



ASSESSMENT

**of a complaint submitted to CAO
in relation to the Marlin Mining Project in Guatemala**

September 7, 2005

Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency

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EXECUTIVE SUMMARY

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints by people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are managed through the CAO's Ombudsman function.

In March 2005 the CAO received a complaint from communities in Sipacapa municipality local to the Marlin mining project in Guatemala. The complaint raises concerns that the project will: (a) reduce access by the community to local water supplies; and (b) result in contamination of local waterways. In addition, the complaint alleges that the project was developed without adequate consultation and in violation of the rights of indigenous people and that the mine exacerbates social tensions, violence and insecurity.

The project – an open-pit and underground gold and silver mine operated by Montana Exploradora de Guatemala, S.A (Montana) a subsidiary of Canadian company Glamis Gold Ltd – is currently still under construction. It spans the boundary of two municipalities in Guatemala – San Miguel de Ixtahuacán (San Miguel) and Sipacapa. Communities in the two municipalities – although both predominantly Mayan – have distinct indigenous cultures and languages. The ore body and approximately 87% of the mine property are in San Miguel. The Board of the World Bank Group approved an IFC loan of US\$45million to Montana in June of 2004.

The CAO investigated this complaint through a field visit to the project location and exhaustive examination of IFC and Montana documentation. CAO interviewed the complainants, other local groups, national and international civil society leaders, IFC and project personnel in both Guatemala and in Washington, DC. The CAO's assessment presents the following findings and recommendations:

Water quality and dam safety

Based on the current design and operational procedures of the project, the people of Sipacapa will not be at a significant risk from any contamination to waterways as a result of the project. The CAO finds that the project, at its current stage of development, has substantially improved its management and mitigation of water quality risks associated with its operations. The CAO also finds that IFC's required independent review of the Tailings Storage Facility (TSF), which includes the tailings dam, has adequately assessed the risks of the dam and has led to substantial improvements in the TSF design. The Environmental Audit and Review and associated Corrective Action Plan have led to enhanced environmental management. However, the timing of completion and implementation of some important associated TSF and environmental management plans have been slower than required by some of IFC's own procedural requirements. Information presented in the publicly-available environmental and social impact assessment (ESIA) – required for government and IFC loan approval – did not have sufficient information to allow informed public scrutiny or debate. The basis on which the IFC determined that the ESIA and environmental management plan development and implementation were adequate is not clear.

The CAO believes that water quality issues can be readily addressed through additional assessment of water users, establishment of water quality standards, improved management plan implementation, establishment of provisions for mine closure, enhanced communication, and effective independent

and participatory monitoring. With regards to dam safety, required plans should be reviewed before dam commissioning.

Water quantity

Based on the current design of the project, the people of Sipacapa will not experience increased competition for water as a result of the operation of the mine. The CAO notes that the initial project design (at the time of the public release and government approval of the ESIA) would have impacted surface water in Sipacapa, but that this plan has now been changed. There are heightened tensions over community access to water in the region and Marlin's planned assistance in the provision of water to some affected communities. The CAO believes that this issue can be readily addressed through additional assessment of water use, improved communication, co-operation and effective independent and participatory monitoring.

Socio-economic impacts

CAO finds that Montana has: (a) localized many social and economic benefits; and (b) ensured transparency with respect to its payments to the government. In addition, the land transactions appear to have been conducted successfully. To minimize potential negative socio-economic impacts such as in-migration, Montana has focused on local sourcing of labor and invested in social infrastructure.

Efforts have been made to ensure that the distribution of project benefits is equitable (as opposed to equal) between the two municipalities. Greater public clarity of procedures with respect to benefits distribution will likely be helpful in engaging people who perceive the current basis for allocation to be unfair.

IFC has given substantial input, both in terms of strategic guidance as well as financial support, to the development of local development foundation established by Montana and has helped to orient the socio-economic monitoring process. IFC analysis of the potentially negative social impacts and the appropriateness of the proposed mitigation measures should have been more fully and systematically recorded. In general, the anticipated regulatory and other social costs associated with this project have not been comprehensively assessed.

Disclosure and consultation

The CAO found that the company has interacted extensively in a variety of different ways with local communities, including Sipacapa. It appears that individual land transactions were successful. CAO also found that local leaders in both San Miguel and Sipacapa signed documents submitted to government regulatory agencies expressing support for the project. However, much of the disclosure and consultation activity occurred after completion of the ESIA. Public disclosures prepared by the company – including the ESIA – were highly technical and did not at the time have sufficient information to allow for an informed view of the likely adverse impacts of the project. The company has demonstrated an increased commitment to public disclosure of project information.

The CAO found a genuine difference in understanding amongst the parties about the purpose of consultation with and disclosures to local people. Without endorsing either perspective, CAO found that the project sponsor and IFC believe it was sufficient to inform parties of the impending project, some of its potential impacts and solicit input for associated development projects. Many of the local leaders in Sipacapa believe that they should have the right to determine whether or not the project should be allowed to operate in their territory. The government of Guatemala has not been able to

provide effective guidance about this issue and meet the expectations of civil society with respect to consultation.

The CAO finds that there are also significant ambiguities about the definition the project's ultimate area of influence and impacted people. Maps presented in the project's environmental and social impact assessment indicate that communities in Sipacapa are directly impacted – if not environmentally then as a result of socio-economic changes. In addition, the exploration activities of Montana and its associates have created confusion for local people about the nature and ultimate extent of projected impacts.

The quality, timing, means and language of disclosures on project impacts to people in Sipacapa lead to valid questions about how to define consultation with these groups as *meaningful* (as required by IFC's policies). The basis on which the IFC determined that the disclosure and consultation practice of the company was adequate – with respect to being both *meaningful* and *culturally appropriate* is not clear. CAO found no record of analysis of company capacity nor of government capacity to supervise or regulate the project. Given the magnitude and broader developmental impacts associated with this development, and the Mayan cultural view of natural resource development, an analysis of Mayan customary perspectives and traditional decision-making norms as they may relate to mining would significantly enhance the consultation process.

With respect to IFC's own due diligence, CAO believes that a more thorough consideration of the governance and country context and the balance of risks and benefits accruing as a result of this investment would have been helpful.

Security

Both company as well as community representatives concur that there is simmering tension, threats and intimidation associated with the project. These tensions are a result of various factors including local fears surrounding the presence of security forces and a heightened level of conflict between groups for and against the development of the mine. This situation has resulted in two violent incidents which are being investigated by local authorities.

The CAO finds that neither the IFC nor the project anticipated the possibility of localized conflict arising as a result of the project. Neither the IFC nor the company have a policy on the management of security forces or assessment of the potential for conflict to arise. CAO expects that implementation of the US/UK voluntary principles on the management of security forces, together with additional measures, will increase the safety and security of project staff as well as local people.

Conclusions and Recommendations

With respect to environmental risks, the CAO finds that the people of Sipacapa are not likely to be impacted significantly by the project. This finding creates considerable legitimate space for both the company and complainants to reflect on an appropriate course towards resolving the current dispute.

This assessment suggests that there are at least four principal causes to the current dispute over the Marlin project:

1. There are significant differences between Montana and the people of Sipacapa about perceived risks of adverse environmental impacts from the project. As a result of an aggressive and at times factually unfounded campaign focused against the project, some people – predominantly in Sipacapa – believe that these risks have not been adequately

monitored, managed or mitigated. The campaign has raised considerable fear and apprehension amongst local people about the possible negative impacts of mining. The campaign has contributed to local tensions and anger and has not always been a reasonable source of information for local people.

2. The difference in treatment by the company of people in Sipacapa as opposed to San Miguel has raised resentment and perceptions of exclusion and isolation.
3. Locally affected people are not able to identify a credible and neutral party who they feel able to trust with respect to information relating to the project.
4. As a result of the heightened and often different perspectives raised by civil society in the country, the national government has not been able to effectively meet the expectations of the various stakeholders with respect to public participation in decisions relating to development of the mining sector. Thus, the pace of development of the Marlin mine has not been compatible with (a) the novelty of mining development in Guatemala; and (b) reconciling the often different perspectives raised by civil society in the country, given the highly technical nature of much of the debate.

CAO's assessment is that implementation of the recommendations in each section of this report, together with careful intervention with respect to **enhanced participation by local people in forwards-looking decisions related to future exploration, royalties, environmental monitoring, and distribution of benefits** will be constructive to promoting dispute resolution.

Recommendations for the project and complainants

Given this situation, CAO recommends that, using this report as a basis for discussion, a high-level delegation from Montana and a group of people representing the complainants and people of Sipacapa should consider engaging in dialogue to establish acceptable next steps towards achieving resolution of this dispute. CAO is willing to convene a meeting at which the parties:

- Promote a comprehensive and participatory plan for the public monitoring of environmental performance of the project;
- Address the concerns of local people and acknowledge that greater emphasis should have been placed on communication and trusted means for engagement with the people of Sipacapa during all phases of the project.
- Explore jointly what steps are necessary to redress the feelings of disrespect that currently tarnish relations between the community and the mine.
- Establish a framework for on-going dialogue and consultation which moves the agenda beyond the legal dispute over the popular consultation and referendum that occurred in June 2005.
- Promote development of a public plan for the integration and monitoring of benefits from the mine.
- Enhance the transparency and perceived fairness of the current procedures for allocation and response to community solicitations for support.

LIST OF ACRONYMS

Acid Rock Drainage	ARD
Annual Monitoring Report	AMR
Asociación Estoreña para el Desarrollo Integral	AEPDI
Communal Development Council (<i>Concejo Comunal de Desarrollo</i>)	COCODE
Consultoría Técnica Ambiental	CTA
Corrective Action Plan	CAP
Environmental and Social Impact Assessment	ESIA
Environmental Action Plan	EAP
Extractive Industries Review	EIR
Fundación Sierra Madre	FSM
German Catholic Bishop's Organization for Development Cooperation	MISEREOR
Guatemala Ministry of Energy and Mines	MEM
Guatemalan Ministry of the Environment and Natural Resources	MARN
Inter American Human Rights Commission	IAHRC
International Cyanide Management Code	ICMC
International Finance Corporation	IFC
International Labor Organization	ILO
Montana Exploradora de Guatemala, S.A.	Montana
Multilateral Investment Guarantee Agency	MIGA
Municipal Development Council (<i>Consejo Municipal de Desarrollo</i>)	COMUDE
Non-Governmental Organization	NGO
Office of Compliance Advisor/Ombudsman	CAO
Right of Way	ROW
Tailings Storage Facility	TSF
World Bank Group	WBG

1 Introduction

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints by people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are managed through the CAO's Ombudsman function.

The purpose of this assessment is to:

1. Provide a fair and objective analysis of the reasons behind the current dispute;and
2. Understand the context and explore conditions to assist parties to achieve resolution of this complaint.

This assessment is not a formal compliance audit of IFC's or its client company's adherence to established policies. Such an audit, as specified by CAO's Operational Guidelines, could occur if necessary, at a later stage. The assessment report presents facts, gathered by the CAO during assessment, about activities that relate to and address concerns raised in the complaint.

1.1 The complaint

On March 9th, 2005 the office of the CAO appraised and accepted a complaint from people from the municipality of Sipacapa claiming to be adversely affected by the IFC-supported Marlin gold and silver mine project in Guatemala. The CAO accepted the complaint after meeting with a some of the signatories to the complaint. The Guatemalan environmental NGO Colectivo Madre Selva (hereafter referred to as Madre Selva) facilitated the filing of this complaint. The Marlin Project is a gold mine currently under construction in the two municipalities of San Miguel Ixtahuacán and Sipacapa (see Map 1). It is owned by Montana Exploradora de Guatemala, S.A (hereafter referred to as Montana).

The complainants ask that IFC's loan to the project be revoked on the following basis:

1. Water demand from the mine will deny access by communities to their water supplies;
2. The mine will use unsafe processing methods that will contaminate the environment and the water supplies used by downstream people;
3. The rights of indigenous people have been violated as a result of failure by the project to consult with them about the proposed development and its environmental and social impacts;
4. The presence of the mine is resulting in social conflict, violence and insecurity.

During assessment, some local people reiterated these concerns and added to them broader issues surrounding environmental impacts (including air quality, post closure impacts, and potential for accidental spills or failure of the dam) and adverse socio-economic impacts, the distribution of benefits and revenue management. Compounding these concerns about the current project, there was concern and confusion in Sipacapa that Montana was carrying out exploration activities in Sipacapa that would lead to expansion of Montana's mining activities into their municipality.

