

Specific Instance Complaint Submitted to the Canadian National
Contact Point Pursuant to the OECD Guidelines for Multinational
Enterprises

Concerning:

**The Operations of Goldcorp Inc. at the Marlin Mine in the
Indigenous Community of San Miguel Ixtahuacán, Guatemala**

December 9, 2009

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Specific Instance Complaint to the Canadian National Contact Point Regarding the Operations of Goldcorp Inc. in the Indigenous Community of San Miguel Ixtahuacán, Guatemala

Pursuant to the Organization for Economic Co-Operation and Development's Guidelines for Multinational Enterprises ("MNE Guidelines"), the Front in Defense of San Miguel Ixtahuacán ("FREDEMI") submits the present specific instance complaint to the National Contact Point of Canada ("NCP") regarding the conduct of Goldcorp Inc. in Guatemala.

FREDEMI is a coalition composed of four community organizations in the municipality of San Miguel Ixtahuacán: Association for Integrated Mayan Development ("ADIM"), the Association for the Integral Development of San Miguel ("ADISMI"), the local Catholic parish, and Strengthening Bilingual Education in San Miguel ("FEBIMI"). These organizations came together to form FREDEMI with the objective of defending the communities adversely affected by Goldcorp's operations at the Marlin Mine.

This complaint was prepared by the Center for International Environmental Law ("CIEL"), a non-governmental organization with offices in Washington D.C. and Geneva, which uses international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society.

I. Summary of the Specific Instance

This specific instance complaint raises concerns that Goldcorp, through its subsidiary Montana Exploradora de Guatemala, S.A. ("Montana"), has violated and continues to violate the MNE Guidelines in its operations at the Marlin Mine in the indigenous community of San Miguel Ixtahuacán ("SMI") in the western highlands of Guatemala.

The conflict between Goldcorp and the community of SMI has continued unabated since the company began to acquire land in 1999 through the company Peridot S.A.. The mine has become a symbol of corporate aggression, which has led to a broad-based and powerful indigenous movement against mining in Guatemala. Despite years of protest, the communities' concerns still go unaddressed. Indeed, community members and local health officials are reporting an increased number of health issues, including skin rashes, hair loss, and other ailments, which they believe are related to water contamination from the mine. Community members and NGOs who raise these concerns are subject to retaliation and intimidation. Yet, in the face of opposition from the affected communities and pressure by Guatemalan and international civil society, Goldcorp is currently undertaking an expansion of the mine. Specifically, Goldcorp is acquiring land in the community of Agel in order to expand mining operations. As with the initial exploration, Goldcorp does not have the consent of the indigenous authorities to expand the mine.

Goldcorp's operations at the Marlin Mine must be understood within the social and political context of Guatemala. Thirteen years after the end of a brutal civil war, Guatemala is in danger of becoming a failed state, plagued by drug-fueled violence, government corruption, and the absence of the rule of law. The country continues to be marked by high levels of

impunity for military and government officials responsible for crimes committed during the armed conflict such as forced disappearance, torture, massacres, and even genocide. In 2008, the United Nations signed an agreement with the Government of Guatemala to create the International Commission Against Impunity in Guatemala (CICIG) in order to assist in the investigation and prosecution of organized crime that is tied to the failure of the justice system to enforce the rule of law and protect the rights of its citizens, especially as it relates to human rights defenders. Guatemala has also been criticized for its failure to ensure the respect of rights of indigenous peoples,¹ who were also disproportionately targeted during the internal conflict. Because of these systemic deficiencies, the Government of Guatemala has been unable, and perhaps unwilling, to regulate Goldcorp's operations and protect the people of SMI and Sipacapa from human rights abuses. That Goldcorp is taking advantage of operating in a weak governance zone—defined by the OECD as “investment environments in which governments cannot or will not assume their roles in protecting rights (including property rights), providing basic public services...and ensuring that public sector management is efficient and effective”²—renders untenable its defense that the Government of Guatemala has sanctioned its activities.

