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Canadian National Contact Point For The OECD Guidelines for Multinational Enterprises

Final Statement of the Canadian National Contact Point on the Notification dated December 9, 2009, concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational Enterprises

May 3, 2011

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1. Executive Summary

On December 9, 2009, Frente de Defensa San Miguelense (FREDEMI), a Guatemalan NGO, assisted by Centre for International Environmental Law (CIEL), an NGO based in Washington D.C. (the "notifiers"), filed a request for review with the Canadian National Contact Point (NCP). A number of issues were raised in relation to the Marlin Mine in Guatemala, owned and operated by Canadian company Goldcorp Inc.

The issues raised related to the implementation of Paragraph 2 of the General Policies (Chapter II) of the OECD Guidelines which states that enterprises should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments". The notifiers indicated that they were seeking the closure of the mine and a statement from the NCP.

The NCP's initial assessment was that the issues raised merited further examination. Pursuant to the process outlined in the Guidelines, the NCP offered its "good offices" to facilitate a dialogue between the parties. The offer was accepted by the company. However, the notifiers declined the offer. The NCP attempted to explore whether the notifiers would be willing to participate in facilitated dialogue without any confidentiality requirements. The notifiers also declined the NCP's second offer of facilitated dialogue with more flexible confidentiality requirements and reiterated their request for a full investigation of the facts, including a field visit to San Miguel Ixtahucán, and for the NCP to issue a "robust final statement".

The NCP's position is that communication and dialogue between the company and the notifiers are essential to the resolution of any disputes. This message has been conveyed to the parties throughout the process.

Therefore, the NCP recommends that the parties participate in a constructive dialogue in good faith with a view to addressing the issues raised. The sooner the parties agree to engage in a meaningful dialogue, the better it will be for all concerned.

The NCP considers this specific instance to be closed.

Should the circumstances change the NCP remains available to provide assistance to facilitate a dialogue.

2. Introduction to the OECD Guidelines for Multinational Enterprises

The OECD [Guidelines](#) (“the Guidelines”) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Each OECD Member State is obliged to establish a National Contact Point (NCP) for purposes of promoting the Guidelines and dealing with specific instances involving allegations of non-observance of the Guidelines by multinational enterprises.

Upon receiving a request for review in relation to a specific instance and allegations of non-observance of the Guidelines, an NCP will conduct an initial assessment with a view to determining whether the issues raised merit further examination. If the NCP’s conclusion is that the issues raised merit further examination, the NCP will then offer its “good offices” as a platform for facilitated discussion between the parties in an attempt to resolve the issues. If the parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes recommendations as appropriate, on the implementation of the Guidelines.

It is important to note that the Guidelines are not laws. Similarly, the NCPs are not law enforcement agencies or courts. The primary value-added of the NCPs is the facilitation of dialogue for purposes of resolving disputes.

Additional information on the Guidelines can be found in Annex 1. The Terms of Reference of the Canadian NCP are attached in Annex 2.

3. Specific Instance

On December 9, 2009, two members of Frente de Defensa San Miguelense (FREDEMI, The Front in Defense of San Miguel Ixtahuacán) along with representatives of the Washington, D.C.-based [Centre for International Environmental Law](#) (CIEL), Amnesty International, MiningWatch Canada, and Breaking the Silence met with members of Canada’s National Contact Point (NCP) in Ottawa, and delivered to the NCP a request for review in relation to the Marlin Mine in Guatemala that is operated by Goldcorp Inc. The request for review was also posted on the [CIEL website](#) the same day.

In its submission, FREDEMI alleges that Goldcorp Inc. has not observed the Guidelines at the Marlin mine. In particular, FREDEMI refers to Paragraph 2 of the General Policies (chapter II) which states that enterprises should “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments*”.

FREDEMI claims that Goldcorp’s operations at the Marlin mine are not consistent with Guatemala’s obligations to respect the rights to life, health, water, property, to be free from racial discrimination, and to free, prior and informed consent. Specifically, the notifiers assert that:

- Goldcorp’s land acquisition violates the communal property rights and the right to free, prior, and informed consent of the people of San Miguel Ixtahuacán (SMI).
- Structural damage to houses caused by Goldcorp’s use of explosives and heavy equipment violates the right to property of those owners.
- Water contamination resulting from Goldcorp’s mining activities violates the right to health of the people of SMI.
- Goldcorp’s overconsumption of water for its operations violates the communities’ right to water.
- Goldcorp retaliation against anti-mine protesters violates their right to life and security of person.