The CAO undertook a field assessment of the complaint in Guatemala between the 25th April and 4th May 2005. The CAO met the following representatives in Guatemala City, Sipacapa, San Marcos and at the mine site:

Table 1: People and Groups Interviewed, CAO Assessment Trip

People/Groups Interviewed	Date of Interview/Meeting
Guatemala City	
Montana personnel and Marlin Project Team	April 25, 2005
CTA Consultants	April 25, 2005
Ministry of Energy and Mines (MEM)	April 26, 2005
Colectivo Madre Selva	April 26, 2005
Sipacapa	
Complainants	April 28, 29, May 3, 2005
Assembly meeting of COMUDE with Auxiliary Mayors from various Sipacapa villages	April 28, 2005
Mayor of Sipacapa	April 30, 2005
Judge of Peace	May 2, 2005
Villager of Guancache	April 29, 2005
Villagers at Poj	April 29, 2005
Fundación Sierra Madre personnel	April 30, 2005
San Marcos	
Bishop Ramazzini	April 28, 2005
Vinicio López	April 28, 2005
Mine Site	
Community Relations Group, San Miguel	May 2, 2005
Community Relations Group, Sipacapa	May 2, 2005
Montana Staff	May 2, 2005
Montana consultant	May 2, 2005

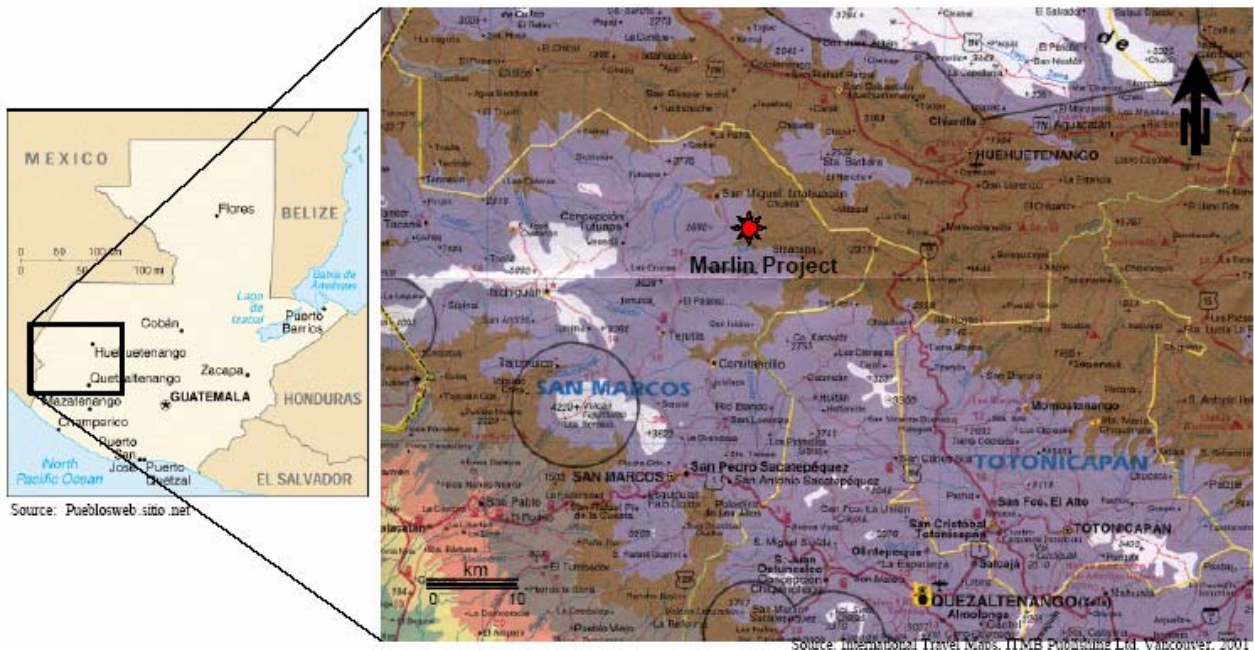
In addition to these meetings, CAO held face-to-face and telephone meetings with the IFC Marlin project team, the senior management team of Montana's parent company (Glamis Gold Ltd), representatives of MISEREOR (The German Catholic Bishop's Organization for Development Cooperation), Friends of the Earth, the Bank Information Center, and AEPDI (Asociación Estoreña Para el Desarrollo Integral) and CARE Guatemala.

1.2 Background

1.2.1 The project

The Marlin Project is located approximately 200 km from the national capital in the Department of San Marcos, located in the Western Highlands of the country (see Map 1 below).

Map 1: The location of the Marlin project



(source SRK 2003, citing IIMB Publishing 2001)

The mine property currently spans about 5km², roughly 85% of which is in the Municipality of San Miguel de Ixtahuacán (hereafter referred to as San Miguel). The remaining 15% percent of the of the mine property (but none of the ore body), is in the Municipality of Sipacapa. The project has also acquired the right of way (ROW) for a 27km power line that does not go through the municipality of Sipacapa.

Construction work on the Marlin project began in May of 2004, and the project is currently in an advanced stage of construction. It is expected to begin operations in the third quarter of 2005. Gold and silver extraction are planned from two open pits and an underground mine. Montana plans to produce an annual average of 250,000 oz gold and 3.6 million oz of silver over a projected 10 year mine life. Montana will use a crushing, grading and cyanide-leaching process in vats for the extraction of gold. The project will also include a waste rock facility and a tailings storage facility (TSF), and construction of mineral-processing and tailings-neutralization plants (see Section 2.1 and Map 3 for more details).

Montana is a 100% subsidiary of Glamis Gold Ltd, a Canadian mining company that is based in Reno, Nevada. Montana was first founded by Montana Gold Corporation of Canada in 1998, and the Marlin ore body was discovered in the same year. The government of Guatemala granted Montana an exploration license for the Marlin area in 1999. In 2000 Francisco Gold acquired Montana, and in 2002 Glamis Gold Ltd acquired Francisco (and thus Montana). Exploration in the Marlin region intensified in 2002, and in November of 2003, the government of Guatemala granted Montana a 25-year exploitation license for the current Marlin project.

In addition to the current exploitation license, Montana has also been granted at least three other exploration licenses in the region adjacent to Marlin and has been conducting early reconnaissance and exploration in both San Miguel and Sipacapa since 2002. In 2004

Montana began to develop an ESIA for the La Hamaca deposit three kilometers north of the main Marlin ore body. Construction has not yet begun at La Hamaca. It is possible that ore from La Hamaca will be processed at the Marlin facilities.

Glamis Gold Ltd currently owns and operates other mines in Mexico, Honduras and the state of Nevada in the United States. It has also owned, operated and closed a mine in the states of Nevada and California in the USA. Within Guatemala, Glamis has gained a concession to explore Cerro Blanco, a site over 300km southeast of Marlin, and the project is still in the exploratory phase. According to public company documents, the Cerro Blanco ore may be processed at Marlin, but this is still to be determined by the company.

Glamis owns the San Martin gold mine in Honduras through its 100% subsidiary, Entre Mares, S.A.. While Montana considers that the San Martin mine demonstrates Glamis's commitment to sound environmental management and social responsibility, opposition groups claim that San Martin reveals the adverse impacts of mining. These differing perspectives of San Martin have to some extent colored the debate over the Marlin mine, as have campaigns against gold mining, the national debate surrounding CAFTA and the political dynamics of Guatemala.

Mining development, and the Marlin gold project in particular, has become highly controversial, both within Guatemala and among international NGOs. Two violent incidents in January 2005 are indicative of the high level of tension surrounding mining development in Guatemala. Incidents include one death in January 2005 during the break-up of a 40-day road blockade 150 km from the mine site¹, one fatal shooting in March 2005 in the town of San Miguel in which an off-duty security guard employed by a security company contracted by the mine shot a local resident in San Miguel, and destruction of a contractor's truck in Sipacapa. The protest and the shooting are still being investigated.

1.2.2 The complainants and the local context

The complaint sent to the CAO was signed by several residents of Sipacapa. Based on interviews with a cross-section of people from Sipacapa, CAO accepts that the complaint raises concerns and apprehensions that are widely-held in the local area. A broad group of people and their leaders in Sipacapa are highly apprehensive about the project. Campaigns by Guatemalan and international civil society organizations critical of mining have increased concerns by highlighting potential negative impacts of mining, sometimes inaccurately.

The people of San Miguel and Sipacapa are predominantly indigenous Mayans with distinct languages and cultures, though they share the overarching connection to a Mayan world view (*cosmovision*) and belief system. About 98% of the roughly 30,000 inhabitants of San Miguel are indigenous Mam-Mayans and speak the Mam language, which is one of the largest indigenous language groups in Guatemala. In the Municipality of Sipacapa, the vast majority of the roughly 14,000 inhabitants belong to the Sipacapense-Mayan indigenous group, and approximately 70% speak Sipacapense. Unlike Mam, Sipacapense is not spoken in other areas of the country. Most people in both municipalities speak some Spanish, though there are some people who only speak their native indigenous language.

¹ The blockade was set up on the Pan-American highway in the town of Los Encuentros to prevent the passage of the Marlin mine's ball mill which was being transported by a contractor for Marlin.

In Sipacapa there are roughly 13 smaller *aldeas* or villages, and in San Miguel there are roughly 20 villages. Each village, and some smaller village units referred to as *caserios* have development councils, referred to as COCODES, made up of the community assembly and a coordinating body designated by the community. Each village also elects an auxiliary mayor. Each COCODE has at least one leader who represents them in the COMUDE of the municipality.

The Project is located in the town of San José Nueva Esperanza (107 inhabitants) and also occupies land within the borders of the communities of Agel (931 inhabitants) and San José Ixcaniche (370 inhabitants), and Tzalem (283 inhabitants). Villagers in each of these towns sold land to the project. The first three towns are within San Miguel, while Tzalem is in Sipacapa.

In late June of 2005, during the writing of this report, members of Sipacapa's COMUDE, comprising municipal leaders and the leaders of the village COCODES within Sipacapa municipality decided to conduct a series of popular consultations and a public ballot referendum on mining in the Municipality. The Sipacapa municipal government initially promoted the concept of a community consultation and a referendum, but withdrew its official support during the process. At the same time a local court issued an injunction against the referendum. The community assembly meetings in which the consultations were held took place during on June 18th 2005 with a majority of villages (11 out of 13) signing community acts stating their position against mining. One community signed an act in support of mining and one village abstained from taking a position. A ballot referendum was held on June 18th in which approximately 2500 people from Sipacapa voted in Sipacapa town either "yes" or "no" to mining in the municipality. Over 98% of voters voted "no".

The time period leading up to the consultations and the referendum was marked by confusing, contradictory and often inaccurate information about the mine's potential impacts and the validity of the consultations and vote as well as reports of voter intimidation. The legal and practical implications for the Marlin project and future mining activities in Sipacapa are unclear. The case remains under legal dispute. No vote was held in San Miguel municipality. As a result of the current climate of mistrust, some local people have been encouraged and chosen not to interact with mine personnel, making productive dialogue difficult, if not impossible.

1.2.3 The national context

The national context surrounding the Marlin mine has influenced substantially the scope and intensity of the current conflict. Marlin will be Guatemala's first major open-pit gold mine and first major mining investment in 20 years. The national debate surrounding its development has brought to focus the deep divisions that exists within Guatemala about indigenous rights, economic and social disparity and the development path the country should take. Guatemala ended a 36-year civil war that involved extreme violence in rural and indigenous areas of the country. The war has left deep racial and class divisions, and a consequent mistrust among many parts of Guatemalan society. Over half the population of Guatemala considers itself indigenous, and since the end of the war, indigenous groups have begun to reclaim their rights as indigenous people with distinct identities.

As part of the 1996 Peace Accords, Guatemala signed and ratified the International Labor Organization Convention 169 on the rights of indigenous and tribal people (hereafter referred to as ILO 169). In 1995, the Government of Guatemala also signed the Agreement on the Identity and Rights of Indigenous People as part of the peace process. Both ILO 169 and this

Agreement speak to the rights of indigenous people to influence the management of natural resources, but not sub-surface minerals which remain the property of the State . The extent to which indigenous peoples should have rights over the management of sub-surface minerals in their territory is currently being debated by many sectors of Guatemalan society.

In 1997, Guatemala passed a new mining law that does not refer to explicitly indigenous lands or municipal obligations over mineral resources. In an attempt to make Guatemala more attractive to mining investments, the new Mining Law changed the royalty system and rate required from companies from the previously legislated 6% to 1%². The cessation of the civil war also made it possible to conduct mineral exploration in previously inaccessible areas.

According to information from the Guatemalan Ministry of Energy and Mines (MEM), as of April 2005 the government has granted to date 127 exploration licenses and 237 exploitation licenses. Only a few of these licenses are likely to lead to the actual development of mines.

