

August 20, 2008

RIGHTS ACTION Open Letter #2

GOLDCORP'S FLAWED AND PRE-DETERMINED HUMAN RIGHTS ASSESSMENT  
By Grahame Russell, Rights Action co-director, [info@rightsaction.org](mailto:info@rightsaction.org), 1-860-352-2448, [www.rightsaction.org](http://www.rightsaction.org)

On May 1, 2008, Rights Action sent an Open Letter ([http://www.rightsaction.org/articles/Goldcorp\\_Open%20Letter\\_050108.html](http://www.rightsaction.org/articles/Goldcorp_Open%20Letter_050108.html)) to Goldcorp Inc and a group of Shareholder-Investors concerning a "Human Rights Impact Assessment" they were proposing to assess human rights violations caused by Goldcorp's "Marlin Mine" operation in Guatemala.

Little or nothing came of this letter, and other critical feedback that Goldcorp and the Shareholder-Investors received. They are proceeding with their "Assessment", again with no consultation with or fundamental participation of the Maya Mam communities that are suffering environmental and health harms and human rights violations caused by Goldcorp's cyanide leaching, open pit gold mine.

BELOW: A further commentary from Rights Action -- and -- the "Request for Proposal" from Goldcorp and the Shareholder-Investors.

Please re-circulate this info far 'n' wide. WHAT TO DO? [info@rightsaction.org](mailto:info@rightsaction.org) / 860-352-2448 / [www.rightsaction.org](http://www.rightsaction.org)

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Rights Actions prepared this commentary in our own right, not on behalf of any Guatemalan groups that we support and work with in mining-affected regions.

The environmental and health harms and human rights violations caused by Goldcorp's cyanide leaching, open pit gold mine in Guatemala are not "Guatemalan" problems; they are "Canadian" and "USA" problems as well. Goldcorp is a gold mining giant based in Canada and the USA. The vast majority of the profits from this mine flow north to Goldcorp directors, shareholders and a wide range of North America investors and pension funds, while the harms and violations occur in Guatemala.

In preparing this commentary, we do not question the motivations of the Shareholder-Investors in promoting a human rights investigation into Goldcorp's operation.

While there is a real and immediate need for a balanced and proper human rights investigation into the environmental and health harms and human rights violations caused by Goldcorp's mine in Guatemala, this is not the way to do it.

#### "MAIN OBJECTIVE"

While there might be much that is commendable with the investigatory procedures of the Human Rights Impact Assessment ("Assessment"), as set out in the Request for Proposal "RFP" (see below), the Assessment is fatally flawed for basic underlying problems.

The "main objective" of the Assessment (see the RFP) is "to optimize opportunities for the Company to continue operating profitably in Guatemala."

The basic, obvious question is: How is it possible to conduct a complete and proper investigation of environmental and health harms and human rights violations caused by a mining operation when it has already been declared that the main objective of the investigation is to continue mining operations?

The main objective of any balanced and proper human rights investigation, including this Assessment, should be to determine: What the violations are, Who are the victims of the violations (including environmental harms), and What caused the harms and violations; and then to make clear and binding recommendations as to How to compensate for all damages and loss, and What steps need to put an end to the causes of the violations - even if this means, in this case, suspending or terminating the mining operation.

This Assessment's "main objective" predetermines a significant part of the outcome of the Assessment and is in direct contradiction to the possibility of a full and proper investigation.

#### THE ELEPHANT IN THE ROOM

How is it possible to carry out a balanced and proper investigation without suspending operations while the Assessment is in progress?

Suspending mining operations would not only an act of good faith, but more importantly a recognition by Goldcorp and the Shareholder-Investors that they take seriously the need to investigate the underlying causes of the health and environmental harms and human rights violations – including, obviously, the very operation of the mine.

If they do not suspend operations, even for a period of time, the Assessment is pre-determining that the mining operation itself is not a cause of the health and environmental harms and human rights violations.