In its initial submission, FREDEMI states that there is no trust between the company and the affected communities. For this reason, they are not requesting the NCP to facilitate access to alternative dispute resolution.

Instead, the notifiers ask the NCP to undertake an investigation into Goldcorp's activities at the Marlin mine and issue a statement to ensure the company's compliance with the Guidelines.

Specifically, the notifiers seek Goldcorp's commitment to:

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

4. The Marlin Mine

The Marlin Mine, located about 300 kilometres northeast of Guatemala City, is a gold and silver operation that uses both open pit and underground mining methods. It employs 1,905 workers, of which 98% are Guatemalan residents. The Marlin deposit was discovered in 1998 by Montana Exploradora, S.A. and was later purchased by Francisco Gold Corporation in 2000. In 2002, Francisco Gold Corporation merged into Glamis Gold Ltd and control of the deposit passed to Glamis Gold. Construction of the mine began in 2004, after the Guatemalan government issued environmental permits and licenses. Goldcorp and Glamis Gold Ltd merged in 2006 and control of the mine passed to Goldcorp. Goldcorp Inc. is a Canadian company headquartered in Vancouver, British Columbia. The Marlin Mine is operated in Guatemala by Goldcorp Inc.'s subsidiary company, Montana Exploradora S.A.

The Marlin Mine has been the subject of numerous studies, inquiries and reports over the years. Some of these studies, inquiries and reports have been undertaken by civil society organizations, while others were sponsored or conducted by the company, international institutions or the Government of Guatemala.

In 2004, the International Finance Corporation (IFC) provided a \$45 million loan to Montana Exploradora, S.A. to develop the mine. In addition, the IFC assisted in the planning and implementation of Montana Exploradora S.A.'s environmental and social programs. The IFC's Office of the Compliance Advisor/Ombudsman (CAO) investigated a complaint in relation to the Marlin Mine, submitted by communities in the Sipacapa municipality in 2005. The CAO recommended that the two parties should engage in dialogue to achieve a resolution of the dispute.

In May 2010, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States granted "Precautionary Measures" for the 18 Mayan indigenous communities surrounding the Marlin Mine, calling on the Government of Guatemala to temporarily suspend the operation of the mine until further investigations can be undertaken. In June, the Government of Guatemala announced that it would initiate the administrative process to suspend operations at the mine. The Guatemalan Minister of Energy and Mines has been assigned responsibility for following up on processes related to the Marlin Mine. In this respect, an official, inter-Ministerial evaluation of the alleged conditions at the mine site is being conducted.

In May 2010, a scientific report on toxic metals was released by Physicians for Human Rights and the Department for Environmental Health at the University of Michigan. The report identified the need for a rigorous human epidemiological study and an enhanced and expanded ecological study. It also recommended the establishment of an independent oversight panel.

In May 2010, Goldcorp released a Human Rights Assessment report regarding the Marlin Mine. The Assessment report was commissioned by Goldcorp and prepared by On Common Ground Consultants Inc. On the basis of an eighteen-month study, the report made a series of recommendations which Goldcorp initially responded to in June 2010. Subsequently, in October 2010, Goldcorp issued an update of the company's actions undertaken to date with respect to the recommendations. Goldcorp has also committed to issuing a series of regular updates describing the progress, challenges, and future expectations as Goldcorp implements the recommendations of the Assessment report. Goldcorp has

posted related documentation onto the company's website. Goldcorp also adopted a human rights policy in October, 2010. However, during a conference call that the NCP had with the notifiers on November 22, 2010, it appeared that the notifiers were unaware of these developments in the company's policies and corresponding changes in practices. The notifiers indicated that they were unaware of any Spanish translation of these documents.

These and other studies and proceedings clearly demonstrate the extent of stakeholder interest in the mine and the impacts of its operations. The NCP is aware of the existence of these and other studies and proceedings, but they did not influence the decisions of the NCP with respect to the initial assessment and the NCP's performance of its mandate.

