

Summary of Human Rights Assessment of Goldcorp's Marlin Mine

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[W]here 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... Goldcorp is responsible for establishing those standards and has the obligation to ensure they are implemented and performance measured. (On Common Ground, Executive Summary: Human Rights Assessment of Goldcorp's Marlin Mine, May 2007, at page 37)

Background

The Marlin Mine in Guatemala is operated by Montana Exploradora de Guatemala S.A., a wholly-owned subsidiary of the Canadian company, Goldcorp Inc. Since its inception in 2004, the operation of the Marlin mine has continually attracted charges of a wide range of human rights abuses. In 2008, a group of shareholders called on Goldcorp to undertake an independent human rights impact assessment (HRIA) of the mine. A steering committee was established to oversee the assessment. The steering committee selected On Common Ground Consultants Inc. to carry out the HRIA. The [270-page report](#) was released on May 17, 2010, in English and Spanish; there is also a [40-page Executive Summary](#).

The present summary is intended to summarize the general tenor of the report for the benefit of Goldcorp shareholders, media and other attendees at the May 19, 2010, shareholders meeting. This has been done due to the fact that many attendees will not yet know about the report's release and/or have found time to read it. The summary is in essence a 2-page summary of the 40-page Executive Summary. It makes no claims about the adequacy or inadequacy of the HRIA process or the report's contents. Also, for reasons of space, this summary cannot cover all the human rights concerns found to be present and to require addressing by Goldcorp, nor can it acknowledge all comments favourable to Goldcorp's efforts.

Self-acknowledged Limitations

The report identified several challenges that limited the effectiveness of the assessment process. These included an observation that "[t]he 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" and also that "[s]ome stakeholders in Sipacapa and NGOs critical of the mine refused to participate." Further, difficulties in making accurate determinations about impacts due to a lack of data pervaded the report. The report reserved particularly stern criticism for Montana in this respect.

While the report concluded that the lack of documentation in some cases appeared to be due to “an unfortunate gap in management procedures”, it noted that in other cases “the absence of data or documentation suggests that the company made claims it could not substantiate.”

Summary of Findings

The assessment was organized around seven priority issue areas identified from concerns raised by stakeholders:

1. **Consultation**

The report took as given that consultation is a critical issue for mining and other major development projects, particularly where a project affects indigenous peoples. On the whole, Montana’s consultation strategies have their strengths but fall short of what is required to respect the rights of indigenous peoples and other stakeholders. Information disclosure is one problem area with stakeholders feeling inadequately informed or consulted with. The assessment recommends that various measures be implemented to ensure broader, more structured and more formalized consultations with indigenous peoples, government, and other stakeholders. The standard of free, prior and informed consent associated with the UN Declaration on the Rights of Indigenous Peoples appears not to be addressed by the report.

2. **Environment (including human rights to health and to water)**

The report categorizes different kinds of human rights harms in a schema wherein there can be “violations”, “infringements” and “failures to respect” human rights. For example, with respect to the human right to water, the report finds that “there is no evidence that there has been any infringement [by direct action by the company] of the right to water” while “there are areas where the company [inaction] is failing to respect the right to water and further due diligence is required.” More generally, it notes that currently available information is insufficient to definitively dispose of many serious concerns, such as claims that springs in the area have been affected by the mine. Additionally, lack of data is a problem with respect to the right to health: “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.” The company must provide compensation where rights have been infringed and conduct further studies where current data is insufficient to prove or disprove an outstanding claim. Stronger policies and strategies are also required with respect to environmental monitoring and mine-closure plans. In particular, an adequate closure plan is integral to preventing long-term human rights impacts on surrounding communities.

3. **Labour**

The mine is found compliant with national laws on child labour, and also advances the right to non-discrimination in employment through significant hiring of local indigenous people. However, weak harassment policies and lack of due diligence about the labour and human rights practices of contractors represent significant failures. Remuneration at the mine is poor and diverges across job categories in a manner that has no rational basis, raising concerns about discrimination in employment. The company has been

unacceptably inattentive to health and safety conditions at the mine. The report also concludes that Montana has not adequately respected freedom of association and the right to collective bargaining. Further, significant information gaps are also a cause for concern here as for other categories. For instance, not enough information was available to assess concerns with respect to gender discrimination in the workplace and discrimination in firing. Serious information gaps also existed with respect to working conditions and health and safety in the workplace. In laying out its recommendations, the assessment identifies four areas as “urgent,” calling for Goldcorp leadership and oversight: industrial health problems in the workforce, workplace issues, freedom of association and collective bargaining, and the establishment of a workers’ grievance mechanism.

4. **Land Acquisition**

General concerns relating to land acquisition include forced resettlement, just compensation, and indigenous rights. There was no forced settlement associated with land acquisition for the Marlin Mine. Montana also provided a consistent above-market price for land, although the adequacy of this price has recently been called into question. However, serious concerns arise where the company did not practise due diligence with respect to preventing pressure and coercion leading to land transfers and ensuring the rights of women in land-transfer decisions. Further, the land acquisition process focused narrowly on individual title and did not adequately account for or accommodate any underlying collective rights of indigenous people to the land. The assessment recommends an immediate moratorium on land acquisition.

5. **Economic and Social Investment**

Montana has contributed to the economic welfare of the surrounding population through employment, purchases, and contracting, and also to local government revenues through royalties and taxes. It has also funded various local education, health, and other infrastructure programs. At the same time, Montana has not conducted enough investigation into the potential negative social and cultural impacts of mining activity. And “[t]he 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.”

6. **Security**

Since the construction of the mine, there have been several confrontations that have involved private and/or public security forces acting on behalf of Montana. In 2005, two such incidents resulted in loss of life. The report expresses concern about Montana’s relationship to both public and private security forces, alongside observing some progress has been made. One criticism was that “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 ...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.” On the private security side, “[G]reater efforts are required to proactively resolve complaints and grievances before they escalate into confrontation or violence....[A]n 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 [on Security and Human Rights] at the level of

Goldcorp that would strengthen commitment and attention to their implementation at the Marlin Mine.”

7. **Access to Remedy**

Montana’s internal grievance mechanism does not meet international standards. Meanwhile, its own use of the judicial system, for instance, to have criminal charges brought against community members, is viewed critically by the assessors. Goldcorp should take steps to revamp its current grievance mechanism and develop human-rights-sensitive policies with respect to its engagement with the Guatemalan judicial system, for instance: “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.” No mention is made of access to the Canadian legal system, to OECD or ILO procedures, or to a regional body such as the Inter-American Commission on Human Rights.

Conclusions

In closing, apart from specific recommendations embedded in the findings in the above seven areas, the assessment presents final general recommendations in four key areas:

- **Human Rights Policy**
The lack of a comprehensive human rights policy must be addressed.
- **Impact Assessment**
Continuing human rights impact assessments must be conducted, and current information gaps must also be addressed.
- **Integration**
Measures are needed to entrench respect for human rights at all levels of the corporate hierarchy.
- **Tracking Performance**
The lack of reliable data hampered the assessment at all stages and prevented determination of many issues. Stronger monitoring, auditing, and reporting mechanisms are accordingly needed.