#### COMMUNICATION AFTER THE FACT

In publicizing the RFP, we find again a basic flaw in this entire process that we and others have commented on all along. From the beginning of this process, spearheaded by Shareholders-Investors in consultation with Goldcorp officials,

there has been no previous consultation with or obtaining consent from the communities.

While there is communication with the affected communities, it is after the fact. This obviously is not at the same thing as proceeding together, based on prior and full consultation and then full consent. Goldcorp and the Shareholder-Investors obviously had prior consultation and agreed, together, to proceed – leaving the affected communities out of the process.

#### LACK OF “TRANSPARENCY, INDEPENDENCE AND INCLUSION”

The RFP explains that the process is based on “transparency, independence and inclusion”. For the summary comments we have made above, and in our May 1, 2008, Open Letter, the process has been characterized by an absence of “transparency” and “inclusion” with respect to the affected communities.

The process is also characterized by a lack of “independence”. As stated above, and in the Open Letter, the entire process has been spearheaded and controlled by beneficiaries of this gold mine, and this is reflected in the three-person Steering Committee, with two spots going to the Goldcorp and the Shareholder-Investors. The third spot is not even for a representative of the affected communities.

To make the obvious point: If the Goldcorp company is on the Steering Committee, then at a bare minimum a representative chosen by the affected communities should be on the committee and the third position would not go to the Shareholder-Investors, but to a truly independent 3rd party, as agreed upon by both the affected communities and Goldcorp.

We could go on with our comments about this Assessment (Example: Why is Goldcorp’s mine in Guatemala the only one being investigated – by this flawed process -, when there are serious allegations of environmental and health harms and human rights violations at many of its mine sites across the Americas? See “Investing in Conflict”, <http://www.rightsaction.org/Reports/research.pdf>), but we leave it at this.

For questions or more information about the points we raise in this letter or about how you can get involved in supporting the struggles and resistance against the multiples harms being caused by Goldcorp’s mining practices in Guatemala and Honduras (and beyond), contact us.

Thank-you.

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## REQUEST FOR PROPOSAL (RFP) HUMAN RIGHTS IMPACT ASSESSMENT

### I. Overview

“Businesses operate in conflict zones and conflict-prone countries around the world. If they make the wrong decisions on investment, employment, community relations, environmental protection and security arrangements, they can exacerbate the tensions that produce conflict. But if they make the right decisions, they can help a country turn its back on conflict, and move towards lasting peace.” Kofi Annan, 2005

Goldcorp is currently preparing to implement a human rights impact assessment of their Guatemala operations (the “Assessment”). The assessment process is being directed by a Steering Committee made up of a company representative, a representative of socially responsible investor groups and a Guatemalan representative.

The steering committee is responsible for setting the scope and timeline of the Assessment, selecting the consultant(s) to conduct the Assessment, and for managing the overall Assessment process. In order for the impact assessment to be comprehensive yet focused, the Steering Committee is looking for an experienced organization to conduct the Assessment. The Steering Committee is also looking for an organization to conduct a peer review of the final Assessment once it is complete.

Goldcorp, one of the world's largest gold mining companies, is a Canadian based company with its corporate office in Vancouver, Canada. Goldcorp employs more than 9,000 people at its 17 operations and development projects located throughout the Americas. Montana Exploradora de Guatemala S.A., a wholly-owned subsidiary of Goldcorp, operates the Marlin Mine in the western highlands of Guatemala.

The Assessment will focus on human rights impacts at the Marlin Mine.

The Assessment will evaluate the policies, procedures, and practices adopted by the company, as well as the impact of those policies and practices on human rights. This RFP details the requirements for bidders who would like to submit a written bid proposal. While the proposal must be consistent with the principles and requirements outlined in this RFP, bidders are encouraged to propose innovative approaches to enhance the human rights assessment process and outcomes outlined below.