5. Consideration of the Specific Instance

Upon meeting with the notifiers and receiving their submission, the Canadian NCP forwarded the request for review to Goldcorp Inc. and asked for a response that could be shared with the notifiers. Goldcorp provided a response to the NCP, confirming its commitment to the NCP process, including facilitated alternative dispute resolution.

The NCP was not in a position to verify the technical details of many of the submitted reports. However, the NCP's initial assessment was that the issues raised merited further examination. The NCP believed that there should be a dialogue between the parties in order to attempt to resolve the issues raised. Accordingly, on March 23, 2010, the NCP Chair signed two letters informing the parties of the initial assessment of the NCP and offered the NCP's "good offices" to "facilitate access to consensual and non-adversarial means to assist in dealing with the issues". The NCP proposed to hold a meeting, or series of meetings if required, in Ottawa.

The letter of March 24, 2010, to FREDEMI contained the following paragraph:

"The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering "whether the issues raised merit further examination". The NCP has carried out its initial assessment by reviewing the documentation which you submitted, as well as the response from Goldcorp Inc. The matters raised have a lengthy history and are complex in nature. Keeping in mind that the NCP is not a court or tribunal, and that it is dedicated to the objective of contributing to the resolution of issues that arise in relation to the implementation of the OECD Guidelines, the NCP has concluded that the issues which you raised merit further examination. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in your submission."

The letter further went on to state:

"If the parties are willing to participate, the NCP will proceed to draft the terms of reference for such a meeting which will include asking both parties to agree to maintain the confidentiality of information tabled and shared during the proceedings."

Goldcorp responded to the NCP's offer on March 26, 2010, and indicated that it was willing to participate in the NCP facilitated dialogue process.

On April 23, 2010, the notifiers responded by declining the NCP offer of facilitated dialogue. In its letter, FREDEMI stated that the conditions did not exist for an open and constructive dialogue with Goldcorp. Furthermore, FREDEMI indicated that agreeing to participate in a closed-door meeting with Goldcorp would create further tensions and divisions within their community.

On May 14, 2010, Goldcorp provided a letter to the NCP that was shared with the notifiers on May 17, 2010. The letter indicated that Goldcorp was disappointed that FREDEMI declined the NCP's offer to facilitate a dialogue with Goldcorp. Further, the letter stated:

"To the extent that FREDEMI's refusal to participate in a dialogue facilitated by the NCP is because of the initial meeting would be a "closed-door meeting in Canada," Goldcorp confirms its willingness to meet

with FREDEMI and the NCP in an open format at a location convenient for all parties.”

In an attempt to explore whether the conditions referred to above by the notifiers could be altered in such a way that FREDEMI would be willing to participate in a dialogue with Goldcorp, the NCP sent a letter to the notifiers on July 2, 2010. With respect to the question of confidentiality, the letter stated:

“Canada’s NCP acknowledges the concerns raised by FREDEMI and remains hopeful that FREDEMI will reconsider its position and consent to a facilitated dialogue. We understand the difficulties an organization would face were it unable to share with its key community stakeholders the information obtained in a dialogue with another party. With this in mind, we would like to clarify that the confidentiality of proceedings would not prevent FREDEMI, acting as the representative or agent of the interested communities, from consulting with such communities before and after a dialogue. As the interested parties on whose behalf you are acting, community members are entitled to receive relevant information related to this specific instance; however, they are also expected to keep such information confidential. A good faith dialogue to resolve difficult and controversial issues requires that there be certain rules around how information shared in proceedings is used.”

Goldcorp was copied on the letter to the notifiers and subsequently wrote to the NCP on July 9, 2010, reiterating Goldcorp’s position outlined in its letter of May 14, 2010, that it was willing to be accommodating on the issues of confidentiality. This letter was forwarded to the notifiers on July 12, 2010.

On August 20, 2010, the notifiers replied by letter, again declining the possibility of a facilitated dialogue with Goldcorp. In its letter, FREDEMI stated that the clarification of the application of confidentiality partly addressed procedural concerns. However, FREDEMI was not prepared to deviate from its position that in order to address human rights concerns, the Marlin Mine must be closed. FREDEMI’s view was that a dialogue would only result in delays. FREDEMI instead urged the NCP to proceed with a full investigation and field visit followed by the issuance of a final statement.

