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Actions Speak Louder than Words:

A Critical Analysis of GoldCorp's Human Rights and Corporate Social Responsibility Policies

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Introduction: GoldCorp's Upcoming Annual General Meeting

GoldCorp is a Canadian mining company listed on the New York and Toronto Stock Exchanges that operates mines throughout North America. According to GoldCorp's 2010 Financial Statements, its Marlin Mine in Guatemala is its second most profitable holding. However, in recent years, there have been growing concerns over GoldCorp's human rights record, especially in relation to the Marlin mine.

In April 2011, GoldCorp's Board of Directors approved the corporation's Human Rights and Corporate Social Responsibility policies (hereinafter "policies"). We understand that GoldCorp consulted on these policies in advance, though we were not approached in this regard. We produced this report to assist the corporation to fulfill and operationalize its important commitments, and to educate other stakeholders, including shareholders and investors, on GoldCorp's policies in advance of its Annual General Meeting scheduled for May 18, 2011 in Vancouver, British Columbia.

At the AGM, shareholders will be asked to vote on a proposal that would require GoldCorp to temporarily suspend operations at the Marlin mine. In the circular that went out to shareholders in advance of the AGM, management recommended shareholders vote against the proposal and, in so doing, referenced their recently passed policies. Therefore, shareholder understanding of GoldCorp's policies is essential to informed voting on the proposed suspension of the Marlin mine.

Summary of Key Findings

The Good News

1. GoldCorp's policies are an important step forward

- Robust policies that create binding obligations on corporations to respect human rights are an important first step towards ensuring greater corporate accountability. However, GoldCorp must now take the necessary next step of creating and implementing the operational policies and procedures required to imbed the policies throughout its business enterprise.

2. GoldCorp commits to respect some important human rights

- GoldCorp's policies provide broad protection of the right to be free from discrimination and core labour rights.

3. GoldCorp will ensure that its policy applies to some important third parties

- GoldCorp's human rights policy anticipates requirements to ensure private security forces respect human rights.

4. GoldCorp commits to ensuring access to justice at the local level

- GoldCorp has committed to creating a company-level grievance mechanism consistent with international best practice.

The Bad News

1. GoldCorp's actions are inconsistent with its stated commitment to human rights

- Despite the fact that GoldCorp's Board of Directors approved these policies in April 2011, the corporation continues to operate the Marlin mine despite a recommendation from the Inter-American Commission on Human Rights that operations be temporarily suspended in light of potentially grave human rights abuses against indigenous peoples, including violations of the right to health.¹

2. GoldCorp is not required to exercise due diligence to avoid human rights violations

- The policies do not require GoldCorp to obtain independent human rights or environmental impact assessments prior to project commencement. Many corporate human rights issues arise after a project commences and can be averted if companies consider the potential implications of their activities at the outset.
- Due diligence must include assessing: (1) the country context to determine the human rights challenges posed by operating in that country or locality; (2) the likely human rights impact of GoldCorp's activities, and (3) the human rights impact of actions by those with whom GoldCorp undertakes business relationships (i.e. other businesses, suppliers, state agencies, private security forces etc.).

3. GoldCorp is not required to remedy harm

- GoldCorp has made no specific commitment to undertake remedial action in the event that rights violations prohibited under its policies are committed and result in harm.

4. GoldCorp's human rights performance is not subject to independent assessment

- GoldCorp's policies do not require regular review and assessment by *independent* human rights experts; nor do they require consultation with affected groups and stakeholders or tracking the effectiveness of any actions taken by Goldcorp in relation to implementing its policies.

5. GoldCorp does not specify the means by which it will require key business partners to respect human rights

- GoldCorp should stipulate the means by which it will ensure that suppliers, contractors, partners, subsidiaries, and private security forces respect human rights (for example, through incorporation of the Human Rights policy into all contracts that Goldcorp enters into with these parties).

6. GoldCorp's policies do not refer to key international human rights law instruments

- GoldCorp's Human Rights policy does not list the *UN Declaration on the Rights of Indigenous Peoples* as a source of relevant principles and obligations, despite the fact that among the key stakeholders affected by its Marlin mine are the Maya Mam and Sipakapense indigenous communities.
- GoldCorp's policies should refer to a broad commitment to "respecting international human rights and humanitarian law standards and the decisions of international human rights bodies applicable to our business operations."