### II. Human Rights Assessment Background

#### a. Objectives

The primary objective of the Assessment is to improve the opportunities for the company to operate responsibly and profitably in Guatemala by ensuring that the company has in place and is implementing effectively, policies and procedures designed to mitigate human rights impacts or potential conflicts with internationally recognized human rights standards and norms given the context in Guatemala. The assessment will gather information from local communities and stakeholders, review the company's policies and procedures that are relevant to the respect for human rights, and assess the current status of the implementation of those policies and procedures (i.e., the impacts of those policies and procedures in the human rights context of Guatemala). It is expected that the assessment process and resulting recommendations will inform company policies, procedures and performance in other regions of operation.

#### b. Principles of the Assessment

The Assessment will be an independent, peer reviewed human rights impact assessment of the company's activities in Guatemala. The process will be guided by the tenets of transparency, independence, and inclusivity, as defined by:

- a. Transparency. Information on the assessment mechanisms, stages and processes will be made available to all stakeholders in a timely and understandable manner.
- b. Independence. The assessment process and the assessor(s) chosen to perform the assessment will be independent. Independence means that there shall be no material relationship (other than the performance of the Assessment) between the assessor and the stakeholders and that the assessor is free from external control in the performance of the Assessment.
- c. Inclusivity. The Assessment will engage, to the best of the assessor's ability, all of the various stakeholders impacted by the company's activities in Guatemala.

#### c. Assessment Context

The scope of the Assessment is the Marlin Mine in Guatemala. The Marlin mine is 100% owned by Montana Exploradora de Guatemala, S.A., a wholly-owned subsidiary of Goldcorp. The Marlin Mine is a conventional milling operation with a combination of open pit and underground mining which began commercial production in December 2005. As part of its sustainable development strategy, the company has created a foundation, the Fundación Sierra Madre, which will also be part of the scope of the Assessment.

The Marlin Mine is in the western highlands of Guatemala, 48 kilometers southwest of the city of Huehuetenango, approximately 300 kilometers northwest of Guatemala City. The mine itself is located in the Municipality of San Miguel Ixtahuacan. The predominant Indigenous group in this municipality is Mam. The administrative buildings are located in the Municipality of Sipacapa where the majority of Indigenous peoples are Sipakapense.

Commercial production at the Marlin Mine commenced in the fourth quarter of 2005 and is expected to continue through to 2015. The Marlin Mine employed 1,149 workers as of the end of 2007 of which 82% were direct employees and 18% were contractor employees. During 2007, 99% of all workers at the operation were Guatemalan residents. Approximately 68% of these workers are from the local communities, and virtually all of these people are indigenous. Of the 937 Montana Exploradora employees working directly for the company as of the end of 2007, 88% were men and 12% were women.

### III. Detailed Requirements for the Assessment Bid

#### a. Assessment Tools

For the purpose of this Assessment, the term 'human rights' is understood to include economic, social, civil, cultural and political rights, as well as the right to food and water, housing, safety and security, as defined by the internationally agreed-upon UN conventions.

The HRIA Steering Committee has selected the Danish Institute for Human Rights' Compliance Assessment tool, which is intended to provide the assessor with a baseline of relevant human rights questions and indicators for use during the Assessment. The entire tool contains over 350 questions and 1000 corresponding human rights indicators, developed from the Universal Declaration of Human Rights, the 1966 Dual Covenants on civil, political, cultural, social and economic rights and over 80 other major human rights treaties and conventions.

The standards and indicators used in the assessment tool are updated on an annual basis, based on feedback from both company users and human rights groups, to ensure that the tool addresses the real life problems faced by companies and to reflect changes and/or developments in international human rights standards or laws.

In addition to the specific indicators that will be covered, the Steering Committee is desirous of capturing information that does not always come out in a question and answer type protocol such as the Danish Institute's tool. Consequently, the assessors will be required to draft a qualitative narrative report on each of the issue categories of the protocols that summarizes the findings of that category and compares current company practice with available practicable best practices and stakeholder perceptions on these practices.