Debate over mining began in 2003 and has escalated over time, gaining national focus in 2004. The debate takes place in the context of related national and international debates about foreign investment, the Central American Free Trade Agreement, and the rights of indigenous people. An active coalition of NGOs, indigenous groups, the Catholic church (including the Bishop of the San Marcos Department, Monsignor Ramazzini) and some of the national media have raised significant national awareness of the Marlin project and other mining licenses being granted by the Guatemalan government. On an international level, several campaigns are underway that criticize mining and the World Bank Group's support of extractive industries. Much of the criticism and apprehension about the Marlin project reflects broader concerns about the mining industry in general and the path of development that the government is promoting for Guatemala.

Recently, the government has established a High Level Commission to review and address mining issues, made up of members of the Catholic Church, the government and some NGOs. During the finalization of this report, the MEM reported that the High Level Commission was in the process of completing a set of guidelines for mining policy. The CAO has not received or reviewed this document. In addition a Mining Vigilance Committee comprised of environmental NGOs and the government visited the Marlin site once in December 2004. However, the terms of reference of the High Level Commission and the Committee are still being developed by the participants. Montana is currently developing a participatory monitoring system involving various stakeholders, including local communities.

1.2.4 IFC involvement with the Marlin project

As part of its due diligence, an IFC team first appraised the Glamis project in October 2003 during a site visit and a review of project documentation at that time. By supporting the Marlin project, the IFC hoped to support the Guatemalan government's policy decision to attract new mining investment to the country. It is believed that the successful development of Marlin would contribute to this increased investment by acting as a demonstration project.

According to IFC's Environmental and Social Review Procedures, the Marlin project was categorized as a Category "A" project, which requires the most rigorous level of environmental

²In addition to this royalty rate, mining companies also pay other taxes, including income tax, discussed in Section 3 and Annex A, Table 5 of this report

assessment. In June 2004, IFC's Board approved a US\$45m loan to the project. IFC has also given a grant of US\$89,000 to support a reforestation project of the Sierra Madre Foundation (FSM, in its Spanish acronym), which Montana established. The loan was disbursed over two tranches, the first in November/December 2004 (\$30 million) and the second in February of 2005, (\$15 million).

The IFC made the decision to support the Marlin project after the WBG-commissioned, multi-stakeholder Extractive Industries Review (EIR) was completed in December 2003 and before the WBG management response to this report was completed and approved by the WBG Board. The review lasted over two years and synthesized extensive comments and lessons learned from extractive projects in the oil, gas and mining sectors funded by the WBG. The WBG Management Response to the EIR was approved by the WBG board and made public subsequent to the Board approval of the Marlin project, so does not technically apply to the Marlin project. The Management Responses to the EIR indicate the evolution of the WBG's analysis of extractive industry (EI) projects and the conditions required for them to meet the WBG's overarching mandate of poverty alleviation and sustainable development. For more details see Box 1 below.

Box 1: Context - The Extractive Industry Review and the World Bank Group Management Response

The EIR Final Report presents findings and recommendations regarding a variety of issues in social and environmental management EI projects, including community consultation prior to and during project development, management of environmental impacts such as water contamination during operations and after mine closure, and management of adverse socio-economic impacts such as increased conflict, increased local exposure to HIV-AIDS, and rapid changes to local economies.

The EIR Final Report found that some of the EI projects funded by the WBG had resulted in substantial negative environmental and social impacts for affected people and that substantial changes in WBG support were warranted as a result. The report included almost 100 recommendations for the WBG divided into four main categories: Pro-Poor Governance, Environmental and Social Components, Human rights, and WBG Institutional Priorities. The independent evaluation units of the World Bank, IFC, and MIGA (OED, EOG and OEU, respectively) conducted a joint evaluation of the WBG EI projects which found that the WBG's EI projects have produced, on the whole, positive economic and financial results though compliance with its environmental and social safeguards remains a challenge. The report made a series of recommendation for how the WBG could enhance its impact of the EI activities it supports. The CAO contributed to the EIR process with a June 2003 report entitled *Extracting Sustainable Advantage?*³ (see Section 3.3 for the recommendations relevant to the Marlin project).

WBG management responded to the CAO report in June 2004 and to EIR Final Report in draft form in June of 2004. The Management Responses presented a path for addressing the reports' recommendations and their implications for future WBG engagement with extractive industries. The Management Response to the EIR was approved by the WBG board in September 2004, The most salient proposals of the Management Responses were that the WBG should continue its support for EI projects provided its involvement supports poverty reduction and sustainable development. The response confirmed the WBG's commitment to:

- 1) Supporting only projects that have the broad support of affected communities;
- 2) Helping to ensure that communities are well informed by requiring that investors make available meaningful information about the social, economic and environmental impacts of their projects through a process of free prior and informed consultation;
- 3) Promoting transparency in revenue management and benefits sharing with local people;
- 4) Ensuring security forces respect human rights;
- 5) Improving strategic and cumulative environmental impact assessments as well as environmental and social management and monitoring systems; and
- 6) Reviewing the governance and country context, including risks and benefits.

³ The CAO report can be found at [www.cao-ombudsman.org/pdfs/FINAL%20EIR%20Report%20\(April%2003\)2.doc](http://www.cao-ombudsman.org/pdfs/FINAL%20EIR%20Report%20(April%2003)2.doc)

The World Bank Group demonstrated it had some expectation and appreciation of controversy associated with mining development in Guatemala when, in mid-2004 the World Bank attempted to initiate a program of support to the Guatemalan government to develop a national process of dispute resolution about mining. In December of 2004, the government, with support from the WBG, held a national mining forum in Guatemala City to discuss mining in Guatemala. At the same time this forum was underway, some environmental NGOs held an alternative mining forum that focused on the potential negative impacts of mining. The dispute resolution program initially envisioned by the WBG, the government, and the company has, for a variety of reasons, been slow to establish.

2 Assessment

The concerns that the mine will damage life and livelihood in Sipacapa are central to the demands that IFC should revoke its funding and construction be stopped. Yet from the perspective of Montana and IFC, adverse impacts from the mine on people in Sipacapa are not expected to be significant. CAO's assessment focuses on understanding the extent to which the people of Sipacapa are likely to be adversely impacted by the mine.

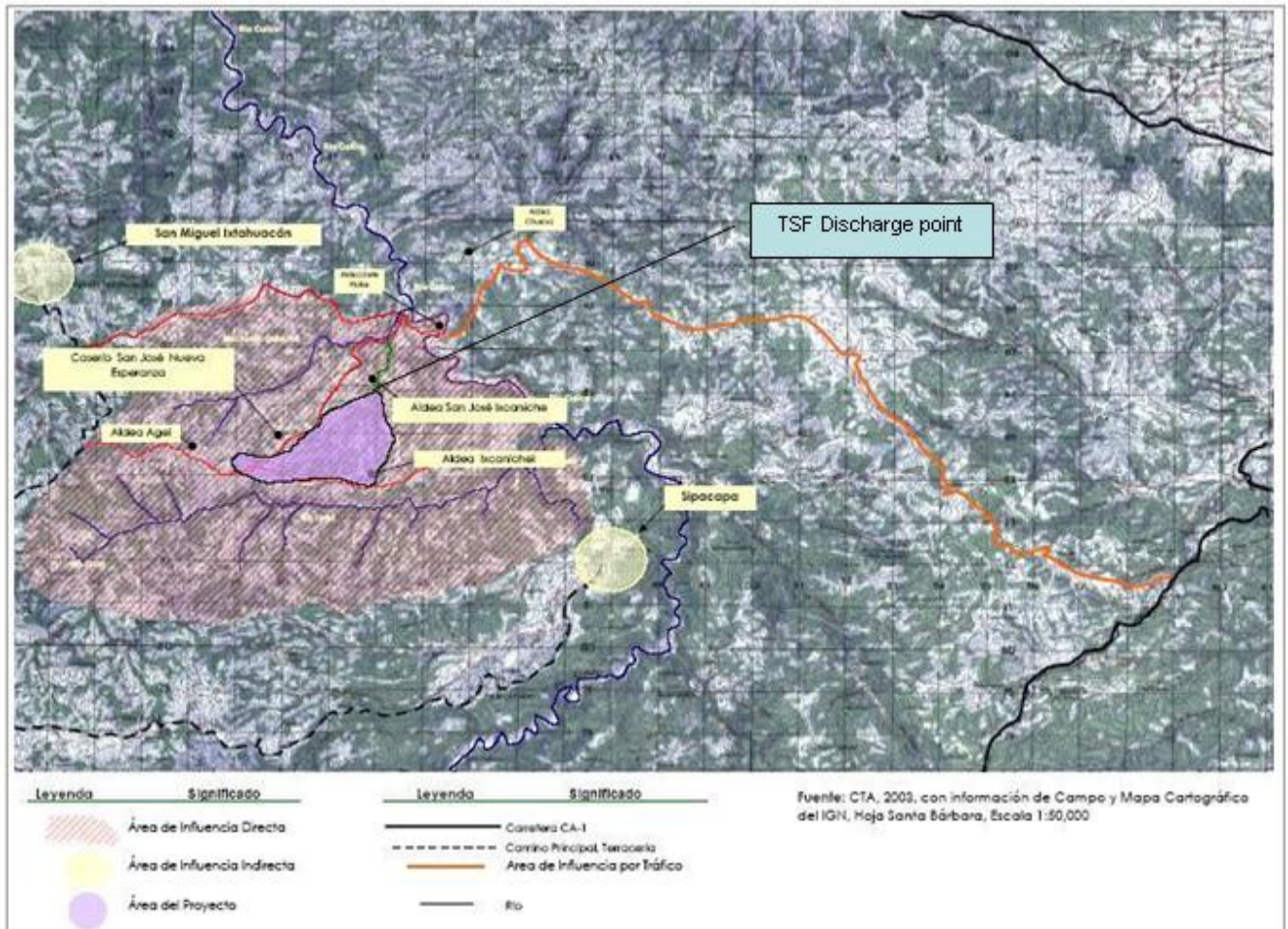
Before mine construction began, the project produced an Environmental and Social Impact Assessment in June of 2003 that presents an analysis of potential impacts of the Marlin mine. The Environmental Action Plan (EAP) of June 2003 and subsequent more detailed environmental management plans propose ways in which these impacts will be monitored, managed, and mitigated. The tailings storage facility (TSF) design plan and the waste rock facility design plan outline how major facilities will be constructed and monitored.

The ESIA identified and summarized four areas of environmental and social influence of the project (see Map 2)

- The area of direct Influence: Part of the micro-basin/watershed of the Tzala river, the micro-watershed of the Quivichil and the communities of Agel, San Jose Nueva Esperanza and San Jose Ixcaniche principally and Tzalem to a lesser extent.
- The areas of indirect influence: The town of San Miguel principally and to a lesser extent the town of Sipacapa.
- The area of influence from traffic: The community of Siete Platos over the Cuilco River, passing the communities of Chuena, la Cal, Cucal of the Malacatancito town in the Department of Huehuetenango to the Pan-American Highway.
- The national area of influence: The Department of San Marcos, location of the municipalities in which the project is located.

This characterization of impacted areas has to a large extent guided the company's engagement with local communities.

Map 2: ESIA map of project site and local areas of influence⁴



Clearly, there are significant differences between the perceptions of the people of Sipacapa and the sponsors of the project. Based on the issues raised in the complaint to the CAO, this assessment focuses on:

- **What are the environmental risks that result from the project, and who is likely to be impacted by its activities?**
- **What are the social and economic impacts of the project, and who is likely to be affected by them?**
- **Was the process for disclosure and consultation adequate – and does it continue to be adequate?**
- **What can be done to resolve security concerns?**

CAO's principal goal is to present a neutral and unbiased assessment of the facts as part of the process of understanding the dispute. Section 2.1 presents an overview of Marlin mine

⁴ The CAO has added the label for the TSF discharge point

operations and associated facilities, and the following Sections 2.2-2.5 address the questions listed above.

2.1 Marlin mine operations and associated facilities

The major Marlin mine facilities include two open pits (the Cochis and Marlin pits), an underground mine, mill and plant facilities, a tailings storage facility (TSF), and a waste rock disposal facility (see Map 3). To acquire the 5km² property, the mine has purchased 395 parcels of land from 254 land owners. Montana has also acquired the right for a 27km power line from the town of Tejutla, a town southwest of the property.

The main transport route for the mine is a public road that runs from the Pan-American highway to the mine site.