7. GoldCorp's policies do not explicitly make it accountable for human rights abuses

- While the Human Rights Policy explicitly states that Goldcorp *employees* will uphold and respect human rights, it does not explicitly state that Goldcorp *as a corporation* will do the same. This is problematic since Canadian corporations have a separate and distinct legal personality from their employees, shareholders, and board of directors.
- Goldcorp has not explicitly committed to participate in existing and available dispute resolution mechanisms.

IHRP Analysis of GoldCorp's Human Rights Policy



HUMAN RIGHTS POLICY

Goldcorp is committed to integrating human rights best practices into our business processes and to inform our decision-making and due diligence processes. Goldcorp's human rights policy mandates that we operate in a way that respects the human rights of all employees and the communities in which we operate our business.

IHRP Comment on para. 1 – Introduction:

According to John Ruggie, the UN Special Representative on Business and Human Rights, policies approved by the highest level of management are an important means by which businesses can express their commitment to meeting their responsibility to respect human rights.² GoldCorp should be commended for taking this important step.

In this first paragraph and throughout its policy, consistent with Ruggie's reports, GoldCorp should explicitly acknowledge its "responsibility to respect human rights."³ In contrast, the language in this introductory paragraph does not demonstrate a strong commitment to respecting human rights: it refers to "integrating best practices" and "informing decision-making" rather than respecting human rights and recognizing human rights as a determining factor in decision-making. We note, however, that GoldCorp does use the "responsibility to respect" language below in advance of the enumerated subsections (emphasis added.)

GoldCorp should commit itself to respecting the human rights of all communities affected by their business, including but not limited geographically to the communities in which they operate. This is essential since the environmental and health impact of mining activities may extend well beyond the community in which the mine is located.

This policy recognizes that while governments have the primary responsibility to protect human rights, our activities have the potential to impact the human rights of individuals affected by our business operations.

IHRP Comment on para 2 – Human Rights Impact:

GoldCorp's clear acknowledgement that its activities can impact human rights is positive.

Goldcorp Inc. is committed to continual improvement in the area of human rights, and to that end, we seek constructive dialogues and partnerships with a variety of stakeholders on our human rights performance, especially those impacted directly by our operations.

IHRP Comment on para 3 – Stakeholders:

GoldCorp should reference the right of free and informed prior consent as a guiding principle for engagement with affected communities.

To meet our **responsibilities to respect human rights**, Goldcorp makes the following commitments:

1. All Goldcorp employees will uphold and respect the human rights set forth in the Universal Declaration of Human

Rights and international humanitarian law.

IHRP Comment on para. 4(1) - Parties:

It is important that GoldCorp acknowledge that its employees are required to respect human rights. However, consistent with Ruggie's reports, GoldCorp should clearly state that, as a corporation distinct from its employees, it has an obligation to respect human rights. Moreover, GoldCorp's responsibility to respect human rights should not be limited to those set out in the Universal Declaration and in international humanitarian law (i.e. the Geneva Conventions etc.), but should include the panoply of rights recognized in international law.⁴

Consistent with Ruggie's *Framework*, GoldCorp should require that not only its employees, but also its business partners and other directly linked partners respect human rights.⁵ While this critique is somewhat addressed in para. 4(10) below, it should be reflected throughout the Policy.

2. Goldcorp respects the rights and dignity of employees, contractors, and local communities and is committed to providing equal opportunity and freedom from discrimination for all.

IHRP Comment on para. 4(2) - Discrimination:

GoldCorp's commitment is consistent with best practice in terms of implying a broad right to be free from discrimination rather than focusing on particular enumerated grounds (i.e. sex, race etc.)

3. Goldcorp respects workers rights, including freedom of association, the right to peaceful protest and assembly, and engagement in collective bargaining in association with the International Labor Organization (ILO) conventions on organizing and collective bargaining.

IHRP Comment on para. 4(3) - Labour Rights:

GoldCorp's commitment appropriately protects unionized labour.

4. Goldcorp respects the rights and traditions of indigenous peoples in association with ILO Convention 169 and seeks to protect cultural and spiritual heritage as well as the environment.

IHRP Comment on para. 4(4) - Indigenous Peoples:

Along with ILO Convention 169, GoldCorp should explicitly reference the *UN Declaration on the Rights of Indigenous People* and, in particular, the right to free, prior and informed consent as a guiding principle for engagement with indigenous peoples.⁶

5. Goldcorp supports the elimination of all forms of forced, compulsory and child labour.

IHRP Comment on para. 4(5) - Forced and Child Labour:

It is commendable that GoldCorp supports the elimination of coercive forms of labour, however, this subsection would be stronger if it positively commit not to engage directly or indirectly (via sub-contractors, partners etc.) in forced, compulsory and child labour.

