



**CAO FOLLOW-UP ASSESSMENT, GUATEMALA**

**Complaint Regarding  
the Marlin Mining Project**

**May 2006**

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## LIST OF ACRONYMS

ASIES	Association for Investigation and Social Studies of Guatemala
AMAC	Community Environmental Monitoring Association
BSR	Business for Social Responsibility
CAO	Office of the Compliance Advisor/Ombudsman
COCODE	Community Development Council
COMUDE	Municipal Development Council
COPREDEH	Presidential Commission for Human Rights
FONAPAZ	National Peace Fund
IFC	International Finance Corporation
INTRAPAZ	Institute for the Transformation of Conflicts for the Construction of Peace in Guatemala
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
SEGEPLAN	Planning and Programming Secretariat
UNDP	United Nations Development Program
WBG	World Bank Group

## 1 INTRODUCTION AND BACKGROUND

A significant force of recent change in the Department of San Marcos is the presence of Montana Exploradora de Guatemala's (Montana) Marlin gold and silver mine. (Montana is a 100% subsidiary of Glamis Gold Ltd, a Canadian mining company based in Reno, Nevada.) The Marlin Project is located in the Western Highlands of Guatemala, approximately 200 km from the national capital. The mine property currently spans 5 km<sup>2</sup>, roughly 85% of which is in the Municipality of San Miguel de Ixthacán. The remaining 15% of the mine property (but none of the ore body), is in the Municipality of Sipacapa.

Construction on the Marlin project began in May 2004, and operations commenced in 2005. Montana plans to produce an annual average of 250,000 oz of gold and 3.6 million oz of silver during the projected 10-year mine life.

The mine is seen as having different impacts on the affected communities of Sipacapa and San Miguel. Some impacts are seen as beneficial: jobs, increased electrification, provision of roads, schools, and health clinics. Others are seen as adverse: disruption of traditional lifestyles, inflation, increased traffic, changes to the landscape, and fear of environmental contamination and other short and long-term impacts. The relationship between the mine and some local communities is also difficult, characterized by tension, suspicion, attribution of motives, and a pattern of distrust.

Objections to the mine's initial development and plans for expansion have taken multiple forms, including litigation, formal grievances and direct action to stop mine development.

In March 2005, CAO received a complaint from some residents of Sipacapa, who raised concerns that the project would (a) reduce access for the community to local water supplies, (b) result in contamination of local waterways, and (c) was developed without adequate consultation and in violation of the rights of indigenous people, exacerbating social tensions, violence and insecurity.

In response to the complaint, CAO undertook an assessment in April 2005. A report on the results of this assessment was published in September 2005.

One of the recommendations in the CAO's September 2005 Assessment Report was that a group of people representing the complainants, leaders from Sipacapa, and a delegation from Montana with the authority to negotiate engage in a dialogue to establish acceptable next steps towards achieving resolution of this dispute.

The CAO Assessment Report elicited further dialog and correspondence, including formal responses from civil society and the IFC, which are posted on CAO's website ([www.cao-ombudsman.org](http://www.cao-ombudsman.org)). In December 2005, the World Bank Group (WBG) President and several staff members met in Washington, DC with the civil society organizations Madre Selva, the Council of Indigenous Authorities of the Western Highlands of Guatemala, the Bank Information Center, Friends of the Earth Canada, and Oxfam America to discuss continued concerns related to the project, and to provide suggestions for resolution. At the meeting, three possible scenarios to address the conflict were presented:

1. *Ratification of the status quo: a business as usual approach that expects the problem will resolve itself;*

2. *A decision by the WBG to recall its loan; and*
3. *Taking steps in cooperation with other key actors to explore conditions for meaningful dialogue with the people of Sipacapa and Montana (and perhaps the government and the World Bank). The purpose of the engagement would be to explore common ground, resolve key issues and improve relationships among the parties, as reflected in central recommendation of the CAO's September 2005 Assessment Report.*

The President of the World Bank Group encouraged the parties to negotiate a middle ground and requested that the CAO lead this effort.