Montana has indicated that it hopes to expand mining operations in Guatemala, and the most advanced new project first planned expansion is an underground mine within the Marlin property at the La Hamaca deposit, which is within the area covered by the Marlin I Exploration License. The Marlin processing facilities have been built with the capacity to process ore from the La Hamaca expansion deposit and possibly ore from other deposits. Exploration outside the Marlin I Exploration License area, in additional areas is ongoing and there may be processing synergies with the Cerro Blanco project (currently in the exploration phase), though this is yet to be determined. The implementation of the La Hamaca project expansion and any other expansions will cause additional impacts that have not been reviewed for this report. IFC financed only the Marlin project (the La Hamaca deposit was reportedly discovered around the time when the Marlin project was approved by the IFC Board). The ultimate footprint of Montana's activities in the Department of San Marcos and in other parts of Guatemala where it has mining concessions can only be determined when after mining plans for expansions are finalized. The La Hamaca ESIA was approved by the MARN on July 5, 2005.

The watersheds: The mine's property lies in part of two watersheds, the Tzala (with a total land areas of 60km²) and the Quivichil (with a total and area 33km²). Both of these watersheds form part of the Cuilco river watershed which covers an approximate land area of 540 km².

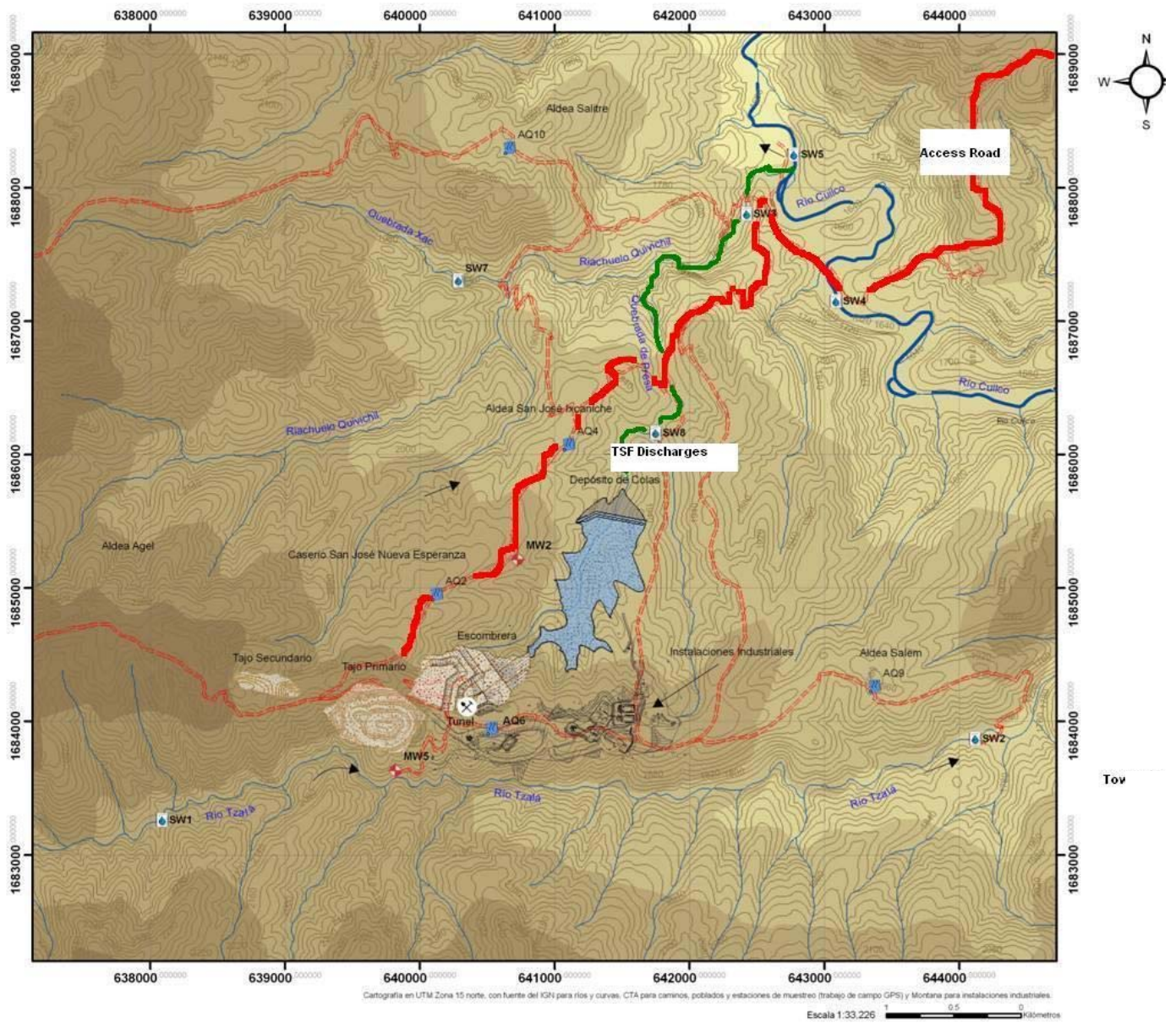
The Marlin pit, the Cochis pit, milling and processing facilities, the La Hamaca proposed expansion, and waste rock and tailings facilities are in the Riachuelo Quivichil basin. The underground workings may be partially in the Rio Tzala basin depending on the mining plan.

Political boundaries: Precise maps of the municipal boundary between San Miguel and Sipacapa are not available. However 87% of the mine property is reportedly in San Miguel and 13% of the land is in Sipacapa (not including the right of way acquisition for the power line). All major facilities (the pits, underground mine and TSF) of the mine are in San Miguel, except for part of the camp and facilities which are in Sipacapa. Part of the Tzala river forms a section of the border between Sipacapa and San Miguel and runs along the mine property. The Quivichil watershed is in the municipality of San Miguel, and the Tzala watershed is in the both the municipality of San Miguel and of Sipacapa.

The transport route travels through the department of Huehuetenango, and on a dirt road through the municipalities of Malancantancito and San Miguel before arriving at the mine site. The main transport route does not pass through Sipacapa.

The right of way for the power line will run primarily along roads from the municipality of Tejutla (southeast of the project site), and through the municipality of Comitancillo before arriving at the mine site.

Map 3: The Marlin mine site, roads, and facilities



Tajo Secundario = Cochis Pit
Tajo Primario = Marlin Pit
Escombrera = Waste rock facilities
Deposito de Colas = TSF
Instalaciones Industrias = Processing facilities

MW = monitoring well for groundwater
AQ = air quality monitoring station
SW = surface water monitoring station

2.1.1 Ore processing at the Marlin site

The Marlin project plans to grind ore from the pits and underground mine and then mix it with cyanide solution in vats for leaching. Gold and silver will then be recovered from the solution in a processing plant. The leftover, ground ore will be sent in a slurry to the TSF after the cyanide concentration in the tailings water is reduced through the INCO process. Depending on the geochemistry of the ore, the slurry can have other contaminants in it in addition to cyanide.

Montana estimates the Marlin project will generate 44 million tons of waste rock that will be disposed of in the waste rock facility and 14 million tons of tailings that will end up in the TSF. Montana has designed the site so that the waste rock facility is above the tailings dam, which is intended to help mitigate any acid rock drainage (ARD) from the waste rock facility. Annex C (Review of Water Quantity and Quality Issues and the Tailings Storage Facility at the Marlin Mine Site) explains in more detail ARD and other possible water quality impacts of the mine. The TSF will discharge treated water into the Quebrada Seca, which flows into the Riachuelo Quivichil and then into the Cuilco River.

The mine will use water for processing ore, underground mine activities, dust control, reforestation, and personnel use. It will draw water from a production well and from water stored in the TSF. The water drawn from a 300m-deep well in the Tzala basin will provide 15% of the water demand, and the water from the TSF (in the Quivichil basin) will provide 85% of the water demand.

2.2 Environmental impacts: What are the environmental risks that result from the project, and who is likely to be impacted by its activities?

People in Sipacapa continue to express considerable fear and apprehension that the project will result in contamination of their waterways and will compete with their communities for water. Many of these local concerns and predictions of future project impacts are based on the often contradictory information presented by a variety of sources, including Montana, the government, religious institutions and NGOs. The conflicting information on impacts has been extremely confusing to local people.

The CAO commissioned an independent expert hydrologist to conduct a desk review of the project documents, both public and not public, relevant to water and dam safety issues. The information presented in the sections on water and dam safety are based on the main findings from this review. The full review is found in Annex C with an additional overview of mining and quality issues in Annex B (Water Quality Concerns at Mining Sites: Some Questions and Answers).

With respect to water competition, CAO undertook an exhaustive assessment of the Marlin project's current and proposed water use together with an analysis of potential competing users for that water.

Additional concerns related to people's fears about adverse environmental impacts – including sedimentation, air pollution, and effects on wildlife and forestry have also been assessed.

2.2.1 Findings on environmental impact and management

Detailed findings are presented in Annex A Tables 1-5 which should be read in conjunction with this text.

From the perspective of environmental health and safety, CAO finds that the most significant potential risks and impacts associated with the Marlin project are:

- Water discharges exceeding prescribed standards;
- Tailings dam failure; and
- Competition for water reducing availability to local communities.

2.2.1.1 Water quality

Table 1 of Annex A details the CAO's findings on potential water quality impacts at the Marlin site. There is no possibility that discharges originating from the processing plants will affect the water courses in Sipacapa municipality. All planned discharges from mining processes flow into the TSF and are discharged into the Quivichil basin in San Miguel municipality. There is accordingly no risk to the people of Sipacapa from planned or unplanned discharges from the TSF.

Through its assessment of project documents, the CAO finds that Montana has put in place a rigorous and recently enhanced system for monitoring water quality and mitigating erosion and has committed to complying with World Bank effluent standards for water quality. If, based on

public monitoring data, discharges exceed these standards then Montana has committed to establishing a water treatment facility. Current details for the precise triggers for this facility have not been elaborated.

Montana is currently determining standards for water use (drinking water, aquatic life, irrigation water or livestock consumption) and will determine beneficial use standards with the Government of Guatemala. The required standards will depend to some extent on the water users downstream of the TSF.

The Guatemalan Government has some standards for drinking water. The government is monitoring the project through review of the quarterly monitoring reports and occasional site visits. However, the government has not defined beneficial use standards or produced regular evaluations or follow-up to these reports. To date, the government has not established a clear and comprehensive system for regulating the Marlin site that includes water quality standards and government monitoring of adherence to regulations and standards.

Montana's development and implementation of some specific management and mitigation plans such as erosion control and waste rock management has not kept pace with the project schedule. The need for enhanced management in some areas is noted explicitly in the 2004 Environmental Audit and Review. The capacity within the Marlin project team to implement the recommendations of the 2004 Environmental Audit and Review and the Tailings Dam Review Board reports has been enhanced.

Montana has begun to make more of this information public through its posting of various important project documents. In May of 2005, the AMR, Environmental Audit and Review and Corrective Action Plan were posted on the Glamis website. During the finalization of this report Glamis made additional technical documents in English and Spanish available on its website, including, Materials and Waste Management, Fauna Management, Surface Water Management, Installation Report for the Water Supply Well PSA-1, Geochemical Characterization of Waste Rock, and Geochemical Characterization of Tailings. Release of Forestry Management and Air Quality Plans are pending translation into Spanish. The disclosure of these documents reveals an increased commitment on the part of the company to inform the public of its characterization and management plans. Public release of additional information such as water quality standards, TSF design and supplementary TSF plans, waste rock facility management plans, and environmental monitoring plans will ensure that information in the public domain is sufficient for informed observers to assess whether mitigation measures are appropriate and being implemented in a timely manner.

2.2.1.2 Dam safety

Because no part of Sipacapa is downstream of the TSF, there is accordingly no risk to the people of Sipacapa from any possible dam failure. Table 2 of Annex A details the CAO's findings on dam safety.

CAO finds that the IFC-required Tailings Dam Review Board, comprised of one external, internationally-recognized independent geotechnical expert (hereafter referred to as the tailings dam reviewer) has adequately assessed the risks of the dam. Some necessary design changes have been made by the design team as a result of the input provided by review. The construction is being supervised by technical consultants whose work is reviewed annually by the tailings dam reviewer.

The tailings dam reviewer will conduct a review of the dam's construction and operation on a yearly basis. There is a reasonable level of supervision by the tailings dam reviewer, though further clarification is needed on the exact scope of the dam review (i.e. which plans will be reviewed and when and for how long after TSF construction is completed) and mechanisms to be implemented to ensure that Montana responds to the findings and recommendations.

