on Security and Human Rights at the Marlin Mine. Establish independent auditing of the mine's environmental management system. Ensure that all prior commitments for baseline studies and ongoing monitoring are implemented.

- **ENHANCE PUBLIC REPORTING PRACTICES.** Enhance reporting on Goldcorp's sustainability performance in accordance with the Global Reporting Initiative, including the 2010 Mining and Metals Sector Supplement. Provide independent assurance for future sustainability reports. Continue to provide Annual Monitoring Reports for the Marlin Mine. Ensure that the information included in the AMRs is coherent with GRI reporting at the corporate level. Provide independent assurance for future AMRs.

Goldcorp's sustainable development practices through the Global Reporting Initiative. However, there is insufficient information to meaningfully assess Montana's performance on some key issues and reporting indicators. This is an important area for improved corporate accountability and tracking improved performance.

### Concluding Observations

Human rights are fundamentally about individuals, groups and communities. While technical performance and solutions are important for addressing the potential impacts of the mine, many of the human rights risks and impacts must be considered in a broader social and political context. Ultimately, perceptions and trust are critical aspects of the mine's human rights performance.

The assessment is an important step in the development of a system of ongoing due diligence for human rights at the Marlin Mine. Some of the next steps are relatively straightforward, particularly when an issue is fully within the company's control. Others steps will be more complicated and perseverance will be required

to expand consultation practices with the project-affected communities, participate in multi-stakeholder processes at the national level, and support access to remedies. A significant shift must take place in Montana's openness to consider stakeholder concerns, resolve legacy issues and investigate allegations.

Up until now, Montana has mainly been in a reactive and defensive mode when dealing with many of the complaints identified in this assessment as affecting human rights. This is not uncommon, as corporate responsibility for human rights has only recently been clarified, and many companies lack policies, procedures, and practices that respect human rights. However, where the State is weak and national compliance with international human rights standards is lagging, as is the case in Guatemala, the company is responsible for applying higher internal standards. Montana's reliance on national legal frameworks has not provided an adequate foundation upon which to respect human rights, particularly in the areas of indigenous peoples rights, labour rights and for the risks associated with mine closure. Goldcorp is responsible for establishing those standards and has the obligation to ensure they are implemented and performance measured.

The next steps should move Montana and Goldcorp from a reactive to a proactive approach to human rights; this should lead to human rights being fully integrated throughout the Marlin Mine's operations. The goal is for the mine's strategic objectives to be aligned with corporate social responsibility and human rights standards. At that point, competitive advantage and profitability should go hand in hand with a strong internal human rights culture and exemplary human rights performance that is continuously optimized.<sup>2</sup> The ultimate goal is to respect all human rights, and in particular the rights of indigenous peoples.

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2 The Canadian Human Rights Commission prepared an "Integrated Human Rights Maturity Model" that describes five steps for a company to initiate the process of compliance of human rights, to human rights maturity, where performance is continuously optimized. [www.chrc-ccdp.ca/hrmm\\_mmdp/default-en.asp?highlight=1](http://www.chrc-ccdp.ca/hrmm_mmdp/default-en.asp?highlight=1).

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