For the reasons detailed in this complaint, Goldcorp has violated and continues to violate Paragraph 2 of the General Policies of the MNE Guidelines, which states that enterprises should, “respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.”

It has been the experience of the complainants that those who raise concerns about the activities of the company will be met with retaliation. Many community members have been falsely detained and prosecuted for defending their rights. As a result, there is no trust between the company and the affected communities. For that reason, complainants are not requesting that the NCP facilitate access to alternative dispute resolution. Instead, complainants request that NCP undertake an investigation into Goldcorp's activities at the Marlin Mine and make a statement, including recommendations, as appropriate, to ensure the company's compliance with the MNE Guidelines. Specifically, the complainants seek Goldcorp's commitment to:

- Suspend all mining operations and close the mine;
- Terminate its plans to expand the mine;
- Cease its intimidation and persecution of community members;
- Submit to ongoing, third-party monitoring of water contamination;
- Establish an escrow account with sufficient funds to finance the environmental restoration and continuous water treatment needed after the closure of the Marlin Mine; and

¹ U.N. Human Rights Council, Working Group on the Universal Periodic Review, *Compilation Prepared by the Office of the High Commissioner for Human Rights, In Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1*, ¶16, 28, U.N. Doc. A/HRC/WG.6/2/GTM/2 (April 10, 2008) [hereinafter UPR Report].

² OECD Council, *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*, 11 (June 8, 2006), available at <http://www.oecd.org/dataoecd/26/21/36885821.pdf>.

- Adopt a corporate policy to respect the right of indigenous peoples to free prior and informed consent.

Finally, this complaint is an opportunity for the NCP to demonstrate that this process can achieve meaningful results for affected communities. Complainants note that previous specific instance complaints have met with limited success. The procedures of the National Contact Point of the United Kingdom appear to represent best practice by offering greater clarity and certainty to the parties in the process.³ In particular, the complainants request that the Canadian NCP use the UK NCP procedures for drafting and publication of the final statement. Furthermore, current scholarship indicates that Canada may be in breach of its own international obligations by allowing Goldcorp to commit human rights violations in Guatemala.⁴ At a minimum, Canada's reputation as a responsible actor on the global stage is at risk if it fails to ensure that its corporations, especially its extractive industries, operate in compliance with international human rights norms. Unless and until national legislation is in place to hold Canadian companies accountable for their impacts abroad, the NCP is the only mechanism available for affected communities.

II. Admissibility Requirements

This complaint meets the admissibility requirements established by the 2000 OECD Council Decision and the Canadian NCP.

Location of Mine and Demographics of Affected Communities

The Marlin Mine is located in the Department of San Marcos in the western highlands of Guatemala, approximately 300 kilometers northwest of Guatemala City. The Marlin Mine occupies an area of approximately 5 square kilometers, of which 87% lies in the municipality of SMI and 13% in the municipality of Sipacapa.⁵

The communities of SMI and Sipacapa are predominantly indigenous whose livelihoods derive from subsistence agriculture. According to the 2001 census, approximately 98% of the 34,211 inhabitants of SMI are Maya-Mam and speak the Mam language.⁶ Among the indigenous population in SMI, 86.4% live in poverty and 32.8% in extreme poverty.⁷ SMI is made up of 40 communities. Sipacapa has 16, 427 inhabitants, of which 77.2% are Maya-

³ Department for Business Innovation and Skills, *UK National Contact Point (NCP) Procedures for Dealing with Complaints Brought Under the OECD Guidelines for Multinational Enterprises*, URN 09/1353 (Sept. 2009), available at <http://www.berr.gov.uk/files/file53070.pdf>.

⁴ See generally, Robert McCorquodale & Penelope Simons, *Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law*, 70 MOD. L. REV. 598 (2007).

⁵ OFFICE OF THE COMPLIANCE ADVISORY/OMBUDSMAN, INTERNATIONAL FINANCE CORPORATION/MULTILATERAL INVESTMENT GUARANTEE AGENCY, ASSESSMENT OF A COMPLAINT SUBMITTED TO CAO IN RELATION TO THE MARLIN MINING PROJECT IN GUATEMALA 12 (2005).