There are four plans that according to IFC Procedures for Environmental and Social Review of Projects, application of environmental assessment to large dams and reservoirs, should have already been completed and reviewed by the independent panel on a schedule that reflects IFC requirements. Two of these plans have already been completed (instrumentation and quality assurance) and two plans (for Operational Maintenance and Emergency Preparedness and Response) were recently completed during the draft review of this report in mid-August 2005. These plans are currently being reviewed by the independent tailings dam reviewer.

2.2.1.3 Water competition

Based on Marlin's current plans, the most significant sources of water are rainfall and runoff into the mine property that will be caught in the TSF and a deep geothermal source tapped by the production well. See Annex A, Tables 3 and 4 for more detailed findings on the mine's use of water and the potential for water competition. Based on the currently available information, there is no significant risk of competition with local communities associated with either of these sources of water. Additional characterization and monitoring of mine operations and water use will enable further verification of this finding.

The ESIA asserted that no downstream users were identified either on the Tzala or the Quebrada Seca. Montana realized in late 2004 there were at least a limited group of irrigators who use water from the Quebrada Seca or the Quivichil downstream of the TSF. Some users have been identified on the Cuilco though their exact locations are unknown. It should be expected that additional groups – both formal and informal – may exist on downstream waterways and it will be essential that Montana ensures that their interests are protected.

Some depletion in streamflow and changes in the basin water balance should be expected downstream of the TSF as a result of the TSF. These changes should be monitored, and a monitoring plan has been set forth in the company's Environmental Monitoring Plan. In addition, the assumption that the geothermal source of water is not linked to the Tzala surface waters needs to be rigorously tested and monitored over the life of the mine. Extraction of water for dust control from the Cuilco has not been recorded, though it is not likely to have a high impact on water flow.

CAO recognizes that communities in the area have an established practice of purchasing water rights from one another. The impact of Montana's plans to assist mine-adjacent communities to expand water systems or purchase water from others in the area should be characterized with additional information. The CAO is aware of one planned expansion, supported by Montana, that involves acquisition of a spring in a village in the municipality of San Miguel.

2.2.1.4 Other environmental impacts

There are other less significant impacts that have been noted in the third party environmental audit and review of 2004. The most significant current impacts are dust from traffic and erosion from construction activities. The erosion will affect streams in both San Miguel (i.e. the Quivichil

and the Quebrada Seca and possibly the Cuilco) and Sipacapa (i.e. the Tzala). There is some data from the October 2004 report to MARN that some aquatic life in the Quivichil stream has decreased downstream of the TSF, and further monitoring will verify if this decline is related to sedimentation from mine construction or natural causes.

Future air quality impacts (i.e. nuisance from dust) could occur from traffic and the on-site processing facilities, though these impacts are not likely to pose a significant risk to human health if the proposed mitigation measures are put in place (see Annex A Table 5 for CAO's more detailed findings on air quality).

2.2.1.5 Environmental impact assessment and management procedures

Impact assessment and disclosure:

In order to ensure that the public was aware of the environmental impacts and planned mitigation and monitoring measures, The ESIA and EAP should have:

- Identified all downstream water users;
- More fully assessed the potential for ARD;
- More fully assessed the potential for other water contaminants;
- Established water quality standards that the mine will meet for beneficial uses; and
- Included details of dam design and/or a plan for the first stages of construction quality assurance.

In addition, the information presented in the ESIA about project impacts and potential risks was and remains highly technical and not readily understandable to many local people who wish to inform themselves of the impacts that may affect them, their communities, and the environment. Thus, both a lack of some important information and the way in which information has been presented has hindered local understanding of impacts of the mine. Disclosure of information has recently been improved, and disclosure and consultation issues are discussed in more detail in Section 2.4 of this report.

Environmental management procedures:

The formulation and implementation of some environmental management plans have not been completed in a timely manner. Specifically:

- the erosion and dust control measures required enhancement, and the erosion control plan should have been finalized before construction began in order to avoid and/or mitigate potential water quality impacts;
- the waste rock design and management plan should have been finalized before construction began in order to avoid and/or mitigate potential ARD and waste rock facility stability issues;
- the dam safety plans should have already been completed in a timely fashion to allow for adequate review before dam commissioning.

CAO understands that some important plans are currently being developed and that implementation plans is being enhanced. Both the 2004 Environmental Audit and Review and 2004 Tailings Dam Review report (both of which were required by the IFC) note that development and/or the implementation of some important management measures and plans during construction was behind schedule.

The 2004 Environmental Audit and Review also noted a need for increased company capacity to ensure proper development and implementation of these management plans. The company has since enhanced its environmental management staff and created a Corrective Action Plan posted on the Glamis website.

Montana is committed to establishing a participatory monitoring system that involves community members and experts with technical capacity. It attempted to establish such a system in 2004, but has encountered several barriers including an undetermined system for compensation of the environmental monitors and political changes within the municipal governments. It has recently retained consultants to help design an improved system and proposals are forthcoming. There are also plans for an independent laboratory to test water quality.

2.2.2 CAO observations of IFC's environmental review process

During this assessment, CAO found that IFC's appraisal and project supervision process – whereby its specialists review and approve documentation submitted to them by the Sponsor – was not fully recorded.

2.2.2.1 Environment and Social Impact Assessment (ESIA)

The basis on which the IFC determined that the ESIA was adequate is not clear. At the time of this assessment no documentation was made available that reflects that any detailed and specific consideration had been given to how the IFC has and will ensure that the project complies with each of the applicable IFC polices and other basic procedural requirements – such as the requirements for dam safety plans. IFC documentation does not systematically define how concerns raised in early IFC reviews of the ESIA, or even during the appraisal itself, are monitored to ensure implementation. This situation is not helpful in the context of the current conflict, because many external observers look to IFC to provide and be able to demonstrate a high level of scrutiny to ensure that IFC requirements for ESIA are met.

2.2.2.2 Environmental management plans

- The IFC did not establish adequate requirements for EMP implementation and design completion that reflects the management needs on the ground.
 - While the IFC found the June 2003 EAP to be adequate as a preliminary set of management plans that would be updated with more specific provisions for site-specific plans, neither the date nor the generic timeframe for completion of EMPs were specified in any IFC documentation. While many other environmental management plans do not need to be completed before operations begin, others, such as waste rock and ARD management, erosion control, waste and materials management, and contingency plans for activities occurring during construction are generally needed in order to promote confidence in the environmental management system.
 - According to the loan agreement, the management plans for Hazardous Materials Management and for Emergency Preparedness and Response were supposed to have been completed before the first loan disbursement. However, when the request for first disbursement was made in late 2004, the IFC determined that these plans could be completed later, before operations began.
- While the Third Party Environment Audit and Review identified concerns about erosion and dust control and the need to complete and implement EMPs, the IFC did not

formally respond to these findings or give any formal input to the company's submitted Corrective Action Plan.

- The IFC's criteria for requiring new EIAs and/or cumulative impacts assessments for associated facilities and expansions of the Marlin project are not clear or justified in any IFC documentation of the Marlin project.

2.2.2.3 Dam safety

- As part of the procedures for ESIA, the IFC has requirements for the development of plans related to the safety of large dams. Four supplemental plans are required by the IFC: the Construction Supervision and Quality Assurance Plan, the Instrumentation Plan, the Operation and Maintenance Plan, and the Emergency Preparedness and Response Plan. All are required in preliminary form during IFC appraisal. The Construction Supervision and Quality Assurance Plan and the Instrumentation Plan are required in final form to be submitted to the IFC during appraisal. These plans were completed in early 2005, and the former is only for phase 1 of construction. These two plans were submitted for review by the tailings dam reviewer during the finalization of this report. The Operation and Maintenance Plan is required to be submitted to the IFC in final form six months before the reservoir is filled. The Emergency Preparedness and Response Plan is required to be submitted to the IFC and Tailings Dam Review Board one year before the reservoir is filled. The Operation and Maintenance Plan and the Emergency Preparedness and Response Plan were completed and submitted for review during the finalization of this report.
- The TSF design report was submitted for review by the independent tailings dam reviewer in January 2005. The Operation and Maintenance Plan and the Emergency Preparedness and Response Plan have been completed in August 2005 and have been submitted for review by the independent tailings dam reviewer.
- The technical critique and resulting improvements to TSF design that have occurred as a result of the IFC-required process for dam safety review have been substantial. In the dam safety board reviews, the reviewer raised specific issues related to the first phase of dam construction, the waste rock facility stability, and some of the modeling of possible water quality issues.
- As with the third party environmental audit and review, the IFC's procedures for ensuring these concerns raised by the reviewer are addressed and that the project makes required changes in an appropriate and timely fashion is not clear or recorded.

2.2.3 *CAO recommendations on environmental impacts, mitigation and monitoring*

The following recommendations are pertinent for Montana:

1) Participatory monitoring

- a) Montana and the government of Guatemala should, in collaboration with community members and independent experts, create a comprehensive program of participatory environmental monitoring. CAO recognizes that Montana has already begun to explore this option and believes that the current proposals could achieve the critical purpose of building public trust in Montana commitments. The CAO also recognizes that Montana has submitted quarterly monitoring reports to the MARN beginning in 2004 that it began to present to interested parties in Guatemala City in May 2005. The participatory monitoring program should:

- i) Monitor surface and groundwater sources to verify the validity of the company's assumptions that water quantity and quality will not be affected. This monitoring should include any potable water sources that could be impacted directly or indirectly by the mine;
 - ii) Ensure public scrutiny of compliance of the operation with determined water quality standards. This monitoring program should involve external experts as well as local people as participants and should periodically audit the mine's environmental performance; and
 - iii) Be tightly linked to enforcement measures that ensure the company remains in compliance with agreed upon standards.
- b) CAO is willing to participate and contribute this program in order to ensure that it is independent, credible and neutral.

2) Dam safety

The dam is a high risk structure and assuring its structural integrity is essential. The CAO recognizes that the IFC has required review by an independent expert and that his input has substantially influenced the design of the TSF. The CAO also recognizes that the company has recently posted the most recent Tailings Dam Review Report on its website. The CAO recommends that Montana:

- a) Publicly release the Operation and Maintenance Plan and Emergency Preparedness and Response Plan and the Review Report of the independent tailings dam reviewer of all four required TSF plans before commissioning in the dam.
- b) Publicly disclose progress related to the issues raised in the review of Phase 1 construction in the Phase 2 and 3 design and construction.

3) Waste rock facility safety and ARD management

- a) Publicly disclose in the Waste Rock and ARD management plan or other appropriate documents:
 - i) An analysis of all past waste rock management since construction began.
 - ii) Detailed protocols and criteria for testing of materials during mining to ensure proper handling and placement of potentially acid generating material.
 - iii) Methods to identify and selectively handle (such as blending with other rock that has sufficient neutralizing capacity) material that is potentially acid generating
 - iv) Measures to address waste rock structural issues already observed in 2003 and 2004 Tailings Dam Review Report .
 - v) An approach to reporting of ARD monitoring data in the Annual Monitoring Report.

The CAO recognizes that preliminary procedures for items ii and iii were outlined in the Waste Rock Characterization and Waste Rock Facility Feasibility Design Report and that some or all of these items have been addressed in the recent August 2005 version of the Waste Rock Management Plan that is under review by the tailings dam reviewer.

4) Mine closure

- a) Publicly report financial provisions for both expected and unexpected closure based on a thorough assessment of mine closure and reclamation costs.
- b) Present locally details of the mine closure plan with an assessment of post-closure impacts and potential post-closure land uses.
- c) Establish with the government institutional responsibility for management and monitoring of post-closure infrastructure. Undertake an assessment of capacity to meet these

requirements and ensure that adequate provision is made for sufficient capacity to be in place by the time of closure.

5) Water quantity

- a) In collaboration with independent experts and community members conduct a comprehensive and publicly released assessment of the impacts of the mine on the water balance of the region and the potential for stream depletion and water competition to occur as a result of the mine's activities. This study should include:
 - i) An updated inventory of all types of water use in all waterways and water sources around the mine.
 - ii) Characterization of springs that serve as potable water sources and users that may be impacted by increased demand and expansions of potable water systems.
 - iii) Confirmation and updating of information on:
 - (1) TSF discharge rates;
 - (2) Water use for dust control;
 - (3) Additional characterization of groundwater and run off;
 - (4) Climatic conditions; and
 - (5) Projections of future changes in water demand in the region (from direct and indirect effects of the mine) and the availability of water sources to meet this demand.