In addition, the Steering Committee commissioned a country context report on the historic and present situation of human rights in Guatemala to provide the assessor with preliminary background information to guide the focus of the Assessment. The country context report will be available to the assessors to facilitate the development of the on-site assessment. The assessor, in conjunction with the Steering Committee and the Danish Institute, will be expected to review the Danish Institute tool to determine which indicators would be most appropriate for the Assessment, and to adapt the Danish Institute tool

accordingly. Bidders are not solely constrained to the use of the Danish tool. Bidders are invited to propose additional assessment questions, indicators and methodologies to supplement the Danish Institute tool (e.g., water quality and quantity, community relations, conflict).

The Danish Institute will provide in-person training to the selected assessor team on the use of its tool, its preferred methods for conducting the assessment and lessons learned from applying this tool with other companies, particularly extractive companies. Appendix A included with this RFP has details on the tool and a sample of the indicators used.

The Assessor will be required to provide recommendations to the company regarding improvements to its operating practices and policies. This section will rely heavily on the skills, abilities, and experience of the assessment team to provide their observations on the current reality of the situation on the ground. Verification of the assessment team's conclusions through feedback from stakeholders will be required to ensure that the summary conclusions and stakeholder perceptions are adequately captured.

#### b. Assessment Methodology

A main tenet of this Assessment is inclusivity. As such, the methodology and process used to conduct the Assessment should be as participatory as possible, within existing time, financial, and logistical constraints, in order to adhere to the following generally accepted principles which govern human rights: empowerment, participation, non-discrimination, prioritization of vulnerable groups, accessibility and accountability. Following the above principles as guidelines, a combination of the following techniques would need to be included in the Assessment methodology:

- Outreach and capacity-building exercises for stakeholders (e.g. community members) to ensure that they understand the overall process and their role in it;
- participatory methodologies that include such things as small focus group meetings, individual meetings with key informants, and general village meetings, as appropriate; and
- meetings with traditionally excluded groups, such as women and/or youth.

As well, popular education methodologies should be incorporated into the Assessment process to ensure that those who do not read or write can still participate effectively.

The Assessment methodology needs to be implemented in a culturally appropriate manner depending on the stakeholder or stakeholders involved. In addition, a stakeholder feedback process needs to be implemented as described in the section d, below.

In order to ensure the process is as culturally appropriate as possible and to ensure local participation, the Steering Committee requires that the assessor

team include a local Guatemalan partner to provide guidance on the specific participatory mechanisms at a minimum and also, perhaps, in preparing the communities for the performance of the Assessment. The local Guatemalan partner should be integrated as fully as possible with the selected assessor, and assist on all areas of the Assessment.

The role of the local Guatemalan partner will be to provide guidance to the assessor on:

- i) socio-economic and political context
- ii) cultural sensitivity and local indigenous context
- iii) culturally appropriate participatory mechanisms and tools
- iv) stakeholder identification
- v) information dissemination & collaboration with local communities
- vi) safety and personal security considerations for participants & interviewees
- vii) local language and translation (Mam & Sipakapense), if possible

We encourage the bidder to propose one or more local Guatemalan partners. The selection of the Guatemalan partner, however, will be the prerogative of the Steering Committee. If the bidder is unable to identify an appropriate Guatemalan partner, the bidder shall indicate that and the Steering Committee will work with the bidder to identify such a partner.

#### c. Investigation Methodologies

The Assessment will be conducted by filling out the indicators provided in the protocols using a variety of methodologies:

- i) In depth interviews with company employees, and external local, regional and national stakeholders. An initial list of possible interview candidates is being prepared by the Steering Committee, although it is expected that the assessor will contact other stakeholders.
- ii) Review of all relevant corporate documentation including policies, processes, training programs, incident and investigation reports, and other relevant documents. A list of such documents and their approximate length is presently being prepared by the company. The assessor should determine if other documents should be reviewed.
- iii) Review publicly available information regarding Montana Exploradora and Guatemala available through sources such as the media, the internet and local and international NGOs.