⁶ ACUSACIÓN ANTE EL TRIBUNAL PERMANENTE DE LOS PUEBLOS, CONTRA LA VIOLACIONES DE DERECHOS HUMANOS FUNDAMENTALES COMETIDOS POR LA EMPRESA MONTANA EXPLORADORA DE GUATEMALA SOCIEDAD ANONIMA, MIEMBRO DE LA TRANSNACIONAL GOLDCORP INC. 11 (Oct. 2008) [hereinafter TPP].

⁷ TPP, *supra* note 6, at 12.

Sipacapense and speak the Sipacapense language—among the indigenous population in Sipacapa, 84% live in poverty and 27.6% in extreme poverty.⁸

Subject of Specific Instance Complaint

The Marlin Mine is 100% owned by Montana, a wholly-owned subsidiary of Goldcorp. Goldcorp's headquarters are located in Vancouver, British Columbia, Canada, with additional offices in Toronto, Ontario; Reno, Nevada; and Mexico City, Mexico.⁹ Goldcorp shares are traded on the Toronto and New York stock exchanges.

In 1999, the Government of Guatemala granted Montana an exploration license for the Marlin area. After Glamis Gold Ltd. acquired Montana in 2002, exploration intensified and in November of 2003, the Government of Guatemala granted Montana a 25-year exploitation license for an area of 20 square kilometers. In 2004, Glamis received a \$45 million loan from the International Finance Corporation of the World Bank Group to develop the Marlin Mine and commercial production commenced the following year. Goldcorp acquired Glamis in 2006.

Operations¹⁰

The Marlin Mine is a conventional milling operation with a combination of open pit and underground mining. The mill is designed to treat a minimal 1.82 million tonnes per year of ore. Ore is fed through a crusher prior to being introduced into the grinding circuit. Milling is conducted in a semi-autogenous grinding mill/ball mill circuit. The pulp produced by the milling is subjected to tank leaching with cyanide. After leaching the ore in the large tanks, the pulp is 'washed' in a series of settling units (counter-current decantation). This effectively produces two products: a clear gold and silver bearing solution and also a pulp without precious metal values. The gold and silver solution is sent to the refinery where the metals are precipitated out of solution through the addition of zinc. The precipitate is filtered and smelted to produce dore bars.

The first full year of production at the Marlin Mine resulted in 161,000 ounces of gold and 1.6 million ounces of silver. Last year, production of gold was 241,400 ounces of gold, and 3.3 million ounces of silver.¹¹

Complainants

The Canadian NCP will accept a specific instance complaint from "any individual, organization, or community"¹² which believes the actions of a multinational enterprise

⁸ TPP, *supra* note 6, at 12.

⁹ GOLDCORP, ANNUAL REPORT 2008 (2008), *available at*

http://www.goldcorp.com/_resources/financials/annuals/2008_Goldcorp_AR_web-2.pdf.

¹⁰ Goldcorp, <http://www.goldcorp.com/operations/marlin/processing/> (last visited Dec. 5, 2009).

¹¹ Goldcorp, <http://www.goldcorp.com/operations/marlin/> (last visited Dec. 5, 2009).

¹² Canada's National Contact Point, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/required-information-information-requis.aspx> (last visited Dec. 5, 2009).

have breached the MNE Guidelines. Here, the complainant, FREDEMI, is a coalition of organizations from the affected community of SMI. The coalition is composed of four community organizations in the municipality of San Miguel Ixtahuacán: Association for Integrated Mayan Development (“ADIM”), the Association for the Integral Development of San Miguel (“ADISMI”), the local Catholic parish, and Strengthening Bilingual Education in San Miguel (“FEBIMI”). ADISMI was founded in the 1980s to promote better health, education and agricultural production in the municipality. FEBIMI is a group of local educators who promote the Maya Mam peoples’ right to bilingual education in the municipality. Together with the local parish, these groups formed FREDEMI to defend the rights of communities adversely affected by the Marlin Mine.