6) Water quality

- a) In collaboration with independent experts and representatives credible to the community (possibly identified through the establishment of the participatory monitoring program), conduct a publicly available site-specific beneficial use study and risk analysis of the waterways impacted by the mine that informs the determination of beneficial use standards. This study should:
 - i) identify and characterize all downstream receptors and water use downstream of the mine site; and
 - ii) Specify the site-specific water quality standards that should be met at the discharge point and at a mixing zone for all contaminants in order to ensure that any users are not adversely affected by changes in water quality as a result of the mine.

7) Sediment control

Report progress on erosion control measures, including during storm events, in the AMR. Include specific data on total suspended solids.

8) Cumulative impacts

Ensure meaningful local disclosure and public opportunity to comment on the ESIA addendum for La Hamaca including assessment of any cumulative impacts of La Hamaca expansion. Local concerns raised during this process should be responded to by project staff.

9) Disclosure of current information

- a) Disclose publicly and locally exploration activities so that local people can understand the company's activities and possible future impacts in the area.
- b) Release to the public on the internet and locally the social and environmental information released to the CAO. This should include disclosure of all relevant environmental, social, and economic information, including but not necessarily limited to all finalized management plans, the TSF design and supplemental TSF material, and geochemical

information. External experts and critics should be invited to review this information and make their criticism public.

- c) Retain the services of an independent third-party auditor that does not provide other services to the company.

2.3 Socio-economic impacts: What are the social and economic impacts of the project, and who is likely to be affected by them?

Local community leaders throughout Sipacapa – as well as national figures – expressed concerns about the potential adverse socio-economic impacts for local people and that overall the Marlin mine is a “bad deal” for local people and for Guatemala as a whole.

In particular some inhabitants of the region have expressed concern and confusion over socio economic impacts including:

- the potentially adverse impacts from the presence of mining contractors and in-migration;
- the current distribution of benefits; and
- future magnitude and distribution benefits that will accrue over the life of the project and future expansions.

Observers at the national level have asked if the royalty and tax benefits to the government are “unfair” and have suggested that they may not cover the costs that the mine will generate in terms of regulation costs and liabilities after closure.

IFC’s Safeguard Policies require that projects assess their social impacts and implement appropriate mitigation measures. These include specific requirements relating to indigenous peoples and resettlement. In a broader sectoral context, emerging conclusions from the EIR at the time indicated concerns about the enclave nature of many extractive industry projects which result in little distribution of benefits to local communities. The EIR process noted that considerable efforts need to be made by project developers to localize the benefits from these projects and ensure that they contribute to poverty alleviation.

The ESIA characterizes socio-economic impacts as generally positive, both from a local as well as national perspective. The ESIA also projects tax and royalty contributions over the life of the project. The company has focused much of its efforts on local sourcing of labor, goods and services in an attempt to localize benefits and mitigate negative socioeconomic impacts of this investment. These are elaborated in the company’s public Annual Monitoring Report.

Montana asserts that all land transactions were voluntary and with willing sellers. Issues related to land transactions and compensation have been documented in a publicly available Land Acquisition Procedures report (LAP). Montana also points to the publicly available Indigenous Peoples Development Plan that commits the company to extensive engagement with local communities through, amongst other avenues, the Sierra Madre Foundation.

2.3.1 CAO findings on socio-economic impacts

Detailed information provided to the CAO on the Marlin project’s socio-economic assessment, proposed mitigation and benefits programs are contained in Annex A, Table 6 which should be read in conjunction with this section of the report.

On balance, CAO finds that Montana has made considerable efforts to overcome some of the major criticisms of social and economic aspects of mining projects. In particular, it has: (a) localized many social and economic benefits; and (b) ensured transparency with respect to its

payments to the government. In addition, the land transactions appear to have been conducted successfully, with no complaints being lodged by any directly affected people to CAO or other independent investigators.

However, poor relations with some local communities, particularly in Sipacapa, are undermining attempts by Montana to promote sustainable development projects and generate goodwill.

With respect to national benefits to date, Montana disclosed expected tax payments and royalties in the ESIA, though the extent of public knowledge of the recent tax regime changes and revenue management is not known. No policy has yet been established by the company or the government on revenue transparency.

Potential adverse socio-economic impacts of the project are not well characterized in the ESIA. The ESIA concludes that adverse impacts relating to in-migration and the construction labor force are likely to be small but does not present a thorough analysis of these impacts. For example, assessment of implications of the project on public services and municipal capacity has not been presented. Based on current conditions, these issues do not appear to have become significant (either in Sipacapa or in San Miguel) and the project's policy of local hiring appears to have prevented a major influx of migrant job-seekers. With the exception of possible conflict over potable water – which CAO has not been able to quantify adequately – the project has invested in promoting education, health and other municipal infrastructure.

The original ESIA is silent on potential cultural impacts relating to Sipacapa. CAO understands that the lack of an early assessment of cultural impacts on Sipacapa is based on an initial judgment by company that social impacts there would be less significant than in San Miguel and that any impact would be positive on balance. At the same time, the absence of meaningful consideration of the cultural and linguistic distinctiveness and minority status of Sipacapa has contributed to the local perception that the company and the government have failed to respect traditional decision-making protocols and increased their vulnerability. Current exploration activities in Sipacapa have increased this perception.

The Land Acquisition Procedures document, the Public Consultation and Disclosure Plan and Indigenous Peoples Development Plan required by the IFC have documented and made available publicly many of its development contributions to date as well as some of the planned development activities. Since the completion of these plans, Montana has enhanced its socio-economic monitoring efforts and is now reporting on a broad set of socio-economic indicators. These indicators are reported in the first 2004 Annual Monitoring Report submitted to the IFC. The AMR is posted on the Glamis website in English and Spanish..

The distribution of benefits and opportunities arising from the project are focused more on San Miguel than Sipacapa. This difference is the source of some criticism of the project from people in Sipacapa. However, efforts have been made to ensure that the distribution of project benefits is equitable (as opposed to equal) between the two municipalities. Greater public clarity of procedures with respect to benefits distribution will likely be helpful in engaging people who perceive the current basis for allocation to be unfair.

At the national level, there is clearly vibrant debate about the relative costs and benefits of mining as a path for development within Guatemala. In this context, a more complete and objective assessment of both anticipated regulatory and other social costs associated with this project, as well as benefits would be helpful. Productive debate would reflect on at least the following key factors:

- The costs of regulatory and social and environmental liabilities and risks that might be the responsibility of the government and municipalities;
- The costs of any necessary increased security and other services provided by the State;
- The tax and benefits regimes available to investors in other comparable, competitor countries; and
- The relative merits of attracting new foreign investment to Guatemala.

The judgment of whether or not the benefits from mining outweigh the costs and are ‘adequate’ for Guatemala should not be a matter for special interest groups, but rather based on objective facts and robust information. The experience of the Marlin project ought to contribute – in a positive way – to that debate. Ultimately and rightly, the people and government of Guatemala make these decisions in the interests of their own national development.

2.3.2 CAO observations of IFC’s socio-economic assessment process

The IFC has been the first entity to present to an interested Guatemalan stakeholder a more detailed analysis of the benefits of the project than was previously available to the public. In a letter to Monsignor Ramazzini, the IFC has elaborated its calculation of the economic benefits of the project. This basic assessment can contribute to the public debate over how the Marlin mine could be a beneficial project for Guatemala. In addition, the analysis took into account the changes in the calculations of benefits in light of the new income tax regime and other tax contributions of the company as well as the increased 2004 employment statistics. However, absent from this analysis is an assessment of the potential regulatory costs and long term liabilities that Guatemala could incur as a result of the Marlin mine. The figures presented by the IFC are shown in Table 5 of Annex A of this report.

On the local level, the IFC has given substantial input, both in terms of strategic guidance as well as financial support, to the development of the FSM. It has also helped to orient the socio-economic monitoring process. The Indigenous Peoples Development Plan required by the IFC demonstrates Montana’s commitment to ensuring that local people share the benefits that the Marlin mine will generate.

IFC analysis of the potentially negative social impacts and the appropriateness of the proposed mitigation measures has not been comprehensive or explicitly recorded in project documentation. There is limited systematic documentation of how concerns raised in early IFC reviews have been addressed. Further identification of any potential health risks from a single-status workforce, crime, strains on social infrastructure and cultural impacts would have enabled a more complete analysis of the appropriateness of the proposed mitigation measures and the monitoring of their effectiveness.

2.4 Disclosure and consultation: Was the process for disclosure and consultation adequate – and does it continue to be adequate?

Whereas the ore body and majority of the mine property is in San Miguel, some facilities are also located in Sipacapa municipality. The complainants believe that Sipacapa was neglected in the consultation process and that the project has failed in its obligations to involve them in the license approval process.

Some constituents in Guatemala contend that because of this lack of consultation, the project does not comply with the requirements of ILO 169 and the Agreement on Indigenous People and as a result, the government of Guatemala illegally granted the license and that the company is not operating legally.

The CAO recognizes that the question of the Guatemalan government's compliance with ILO 169 and other human rights covenants has been brought before the Inter-American Human Rights Commission (IAHRC) and that this body has not yet made a statement on the matter. The CAO also recognizes that there is a debate within the Guatemalan government about compliance with ILO 169. Furthermore, the CAO is aware that the implications of the outcome of the recent popular consultation and referendum that took place in June in Sipacapa is under legal dispute.

This section seeks to understand:

- What efforts the company and the government of Guatemala have made to consult with the people of Sipacapa, and what the rationale has been for these efforts; and
- Why there is now such heightened expectations of consultation within Sipacapa as well as resentment of having been excluded from the consultation process.

CAO's assessment focused on the quantity, timing and quality of disclosure and consultation activities. Table 7 in Annex A presents information made available to CAO on disclosure and consultation activities associated with the project from a variety of different sources. This table should be read in conjunction with this section.

In summary, the chronological record of disclosure and consultation reveals that:

Before the granting of the exploration license for the current Marlin project, CAO found no formal notification or records that indicate whether or not the government of Guatemala informed or consulted with local people or their leaders prior to granting of the exploration license for the Marlin area.

During the exploration for current project and for further exploration, the company asserts that meetings were held about exploration activities between exploration geologists and other project staff with local leaders and other representatives in both Sipacapa and San Miguel in 2002 and 2003. Records were not kept of these meetings. CAO's understanding is that landowners gave permission to the company to carry out exploration activities on their land. No recorded formal consultation or notification process was undertaken by the government for the granting of these exploration licenses which are additional to the license granted in 1999 for the Marlin area.

During the land purchase process for the Marlin mine property, which began in 2002 and lasted through January 2005 (except for a small amount of land, roughly one quarter of a km² that was purchased before 2002), municipal mayors or their staff were notified of land transactions and were called upon to witness the recognition of land rights to individuals prior to transactions with the project. The land transaction process was managed by Peridot, S.A., a company working on behalf of the project: 15% of the land purchased is in Sipacapa; 85 % in San Miguel municipality. The acquisition of the right of way for the 27km powerline right of way was recently completed in April of 2005. The ESIA was submitted to the MARN and approved in October 2004.

Montana maintains that all individuals who have transacted land with the company did so on a voluntary basis and received fair remuneration as well as offers of employment with the mine. CAO found no evidence to refute this assertion. To the CAO's knowledge, no complaints from individuals who have transacted land have been received by the Guatemalan Human Rights Ombudsman or other investigators who have visited the area.

During the ESIA preparation process, consultants for the company undertook two socio-economic/public opinion surveys of roughly 60 people in the three towns in San Miguel considered by Montana to be directly affected . In addition, the company maintains that meetings were held with municipal representatives and others in both Sipacapa and San Miguel about the activities of the project. Few records were kept of these municipal meetings.

In early 2003 the Community Relations Group (CRG) was formed by the project, and better documentation of community meetings began. The CRG is made up of indigenous residents of both municipalities. The mandate of the group is to explain the project, listen to community concerns, questions and ideas and make recommendations about community projects.

During the ESIA Drafting and Approval Process the first reported CRG meetings in which the company reports the ESIA was discussed occurred in June of 2003. Throughout the later half of 2003 a larger number of meetings was held by the CRG in which aspects of the project were discussed and information disseminated. These meetings were predominantly in San Miguel but also with some villagers in Sipacapa.

The ESIA was completed in June 2003 and disclosed – according to regulatory requirements – for 20 business days at the office of the MARN in Guatemala City and the city of San Marcos, the regional capitol of the department of San Marcos. In addition, radio announcements were run in both Mam and Spanish for a week and newspaper notifications are made announcing the availability of these documents in San Marcos and Guatemala City. One person is reported to have reviewed the document in Guatemala City.

MARN reports that one group from Sipacapa visited the MARN office in San Marcos to inquire about the project and its environmental impact suggests that there was some concern expressed to MARN about the project. However, the date and the subject matter discussed at this meeting are not recorded. If the meeting did occur during the comment period, the visit was not considered a formal comment on the ESIA because comments to the ESIA must be written and technically based, according to MARN requirements.