At this stage it became evident that the notifiers and Goldcorp had irreconcilable positions. While the notifiers wished the Marlin Mine to be closed and were unwilling to participate in any facilitated dialogue, Goldcorp wished to remain open and participate in facilitated dialogue.

The NCP sent a letter dated October 6, 2010, to the notifiers and copied Goldcorp indicating that it was proceeding to draft a final statement. In this letter, the NCP indicated that it is not in a position to carry out a field visit. Subsequently, on November 22, 2010, the NCP held a conference call with CIEL and FREDEMI members in Guatemala. During this conference call, the members of FREDEMI provided a number of testimonials about their experiences and concerns with the mine. They repeated that they were not interested in participating in a dialogue with Goldcorp and they wanted the mine to close. During the call, the NCP informed the representatives that it was preparing a draft statement which would be forwarded for comments. The NCP was asked if it would be providing a Spanish translation of the entire draft statement for the benefit of the community members. On December 13, 2010 the NCP informed FREDEMI that further to its provision of courtesy unofficial Spanish translations of letters throughout this process, it decided that it would provide courtesy unofficial translations of the Executive Summary and Recommendations portions of the draft statement. This procedure is consistent with the approach taken with regard to translations during consultations with aboriginal communities in Canada regarding environmental impact assessments. The NCP also held a meeting on November 23, 2010 with a Goldcorp official and a mine employee who was a resident of the community around the mine. The employee described their life in the community and their work at the mine. A detailed chronology of events can be found in Annex 3.

The Canadian NCP listened to both sides in this dispute and attempted to bring the parties together for purposes of engaging in a dialogue to address and resolve the issues that have been raised. The NCP regrets that these efforts have not been successful.

Although the notifiers declined the NCP’s offer of facilitated dialogue, the NCP’s initial assessment was that the issues raised merited further examination. With regard to the issues raised by the notifiers in the specific instance, the NCP is of the view that the lack of communication, and possible miscommunication,

between the parties is a significant contributing factor to the overall problem. Generally, mining companies which undertake significant operations should endeavour to use effective communication strategies in order to engage the communities affected by the mine and to disseminate information of a technical or scientific nature. This process and activity is a critical element of corporate social responsibility which, if managed successfully, may benefit all parties concerned. At the same time, community members should be willing to engage with the company. A lack of effort by either party can lead to erroneous perceptions and misunderstanding, lack of trust, opposition and grievances.

The NCP recognizes that, over the years, the Marlin mine operations have changed hands, and that this has contributed to the deepening of the lack of trust among some communities. The building of trust in such circumstances constitutes an even greater challenge which requires a corresponding effort on both sides.

In this regard, the NCP would like to acknowledge Goldcorp's willingness to engage in the NCP process. The NCP encourages Goldcorp to continue to issue its regular updates on the implementation of the recommendations in Human Rights Assessment Report prepared by On Common Ground.

6. Recommendation

The NCP's position is that communication and dialogue between the company and the notifiers are essential to the resolution of any disputes. This message has been conveyed to the parties throughout the process.

Therefore, the NCP recommends that the parties participate in a constructive dialogue in good faith with a view to addressing the issues raised. The sooner the parties agree to engage in a meaningful dialogue, the better it will be for all concerned.

The NCP considers this specific instance to be closed.

Should the circumstances change the NCP would be willing to provide assistance to facilitate a dialogue.

Annex 1: Information on the OECD Guidelines for Multinational Enterprises

The Guidelines constitute a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Adhering governments have committed to promote them among multinational enterprises operating in or from their territories.

Although many business codes of conduct are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises. They aim to promote the positive contributions multinationals can make to economic, environmental and social progress.

Adhering countries comprise all 33 OECD member countries, and 9 non-member countries (Argentina, Brazil, Egypt, Estonia, Latvia, Lithuania, Morocco, Peru and Romania). The Investment Committee has oversight responsibility for the Guidelines which are one part of a broader OECD investment instrument - the Declaration on International Investment and Multinational Enterprises. The instrument's distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context.

Because of the central role it plays, the effectiveness of the National Contact Point is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities.

More information may be obtained about the Guidelines on the [OECD website](#).