Complainants are assisted in this complaint by CIEL, which supports communities around the world in the defense of their rights to their land and natural resources.

Jurisdiction

Guatemala is neither an OECD member country nor is it one of the eleven non-member countries adhering to the MNE Guidelines. Canada is an OECD member country and has established a national contact point pursuant to the MNE Guidelines. Thus, according to the 2000 OECD Council Decision, the Canadian NCP should admit this complaint as a specific instance arising in a non-adhering country.

Other Fora

A petition to the Inter-American Commission on Human Rights was filed in 2007 on behalf of the communities of Sipacapa—SMI was subsequently added—against the Government of Guatemala for the failure to recognize the results of the 2005 *consulta*, in which 11 of the 13 communities of Sipacapa voted against the mine. The petition was based on a lawsuit filed in Guatemala and was decided by the Guatemalan Constitutional Court. The petition is still pending. The Latin American Water Tribunal considered a complaint regarding water quality and quantity concerns.

III. Violations of the MNE Guidelines

Goldcorp’s Activities are not Consistent with Guatemala’s Human Rights Obligations

Paragraph 2 of the General Policies of the MNE Guidelines states that enterprises should, “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” Goldcorp’s operations at the Marlin Mine are not consistent with Guatemala’s obligations to respect the complainant’s rights to life, health, water, property, to be free from racial discrimination, and to free, prior and informed consent.

1. Goldcorp’s Land Acquisition Violates the Communal Property Rights and the Right to Free, Prior, and Informed Consent of the People of SMI

The right to own land communally and the right to free, prior, and informed consent (“FPIC”) is protected by the International Convention on the Elimination of Racial Discrimination and the American Convention on Human Rights, both of which Guatemala has ratified.¹³ The Guatemalan Constitution also protects the right of indigenous communities to collective land tenure.¹⁴ These rights are specifically protected in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), which Guatemala voted in favor of in the UN General Assembly. These international obligations are consistent with the rights protected under the Agreement of Identity and Rights of Indigenous Peoples, which recognizes that the approval of an indigenous community is necessary prior to the exploitation of natural resources that would interfere with their subsistence livelihoods.

Article 21 of the American Convention on Human Rights protects the right to property. In a recent case, the Inter-American Court on Human Rights found that in the context of tribal and indigenous peoples the Convention recognizes the right to the use and enjoyment of property according to a system of communal property.¹⁵ That right is not absolute, the State may place limitations on the use of property. However, in the case of large-scale development that would have a major impact on the indigenous or tribal territory, the State has a duty to obtain the free, prior and informed consent of the indigenous or tribal people.¹⁶

The International Convention on the Elimination of Racial Discrimination guarantees the equal protection of civil, political, economic, social, and cultural rights regardless of race, color, descent, or national or ethnic origin. The Committee on the Elimination of Racial Discrimination (“CERD”), in its General Recommendation 23, affirmed that discrimination against indigenous peoples falls within the scope of the Convention. The CERD interprets the Convention as requiring states to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.” Further, the CERD called on states to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interest are taken without their informed consent.”

Specifically, in its 2006 Concluding Observations on Guatemala’s implementation of the Convention, the CERD expressed its concern about the lack of respect for the traditional lands of indigenous peoples.¹⁷ Further, the CERD noted that the Ministry of Energy and Mines had granted mining concessions on indigenous territory without consultation.¹⁸ The High Commission on Human Rights echoed that concern and added that the national

¹³ American Convention on Human Rights, art. 21, Nov. 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123; International Covenant on the Elimination of All Forms of Racial Discrimination, March 7, 1966, 660 U.N.T.S. 195.

¹⁴ CONSTITUCION POLITICA DE LA REPUBLICA DE GUATEMALA art. 67.

¹⁵ *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 172, at 29 (Nov. 28, 2007).