#### d. Stakeholder Feedback

As part of the Assessment process, the Steering Committee believes that it is important that the assessor review its general findings with stakeholders prior to finalizing the Assessment report in order to validate the assessor's evaluation and conclusions. Therefore, the bidder's proposal must outline a methodology for obtaining stakeholder feedback.



Basic requirements for this feedback mechanism are:

- i) It should be coordinated in conjunction with the local partner to ensure it is an appropriate methodology.
- ii) Key internal and external stakeholder interviewees should participate in the feedback process.
- iii) It should include feedback meetings that will provide key stakeholders with an opportunity to comment on the assessor's general findings and to offer comments or perceptions on the assessor's evaluation and conclusions.
- iv) Written documentation of the stakeholder feedback process and results must be prepared and included in the final report that will be made available to the public.

The assessor is responsible for making conclusions and recommendations independently and professionally. The purpose of the feedback process is to afford the assessor with an opportunity to confirm with key stakeholders the accuracy of the information and understanding of issues and priorities developed by the assessor during the Assessment process, and to identify whether there are gaps in the information or data requiring further investigation.

#### e. Coordination with the Steering Committee

The assessor is responsible for ensuring full and timely communication and coordination with the Steering Committee to enable the Committee to perform its oversight role. Each proposal shall describe the assessor's proposal for the process and mechanisms for ensuring communication and coordination with the Steering Committee. The coordination process must be integrated with the implementation plan for the Assessment and shall provide the Steering Committee with adequate opportunity to provide oversight with respect to each element of the Assessment process.

#### f. Deliverables Required

At the end of the Assessment the following deliverables are required:

- i) A comprehensive report that includes:
  - a. The Danish Institute Assessment protocol filled out and completed with detailed information that documents and supports each of the assessor's findings.
  - b. The assessor's qualitative analytical commentary on each category of human rights assessed, including an analytical commentary on current company practice and stakeholders' experiences and perceptions of company practice.
  - c. Recommendations for reasonable and pragmatic remedial actions and/or improvements in the company's policies, practices and procedures. The recommendations should be specific, practicable, and reasonably achievable.
  - d. A detailed description of the methods and tools used to conduct the

Assessment.

e. Written documentation of the stakeholder feedback process. The documentation should include a description of the stakeholder feedback methodology, the assessor's evaluation of the information developed during the feedback process, and any modifications to the assessor's initial evaluation and conclusions based on the stakeholder feedback.

ii) A summary of the Assessment to be made public to all external stakeholders.

g. Timing

Responses to RFP due: August 22, 2008

Assessor team selected: August 29, 2008

Work to start: September 8, 2008

Local partner selected (if not included in RFP): September 27, 2008

Protocol reviewed and finalized: September 29, 2008

All agreements and field arrangements settled: October 15, 2008

Onsite assessment: October 2008

Draft report to the Steering Committee: December 15, 2008

Stakeholder feedback process: January 2009

Final report due: February 20, 2009

h. Confidentiality

The finalists for this proposal will need to sign a confidentiality agreement that ensures that all information they have gathered on the company and external stakeholders will be held confidentially. In particular, the assessor will be required to maintain, and to make available to the Steering Committee and peer reviewer upon request, a list of all stakeholders interviewed, unless a stakeholder specifically asks not to be identified. The list of stakeholders interviewed is intended to verify the comprehensiveness of the Assessment and will not be made public. In all reports and documentation, comments from stakeholder interviews will not be attributed to individual stakeholders. The assessor must provide a written protocol that explains to all stakeholders interviewed the confidentiality aspects of the Assessment and how information provided by stakeholders will be used by the assessor. A confidentiality agreement will be prepared by the Steering Committee.

i. Assessor Qualifications

i) Required:

a. Guarantee of independence (either monetary or other) from all stakeholders, including the company and its shareholders.

b. Demonstrated extensive experience and/or understanding of civil, political, cultural, social and economic human rights issues.

c. Experience conducting human rights assessments.

d. Experience with mining or extractive industries and communities.