As a first step toward fulfilling that recommendation, the CAO undertook a field visit to Guatemala from January 23 to February 1, 2006 to explore the feasibility of creating a stakeholder dialogue process that would identify and resolve issues related to the conflict. The role of the CAO in this process would be neither “judge” nor “party,” but rather as an independent and neutral facilitator conducting an objective assessment, and guaranteeing a fair process and equitable outcome for the parties.

This report describes the results of this follow-up field visit.

## **1.1 The national context**

The national context in which the Marlin mine exists has substantially influenced the scope and intensity of the current conflict between the mine and some communities. Marlin is Guatemala's first significant, open-pit gold mine and first large mining investment in over 20 years. The national debate surrounding the mine's development brought to the surface deep divisions that exist within Guatemala regarding indigenous rights, economic and social disparity, and the country's development path. Guatemala's 36-year civil war brought extreme violence to the rural and indigenous regions of the country, leaving deep racial and class divisions, and mistrust among many parts of Guatemalan society. Over half the population of Guatemala considers themselves to be indigenous, and since the end of the civil war in 1996, indigenous groups have begun to demand greater recognition and respect for their rights.

In recognition of the national mining controversy, the government established a High Level Commission to review and address mining issues. This Commission consists of members of the Catholic Church, the government, industry representatives and several non-governmental organizations (NGOs). The work of the Commission is now complete and the debate continues regarding the findings and recommendations of the Commission.

The constitution of Guatemala provides for the royalty sharing between the national government and the municipality in which a mined ore body is located. Given that all of the Marlin ore body is in San Miguel, there is no constitutionally mandated requirement to share royalties with the municipality of Sipacapa. This has been a source of tension.

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 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.

In Sipacapa there are roughly 13 small *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 (COCODES), comprised of the community assembly and a coordinating body designated by the community. Each village also elects a village mayor (Alcaldes Auxiliares) who are members of the municipal development council (COMUDE).

In late June 2005 members of Sipacapa's COMUDE, comprising municipal leaders and leaders of the village COCODES within Sipacapa municipality, conducted 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 when a local court issued an injunction against the referendum. Nevertheless, the consultations, in the form of community assembly meetings, took place on June 18, 2005, with a majority of villages (11 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. In a ballot referendum approximately 2500 people from Sipacapa voted either "yes" or "no" to mining in the municipality. Over 98% of those who voted expressed their opposition to mining in Sipacapa.

The period leading up to the consultations and referendum was marked by confusing, contradictory and sometimes inaccurate information about the mine's potential impacts and the validity of the consultations and vote. Reports of voter intimidation circulated. No vote was held in San Miguel municipality. The case remains under legal dispute.

There has been relative calm in the communities adjacent to the mine in the last six months. The mine has carried forward a number of initiatives to improve its relationships with its neighbours, including establishment of a participatory community environmental monitoring association and an agreement to support the construction of a road from San Miguel to San Marcos. In addition, the first royalty payment was received by the municipality of San Miguel during February 2006.

## **1.2 Purpose of Field Visit**

The purpose of the field visit during this exploratory phase was to meet with key actors from the community, civil society, government, and the mine to answer the following questions:

- 1. Is a stakeholder negotiation (or other collaborative process) feasible and likely to succeed? If feasible, who should participate in the deliberations?*
- 2. What will the process look like and what would the parties suggest should be included in an operating agreement to guide the dialogue?*
- 3. If the situation is not ripe for a dialogue process to address the conflict, what is possible?*
- 4. What observations and next steps can we offer to key actors for their reflection, thoughts and comments, so the situation can be improved?*

While we found that conditions do not exist at this time to support a successful dialogue process between the community of Sipacapa, the government of Guatemala and the mine, the current situation holds risks – both of further action as well as of inaction – that are discussed later in the document.

At a meeting of the Sipacapa COMUDE, attended by village leaders from the COCODES, appointed village mayors, the mayor of Sipacapa, and the municipal council, we heard that people of Sipacapa:

- Want to focus on their future and move beyond the conflict with the mine (although these disputes remain unresolved) and are not interested in engaging in a formal dialogue about the conflict with Montana at this time;
- Would like their “consulta popular” to be acknowledged, which would provide a certain peace of mind and degree of certainty so “we can move forward with the projects that we need;”
- Want peace in their community to continue, as has been the case for the past five months; and
- Are strongly committed to a more prosperous future through determining their own path to development (versus imposed development) in a way that gives voice to traditional values, creates opportunities for improved quality of life and good governance in the region.

