



# MiningWatch Canada

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**RE: Fundamental Concerns with the Goldcorp Human Rights Impact Assessment and Erosion of Trust in Canada's Responsible Investment Community's Shareholder Proposal Process.**

Dear All,

This letter details MiningWatch Canada's concerns over the ongoing Goldcorp Human Rights Impact Assessment (HRIA) process at the Marlin Mine in Guatemala. While deeply concerned about this fundamentally flawed initiative, we recognize it as a particularly egregious example of a systemic problem. The shareholder proposal that led to the Goldcorp HRIA reveals a lack understanding of the ethical responsibility to assure that shareholder resolutions that directly impact on locally affected communities do not undermine the efforts these communities are engaged in to protect their own rights. In short, shareholder resolutions put forward in Canada that will directly impact on local communities should have the free prior and informed consent of locally affected communities.

**On Goldcorp's HRIA** – This letter follows on a personal meeting I had with Peter Chapman and Ashley Hamilton on May 29<sup>th</sup>, during which the issues set out in this letter were discussed at length. It also follows on other meetings some of you have had with concerned civil society groups. And it is preceded by other letters you have received on this issue. Some of these letters came from organizations that work directly with the affected communities and one came from the affected communities in San Miguel Ixtahuacan (September 4, 2008). We concur with the core concerns that have been raised by others, namely:

- The *shareholder resolution* put forward by Ethical Funds Company, the Public Service Alliance of Canada (PSAC) Staff Pension Fund, and the 1<sup>st</sup> and 4<sup>th</sup> Swedish National Pension Funds, and the *Memorandum of Understanding* (MOU) that these groups, as well as SHARE, subsequently signed with Goldcorp, as well as the *Human Rights Impact Assessment* process that is now underway are fundamentally and irrevocably flawed and unacceptable as the communities directly affected by the Marlin Mine and by the HRIA were never consulted as to the content of the shareholder proposal or the subsequent MOU between the shareholder group and Goldcorp.
- As the September 4 letter from the communities of San Miguel Ixtahuacan makes clear, it is highly unlikely that the MOU the shareholder group signed with Goldcorp would have been acceptable to the

local communities concerned, had they been consulted on it. In particular, this letter points out that the MOU excludes local communities from a role in the Steering Committee that is overseeing the HRIA process. This means that the affected communities have no direct role in setting the scope and the timelines of the assessment process, nor in selecting assessors and peer reviewers, nor in managing the assessment process. Goldcorp has been provided a role on this Steering Committee.

We therefore agree with others who have engaged some of you in person and in letters that these flaws are serious enough to warrant a halt being called to this HRIA process, and we call on members of the shareholder group who share these concerns to withdraw from the MOU. We believe it is fundamentally unethical to ask people to participate in a process that they did not ask for, were not consulted on, have no direct say in, and to which some have expressed a direct opposition.

It is particularly unfortunate that The Ethical Funds Company participated in the Goldcorp HRIA proposal without considering the importance of community support for this proposal. The Ethical Funds Company has done important work on the principle of free prior and informed consent as it pertains to companies that will impact on local communities. But Ethical Funds does not seem to recognize the need for community consent for its own shareholder proposals that directly intervene in ongoing struggles.

***On the Shareholder Proposal process*** – The Goldcorp shareholder proposal is but the latest such proposal on mining put forward by members of the socially responsible investment (SRI) community that has been met with dismay by communities and their local and Canadian partner organizations. Other such examples are resolutions on Alcan's operations in Kashipur in 2006 and on Barrick's Pascua Lama project in Chile in 2006 and 2008.

The essence of the problem with each of these shareholder proposals has been that they do not reflect the demands that are actively being pursued by the directly affected communities. Worse still, they may place additional burdens on those communities or even compromise their work to defend their rights.

These communities are often engaged in long-term struggles to protect their lives, their rights and their environments. When these struggles, which communities wage at great cost to themselves, become high profile enough to draw international attention they also draw the attention of the SRI community. However, the primary focus and the primary interlocutors of the SRI community are *not* local communities; they are corporations and they are the clients of SRI companies - the investors. It is primarily considerations with respect to these two stakeholder groups that shape the shareholder proposals that are put forward by SRI companies. With respect to their clients - socially conscientious investors - SRI companies need to be able to argue that they are actively engaging companies and changing their behaviour for the better. As a result, they need to find ways to get companies to sit down with them and dialogue. With respect to corporations, SRI companies need to be able to exert enough pressure to bring them to the table for dialogue without alienating them. Carefully crafted shareholder proposals on high profile conflicts can be used to this end. These shareholder proposals need to suggest courses of action that companies, in this case mining companies, may be willing to take in return for good press, possible risk reduction, and relief, even if temporary, from community pressures.

Shareholder proposals have commonly been put forward without anyone from the SRI company setting foot in the community. They are based on desk research on the conflict, dialogue with the mining company and gathering information from Canadian NGOs. In the case of the Goldcorp issue, the visit by the shareholder group to Guatemala was a positive development. However, upon coming back to Canada, and Sweden, it was back to business as usual. A proposal was designed that the company might agree to and that investors might like. No apparent consideration was given to whether or not this proposal would be acceptable to the affected communities. The Goldcorp proposal is particularly problematic from an ethical point of view because it requires active participation from the community in the human rights

impact assessment. In that sense it is invasive and an additional form of pressure and potential conflict that this community does not need. A basic principle of shareholder resolutions should be that they do no harm. That cannot be said for the Goldcorp proposal.

On occasion, SRI companies put forward shareholder proposals that relate to mining conflicts in which communities are asking that a company not mine, or cease to mine, in a particular area. Given the goals of SRI companies set out above, it is not surprising that these community demands have not been reflected in shareholder proposals. Rather the proposals have asked for independent studies on levels of support for a project, improved community consultation procedures, or for a human rights impact assessment.

It may appear that such shareholder proposals that do not reflect community demands are at least harmless, but that is not the case. In agreeing to meet the requirements of these shareholder proposals mining companies immediately become the recipients of public praise. They benefit by their positive association with the SRI community and the pressure to meet the actual demands of the local communities is relieved, at least temporarily. For communities, still facing all the same pressures and threats to their lives and livelihoods, it becomes harder to get their story out and to get the company to respond to their actual demands.

SRI companies should do more work up front to match their own interests and requirements with community struggles and demands that can be usefully addressed through the kinds of shareholder proposals SRI companies would like to promote. There are such cases. Struggles where a significant segment of the local community has clearly outlined a position that a mining project should not proceed, should cease, or not expand, are not likely to be good candidates for a shareholder proposal.

***Erosion of Trust*** – The recent history of shareholder proposals that have *not* met community needs and the lack of responsiveness of the SRI community to concerns MiningWatch Canada and others have brought forward in this regard has led to a serious erosion of trust.

SRI companies are now turning their minds to possible shareholder proposals on mining companies for 2009. We are very concerned that, once again, internal motivations and corporate planning within SRI companies are driving these potential proposals, not a long-standing relationship with the communities involved or a clear understanding of what these communities are trying to achieve. Some of the struggles SRI companies may want to profile in these proposals may involve communities with which MiningWatch Canada has had a long-standing engagement. We are concerned that in the wake of criticism over the Goldcorp HRIA, last minute attempts may be made to get names of local leaders in these communities and perhaps to have some quick meetings with the community. These efforts would not provide sufficient assurance that a subsequent shareholder proposal will actually meet community needs and will not undermine community member's own efforts to protect their human rights.

We raise these concerns now in the hope that this letter will serve to temper forward momentum and open a space for a frank and constructive discussion of these issues.

Sincerely,



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