

EXERCISING RIGHTS: COMMUNITIES DEFEND TERRITORY

During the past year, conflict around Tahoe Resources' Escobal silver mine has intensified as community resistance to the project grows. In March, we witnessed the first of 26 planned community referenda, a process that was cut short in May when the government declared a state of siege in the region. Tahoe's project, while relatively new, follows a pattern of imposition, lack of consultation and repression seen in many communities opposing large-scale development projects in Guatemala.

A community leader from San Rafael Las Flores summarized the importance of the community consultation process: "What we want is for the president and the Ministry of Energy and Mines to realize that communities are doing everything possible to unite and to express our opposition to the projects through community referenda. We only ask that they listen to our opinion."

Since 2005, over one million people in more than 75 community referenda voted to reject mega-projects in their territory. Neither the government nor the mining companies have respected these community decisions. Instead, in July, President Otto Pérez Molina announced a proposed two-year moratorium on new mining projects. This political maneuver came after his administration had already granted more than 100 mining licenses since taking office, and the proposal has been criticized by indigenous organizations for failing to address the underlying source of mining conflict: lack of respect for the right to consultation.

The Western Peoples' Council (CPO), a consortium of organizations dedicated to defending indigenous rights, responded to the proposed moratorium: "The people have not asked for a moratorium on community consultations; the people have demanded that the government respect the decisions of the good-faith community consultations that have overwhelmingly rejected this model of death disguised as mining activity."



The Escobal Project is located in the municipality of San Rafael Las Flores in southeastern Guatemala.

Photo: CPR Urbana

While consultation remains an important tool in the struggle for self-determination, many communities are seeking out additional resources and strategies. The following report outlines the multi-year journey of community resistance to Tahoe's Escobal project. It also includes cases of other communities facing similar patterns of violence and criminalization, and the successful implementation of legal strategies to combat them.

COMMUNITIES GAIN GROUND IN OPPOSITION TO TAHOE RESOURCES' ESCOBAL MINE

Exploration of the Escobal silver mine began in 2006 by Glamis Gold, sold later that year to Goldcorp Inc. Kevin McArthur, CEO of Glamis and Goldcorp until 2008, founded Tahoe Resources Inc. and bought the Escobal project in 2010. While the

Escobal project has changed hands many times, the real leadership has remained the same. McArthur is currently the CEO of Tahoe Resources, while Goldcorp Inc. owns 40% of the company's investment shares. The Escobal project is Tahoe's only mine and according to McArthur is "one of the highest, widest silver deposits in the world."

The similarities between Tahoe Resources and Goldcorp Inc. are reflected not only in their leadership and investment affinities but also in patterns of conflict and violence resulting from the companies' presence in communities. Both Canadian companies have faced complaints regarding the lack of consultation, violence and intimidation against community leaders, and environmental impacts on water sources and public health.



Community authorities count consultation results in Los Planes, San Rafael Las Flores. *Photo: CPR Urbana*

In 2011, four municipalities surrounding the Escobal project organized the first community consultations on the Escobal mine voting overwhelmingly against the silver project. Though the right to consultation is outlined in national and international law, the municipal authorities of San Rafael Las Flores denied citizens the right to a municipal-wide referendum. Nevertheless, communities persisted, and in early 2013 successfully carried out eight community-based referenda before the government

declared a state of siege in May 2013, effectively stymieing the democratic process.

"Minera San Rafael (Guatemalan subsidiary of Tahoe Resources) does not have the social license to operate and they are never going to have the social license to operate," stated Oscar Morales from the Committee in Defense of Life and Peace of San Rafael Las Flores.

LEGAL APPEALS SEEK TO REVOKE TAHOE RESOURCES' LICENSE

In addition to holding community referenda, more than 200 individuals from affected communities expressed their opposition by presenting legal objections to the project, as permitted under Guatemala's mining law. The objections were based on the mine's potential negative impacts on community water supplies. Shortly before announcing the granting of Tahoe's final license on April 3, 2013, government officials notified community members that their objections had been dismissed.

One of the complainants, Quelvin Jiménez, community leader and member of the Xinca Parliament, appealed the dismissal, as his complaint had not been investigated before the license was granted. A federal court in Guatemala City upheld Quelvin's appeal, ruling that the Ministry of Energy and Mines subverted due process in approving Tahoe's license and ordered the ministry to review his complaint.

Formed on the International Day of Indigenous Peoples in 2002, the indigenous Xinca Parliament unites 13 organizations and represents 20 Xinca communities in Santa Rosa, Jutiapa and Jalapa, who work to unite and defend rights of the Xinca people.

Communities and their allies opposing the Escobal project believe the court's decision demonstrates that the license approval process was flawed.