6. Where Goldcorp hires private security forces to protect employees, contractors, partners, resources, and company property, the contractors will be required to comply strictly with local and international law and with the Voluntary Principles on Human Rights and Security. Goldcorp will provide training and capacity building in accordance with the Voluntary Principles to all employees engaged in security functions and to all private security forces hired by the company. In addition, Goldcorp will seek opportunities to provide training and capacity building in accordance with

the Voluntary Principles to public security forces. Goldcorp's policy is to not hire public security forces, except in extraordinary circumstances.

IHRP Comment on para. 4(6) – Third Parties:

Given the central role that private security forces often play in alleged human rights violations by extractive sector companies,⁷ this commitment is important and consistent with best practices. However, consistent with Ruggie's *Framework*, this paragraph should be extended beyond private security forces to include business and others directly linked partners.⁸ While subsection 10 partly addresses this concern (below), it should be reflected throughout the Policy.

7. Goldcorp will work to minimize involuntary resettlement wherever possible and when relocation cannot be avoided will establish, in consultation with affected communities, a resettlement plan in adherence to the International Finance Corporation Performance Standards and ILO Convention 169.

IHRP Comment on para. 4(7) – Involuntary Resettlement:

GoldCorp should commit to involuntary settlement only being used in "exceptional circumstances" and in accordance with law. According to the Miloon Kothari, the then UN Special Rapporteur on the Right to Housing, forced evictions may "constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement."⁹ Therefore, evictions must be carried out lawfully and only in *exceptional* circumstances.

Consistent with the World Bank *Guidelines* and IFC Performance Standard 5, GoldCorp should also make explicit that, where resettlement is unavoidable, it will: provide sufficient investment resources to enable the persons displaced by the project to share in project benefits; consult displaced persons in order to provide them with opportunities to participate in planning and implementing resettlement programs; and improve displaced person's livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement/pre-project implementation levels.¹⁰

GoldCorp's policy is consistent with IFC Performance Standard 5 in terms of mandating consultation with affected communities prior to developing a resettlement plan.¹¹ However, GoldCorp should also explicitly reference the principle of free, prior and informed consent as a guiding principle when engaging with communities facing potential relocation.

8. All Goldcorp employees and contractors will be trained on human rights and the Goldcorp Human Rights Policy. Human rights training will be monitored for effectiveness.

IHRP Comment on para. 4(8) - Training:

Given that training is an important precondition for compliance with the policy, this commitment is important. However, GoldCorp should consider offering training to business partners and others directly linked with their operations, beyond contractors.

9. Goldcorp is committed to continual improvement of its human rights standards and practices and to that end, will regularly review and assess the effectiveness of and our compliance with this policy. Information regarding assessments and performance will be made available to the public through annual Global Reporting Initiative reporting.

IHRP Comment on para 4(9) – Review and Assessment:

It is positive that GoldCorp recognizes the need for regular review and assessment of its compliance with the policy. However, consistent with best practices, GoldCorp should require regular review and assessment by *independent* human rights experts, including consultation with affected groups and stakeholders.¹² The policy should also explicitly state that the findings of assessments will be integrated into operations and lead to follow up actions, and that the effectiveness of these follow-up actions will be tracked.¹³

GoldCorp should refer to its “responsibility to respect” human rights, rather than a more vague commitment to “continual improvement of its human rights standards and practices.”

10. Goldcorp will take appropriate measures to ensure that contractors and partners respect this policy.

IHRP Comment on para 4(10) – Ensuring Compliance by Third Parties:

This is a centrally important commitment which should be operationalized by requiring third parties, including contractors and business partners, to require compliance with the Policy through inclusion of adherence to it as a term in contracts with third parties. Ideally, failure to abide by the policy could constitute a breach of contract.

IHRP Comment on para 4 – No Reference to Due Diligence:

GoldCorp does not commit to conducting human rights due diligence at the outset of any project. According to Ruggie's reports, pre-project due diligence should include assessing: (1) the country context to determine any human rights challenges posted; (2) the likely impact of GoldCorp's activities, and (3) the impact of those with whom GoldCorp has relationships (i.e. other businesses, suppliers, state agencies etc.).¹⁴ This is crucial since many human rights violations can be avoided through the exercise of due diligence. This should be the primary objective of a corporation whose goal is to operate in a manner that respects and does not violate human rights of those affected by its operations.