For a copy of the Guidelines, visit the [OECD website](#) (PDF, 1.75 MB).

Annex 2: Canadian NCP Terms of Reference

Please visit: [Terms of Reference for Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises](#)

Annex 3: Chronology of Events

- **December 9, 2009:** The notifying party FREDEMI (and CIEL) came to Ottawa and met with the NCP to submit their request for review. The request states that the notifiers are not seeking facilitated dialogue but that the NCP undertake an investigation and make a statement. This message was also stated during the meeting. Following the meeting with the NCP FREDEMI held a press conference.
- **December 16, 2009:** Letter acknowledging receipt of the submission was sent to FREDEMI.
- **January 22, 2010:** NCP sends letter to Goldcorp informing them of the submission from FREDEMI and requesting a response.
- **February 19, 2010:** Goldcorp Inc. provided their response to the submission.
- **February 24, 2010:** NCP held a meeting and discussed the specific instance. A Working Group (subcommittee) was formed to conduct the initial assessment and make a presentation to the NCP for purposes of assisting the NCP in concluding an initial assessment. The Working Group met several times (March 2, March 11) to consider the documentation from both parties.
- **March 25, 2010:** NCP communicated its initial assessment of the submission to both parties in letters dated March 24, 2010. Both parties were informed that the NCP considered the issues raised to merit further examination and offered to facilitate a dialogue. The parties were asked to reply by April 7, 2010.
- **March 26, 2010:** Goldcorp responded that they were willing to participate in the NCP's process.
- **April 9, 2010:** A Spanish copy of the Goldcorp's response of February 19 was forwarded to CIEL. CIEL was also requested to reply to the NCP's offer in its letter of March 25 by April 23, 2010
- **April 23, 2010:** FREDEMI provided its response and declined the offer of facilitated dialogue. The letter referred to the initial submission and repeated that they are not requesting the NCP to facilitate dialogue but instead urge the NCP to conduct a field visit and issue a statement.
- **May 14, 2010:** Goldcorp submitted a letter indicating its willingness to participate in a meeting without any confidentiality conditions. This letter was shared with FREDEMI on May 17, 2010.
- **June 1, 2010:** NCP held a meeting with Dina Aloï of Goldcorp. The meeting was held at Ms. Aloï's request. The minutes were prepared and subsequently shared with FREDEMI.
- **July 2, 2010:** The NCP sent FREDEMI a letter clarifying that the NCP's understanding of the confidentiality requirements would not prevent FREDEMI, acting as representatives or agents of interested communities, from consulting with their communities. The letter asked whether they would reconsider the offer of facilitated dialogue and requested a reply by August 2, 2010.
- **July 9, 2010:** Goldcorp was copied on the letter to FREDEMI and sent a letter (July 9) indicating that FREDEMI should be informed that Goldcorp is prepared to waive the confidentiality conditions for a meeting. This letter from Goldcorp was subsequently forwarded to FREDEMI on July 12.
- **July 29, 2010:** NCP received a number of documents from Goldcorp and shared these with

FREDEMI. FREDEMI requested additional time to reply to the letter of July 2.

- **August 4, 2010:** At Goldcorp's request, the NCP held a meeting with Dina Aloï and Valerie Pascale of Goldcorp. Minutes were prepared and shared with FREDEMI on August 16.
- **August 20, 2010:** FREDEMI replied to the NCP's letter of July 2 by again declining the offer of facilitated dialogue and repeating that they wish the Marlin Mine to be closed and urge the NCP to conduct a full investigation including a field visit.
- **October 7, 2010:** NCP sent a letter dated October 6, 2010 to FREDEMI (copy to Goldcorp) stating that the NCP is now proceeding to draft a statement. The letter contained an offer for a conference call with FREDEMI to address a concern expressed in their August 20 letter that the NCP had one meeting more with Goldcorp than with FREDEMI and may not have the full understanding of the situation.
- **November 22, 2010:** NCP held a conference call with CIEL and FREDEMI members in Guatemala. FREDEMI members provided a number of testimonials about their experiences and concerns with the mine. The NCP informed the representatives that it is preparing a draft statement which will be forwarded for comments.
- **November 23, 2010:** Two Goldcorp representatives met with some members of the NCP and made a presentation about the mine and community relations.

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