¹⁶ *Id.* at 40.

¹⁷ U.N. Committee on the Elimination of Racial Discrimination, *Consideration of the Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination*, ¶ 17, U.N. Doc. CERD/C/GTM/CO/11 (May 15, 2006) [hereinafter CERD Concluding Observations].

¹⁸ *Id.* at ¶ 19.

legislation on consultation does not adequately protect indigenous rights.¹⁹ These issues were raised a year ago when Guatemala was considered in the UN Universal Periodic Review. In response, the Government of Guatemala stated that, “The suspension of mining exploitation pending determination of whether it is harmful is underway.”²⁰

Article 32 of the UNDRIP recognizes that the consent of the indigenous representative institution is should be obtained “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”²¹ Although the UNDRIP is not considered to be binding, legal scholars have argued that many of its provisions reflect customary international law, an argument supported in part by the statements made during the vote in the UN General Assembly. For example, Jose Alberto Briz Gutierrez, speaking for Guatemala in casting its vote in favor of the UNDRIP at the UN General Assembly, stated that the Declaration did not create new rights but reaffirmed the rights of indigenous peoples.²²

As recognized in the Agreement on Identity and Rights of Indigenous Peoples, one of the agreements included in the 1996 Peace Accords, the right of indigenous peoples in Guatemala to communal land tenure has been repeatedly violated and access to defend that right has been denied.²³ In the case of SMI, there is significant evidence to suggest that the territory is communally owned.²⁴ That families have individual lots is not inconsistent with communal tenure, especially, as it appears here, when those families retain only usufruct rights to their lots. In 1999 as Goldcorp was seeking to acquire land in SMI through Peridot, S.A., the municipal mayor of SMI unilaterally sanctioned individuals to sell their lots to the company.²⁵ However, according to Municipal Code and international law,²⁶ only the indigenous authorities of the community can authorize the sale of communal lands, which they have not done in SMI. Thus the original communal title to the land remains intact. The rights that Goldcorp purchased from individual families could only have been use, not ownership, rights. It appears that when the company registered these rights, they were converted to ownership rights on top of the original communal title, resulting in a double title on the land.²⁷ Consequently, Goldcorp could not and does not have a valid claim to own the property on which it is operating.

¹⁹ *UPR report, supra* note 1, at ¶ 29.

²⁰ U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review Guatemala*, ¶22, U.N. Doc. A/HRC/8/38 (May 29, 2008).

²¹ U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 32, U.N. Doc. A/RES/47/1 (Sept. 7, 2007).

²² United Nations, General Assembly Adopts Declaration on Rights of Indigenous Peoples, <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm> (last visited Dec. 6, 2009).

²³ Agreement on Identity and Rights of Indigenous Peoples, § IV.F, reprinted in Letter dated 5 April 1995 from the Secretary-General to the President of the General Assembly and to the President of the Security Council, U.N. GAOR, 49th Sess., Annex, U.N. Doc. A/49/882 (1995).

²⁴ JORIS VAN DE SANDT, *CORDAID, MINING CONFLICTS AND INDIGENOUS PEOPLES IN GUATEMALA* 89(2009).

²⁵ *Id.* at 103.

²⁶ U.N. Declaration on the Rights of Indigenous Peoples, *supra* note 21, art. 18.

²⁷ VAN DE SANDT, *supra* note 24, at 108-109.

The right to use the land to operate the Marlin Mine would have required the free, prior and informed consent of the community because the mine has major impacts on the land and resources of the indigenous territory of SMI. Indeed, in a recent visit to Guatemala conducted by the Inter-American Commission on Human Rights, Commissioner Abramovich reiterated that “States are destined to obtain the consent of the towns and indigenous communities that could be potentially affected by development programs and investment projects that are carried out on their territories.”²⁸ When asked about its failure to obtain the consent of the people of SMI, the company responds that it consulted with over 70,000 people. It is critically important to make the distinction between consultation and consent. Consultation requires that information about the adverse impacts of the project be effectively communicated to affected communities and their feedback incorporated. There is ample evidence that the company’s efforts did not meet this standard.²⁹ Consent requires the approval of the community according to their customary decision-making processes. Goldcorp has not claimed, to the knowledge of complainants, that it has the community’s consent to operate in SMI. Not only was consent not obtained, many local referenda, or *consultas*, have demonstrated that a large part of the community is opposed to the presence of the mine on their territory.