Our commitment to respect human rights also is supported by our corporate policies:

1. Goldcorp’s Corporate Social Responsibility Policy
2. Environment and Sustainable Development
3. Occupational Health and Safety
4. Code of Business Conduct and Ethics (which specifically addresses corruption and labour equity)

Our commitment to respect human rights is informed by international law, including:

- ILO Convention 29 on Forced or Compulsory Labour
- ILO Convention 87 on Freedom of Association and Protection of the Right to Organize
- ILO Convention 98 on Right to Organize and Collective Bargaining
- ILO Convention 100 on Equal Remuneration
- ILO Convention 105 on Abolition of Forced Labour
- ILO Convention 111 on Discrimination (Employment and Occupation)
- ILO Convention 138 on Minimum Age
- ILO Convention 169 on Indigenous and Tribal Peoples
- ILO Convention 182 on Worst Forms of Child Labour
- International Convention on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights

- Organization for Economic Co-operation and Development Guidelines
- Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (John Ruggie)
- Voluntary Principles on Security and Human Rights
- United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Code of Conduct for Law Enforcement Officials
- Universal Declaration of Human Rights

IHRP Comment on para. 6 – Incomplete List of Human Rights:

In its introductory sentence, GoldCorp should clarify that it has a “responsibility to respect human rights as recognized in international law.” According to Ruggie’s reports, it is not best practices for such a policy to specify a list of relevant human rights treaties since companies have the potential to impact virtually all human rights.¹⁵

In any event, GoldCorp has omitted the following relevant treaties from this list:

UN Declaration on the Rights of Indigenous Peoples,

ILO Declaration on Fundamental Principles and Rights at Work,

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Convention on the Elimination of all Forms of Discrimination against Women, and

Convention on the Rights of Persons with Disabilities

The list should also include specific reference to all of Ruggie’s reports.

[signature on original]

Charles Jeannes
President and Chief Executive Officer
Goldcorp Inc.

IHRP Analysis of GoldCorp’s Corporate Social Responsibility Policy



Goldcorp’s Corporate Social Responsibility Policy

Goldcorp’s objective is to generate sustainable prosperity through our business operations. Goldcorp is committed to conducting our business responsibly at all times, which means respecting the safety and health of our employees, protecting the environment, respecting the human rights of our employees and the residents of the communities in which we operate, and contributing to the sustainable development those communities. Goldcorp’s Corporate Social Responsibility Policy is rooted in our company values, guided by international standards and best practices, and driven by our aspiration for excellence in the overall performance of our business. Through the efforts of each of our employees, Goldcorp is determined to take pride in being responsible, respected, and welcomed.

IHRP Comment on para. 1 - Respecting Human Rights:

GoldCorp should explicitly acknowledge its “responsibility to respect human rights” of its employees and all communities affected by their business, including but not limited to the communities in which they operate. This is essential since the environmental and health impact of mining activities may extend well beyond the community in which the mine is located.

CSR Vision 1+1=3 We believe partnerships are the foundation of constructive, creative, and sustainable development. Our vision is to seek strategic partnerships to foster establishment and growth of robust engagement with our stakeholders from the beginning of project development to achieve Goldcorp’s commitment to generating prosperity that is sustainable beyond the operating life of our mines.

IHRP Comment on para. 2 – Generating Prosperity

It is positive that GoldCorp is committed to promoting sustainable development. However, it is worth noting that corporate social responsibilities willingly undertaken (i.e. philanthropic in nature) do not necessarily fulfill human rights responsibilities which are binding.

To meet our commitments, Goldcorp and its subsidiaries will provide its employees with the necessary resources to:

- Develop meaningful and effective strategies for engaging with all stakeholders.
- Consult with local communities to identify effective and culturally appropriate development goals.
- Establish grievance mechanisms, based on international best practices.
- Partner with credible organizations, including non-governmental and civil society organisations.
- Identify and develop socio-economic opportunities that lead to sustainable prosperity in the communities and countries in which we operate.
- Integrate socio-economic, environmental, occupational health and safety, human rights, and governance best practices into our business processes.
- Make meaningful and sustainable contributions to the host countries and communities where we operate.