In September 2003 the elected representatives of both San Miguel and Sipacapa formally expressed their support for the project through signed acts. In San Miguel, over 40 village representatives from throughout the municipality signed an act of approval which, in describing the contents of the meeting, mentions the ESIA and the findings that impacts will be minimal

with mitigation and the benefits of the project. In Sipacapa, the mayor and five council members signed an act that expresses support for the project but does not mention the ESIA. Both Municipal acts are sent to MARN. The Marlin project's ESIA was approved by MARN at the end of September.

In October 2003, Montana first presented to local communities a CD recording of the executive summary of the ESIA in Mam. Montana estimates that to date up to 300 people heard the recording. The disclosure of the full ESIA and executive summary in Spanish locally occurred in February of 2004. The summary of the ESIA is not available in an oral recording in Sipacapense.

Also in October 2003, MEM issued a notice in a national newspaper for one day providing the public with a 30 day period to object to the project. No objections are received and the project's exploitation license was approved.

According to current records, the Guatemalan government did not hold any public consultations with local people about the ESIA. The first recorded MEM meeting with local people in which the project was discussed was during the first part of 2004 when the then viceminister of MEM visited both San Miguel and Sipacapa. According to the MEM this meeting was not recorded and did not involve productive dialogue. A second, recorded meeting with the new viceminister of MEM occurred in Sipacapa in April of 2005. The agenda for this meeting was prepared by the communities and focused on local concerns and questions to the MEM about the Marlin mine. This visit appears to have been welcomed by many people in Sipacapa as a way to clarify confusion about the current project.

More recent disclosure of Marlin project information has been made available on the Glamis website and it has begun to present quarterly monitoring to groups including government agencies and NGOs in Guatemala City.

2.4.1 CAO findings on quantity and quality of consultation and disclosure processes

The record of consultations demonstrates that there have been a substantial number of meetings of the CRG with large numbers of people in both Sipacapa and San Miguel. Information from the public consultation process has been used to design and improve Montana's commitment to local employment and procurement. In addition, this information has guided the work of the philanthropic activities of the project through the Sierra Madre Foundation. The consultation process with landowners who transacted land with Montana appears to have been acceptable to the involved parties.

There is evidence that the company responded to public survey findings of the ESIA process by changing some of its design plans for the project. Mitigation measures related to concerns about road traffic and dust were responded to at least in part by watering the roads and implementing traffic safety measures. After release of the ESIA in June 2003 Montana revised its plans for drawing water from the Tzala river and instead (in March 2004) decided to source water from a deep well thought to be from a geothermal source and with no known competitive users. CAO understands that this change in water sourcing was made at least partially in response to concerns raised during the ESIA process.

The complainants as well as many municipal leaders in Sipacapa now contend that these consultation and disclosure efforts were not adequate. Some of the main reasons for this persistent concern are:

- The relative efforts and difference in approach placed by Montana on disclosure and consultation in Sipacapa as opposed to San Miguel. It appears that early in the development process, Montana's assessment was that, despite the proximity of the project to communities in Sipacapa, the people of Sipacapa were unlikely to be significantly adversely impacted. Accordingly, proportionately less effort was invested in (a) communicating the impacts; (b) engaging pro-actively with communities in Sipacapa.
- Public disclosures about project impacts and potential risks prepared by the company – including the ESIA – were highly technical and did not at the time have sufficient information to allow for an informed view on the likely adverse impacts of the project. In particular, issues of acid rock drainage, dam safety and cyanide management were poorly defined. The quality of the ESIA was subsequently (in 2004) criticized.
- Lack of clarity about whether and how potential impacts of the project were conveyed to local people, as opposed to more general discussions on project benefits.
- The limited ability of the CRG to explain and respond to environmental impact concerns. The CRG, established in early 2003 and made up of employees drawn from Sipacapa and San Miguel reflects reasonable investment by the company in developing its community relations capacity. The CRG was occasionally accompanied by technical staff when it met with communities. However, the CRG personnel expressed that in general they heard continuing concerns within both Sipacapa and San Miguel municipalities about the environmental impacts of the project and noted that they were unable to explain project impacts and mitigation plans, such as why water demands of the project would not impact local users and how potential contamination of water supplies would be mitigated. This suggests that the CRG requires additional capacity and support by technical staff to adequately address concerns raised by the community about the mine.
- Neither the company nor the government have documented or are currently documenting the local consultation process about the granting of exploration licenses in Sipacapa. It is therefore not clear whether any consultation about license granting has occurred.
- In the absence of adequate accessible information, it has not been possible for many people to understand what is planned for future expansions into Sipacapa or verify rumours and concerns about mining that have been raised within their communities or from outsiders.

IFC, in collaboration with the World Bank in Guatemala appreciated to some extent that this investment and others in the mining sector were provoking a high level of concern and possible conflict at the national level. The WBG proposed a program of support to the Government of Guatemala which involved establishment of a national forum to promote dialogue and reflection about the role that mining could play in Guatemala's development. However, the timing for establishment of this program does not seem to have been compatible for the much faster timetable for construction of the Marlin project.

Some civil society groups nationally and in Sipacapa have an expectation that locally affected indigenous people should participate in decisions of whether or not mining activities will proceed in their territories. The position and actions of the government of Guatemala to date on this matter, including in relation to the Marlin project, do not meet these expectations. . Much of the disclosure and consultation activity occurred after completion of the ESIA, and it is reasonable

to question the extent to which they had an opportunity to meaningfully participate in the ESIA process.

The national mining regulations provide no guidance on how project developers should seek approval from local people for either their exploration or exploitation activities. Protocols for implementing the intent of ILO 169 – which requires that local people are informed and consulted about potential exploration or development activities – have not been developed.

The government and project sponsor have not comprehensively considered the local norms for community decision-making about community matters that affect the populace. The Mayan cultural view of natural resources and their management is distinct and is likely to influence perceptions towards mining. Given the predominance of the Mayan identity of the region's inhabitants and their local norms, an analysis of Mayan customary perspectives and local decision-making norms as they may relate to mining would significantly enhance the consultation processes.

The national government does not have the capacity to meet the expectations of civil society with respect to regulation of mining and public participation in decision-making about the development of the mining sector on indigenous land. Mining companies have to a large extent been left alone to deal with local landholders and impacted people. The government currently does not require local disclosure of environmental documents to project-affected people. While there appears to be a MARN requirement, at least in the case of this project, for some sort of municipal approval of the ESIA, there is no regulatory guidance on the appropriate extent or scope of government or company consultation meetings about the intended mine development. Given the novelty of mining in Guatemala, the rural location of potentially affected people and the complexity of environmental and social impacts associated with a large open-pit development the period of time over which the Marlin project has developed has proved to be insufficient for reasonable and informed consultation. Overall, there has not been sufficient time and space for trust to be built in reconciling disputes and concerns related to development of the project and granting of mining concessions in general.

In the absence of a strong government regulatory environment, the project has developed its own protocols for disclosure and consultation. These protocols are based on the company's own assessment of impacted people. Its emphasis has been on the people of San Miguel – where 100% of the ore body is located, 85% of the mine property, transportation routes and most potential downstream, offsite impacts. San Miguel receives a share of the royalty that the company will pay to the government under existing legislation. The project has thus focused disclosure and consultation activities, local hiring opportunities and philanthropic benefits in San Miguel.

The absence of clear government regulations has resulted in uncertainty for both the investor as well as local people about the extent to which they should have been informed and consulted about mining. In particular the self-guided nature of Montana's activities raises the issue of what questions people are being asked during consultation: is it whether the project should go ahead or rather how the project should go ahead. Without endorsing either perspective, it appears that given the timing and extent of the project's consultation activities it (i.e. the project) is asking to some extent how the project should go ahead. The people of Sipacapa want to be asked whether or not the project should be approved based on what the impacts will be on their territory from this mine and from the future expansions.

With respect to current exploration activities, the company maintains that all exploration activity occurs only with the permission of the landowners. However, neither the company nor the government appears to have engaged in a proactive process of working with local people to build a clear understanding of appropriate protocols for disclosure and consultation. Current actions by the company appear to be relatively *ad hoc*, albeit better documented than in the past.

2.4.2 CAO observations on IFC Assessment of disclosure and consultation processes

During this assessment, CAO found that the IFC's appraisal process – whereby its specialists review and eventually approve documentation submitted to them by the Sponsor – was not rigorously recorded. The basis on which the IFC determined that the disclosure and consultation practice of the company was adequate – with respect to being both *meaningful* and *culturally appropriate* is not clear. CAO found no record of analysis of company capacity nor of government regulations or capacity to implement regulations. The Public Consultation and Disclosure Plan required by the IFC does not directly address these issues. There is no documentation that reflects that any detailed consideration was given to the quality of consultation nor to the rationale in differentiating an approach between San Miguel and Sipacapa. This situation is not helpful in the context of the current conflict.

2.4.3 CAO recommendations for disclosure and consultation

In addition to the substantial recommendations for disclosure and consultation made in Section 3, the CAO recommends that Montana undertake enhanced consultations about impacts with local community groups (both directly impacted and those that perceive themselves to be impacted) that address their specific concerns.

Based on the studies recommended in Section 2.2.3 that may provide new information about impacts and appropriate water quality standards, the company should conduct focused and culturally appropriate consultations with any existing as well as newly identified impacted communities. These consultations should include:

- a. Presentations of the findings of the studies proposed in Section 2.2.3 on environmental recommendations and mitigation measures in an understandable format; and
- b. The opportunity for participants to raise concerns to technical staff and to have these concerns comprehensively addressed and taken into account in management plans and the participatory monitoring system elaborated in section 2.2.3.

Furthermore, Montana should create a transparent and fair mechanism for receiving grievances from impacted people, documenting and addressing them in a timely and transparent manner.

2.5 Security: What can be done to resolve security concerns?

There is substantial concern about security from all stakeholders of the Marlin mine.

Two violent deaths are currently associated with this project: one an incident involving government security forces amidst a protest against the movement of project machinery (i.e. the mine's ball mill) in Sololá; the other an incident of an off-duty security officer shooting a local contractor in San Miguel. The police are investigating the specific incidents of violence.

In Sipacapa there has been an additional violent incident when a truck operated by the company was burned by individuals opposed to the mine the day that the aforementioned ball mill arrived at the mine site. There have also been widespread allegations of death threats against prominent figures who have spoken out against the mine (including Monsignor Ramazzini and representatives of Madre Selva) as well as threats of intimidation of people in the local communities who are both for and against the mine. During the week of the referendum in Sipacapa, drinking water infrastructure for the four villages nearest the Marlin project was vandalized, and some believe this to have been an intimidation tactic of opponents to the mine.

Specifically, local concerns about security include:

- The presence of non-local mine personnel/ contracted security forces, who are understood by local people to be former soldiers.
- The presence of the military on the mine site. Given the past violence of the civil war in which the military committed acts of violence against rural and indigenous people, there is little trust in the military.
- Overflights by reconnaissance planes and helicopters, which raised concern and fear, largely derived from past experiences during the Guatemalan civil war. Some people feared that helicopters and planes were dispersing substances harmful to crops, others feared that reconnaissance information that was being gathered would be used to harm them.
- Threats and intimidation tactics used against people both for and against the mine and the resulting increase in divisions within and among communities.

At the time that the Marlin project began construction in May 2004, neither the company nor the IFC anticipated the possibility of localized conflict arising as a result of the project and the presence of security forces. The presence of the Guatemalan military on site is required by Guatemalan law to ensure the safety of industrial explosives.

There are currently no WBG or IFC policies relating to human rights and the management of security forces. The WBG management response to the EIR elaborates new requirements for projects to adopt the US/UK Principles on Management of Security forces (see Box 2 below).

Critics maintain that given the local and national contexts, the IFC should have required and the company should have implemented policies on human rights and the management of security personnel, interaction with government security forces, and consultation with local people about the overflights and their purpose. They also maintain that the project, because it has created new divisions in the communities, will continue to exacerbate violence and threats to human rights at many levels.

Box 2: Summary of the US/UK Voluntary Principles on Security and Human Rights

In 2000, the Governments of the United States and the United Kingdom, companies in the extractive and energy sectors, and human rights and labor rights non-governmental organizations, have developed a set of voluntary principles (www.voluntaryprinciples.org) to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. The Principles are the first set of guidelines of their kind for this sector. They address three areas of mutual concern to both companies and NGOs and include the following provisions:

Risk assessment

Companies should undertake risk assessment when using security forces. Effective risk assessments should consider the following factors: identification of security risks, potential for violence, human rights records, rule of law, and conflict analysis, and equipment transfers among others.