As mentioned previously, Goldcorp is currently undertaking plans to expand the mine in the village of Agel. It is unknown whether this project, referred to by the company as “Coral,” will result in an additional open pit mine or an extension of the existing underground mine. As before, Goldcorp is attempting to buy land from individuals in Agel. Agel, located within SMI, would be included under the original communal title. Goldcorp could not purchase ownership rights without the consent of the traditional indigenous authority of SMI, which it has not obtained.

Consequently, Goldcorp’s activities in SMI are not consistent with Guatemala’s obligations under the American Convention, the International Convention on the Elimination of Racial Discrimination, or the UNDRIP to respect the right to communal property and the right to free, prior and informed consent. The complainants seek as a remedy the immediate suspension of all mining operations in SMI unless and until their property rights have been legally recognized and their consent obtained.

2. Structural Damage to Houses Caused by Goldcorp’s Use of Explosives and Heavy Equipment Violates the Right to Property of Those Home Owners

The right to property also includes the protection of individual personal property, such as houses. Residents of the communities of Agel, San José Ixcániche, San José Nueva Esperanza and Salitre in SMI assert that fractures started to appear in their houses after operations commenced at the Marlin Mine. A recent engineering study undertaken by COPAE and the Unitarian Universalist Service Committee found that the most likely cause

²⁸ Inter-American Commission on Human Rights, IACHR Conducted Visit to Guatemala, <http://www.cidh.oas.org/Comunicados/English/2009/37-09eng.htm> (last visited Dec. 6, 2009).

²⁹ VAN DE SANDT, *supra* note 24, at 41.

of the structural damage seen in the houses of those communities was vibrations from Goldcorp's use of explosives at the mine and from the associated traffic of heavy equipment.³⁰

3. Water Contamination Resulting from Goldcorp's Mining Activities Violates the Right to Health of the People of SMI

Article 12 of the International Covenant on Economic, Social, and Cultural Rights,³¹ Article 4 of the American Convention, and Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, all ratified by Guatemala, protect the right to health, which includes the right to be free from pollution of air, soil, and water.

There are two important rivers that flow through SMI, the Cuilco River and the Tzala River.³² The population of SMI uses water from these rivers for bathing, washing clothes, animals, irrigation, and, in some cases, for drinking water.³³ Thus, contamination of these rivers has serious consequences for the health of the people of SMI.

Water pollution from Goldcorp's mining activities was the subject of a case in front of the Latin America Water Tribunal in September 2008. The Tribunal found that Goldcorp's operations generate 170 barrels of waste every month, one third of which is organic waste.³⁴ The Tribunal found that it is likely that acid rock drainage would overflow into surrounding land and rivers during the rainy season creating a human health risk.³⁵ Consequently, the Tribunal determined that Montana, Goldcorp's Guatemalan subsidiary, should indemnify the communities for damages caused to the environment and people of SMI and Sipacapa.³⁶ Further, it recommended that there be an independent study conducted with the participation of the affected communities to determine whether Goldcorp can avoid damages to communities and the environment.³⁷

Chief among the communities' concerns is the unlined tailings pond. The pond, whose water contains cyanide, heavy metals, and other chemicals, is almost at capacity.