These views were shared by many with whom we spoke during our visit. Forging this vision will require the stakeholders to consider a broader set of interests and an improved working relationship. This includes the company, the WBG, the Guatemalan government, civil society and diverse voices from the community who, in the past, may have advocated for their own approaches.

This report reviews our field visit approach, summarizes key themes we heard from those we interviewed, identifies risks and offers recommendations to address these risks.

## **2 CAO ASSESSMENT APPROACH**

### **2.1 Field Visit**

The purpose of the trip was to conduct interviews with people about the questions described above. The CAO’s intent in conducting this situation assessment was not to talk with every person who might hold a strong opinion, but rather to discuss the issues with a representative sample of key stakeholders. Interviews were conducted confidentially; thus, results are presented through the identification of key themes. We interviewed key parties associated with the conflict relating to the Marlin mine and some outside groups with potential suggestions for how to resolve the conflict. These included:

- Members of the Community of Sipacapa through a formal COMUDE meeting
- Ministry of Energy and Mines
- World Bank Group Country representative
- United Nations Development Program (UNDP) representative
- Marlin/Montana management and staff
- Madre Selva
- Catholic Church
- Member of Congress
- Presidential Commission for Human Rights (COPREDEH)
- Association for Investigation and Social Studies of Guatemala (ASIES)

On January 31, 2005, we attended a public presentation sponsored by ASIES related to popular consultation in Guatemala (*Las Consultas Populares: Sus Alcances para la Democracia en Guatemala*).

In addition, telephone interviews were conducted with:

- Members of the technical support team of the Association for Community Environmental Monitoring (AMAC)
- International NGOs (Bank Information Center, Friends of the Earth, Oxfam America)

We did not contact or meet with all persons who might have an interest in environmental, social and development issues in the region. In particular, we regret that the conditions were not acceptable for us to meet with a broader section of the community of Sipapcapa. Neither were we able to meet the Director of the Planning and Programming Secretariat (SEGEPLAN). We are aware of numerous individuals who may also have useful additional information.

Nevertheless, we are confident our interviews provided a reasonably complete view of the nature of the current dispute and ideas for putting the situation on a more positive footing that will be helpful to the various parties in considering next steps.

## **2.2 Context Analysis**

The CAO team examined factors related to the broader context of the conflict with the mine, including dynamics and trends at the national level related to mining and development, and risks and opportunities that may influence how issues are addressed and how conflicts play out. The CAO evaluated information about the willingness of those interviewed to engage in collaborative processes to address contested issues and the feasibility of implementing various dialogue structures and procedures. Given that a direct dispute resolution process among the parties to address the conflict was deemed by most not to be advisable at this time, the CAO explored other interventions that could address current risks identified by the CAO as well as the parties.



### 3 THEMES

The following themes represent a summary of issues and key opinions that attempt to capture what the CAO heard in conversations with those interviewed.

**3.1 Now is not the time for formalized talks.** There is agreement among the company and many representatives from the municipality of Sipacapa, as well as members of COMUDE, that now is not the right time to begin a formal dispute resolution process to resolve the conflict. The following reasons for this conclusion were expressed to the CAO:

- *Both the mine and many community members are focusing on other things beside this conflict. Many community representatives stated they have moved beyond the conflict with the mine and are now focused on practical development options and reconstruction efforts as a result of Hurricane Stan. In their view, the popular referendum that occurred June 18, 2005, has closed the discussion about mining and their position is clear: “No to mining on our territory.” They also expressed the importance of retaining their land and not selling it to the company. While some community members may want to continue to debate the mining issue, most have no appetite for continuing to discuss the dispute or engaging in dialogue over mining. “We can ignore the mine as long as it doesn’t affect us” captures the prevailing attitude. Nevertheless, there is still little acceptance of the mine and no resolution of the root causes of the dispute. This position reflects a marked change from the September 2003 Sipacapa Strategic Development Plan, funded and supported by the NGOs CARE and the National Peace Fund (FONAPAZ), which endorsed metallic mining as a viable vehicle for development, albeit with recognized risks. It appears that many in the community have now concluded that the perceived risks of mining development outweigh the benefits.*
- *The company is hopeful that over time, Sipacapans will change their position once they witness the benefits of mining development enjoyed by their neighbors and the level of environmental responsibility demonstrated by the company. They are guardedly optimistic that the community environmental monitoring association, AMAC, facilitated by Business for Social Responsibility (BSR)/Avanzar, will serve to build confidence in the communities directly impacted by the mine. AMAC will focus on water quality initially.*
- *Both groups have unilateral alternatives they believe better meet their interests, at least in the short term. In fact, each party agrees there are greater risks to participating in formalized talks than not participating in the short term. For some in the community, dialogue and negotiation could offer the mine legitimacy that they do not believe it has. Furthermore, in the view of many community members, the potential benefits of mining are integrally linked to accepting mining activity. They believe any agreement will have hidden strings attached, binding them to more mining activity and creating a level of dependency upon the mine for their own development, undermining pride, dignity and self respect. They point to a current example where they believe the company and government are creating dependency on mining by the Montana’s offer to pay the salaries of some school teachers. Similarly, the company is pursuing its own strategy of arriving at agreements with individual landowners and smaller villages in Sipacapa to undertake exploration on their land, offering them employment and possibly other benefits. Having already made some unsuccessful efforts to negotiate a voluntary royalty payment at the municipal level in Sipacapa, Montana is concerned that any offer it makes to the broader Sipacapan community would be perceived as provocation or cooptation, rather than resolving the conflict or improving their relationship with the community.*

- *The parties may believe they have greater power and leverage outside a dialogue process than inside.* For negotiations to be successful, it is important that the power relationships among the parties are equitable. Some feel that power relationships among the stakeholders are not equitable in negotiations, and believe they have greater power and leverage outside a dialogue process. Although mediators and other third parties must often address power imbalances in order to achieve sustainable, just agreements that will hold over time, parties are often concerned that the asymmetrical distribution of power makes dialogue dangerous, and are not aware of how to change the power dynamics.
- *Both sides likely perceive there are not sufficient conditions or incentives to reach agreement.* There have been several failed attempts to establish dialogue processes with Sipacapa, although negotiations with San Miguel have proved more successful.
- *Neither the company nor the community expressed significant concern about the potential for conflict escalation in the short term, although other groups did.* Both perceive the current environment as relatively calm. However, as mentioned above, the CAO understands the mine is continuing to negotiate with individual landholders to explore for mineral prospects in Sipacapa, and at least some community members are aware of these activities. The CAO also understands that other parties, some of them local, are under the impression that further exploration and exploitation activities conducted by Montana in Sipacapa have been discontinued for the time being. While we understand that no additional land has been purchased, the mine is undertaking exploration activities with the permission of some landowners and villages but without the recognized approval of the municipality.
- *It is not clear whether there are appropriate conveners, venues and third parties available to conduct a successful stakeholder process that is trusted, involves different voices among the parties, can achieve the level of intimacy needed to understand what all parties really feel and think, and explore what opportunities for resolution exist at a more profound level of detail.*
- *The extent to which the company and different groups within the community of Sipacapa have thoroughly analyzed what it would take to talk, and how talking together could address their critical needs, fears, concerns and issues, is not clear to CAO.* We respect the views of those who spoke to us, and we recognize that this group of community representatives prefers to ignore or avoid the conflict at present (In highly intractable conflict situations, approaching the fundamental conflict directly seldom works in isolation or as a first step.) Consequently, other avenues will also need to be pursued.

**3.2 Pursuing good governance and alternative development in Sipacapa is preferable to dialogue at the moment.** Interviewees defined “alternative development” as development decided upon by the community, as opposed to imposed or pre-conceived development. Alternative development, as defined by Sipacapa, does not deplete a community’s natural resources or cause social disruption, but rather promotes local culture and traditions. The interviewees understood the company and the WBG as promoting mining as the only alternative to poverty. However the alternative development model would provide choice beyond mining to bring the communities out of poverty. There was broad support at local and national levels to focus on the issue of good governance in the context of development in Sipacapa, and also for the broader region of San Marcos. This sentiment was strong despite the presence of competing factions and the potential for conflicting development plans.