IHRP Comment on para. 3:

Resources for Key Partners: GoldCorp should refer not only to providing necessary resources to its employees, but also to its key business partners and other directly linked partners.

Community Engagement: Consistent with the *UN Declaration of the Rights of Indigenous Peoples*, GoldCorp should refer to free prior and informed consent as the guiding principle for engagement with affected communities and stakeholders.¹⁶

Dispute Resolution: Company level grievance mechanisms consistent with international best practices are an important means of ensuring affordable access to justice for local communities. However, GoldCorp should also explicitly commit to participating in existing and available dispute resolution mechanisms such the IFC Office of the Compliance Advisor/Ombudsman (for IFC funded projects), OECD Guidelines National Contact Person, or the Canadian Office of the Extractive Sector Corporate Social Responsibility Counsellor.¹⁷ We understand that GoldCorp has been willing to participate in these processes in the past; however, this commitment should be explicit. Finally, GoldCorp should reference this grievance mechanism in its Human Rights Policy as well.

Remediation: GoldCorp does not but should commit to provide for remediation through legitimate processes for adverse impacts that it has caused or contributed to causing.¹⁸

Responsibility to Respect: Consistent with reports by Ruggie, GoldCorp should explicitly acknowledge its “responsibility to respect human rights,” rather than commit to “integrat[ing] ...human rights best practices into [its] business processes.”

Our CSR objectives also are supported by our corporate policies:

1. Environment and Sustainable Development;
2. Occupational Health and Safety;
3. Human Rights (which makes specific reference to Indigenous Rights);
4. Code of Business Conduct and Ethics (which specifically addresses corruption and labour equity).

IHRP Comment on para. 4 – Other Corporate Policies:

Please note that, besides the Human Rights Policy, we did not review the other policies referenced and, therefore, cannot comment on them.

[signature on original]

Charles Jeannes
President and Chief Executive Officer
Goldcorp Inc.

¹ Inter-American Commission on Human Rights, “Precautionary Measures Granted by the Commission during 2010,” <http://www.cidh.org/medidas/2010.eng.htm>; In reference to Precautionary Measure 260-07 issued on May 20, 2010, “The Inter-American Commission asked the State of Guatemala to suspend mining of the Marlin I project and other activities related to the concession granted to the company Goldcorp/Montana Exploradora de Guatemala S.A., and to implement effective measures to prevent environmental contamination, until such time as the Inter-American Commission on Human Rights adopts a decision on the merits of the petition associated with this request for precautionary measures.”

² John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, 18th Sess, 2011 (hereinafter “*Guiding Principles*”).

³ John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, A/HRC/8/5, 8th Sess., 2008 (hereinafter “*Framework*”); *Guiding Principles*, *supra* note 1.

⁴ *Framework*, *supra* note 3, at para. 24; *Guiding Principles*, *supra* note 2, at para. 12.

⁵ *Guiding Principles*, *supra* note 2, at para. 13.

⁶ *United Nations Declaration on the Rights of Indigenous Peoples*, UN GA 61/295, 13 September 2007, at art. 10 (hereinafter *UNDRIP*).

⁷ Human Rights Watch, *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine* (New York: Human Rights Watch, 2011).

⁸ *Guiding Principles*, *supra* note 2, at paras. 13, 19.

⁹ Miloon Kothari, Annex I to the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, 4th Sess, 2007 at para. 6. See also: Michael M. Cemea, *Involuntary Resettlement in Development Projects: Guidelines for World Bank-Finances Projects* (Washington: World Bank, 1988) (hereinafter “*World Bank*”).

¹⁰ World Bank, *supra* note 9. International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (Washington: World Bank Group, 2006) at para. 8 (hereinafter “*IFC Performance Standard 5*”).

¹¹ *IFC Performance Standard 5*, *supra* note 10, at paras. 2, 3, 9.

¹² *Guiding Principles*, *supra* note 2, at para. 18.

¹³ *Guiding Principles*, *supra* note 2, at paras. 19, 20.

¹⁴ *Framework*, *supra* note 3, at paras. 56-59; *Guidelines*, *supra* note 2, at para. 17.

¹⁵ *Framework*, *supra* note 3, at para. 24; *Guiding Principles*, *supra* note 2, at para. 12.

¹⁶ *UNDRIP*, *supra* note 6 at art. 10.

¹⁷ *Guiding Principles*, *supra* note 2, at paras. 29, 30.

¹⁸ *Guiding Principles*, *supra* note 2, at para. 22.