³⁰ COMISIÓN PASTORAL PAZ Y ECOLOGÍA & UNITARIAN UNIVERSALIST SERVICE COMMITTEE, CASAS RAJADAS ALREDEDOR DE LA MINA MARLIN: INVESTIGACIÓN Y ANÁLISIS PRELIMINARES DE DAÑOS A LAS CASAS EN LAS ALDEAS DE AGEL, EL SALITRE, SAN JOSÉ IXCANICHE Y SAN JOSÉ NUEVA ESPERANZA, MUNICIPIOS SAN MIGUEL IXTAHUACÁN Y SIPACAPA, DEPARTAMENTO DE SAN MARCOS, GUATEMALA (2009).

³¹ U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 14 (2000) The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 51, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

³² COMISIÓN PASTORAL PAZ Y ECOLOGÍA, INFORME ANUAL DEL MONITOREO Y ANALISIS DE LA CALIDAD DE LAS AGUAS, SITUACION ACTUAL DEL AGUA ALREDEDOR DE LA MINA MARLIN, UBICADA EN LOS MUNICIPIOS DE SAN MIGUEL IXTAHUACAN Y SIPACAPA, DEPARTAMENTO DE SAN MARCOS, GUATEMALA 3 (2008).

³³ *Id.*

³⁴ LATIN AMERICAN WATER TRIBUNAL, CASE: OPEN PIT MINING IN THE CUILCO AND TZALA RIVER BASINS. SIPACAPA AND SAN MIGUEL IXTAHUACAN DISTRICTS, SAN MARCOS DEPARTMENT GUATEMALA ¶7 (2008).

³⁵ *Id.* at ¶9.

³⁶ *Id.* at 4.

³⁷ *Id.*

Community members are concerned about the company's plans to discharge the water into the Quivichil River, which they use for drinking water and other purposes.

Anecdotal evidence shows increased skin rashes and hair loss among the population of SMI.³⁸ Local doctors have attributed the increase incidence of these ailments to the water contamination caused by the mine. An independent water quality study conducted in 2008 by the Comisión Pastoral Paz y Ecología ("COPAE") Marcos found elevated levels of arsenic in the rivers near the Marlin Mine, in some instances, seven times higher than permissible limits set by the U.S. Environmental Protection Agency.³⁹ COPAE's second annual monitoring report confirmed that levels of arsenic continued to rise.⁴⁰

4. Goldcorp's Overconsumption of Water for its Operations Violates the Communities' Right to Water

Articles 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights, ratified by Guatemala, protects the right to water, which includes ensuring a supply of water adequate for personal and domestic uses.⁴¹

Goldcorp uses 250,000 liters of water per hour, which is equivalent to the amount of water a family would use in 22 years.⁴² However, because the environmental impact assessment prepared for the Marlin Mine did not include baseline information regarding surface and ground water, it is difficult to determine how the company's use of water impacts the community's resources.⁴³ Communities in San Miguel Ixtahuacán have reported that six wells have dried up, one of which supplied 40 indigenous families;⁴⁴ while half a dozen other communities are reporting increasing water shortages. Specifically, residents in the community of Agel, located above the mine, confirm that several springs from which they have taken water for many years have dried up. Further, some residents assert that their water pipes are damaged or periodically blocked due to Marlin's underground operations, resulting in a temporarily suspending their access to water.

5. Goldcorp Retaliation Against Anti-Mine Protesters Violate their Right to Life and Security of Person

³⁸ Bill Law, *Canadian mine accused of causing skin infections*, <http://news.bbc.co.uk/2/hi/americas/7934513.stm> (last visited Dec. 6, 2009).

³⁹ COMISIÓN PASTORAL PAZ Y ECOLOGÍA, *supra* note 32, at 33.

⁴⁰ COMISIÓN PASTORAL PAZ Y ECOLOGÍA, *SEGUNDO ANUAL DEL MONITOREO Y ANALISIS DE LA CALIDAD DE LAS AGUAS, SITUACION ACTUAL DEL AGUA ALREDEDOR DE LA MINA MARLIN, UBICADA EN LOS MUNICIPIOS DE SAN MIGUEL IXTAHUACAN Y SIPAKAPA, DEPARTAMENTO DE SAN MARCOS, GUATEMALA* 28 (2009).

