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February 26, 2010

Steve Bywater, Chief Executive  
GCM Resources plc  
Foxglove House, 166-168 Piccadilly  
London, W1J 9EF  
United Kingdom

Re: Statement to the U.K. Joint Committee on Human Rights

Dear Mr. Bywater,

We are writing in regards to the memorandum you submitted to the U.K. Joint Committee on Human Rights on 26 June 2009. We would like to seek clarification on several of the statements you make in the letter and ensure that GCM is aware of best practice and international guidelines on displacement and resettlement, the rights of Indigenous Peoples, and environmental assessment.

First, we would like to request more information on the independent review which you state has been conducted on the Environmental and Social Impact Assessment (ESIA). We are concerned that this review incorrectly verifies that the project's ESIA is in compliance with the Social and Environmental Policy and Performance Standards at the International Finance Corporation (IFC) and meets the requirements under the Equator Principles. This is evident in a number of ways. For example:

- IFC guidelines require that dissemination of project information, including the draft Resettlement Plan, to local, affected communities should take place in languages preferred by the communities.<sup>1</sup> In addition, accessibility to information is a primary component of free, prior and informed consultation, also a requirement in IFC policy.<sup>2</sup> However, it is our understanding that project planning documents, including the 2006 draft Resettlement Plan and Social and Environmental Impact Assessment, were never produced or distributed to local communities in their local languages, significantly limiting the ability of local community members to effectively participate in the consultation process.
- Prior to financing a project, the IFC requires that, for projects with significant impacts or with direct impacts on Indigenous Peoples, consultations with local communities must lead to broad community support.<sup>3</sup> Based on the widespread opposition to the project, it is difficult to conclude that such support for the project exists locally, and therefore we believe it would not meet the benchmark for IFC financing. We are concerned that GCM may continue to seek the support of communities which have already clearly expressed their dissent to the project when instead, the company should acknowledge that such support does not exist.
- IFC Performance Standards also make special consideration regarding consultation when the property rights of Indigenous Peoples are impacted. IFC standards state that where relocation of Indigenous Peoples is unavoidable:

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<sup>1</sup> International Finance Corporation, *Guidance Note 1, Social and Environmental Assessment and Management Systems* (2007), G47.

<sup>2</sup> International Finance Corporation, *Performance Standard 1, Social and Environmental Assessment and Management Systems* (2006), para. 22.

<sup>3</sup> International Finance Corporation, *Policy on Social and Environmental Sustainability* (2006), para. 15, 19-20.

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*“the client will not proceed with the project unless it enters into a good faith negotiation with affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation.”<sup>4</sup>*

It is unclear from GCM’s Indigenous Peoples Development Plan (February 2006) whether or how such good faith negotiations were conducted and, if they were conducted, the results from these negotiations.

Second, in your statement to the Joint Committee, you refer to 40,000 people who will need to be resettled. Furthermore, you state in the project’s draft Resettlement Plan (December 2006) that the total number of those to be displaced (both physically resettled and economically displaced by loss of land) is almost 50,000. However, we believe this estimated number of potentially displaced persons is underestimated. This is for a number of reasons:

- While the draft Resettlement Plan identifies almost 1,000 people in host communities who will be affected due to land consolidation and acquisition for the creation of resettlement sites to be established in the *first phase* of the project (roughly project years 1-2), there is no mention how many community members will be affected in *subsequent phases* (roughly project years 3-10). How many host community members will be affected by the ongoing resettlement, over the course of 10 years, envisaged by the project?
- Furthermore, according to the draft Resettlement Plan, it cannot yet be determined whether nearly 800 households (roughly 3,500 people) in 11 villages bisected by the mine will require relocation as a result of mine disturbances. Although the aim will be to exclude these villages “as far as possible” from the resettlement program, the draft Resettlement Plan explains, mine disturbances including “excessive noise levels” may necessitate their relocation.<sup>5</sup>
- In regards to access to water, it is our understanding that trials to test the feasibility of re-injecting and infiltrating water have still to be carried out. Moreover, it is likely that, even with the planned forty-seven re-injection wells, the water table will be lowered to a degree that cannot be fully compensated for. It is unclear how many thousands of more people will be affected by the decreased water table.