Many expressed the belief that strengthening governance in Sipacapa and implementing development projects created by the local communities would present the opportunity to build a common, united future for the communities in the region. Many people believe this approach would inspire leaders to come together to develop a shared vision of the kind of community they want to be, encourage people to discover what connects and unites them rather than what divides them. Accordingly, supporters of this approach believe better governance and alternative development could result in a stronger and more cohesive community that is better off socially, economically and spiritually.

The interviews raised a central issue for further exploration: under what structure or institutional framework could a group that included civil society, public authorities and traditional community leaders discuss and agree upon development priorities and a strategy for implementation? Specifically:

- Who should lead such an effort and how might an approach be put in place that utilizes principles of good governance such as transparency, accountability, and participation and results in positive development impacts as well as increased social capital?;
- What kind of capacity building and institutional strengthening would be required?;
- How can a good governance and development approach strengthen civil and government leadership and enhance community cohesion?;
- How can a unified development strategy, rather than dueling plans (alternative plans versus a municipal plan), be ensured?; and
- How can various levels of development councils better harmonize their development efforts?

A number of interviewees stated that good governance and institutional strengthening is urgently needed at the national level in addition to the regional and local levels. One oft-cited example is the need for capacity building and support with respect to the environmental supervision and enforcement area.

Many strongly recommended that the WBG take an active role in promoting good governance and development in Sipacapa:

- “Community development is key and how to get development benefits into the community is critical and is not yet happening;” and
- “Sipacapa is an ethnic island, isolated, and separate which may call for a special approach that respects their culture and ethnic diversity.”

**3.3 The dilemma of leadership needs consideration.** Any effective process that brings communities together, produces good governance, promotes sustainable development, and resolves community conflicts requires engaged and positive leadership that is representative of constituents. Many individuals we spoke with raised serious doubt about the presence of this kind of leadership. The following local leadership challenges were identified by those we have interviewed:

- Leadership structures in Sipacapa are complex, and community leadership is sometimes difficult to identify. These structures need to be better understood and engaged with appropriately. For example, we heard different interpretations of the extent to which Guatemala civil society groups represented community concerns to the WBG President and what their process of consultation with their constituencies was;
- There are currently few leaders at the local level who can bridge differences within the community, address internal divisions, provide vision and inspire others to construct something together that serves the greater good;
- Leaders in Sipacapa have often accumulated power through intimidation and opportunism. This has, created social divisions and resulted in fear and uncertainty;

- It is unclear how a leader's legitimacy is derived and what the nature of the consultation process is between leaders and their bases; and
- Leadership at any level requires proposing positive solutions for complex problems rather than relying primarily on opposition and negativity. For example, we understand there are current initiatives underway in Sipacapa sponsored by the Catholic Church and other groups. We also heard several parties mention Vision 2020, a planning initiative related to the Department of San Marcos. Developing positive leadership capacity in Sipacapa will be essential. It may be important to engage directly with people as well as work through community leaders.

**3.4 Guatemalans, rather than "outsiders" are more appropriate to lead these community processes.** CAO repeatedly heard that no matter what the way forward is, it should be led by Guatemalans. The WBG and other outsiders may have a constructive role to play but CAO's ability to bring resolution in this situation is limited without Guatemalan leadership. Consistently, those with whom CAO spoke mentioned two critical national leaders whose support and personal involvement would be critical to put things on a more positive footing, Dr. Hugo Beteta, the head of SEGEPLAN, and Bishop Álvaro Ramazzini, Bishop of San Marcos and the President of the Episcopal Conference. These two individuals were identified by many interviewees as local leaders capable of transforming the situation in Sipacapa. SEGEPLAN was also noted as being particularly important for connecting local development in Sipacapa with the national planning process.