Company engagement with public security

Where public security is used on project sites, the company should among other steps: undertake consultation with host government and local communities about the impact of their security arrangements on those communities, communicate their policies regarding ethical conduct and human rights to public security providers, report any credible allegations of human rights abuses, promote various principles with public security including non-employment of individuals with credible records of human rights abuse, use of force only when strictly necessary, respect for the rights and freedoms of individuals.

Company engagement with private security

Where private security is used on site, private security force companies should, among other provisions, have policies regarding ethical conduct and human rights and not employ individuals with a credible history of human rights abuses.

Companies that employ security forces should, among other steps, review the background of private security particularly with the use of excessive forces, ensure private security personnel are adequately trained to respect the rights of employees and the local community, actively monitor practices of their security forces or retain a third party to do so, monitor the status of any investigations regarding abuse by security forces and press for their resolution.

2.5.1 CAO findings on security

- The lack of a clear policy on human rights and the management of security forces is a significant oversight on the part of both the company and IFC to adequately safeguard against the potential for violence.
- Local people remain gravely concerned about security force issues, and the company to date does not have policies in place for management of security forces. The company

has a copy of the statement on the use of force of the new contractor that is has hired to replace Golan, though this is not public information.

- It was not possible for the assessment team to verify the allegations of threats on either side, but corroboration from a number of different voices suggests that this concern is serious. There is no system in place that is addressing these allegations.
- The parties involved have all denounced violence and profess to seeking a peaceful resolution to the current situation. At the same time, it appears that death threats and conflict related to the mine are continuing. The IFC has received copies of letter threatening Montana workers. There is no system in place for addressing the allegations and threats to security.
- IFC failed to make any consideration of potential for local-level conflict in its appraisal or advice to the Sponsor. This is surprising given (a) the CAO's recommendations, made in its June 2003 contributing report to the EIR *Extracting Sustainable Advantage* and (b) the advanced stage of development of the EIR. CAO acknowledges that application of principles for the management of security forces are now incorporated in Management's response to the EIR.

2.5.2 CAO recommendations for security

The first step – on the part of both Montana and the complainants – is to formally commit to principled, non-violent dispute resolution. On the part of Montana, the following recommendations are pertinent:

- Adopt and operationally implement the US/UK Voluntary Principles on the Management of Security Forces in order to ensure the security of its own staff, contractors and other personnel in a responsible manner. These principles will ensure protection of human rights and should be implemented through training for its own security personnel (as well as contractors). Montana should develop a code of conduct together with the government on the management of state-sponsored security forces associated with the mine.
- Ensure that all personnel understand their responsibilities to promote peaceful outcomes to the current tense situation.
- Support – together with the local judiciary – an independent commission to investigate allegations of intimidation and violence in the local communities and acts quickly and decisively on the findings of this commission.
- Establish a system for the monitoring and reporting of security concerns as they are raised over the life of the operation.

3 Conclusions and Recommendations

This assessment suggests that there are at least four principal causes to the current dispute over the Marlin project:

- There are significant differences between Montana and the people of Sipacapa about perceived risks of adverse environmental impacts from the project. As a result of an aggressive and at times factually unfounded campaign focused against the project, some people – predominantly in Sipacapa – believe that these risks have not been adequately monitored, managed or mitigated. The campaign has raised considerable fear and apprehension amongst local people about the possible negative impacts of mining. The campaign has contributed to local tensions and anger and has not always been a reasonable source of information for local people.
- The difference in treatment by the company of people in Sipacapa as opposed to San Miguel has raised resentment and perceptions of exclusion and isolation.
- Locally affected people are not able to identify a credible and neutral party who they feel able to trust with respect to information relating to the project.
- As a result of the heightened and often different perspectives raised by civil society in the country, the national government has not been able to effectively meet the expectations of the various stakeholders with respect to public participation in decisions relating to development of the mining sector. Thus, the pace of development of the Marlin mine has not been compatible with (a) the novelty of mining development in Guatemala; and (b) reconciling the often different perspectives raised by civil society in the country, given the highly technical nature of much of the debate.

With respect to environmental risks, CAO finds that the people of Sipacapa are not likely to be impacted significantly by the project. This finding creates considerable legitimate space for both the company and complainants to reflect on an appropriate course towards resolving the current dispute.

The tight focus of the project on only environmentally impacted people during the ESIA process raises a number of questions and concerns about the relationship between the project and its neighbouring communities. Some of these concerns are specific to Marlin, others are more generic and relate to the context of development and mining in Guatemala. CAO's assessment is that implementation of the recommendations in each section of this report, together with careful intervention with respect to **enhanced participation by local people in forwards-looking decisions related to future exploration, royalties, environmental monitoring, and distribution of benefits** will be constructive to promoting dispute resolution.

3.1 Enhanced participation by local people in forwards-looking decisions related to future exploration, royalties, and distribution of benefits

The severity of the local concerns in Sipacapa about the Marlin project can be largely attributed to perceptions of exclusion and isolation. The underlying reasons for why people in Sipacapa appear to have more reason to fear the mine can be traced to decisions taken – early in the development process – to focus more on San Miguel because that is where the impacts of the

currently proposed mine are most significant. The consequences of that early decision (which was probably quite rational at the time given the distribution of risks as well as benefits arising from the project) have been: (i) fewer avenues for meaningful communication for people in Sipacapa; (ii) less information on the project reaching the broad community in Sipacapa; (iii) less trust between opinion-leaders in Sipacapa and the project when compared with San Miguel. Similarly, decisions to allocate benefits from the Foundation Sierra Madre – which are not equal but are most likely equitable – have generated perceptions of few benefits reaching Sipacapa.

As a result, when an aggressive (and at times factually unfounded) campaign led by civil society groups alerting villagers to the possible negative impacts of mining was launched towards the end of 2004, and combined these concerns with information about how these groups should have been consulted prior to the project's development, it had a significant impact in Sipacapa. It appears that the combination of proximity to the mine and inadequacy of reliable alternative sources of information has fuelled fear and apprehension about the project. Fear and apprehension have now spiraled into a climate of intimidation and near-violence.

There has been no genuinely credible neutral voice of informed reason to whom people could turn given their apprehensions. It is a reflection of poor relations that many leaders in Sipacapa chose not to turn to Marlin to seek this assurance although this may have been inevitable given the perceived self-interest that the project would have. It is possible that people held similar reservations about their government. In this context, the Catholic Church has become an important focal point. It too has tended to be outwardly critical of mining. It is clear that many local leaders felt that they should have been involved – at a grass roots level – in decisions that the central government took to grant the exploration and subsequent exploitation license.

Whatever the reasons and justification, there is a substantial movement in Sipacapa that has felt powerless in the face of a significant development decision, and intimidated by what it sees as a wave of new exploration activities endorsed by the central government. The popular consultations and ballot referendum against mining had the clear intent of reasserting the voice of people who felt their views had not been heard or respected.

3.2 Recommendations for the project and complainants

Given this situation, CAO recommends that, using this report as a basis for discussion, a high-level delegation from Marlin and a group of people representing the complainants and people of Sipacapa should consider engaging in dialogue to establish acceptable next steps towards achieving resolution of this dispute. CAO is willing to convene a meeting at which the parties:

- Address the concerns of local people and acknowledge that greater emphasis should have been placed on communication and trusted means for engagement with the people of Sipacapa during all phases of the project;
- Explore jointly what steps are necessary to redress the feelings of disrespect that currently tarnish relations between the community and the mine;
- Establish a framework for on-going dialogue and consultation which moves the agenda beyond the legal dispute over the popular consultation and referendum that occurred in June 2005;
- Promote development of a public plan for the integration and monitoring of benefits from the mine that includes royalties, FSM community investments and other economic benefits; and

- Enhance the transparency and perceived fairness of the current procedures for allocation and response to community solicitations for support.

The CAO would welcome the participation of important stakeholders defined by the each of the key parties to this dispute to participate in this process.

3.3 Conclusions and Recommendations for IFC

Specific observations of IFC's processes are presented in each of the chapters of this report. CAO has made no attempt to formally audit IFC's involvement in this project. As ombudsman, the emphasis has been to understand the significance of concern presented by the parties and to establish, as far as possible, the factual basis for these concerns.

CAO finds a number of instances where increased clarity and greater rigor on behalf of IFC would have been helpful to addressing issues raised by complainants. These include, specifically:

- A clear rationale for how IFC judged the adequacy of the ESIA during its own appraisal process;
- Clear criteria for assessing the adequacy of environmental and social management plans at key points in the project development process as well as explicit justification in project documentation for waiving any IFC requirements;
- Mechanisms to ensure monitoring and implementation of recommendations arising from external audit and third party reviewers;
- Clear definitions of how IFC assessed that disclosure and consultation activities were *meaningful and culturally appropriate*;
- Requirement of a security policy that ensures protection of human rights; and
- Thorough consideration of the governance and country context and the balance of risks and benefits accruing as a result of this investment.

The last point is particularly relevant to possible next steps for the IFC in relation to the Marlin project. Given the high risk nature of the Marlin investment, the IFC should consider leveraging support from the WBG to improve the capacity of Guatemalan government agencies to effectively regulate the Marlin project and other projects in the mining sector. CAO notes a deep lack of trust in regulatory authorities which can only undermine the credibility of the mining sector in the near term. Support from the WBG, rather than directly through IFC, may be beneficial in overcoming real or perceived conflicts of interest relating to IFC's investments in any individual project.

CAO recognizes that IFC has made attempts to promote dialogue about mining at the national level in coordination with other parts of the WBG. However the timeframe associated with these efforts was not compatible with the timetable of the project's development. This tension undermined the effort and should be resolved in any forwards-looking initiative.

On a more general level, the Marlin project brings to focus the importance of IFC extractive industries policy reform. IFC experience in the extractive industry (EI) sector, of which the Marlin project is a part, has shown that when the IFC supports high-risk EI projects, a high level of due diligence is required in order to ensure these investments lead to development benefits and the fulfillment of the IFC's mandate. The Management Response to the EIR has provided further clarification about the changes required for effective engagement with the EI sector that the WBG believes will lead increased to poverty alleviation and sustainable development.

Furthermore, several of the CAO recommendations from its June 2003 contribution to the EIR (*Extracting Sustainable Advantage?*) are relevant to both the Marlin project and IFC's social and environmental policies in general. The IFC has responded to the report and has applied some of these recommendations in the context of the Marlin project (e.g. improved benefits sharing with local communities). Other salient recommendations that relate to CAO observations of IFC processes in general and this project assessment in particular include:

Regarding environmental impacts

- IFC should develop sector specific guidance on how comprehensive environmental risk assessments should be undertaken. In addition, IFC should finalize and fully implement its draft guidance on cyanide handling.
- IFC should develop and implement improved guidance on ecological assessment and mitigation.
- IFC should strengthen the available guidance on closure to apply to all extractives projects, and include a requirement to ensure that social considerations are taken into account. They should also develop and implement measures to ensure that funds allocated to closure during their involvement with a project are ring-fenced, even after they exit.

Regarding socio-economic impacts

- IFC should develop improved guidance on how to deal with [various social impact] issues [including in-migration, induced development and health impacts], and integrate it into improved guidance on social assessment, as recommended by the CAO Safeguard Policy Review.

Regarding Disclosure and Consultation

- IFC should more explicitly acknowledge and report on the influence that public consultation has had on the design and implementation of projects,. The benefits of ongoing consultation and engagement throughout a project's life cycle should routinely be articulated to clients, and required for the period of IFC or MIGA's involvement.

Regarding Security

- IFC should more systematically consider potential risks to human rights at the project level, take appropriate steps to mitigate them, and provide clearer guidance to clients on both of these aspects. Where relevant, these aspects should be reported on at the project level.

The CAO recognizes that to some extent the WBG is implementing these recommendations and that the IFC is incorporating them into its Safeguard Policy revision. The most relevant parts of the management's response include:

- Improving strategic and cumulative environmental impact assessments as well as environmental and social management and monitoring systems
- Promoting transparency in revenue management and benefits sharing with local people;
- Helping to ensure that communities are well informed by requiring that investors make available meaningful information about the social, economic and environmental impacts of their projects through a process of free prior and informed consultation;
- Supporting only projects that have the broad support of affected communities;
- Ensuring security forces respect human rights; and

- Reviewing the governance and country context, including risks and benefits.

The CAO believes that meaningful implementation of these recommendations are needed in order to ensure that the IFC's investments in extractive industry projects result in sustainable development impacts for project-affected people and developing country economies.