Third, we would like to ensure that GCM is aware of the United Nations (UN) *Basic Principles and Guidelines on Development-based Evictions and Displacement*. These *Guidelines* provide detailed standards regarding the rights of communities threatened with forced resettlement, land acquisition, and the loss of livelihoods due to development projects. Among other things, the *Guidelines* state that:

*“Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value or better.”<sup>6</sup>*

Cash compensation is a primary feature of GCM’s draft Resettlement Plan as lack of available replacement land is a significant factor in Bangladesh. However, cash-based compensation, as opposed to land-based compensation, has been found to rarely improve the livelihoods of displaced persons and most

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<sup>4</sup> International Finance Corporation, Performance Standard 7, Indigenous Peoples (2006), para. 14.

<sup>5</sup> See page 4-2 of the Phulbari Coal Project draft Resettlement Plan (December 2006).

<sup>6</sup> UN Basic Principles and Guidelines on Development-based Displacement and Evictions, A/HRC/4/18 (2007), para. 60.

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often leads to impoverishment.<sup>7</sup> Furthermore, while the draft Resettlement Plan makes clear that replacement lands will not be provided to displaced households, it repeatedly suggests that some of these households will use cash compensation to purchase new lands.<sup>8</sup> This glaringly ignores the fact that potential replacement agricultural lands equal in size and value to those acquired for the coal mine simply do not exist in Bangladesh.

As currently designed, the project does not meet UN guidelines on development-based evictions and displacement. Land-dependent communities and communities with a special attachment to their land, as is the case for many communities affected by the potential coal mine, should not be displaced without the option of replacement land.

Fourth, GCM should also be aware of the UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP), adopted by the General Assembly in September 2007. Among other things, UNDRIP states that Indigenous Peoples should be consulted:

*“through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”<sup>9</sup>*

Again, the Indigenous Peoples Development Plan prepared for the project is unclear as to how the *consent* of Indigenous Peoples affected by the project was obtained. We would welcome additional information from GCM on whether or how Indigenous Peoples affected by this project were given the opportunity to provide their free, prior and informed consent.

Finally, regarding environmental assessment and sustained agricultural practices, we have several concerns and questions:

- We are concerned the "improved farming practices" that are to be developed to take advantage of the "year round availability of water for irrigation" resulting from the dewatering of the mine, will not be sustainable after mining stops when that source of water is no longer available.
- The original characteristics of the Dupi Tila aquifer, and the impermeable strata below it that currently support the overlying aquifer (i.e., the Gondwana sediments that are to be mined for their coal), can *never* be re-established within the area of the mine footprint after mining stops, regardless of the rehabilitation practices adopted. Neither the original porosity characteristics of the aquifer sediments, nor the impermeability of the layers below it, can be re-established by the simple process of returning the extracted rock material back into the mining pit after mining stops. We fear there may be the potential for contamination of groundwaters as waters from the Dupi Tila aquifer interact with the unconsolidated sediments that have been placed back into the mining pit.

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<sup>7</sup> See, for example: W. Courtland Robinson, *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, The Brookings Institution-SAIS Project on Internal Displacement, (Washington D.C: 2003).

<sup>8</sup> For example, p. 10-7 of the draft Resettlement Plan states: “it is anticipated that the affected HHs [Households] in this project will continue to live in the present location till there is need to displace them, and will invest the compensation to buy land.” Also see pp. 7-5, 7-11 & 10-6.

<sup>9</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Article 32, Adopted by General Assembly Resolution 61/295 on 13 September 2007.

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- The fact that the original hydrological conditions can never be reestablished is in part proven by the planned lake that is to occupy the site of the mining excavation after mining ceases. What is the size of the proposed lake, and what real value does it offer to the community with respect to the loss of valuable agricultural land? Does the community want or need such a lake?

We believe that these issues amount to significant concerns about the social and environmental sustainability of the project, particularly regarding the livelihood impacts for locally affected people. We look forward to your response and thank you for your attention.

Sincerely,



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Business and Human Rights Resource Centre