- e. Knowledge of Indigenous peoples issues (especially those related to mining or extractive industries).
- f. Members of the team who are fluent English and Spanish speakers.
- g. Credibility with relevant communities of interest both internal and external to Guatemala.

ii) Strongly Preferred:

- a. Experience in Guatemala and knowledge of Guatemalan human rights context.
- b. Knowledge of nongovernmental organizations in Guatemala who may partner with the assessor in conducting the Assessment (as approved by the Steering Committee).
- c. Demonstrated ability to work productively with both the mining/extractive industry and nongovernmental/civil society organizations.
- d. Ability to provide constructive criticism and feedback to corporations

#### IV. Proposal Information Required

Written proposals shall specify how the bidder intends to meet the principles, activities and deliverables identified in this RFP. All proposals are due by August 15, 2008.

1. Detailed description of the methodology that would be used to conduct the Assessment.
2. Detailed description of the methods or suggestions for working with a local partner in addition to identification of or a description of how the local partner would be selected. If a local partner is specified, provide the information requested in items 4 and 5 for the local partner as well.
3. Detailed description of the stakeholder feedback process that meets the requirements of the RFP.
4. Detailed description of the organization bidding for this project. Please specify experience in human rights assessments and issues.
5. Detailed description of the individuals conducting the work and their roles in conducting the Assessment. In particular please specify their experience in human rights assessments and issues.  
Also please specify experience in Guatemala or Central and/or Latin America and language proficiencies.
6. Disclosure of any financial or non-financial ties of the organization or the individuals performing the work to Goldcorp, Montana Exploradora, the shareholders who have proposed this assessment<sup>1</sup> or any major stakeholder related to Montana Exploradora in Guatemala.
7. Third party and client references.
8. A project budget specifying in detail daily rates and costs for the various elements of the Assessment and any assumptions regarding functions to be provided by others:
  - a. Preparation (i.e. local partner selection, training on Danish tool, protocol review, document review)

- b. Onsite Assessment (number of days estimated on site in Guatemala)
  - c. Report writing
  - d. Stakeholder feedback process
  - 1 Consisting of Ethical Funds, First Swedish National Pension Fund, Fourth Swedish National Pension Fund, and the Public Service Alliance of Canada Staff Pension Plan / SHARE.
  - e. Final publication of summary report and wrap up of the project
9. Statement of interest in bidding for a) the Assessment, b) the peer review of the assessment, or c) both the Assessment and the peer review.

All costs will be paid directly by Goldcorp.

\*\* All costs incurred while developing the proposal are solely the bidder's responsibility and non-reimbursable.

#### V. Assessor Team Selection

The selection process will be conducted by the Steering Committee. They will select a semi-finalist group of proposals. These semi-finalists will be interviewed via the phone and their references will be checked. If necessary in person interviews will be conducted with expenses paid for by Goldcorp.

#### VI. Peer Review

The Steering Committee acknowledges that human rights impact assessment is a new and developing field, therefore the final assessment report will be peer reviewed. The purpose of the peer review is to ensure the integrity and quality of the Assessment report and the methodology, techniques and tools deployed by the assessor. The peer reviewer is expected to critically evaluate the rigor of the Assessment process and identify any shortcomings or gaps.

The Steering Committee will select a peer reviewer; however, the selection need not be made from bidders responding to this RFP. Bidders that are interested in being considered for the position of the peer reviewer must clearly indicate their interest in the submitted proposal (see section IV above), and provide a detailed description of their skills and abilities in conducting a rigorous peer review of the Assessment.

#### VI. Submission Information

Please send all final proposals to:  
Zoe Le Good, Advisory Services  
Suite 205, 535 Thurlow Street  
Vancouver, BC  
V6E 3L2  
zoe@cbsr.ca  
604.323.2714

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