

Arizona Journal of Environmental Law & Policy
April, 2011

Comment
Joseph Ezzo

Copyright © 2011 Arizona Journal of Environmental Law & Policy; Joseph Ezzo

THE MARLIN MINE, GUATEMALA: ENVIRONMENTAL AND INDIGENOUS HUMAN RIGHTS CONCERNS

Montana Exploradora de Guatemala S.A., a wholly-owned subsidiary of Goldcorp, a Canadian mining company, began gold and silver mining operations in the western highlands of Guatemala in 2005. The municipalities of San Miguel Ixtahuacán and Sipacapa were primarily affected.¹ The presence of the mine has directly impacted 18 communities of indigenous Maya people: Tres Cruces, Escupijá, Pueblo Viejo, La Estancia, Poj, Sipacapa, Pie de la Cuesta, Cancil, Chual, Quecá, Quequesiguán, San Isidro, Canoj, Ágel, San José Ixcaniché, San José Nueva Esperanza, San Antonio de los Altos, and Siete Platos.²

As the construction and operation of the mine was undertaken without consultation with the local indigenous peoples, and because of its potentially devastating environmental effects, a groundswell of protest followed by legal activity has occurred.³ In their legal proceedings, the communities complained of a variety of environmental issues, including the contamination of rivers; the drying up of wells; illness to infants and children, including frequent skin rashes; and the deaths of live stock.⁴

Several shareholders of Goldcorp attempted to address some of the environmental issues in 2008. They called on the mining company to conduct an independent assessment of the human rights and environmental concerns relating to the Marlin Mine.⁵ A steering committee was created, consisting of shareholders, a Goldcorp representative, and a Guatemalan representative.⁶ The steering committee -- "committed to the principles of independence, inclusively, and transparency" -- selected the firm On Common Ground Consulting, Inc. to conduct the assessment.⁷

The effort resulted in a detailed report and an executive summary that presented the consultant's finding and recommendations with regard to issues of the environment, land acquisition, labor, consultation with indigenous peoples, security, and access to remedies.⁸ The two most pressing issues found by the consultants were consultation with and consent from indigenous peoples and environmental concerns.⁹ The environmental concerns of local indigenous peoples, in order of frequency of complaint, included: water quality; health; land contamination; water quantity; dust; and vibrations.¹⁰

The consultants found that Goldcorp was essentially in compliance with good practice standards in all environmental areas with the exception of preparedness for closure and post closure supervision and oversight.¹¹ They also noted that a more effective mechanism for independent auditing might be desirable.¹² Their recommendations included fixing the houses that had been cracked by vibrations; complete a water census of the affected area and any additional areas that might be affected by expansion; and prepare a contingency plan for Txeshiwe Spring by consulting with its users "to supplement or replace the water source in case of impacts to quality or quantity."¹³

After failing to find a remedy in domestic court, the Mayan communities took their case to the Inter-American Commission on Human Rights (IACHR), a body within the Organization of American States, to which Guatemala is a signatory. On May 20, 2010 the IACHR issued a precautionary measure recommending that the Guatemalan government close the mine until

proper consultation with the indigenous communities had been conducted and that environmental problems were properly addressed.¹⁴ According to the measure:

The IACHR likewise asked the State to adopt the necessary measures to decontaminate, as much as possible, the water sources of the 18 beneficiary communities and to ensure their members access to water fit for human consumption; to address the health problems that are the subject of these precautionary measures, in particular to begin a health assistance and health care program for the beneficiaries aimed at identifying those who may have been affected by the consequences of the contamination, so as to provide them with appropriate medical attention ...¹⁵

The Marlin Mine controversy is therefore one in which environmental impacts and international human rights issues cannot be disentangled from one another. As a signatory to the OAS, the Guatemala government has an obligation to follow the findings of the IACHR; as a signatory to the International Labor Organization (ILO) Convention No. 169, it has a binding obligation to protect the human rights of indigenous peoples, which includes protection of their traditional territory and the natural resources therein.¹⁶ To date, however, the government has allowed the mine to continue to function.

Shortly after the IACHR announced its precautionary measure, James Anaya, the U.N. Special Rapporteur on the Rights of Indigenous Peoples, visited Guatemala at the invitation of its government to investigate the Marlin Mine controversy. One of the complicating factors the Special Rapporteur encountered was a wealth of conflicting reports and testimony, and lack of baseline data from which to evaluate the broad range of claims.¹⁷ Stressing the human rights component of the issue, Anaya reiterated the importance of traditional lands and resources to the collective rights of indigenous peoples,¹⁸ as well as the duty to consult with indigenous peoples in matters where their livelihoods will be impacted.¹⁹ The Goldcorp-sponsored report, despite its favorable findings regarding environmental factors, found that the duty to consult with indigenous peoples -- a responsibility of the government -- had not been met; adequate consultation has to include providing local people with a clear understanding of the project and its potential environmental impacts.²⁰

In June 2010, the government of Guatemala stated that it would suspend operations at the Marlin Mine pending a full investigation of the mine's environmental and health effects.²¹ To date, however, it had not done so. The government has failed to honor its commitment to international human rights instruments such as ILO Convention No. 169, and, as of 2007, the U.N. Declaration on the Rights of Indigenous People (which the government endorsed). It has likewise failed to live up to its commitment to IACHR. Consequently, the traditional lives of 18 communities of indigenous Maya people, along with their traditional territory and natural resources contained therein, are threatened. This constitutes a significant setback in the international push to recognize and respect the rights of indigenous peoples. It further demonstrates a lack of concern from environmental degradation and its legal consequences where the self-determination of indigenous peoples is concerned. As Special Rapporteur Anaya has states:

The existence of legitimate demands on the part of the indigenous peoples is undeniable. These demands are founded not only on Guatemala's international human rights obligations but also on elementary considerations of humanity, given the impact of the projects on their ancestral lands.²²

Footnotes

¹ Inter-American Commission on Human Rights, Precautionary Measures Granted by the Commission during 2010, PM 260-07: Communities of the Maya People (Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala, <http://www.cidh.oas.org/medidas/2010.eng.htm>.

² Id.

³ S. James Anaya, Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine paras. 26-27, UN Human Rights Council Report A/HRC/15/37/App. 8 (July 8, 2010), http://unsr.jamesanaya.org/docs/special/2010_special_guatemala_preliminary_note_en.pdf.

4 Id. at para. 9.

5 On Common Ground Consulting, Inc., Human Rights Assessment of Goldcorp's Marlin Mine: Executive Summary (May 2010), http://www.hriaguatemala.com/en/docs/Human%20Rights/OCG_HRA_exec_summary.pdf.

6 Id. at 4.

7 Id.

8 Id. at 3.

9 On Common Ground Consulting, Inc., Human Rights Assessment of Goldcorp's Marlin Mine 61 (May 2010), http://www.hriaguatemala.com/en/docs/Human%20Rights/OCG_HRA_Marlin_Mine_May_17.pdf.

10 Id.

11 Id. at 66.

12 Id.

13 Id. at 82.

14 Inter-American Commission, note 1, *supra*.

15 Id.

16 Anaya, note 3 *supra* at paras 15, 27.

17 Id. at paras 24-25.

18 Id. at para. 8.

19 Id. at para. 31.

20 On Common Ground, note 9 *supra* at 59-60.

21 Guatemala to Suspend Goldcorp's Marlin Mine (June 29, 2010), available at: <http://upsidedownworld.org/main/news-briefs-archives-68/2574-guatemala-to-suspendgoldcorps-marlin-mine>.

22 Anaya, note 3 *supra* at para. 11.