**3.5 The capacity of the government to supervise the mine and set clear guidelines for consultation needs enhancement.** Many reported that citizens generally lack confidence in their national government's ability to protect the public interest. These citizens question whether relevant government ministries like the Ministry of Energy and Mines, and the Ministry of Environment and Natural Resources have sufficient technical capacity to effectively regulate the mining industry. There was strong support for improved regulatory and enforcement capacity in a way that is comprehensive and strategic. Some examples of improvement in capacity are: assessing regulatory strengths and weaknesses and based on this diagnosis, developing a systems approach to remedying the deficiencies. An important component of the capacity to supervise and regulate relates to the public consultation process. Many strongly expressed the need to develop a public consultation process that gives affected communities real participation in decisions that affect them. The work of the High Level Commission and that of others may begin to illuminate the way forward on both the consultation and the supervisory capacity issues.

**3.6 Create a tipping point for resolution.** A number of people with whom we spoke emphasized that development and governance support will not resolve the root causes of this conflict. Many suggested that to jump start a process aimed at transforming the dispute, reciprocal gestures of goodwill would be required from a broad collective of actors, such as the WBG, the mine, government of Guatemala, community of Sipacapa, International NGOs, Guatemala civil society, and others. The President of the WBG has encouraged a process of dialogue, and in the future a greater willingness for engagement may exist than exists today. However, some interviewees observed there is a need to create more favorable conditions before initiating such dialogue. In protracted conflict situations the demonstration of such preliminary confidence-building measures can create these conditions. Outlined below are other actions, in addition to those presented earlier, that many people suggested could make a difference, particularly if a critical mass of actors came together to tip the scales in the direction of dialogue and eventual resolution:

- The mine could declare a temporary, voluntary suspension of exploration activities in Sipacapa;
- The community of Sipacapa could assess whether there is an issue they could talk about through a formal dialogue process in which both the community and the mine could benefit, and that would be completely independent of whether there is future mining in their community. For example, they could agree on ways to minimize or de-escalate potential violence or share information;
- The government of Guatemala, in conjunction with the municipality and the mine, could resolve the issue regarding the teacher situation in Sipacapa;
- The WBG could provide resources to promote good governance and development in the San Marcos region, with some allocated to the mine-affected towns;
- The President of Guatemala could send to Congress the High Level Commission's agreement that outlines guidelines and conditions for Mining Law reform;
- National and international NGOs and others could propose constructive ideas about how they will contribute to building good will to move the situation forward; and
- All sides could commit to non-violence and no intimidation.

## 4 ASSESSMENT OF RISKS AND RECOMMENDATIONS

This assessment identifies a dilemma: an emphatic position from the principal stakeholders that now is not the time for intervention from outsiders; and concern from many observers intimate with the situation that, without external intervention, the situation may well deteriorate. Under these circumstances – where the principals do not believe entering a jointly agreed process is appropriate – the CAO is unable to contribute further value and must close the complaint. In doing so:

- i) We have the commitment from IFC that progress of implementation of the CAO's project-specific recommendations (made in September 2005) will be monitored and publicly reported through the Sponsor's AMR or other disclosures.
- ii) The CAO will remain available to the parties – at their request – for re-engagement at any time should it be helpful as part of a dispute resolution process.
- iii) We appreciate that in the current situation, risks emerge from action but also from inaction.

Based on our interviews, analysis of themes in the preceding section, and our experience with similar situations, we have identified the following risks associated with the current situation, and make suggestions to the parties for possible steps to reduce or overcome those risks.

**4.1 Risk:** *As long as the root causes of the conflict between the mine and the community have not been addressed, there is the possibility for the conflict to escalate.*

Although the mine and community leaders prefer to avoid the conflict for the time being, many other interviewees emphasized that the root causes of the conflict still persist. The CAO is concerned that current positions have the potential to escalate the conflict if not addressed more directly. This dynamic presents short- and long-term risks which all parties should consider.