⁴¹ U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶12, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

⁴² COMISIÓN PASTORAL PAZ Y ECOLOGÍA, *supra* note 32, at 6.

⁴³ ROBERT E. MORAN, *NEW COUNTRY, SAME STORY: REVIEW OF THE GLAMIS GOLD MARLIN PROJECT EIA, GUATEMALA* 4 (2004).

⁴⁴ LATIN AMERICAN WATER TRIBUNAL, *supra* note 34, at ¶11.

Articles 6 and 9 of the International Covenant on Civil and Political Rights and articles 4 and 7 of the American Convention on Human Rights, both instruments ratified by Guatemala, protect the right to life and security of person.

Ever since Goldcorp has been operating in the communities, there has been conflict. In early 2005, one man was killed and many more injured during a protest in Sololá to block the passage of mining equipment destined for the Marlin Mine.⁴⁵ In 2007, Goldcorp filed complaints against seven community members who protested the compensation received for their land. Charges against five members were dismissed and two resulted in convictions that have been appealed in national courts. In 2008, Goldcorp filed a complaint against eight women for interrupting the electrical lines to the processing plant, which resulted in the Police issuing arrest warrants. In June of this year, Goldcorp again filed complaints against community members, who had burned the company's equipment to protest the company's expansion into Agel.⁴⁶ All cases were characterized by irregularities, including lack of evidence and false testimony. In a country that is known for its high levels of impunity, the state's quick response to all of Goldcorp's complaints creates the appearance, if not the reality, that the company is enjoying unequal access to the law, whereas community members are subject to persecution with little success in their complaints against the company. The result is that local leaders feel intimidated and afraid that protesting against the company's activities will lead to their criminal persecution.

Community leaders and church officials have received death threats in response to their advocacy against the Marlin Mine. In June 2008, the director of ADISMI received four death threats on his mobile phone.⁴⁷ It is not known whether these threats originate from Goldcorp's employees. The priest of the Catholic church in SMI has also received death threats by mail. However, it is clear that the presence of the mine in SMI has and continues to destabilize the community and foment conflict.⁴⁸

IV. Desired Outcome

The complainants request that the NCP conduct an investigation into Goldcorp's activities in and around the Marlin Mine, including its exploration and expansion of the Marlin I and II concessions. Further, complainants request that the NCP make appropriate recommendations to Goldcorp, which ensure the respect for the human rights of the residents of SMI. Specifically, complainants seek Goldcorp's commitment to the following:

- Suspend all mining operations and close the mine;
- Terminate its plans to expand the mine;

⁴⁵ *TPP, supra* note 6, at 17.

⁴⁶ UNIDAD DE PROTECCIÓN A DEFENSORAS Y DEFENSORES DE DERECHOS HUMANOS GUATEMALA, INFORME PRIMER SEMESTRE 2009 14 (2009).

⁴⁷ *Id.*

⁴⁸ BREAKING THE SILENCE ET AL., TERRITORIOS INDÍGENAS Y DEMOCRACIA GUATEMALTECA BAJO PRESIONES, CONFLICTIVIDAD SOCIAL, CONSULTAS COMUNITARIAS Y VIOLACIONES A LOS DERECHOS HUMANOS EN EL CONTEXTO DE LA EXPLOTACIÓN DE LOS RECURSOS NATURALES EN TERRITORIOS INDÍGENAS DEL ALTIPLANO OCCIDENTAL DE GUATEMALA, Y LA ACTIVIDAD DE MINERÍA A CIELO ABIERTO EN EL MUNICIPIO DE SAN MIGUEL IXTAHUACÁN, DEPARTAMENTO DE SAN MARCOS 22 (2009).

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- Cease its intimidation and persecution of community members;
- Submit to ongoing, third-party monitoring of water contamination;
- Establish an escrow account with sufficient funds to finance the environmental restoration and continuous water treatment needed after the closure of the Marlin Mine; and
- Adopt a corporate policy to respect the right of indigenous peoples to free prior and informed consent.