Interviewees pointed to a variety of issues that remain unaddressed, including the question of future exploration; royalties, or other forms of compensation for using lands; future of expansion of mining activities; public consultation; the monitoring of environmental impacts and socio-economic benefits; etc. In a context of no resolution, no certainty, no trust and no relationship, many individuals noted that any number of factors could ignite conflict locally:

- A mine-related accident;
- Perceived harm to public health or the environment attributed to the mine;
- Disequilibrium in development between Sipacapa and San Miguel de Ixtahuacán leading to jealousies and a feeling of having been left out;
- Border disputes between the municipalities;
- Outside provocateurs; and
- A failed negotiation between the mine and a landowner over exploration or benefits.

There is also the risk that failure to address critical issues locally could spill over into the national debate and further exacerbate tensions between indigenous communities in the Guatemalan Highlands and pro-mining interests in the country more broadly.

Ignoring the conflict or doing nothing encourages a crisis approach to problems as opposed to a more strategic response.

#### **4.1.1 Recommendation**

The key parties should carefully assess the risks of continuing with exploration activities in Sipacapa, particularly in the current climate of a tense calm, and make a judgment of the most appropriate course of action. Parties should focus on confidence building measures that could be offered in order to secure the social and political conditions for dialogue. For example, what would it take for the company to declare a temporary voluntary suspension of exploration activities in Sipacapa? How can this be done in a way that benefits the community and the mine, and rewards peace? What and how can other actors contribute to building confidence and good will so the risk of cooperation is shared? Who can do what to create an opening for talks?

**4.2 Risk:** *Not talking forces communities to use power- or rights-based approaches with the mine (versus also being interest-based options) and drives the company toward bilateral strategies that can further undermine social cohesion and be perceived as (or actually) ‘divide and rule’. Such approaches often miss opportunities for more creative solutions that address the root of the problem.*

Without the possibility of broader formal dispute mediation process, the company relies upon a practice of engaging in bilateral relations, negotiating with individual villages rather than the municipality as a whole. The risk of this approach is that it may be contrary to what some members of the municipality say they have collectively decided. Such practice emphasizes narrow group identities and divisions among groups rather than broader, common identities and connections. It can also undermine rather than enhance social cohesion and contribute to conflict escalation. In addition, sometimes problems cannot be solved using bilateral or unilateral strategies.

The local communities also face potential risks. If a community is dissatisfied with a situation involving the mine and there is no relationship or dialogue space available to explore solutions, the choices of how to influence the situation are limited to a set of power-based activities such as mobilizations or road blocks, or rights-based alternatives such as the courts – which may take months or years. While there are times when a rights- or power-based strategy is preferable, these two approaches do not always result in a deeper solution to the problem or a more comprehensive satisfaction of people’s interests, needs, fears or concerns.

#### **4.2.1 Recommendation**

Community leaders and Montana should assess separately or jointly whether there is an issue around which they could establish a more formal process of dialogue that is completely independent of whether there is future mining in the community or not, where there is the opportunity for joint benefit, and the risk of engaging is not too high. For example, would there be benefit in discussing how to minimize or de-escalate potential violence, or ways in which they could share information? What would be required for this kind of a conversation to happen?

**4.3 Risk:** *Further intervention by outsiders from the international community may result in more harm than good by inadvertently enhancing dividers rather than connectors in communities or fueling violence and conflict in relation to the mine.*

Intervention and assistance in conflict settings interacts with the conflict. It is often misused by people in conflict to pursue political advantage. In the case of Sipacapa, there is a risk that attention and intervention from external parties – including CAO, WBG and civil society organizations — could play into the interests of Sipacapa and more broadly of those that seek to divide the community further and perpetuate this dispute to the detriment of other local people.

As outsiders intervening in conflict, we always interact with existing dividers and connectors in the communities in which we work. Consequently, any conflict intervention from outsiders should anticipate the possibility of heightening and prolonging the conflict, rather than reducing or resolving it. Whether knowingly or unknowingly, outsiders run the risk of supporting dividers or the connectors, with positive or negative impacts.

Third-party actors can only play a positive role in conflict resolution once they are seen by communities and companies as not contributing to the conflict.

#### **4.3.1 Recommendation**

Parties contemplating intervention should assess these risks through a context analysis and other steps to reduce the possibilities of doing more harm. For example, they should consider how to:

- Identify pre-existing schisms in the community and how specific activities can either negatively or positively impact the existing conflict;
- Use this information to form the basis for an effective intervention strategy aimed at promoting stability in the community, supporting existing societal forces that integrate communities and building a peaceful, inclusive future;
- Understand the relationship between local communities or groups within local communities, and the wider social context; and
- Consider how they are viewed in the context of broader inter-group dynamics and what their impact on the dynamics will be.

The CAO has communicated with key parties to ensure that this recommendation is well disseminated and understood, and will continue to do so with the public release of this report.

**4.4 Risk:** *If Sipacapa remains isolated from significant development benefits, and has not improved socially or economically as a result of IFC's investment in Montana, the WBG could be held accountable for such results. This poses a long-term risk to the WBG's reputation.*

The continued rejection by key leaders on the community of formal negotiations with the mine could result in this outcome. In addition, continued divisions in the community – some of which are rooted in the conflict over the mine – are a significant contributory factor. It is in the interest of the WBG to promote increased cohesion and capacity building for the municipality so that the community can create a sense of its own future and development.

The ethnic difference between Sipacapa and its neighbors presents a particular concern. External observers noted that singling out Sipacapa runs the risk of 'rewarding' this community for conflict and creating incentives for conflict elsewhere. However, not singling out Sipacapa may neglect important cultural interests. Any intervention will need to reframe issues from rewarding conflict towards rewarding progress towards dispute resolution.

To remain respectful of the community's wishes for reduced interference from external parties, the entry point for assistance is a critical factor. Enhancing capacity within Guatemala to take the initiative in this area is likely to be more successful than any initiative led by the CAO or other external party.



#### **4.4.1 Recommendation**

There is an opportunity to initiate a meaningful national and local dialogue that reframes the current debate away from conflict and towards the pursuit of socially equitable and environmentally sustainable approaches to Guatemala's development.

To build on this opportunity, the WBG should consider a catalytic role supporting the people of Sipacapa to participate more effectively in existing regional and municipal development processes. This initiative would be aimed at helping the Sipacapa community build consensus around a vision for its own development in practical terms, determine its development priorities, and identify where resources exist within the WBG, the Guatemalan government and possibly others. The goal of the strategy should not be to rewrite the Country Assistance Strategy for Guatemala or create new government programs. Instead, it should draw on resources that already exist and help the community access these resources.

The WBG will need a credible local ally, and some observers suggested that SEGEPLAN may be most effective. The Catholic Church and the COMUDE of Sipacapa were also suggested as others that should be involved. The process should NOT include the mine at this point. The outcome of the dialogue process should be:

- A coherent vision of development;
- Consensus on development priorities;
- A realistic, autonomous development plan "owned" by the municipality based on the joint community vision and agreed upon priorities;
- A clear commitment of resources from existing sources dedicated to implementation; and
- Strengthened local governance.

External facilitators from groups such as Institute for the Transformation of Conflicts for the Construction of Peace in Guatemala (INTRAPAZ) or Fundación PROPAZ may be critical, but these must be selected by the parties themselves. This initiative should be aimed at promoting and rewarding a spirit of cooperation from the community and its commitment to peaceful dispute resolution, rather than rewarding the conflict.

**4.5 Risk:** *Stakeholders at all levels acknowledged that the Government of Guatemala does not have sufficient capacity to supervise and regulate the impacts of the mine.*

This concern fosters the local fear and suspicion that the mine will not operate safely and ultimately will cause long-term adverse impacts. There is no regulatory framework for public consultation that provides clear guidelines on how the community will be consulted about future exploration and exploitation licensing and mine activity, such as land acquisition and the EIA for future expansions. Such a lack of guidance, as demonstrated by the past conflict over the original Marlin mine development, creates differing expectations and uncertainty for both the company and the community. If these structural problems related to mining in Guatemala are not resolved at the national level, conflicts between the government, the mine and communities will be exacerbated at the local level. It also has implications for the future of mining activities in the country.

#### **4.5.1 Recommendation**

The WBG and relevant government ministries, such as Energy and Mines and Environment Natural Resources, should continue to explore options to strengthen technical capacity to regulate the mining industry in a way that is respectful of the wishes and interests of the directly impacted people and, more generally, people of Guatemala.