NISGUA Advocacy and Action

April 2013: Denounced approval of license amidst ongoing violence and submitted petition with 4,000+ signatures calling on authorities to conduct a thorough investigation into the violence

May 2013: Released investor alert to key financial analysts and shareholders of Tahoe Resources

June 2013: Participated in submission of complaint to the Ontario Securities Commission regarding Tahoe's failure to disclose vital information

June 2013: Delivered letter to President Molina signed by 30 organizations calling for revocation of the Tahoe license

According to analysis by the Center for Legal, Social and Environmental Action in Guatemala (CALAS), the court's decision should invalidate the license and suspend the project as Guatemala's mining law states that a project cannot receive an exploitation license if complaints are still pending.

Tahoe Resources has appealed the ruling, sending the decision on the future of the project to Guatemala's Constitutional Court. While the impacts of the appeals court decision are still unclear, the ruling underscores the lack of government respect for due process and regard for the concerns of affected communities in favor of the interests of multinational firms, such as Tahoe.

CRIMINALIZATION ATTEMPTS TO DELEGITIMIZE SOCIAL PROTEST

While the appeals court decision represents an important step in the ongoing struggle in defense of territory, the systematic criminalization of those opposing mega-projects continues in San Rafael Las Flores and across Guatemala.

During the last year, there have been more than 70 legal processes filed against community members opposing the Escobal mine. The majority of these complaints were filed by individuals working for or associated with Tahoe Resources.

- Nov 2011 – Local manager for Minera San Rafael accuses seven community members for crimes including kidnapping and terrorism. All charges were found to be without merit.
- Mar 2012 – Mine employee files charges against two community leaders attempting to organize municipal-wide referenda in San Rafael.
- Sep 2012 – 26 people arrested during protest outside mine site. More than six months later all were cleared of charges.
- Apr 2013 – 26 arrested after National Civil Police violently evicted a peaceful encampment outside the mine site. All charges were dropped.
- May 2013 – 18 arrest warrants issued, 12 homes raided and 6 arrested as a result of the state of siege.

Scores of legal processes have been launched against leaders defending territory, not only in San Rafael but also throughout the country, demon-

Repression & criminalization in Huehuetenango

As Santa Cruz Barillas celebrated the provisional release of community leader and ADH member Rubén Herrera from prison at the end of May, legal persecution continues against community members for their resistance to the hydro-electric project.

On August 29, Saúl Aurelio Méndez Muñoz and Antonio Rogelio Velásquez López were detained outside a Guatemala City courthouse where they had arrived for a hearing to officially dismiss a prior accusation against them. Since the state of siege in Barillas in May 2012, the state and the Spanish company behind the project have strategically used criminalization against respected community leaders to counteract social organizing against the project.



Antonio Rogelio Velásquez López pictured above with his family. *Photo: Prensa Comunitaria*

strating a disturbing trend in which companies and their allies manipulate the justice system to undermine community resistance. This misuse of the system impacts families and local communities, potentially exposing them to greater levels of violence, while stigmatizing and marginalizing community resistance.

The role of international solidarity continues to be important, particularly as the criminalization of peaceful protest intensifies in Guatemala. In the words of the Departmental Assembly of Huehuetenango (ADH): "In a very special way, we want to express our thanks for the show of solidarity with our cause. We are confident that this solidarity encourages and strengthens us to continue fighting."

HOLDING INTERNATIONAL COMPANIES ACCOUNTABLE

Despite the ongoing criminalization of community leaders, advances in strategic legal cases that target corporate impunity and government non-compliance offer communities hope.

Tahoe Resources on trial in Guatemala

Tahoe Resources' former security manager, Alberto Rotondo, was arrested for ordering an attack against peaceful protesters outside the Escobal mine, which resulted in the serious injury of six community members. In May, Rotondo was charged with assault and obstruction of justice and sentenced to house arrest. In an attempt to minimize the severity of the attack, Tahoe Resources initially denied that Rotondo had been arrested or charged. The case against Rotondo exemplifies an increasingly common trend in which mine employees are accused of inciting violence near mine sites.



Father Adolfo Augustin Garcia and son Luis Fernando Garcia were wounded in April 27 attack outside the Escobal site. *Photo: Giles Clarke*

HudBay Minerals on trial in Canada

In a precedent-setting decision, an Ontario court ruled that Canadian mining company HudBay Minerals can be tried in Canada for violence carried out by its former Guatemalan subsidiary.

HudBay has been accused of three crimes against the Maya Q'eqchi' people in El Estor including the 2009 murder of Adolfo Ich Chamán and the 2007 rape of 11 women by mine security. The decision marks an important advancement toward justice and opens the door for North American mining companies to be held legally responsible for abuses committed abroad.



"It means everything to us that we can now stand up to HudBay in Canadian courts to seek justice for what happened to us."
-Angelica Choc (center), wife of Ich Chamán and plaintiff on the HudBay case.
Photo: Rights Action

Indigenous peoples challenge the government

On September 3, the Western Peoples' Council (CPO) filed a petition with the Inter-American Commission on Human Rights (IACHR) for the government's failure to consult with indigenous people on the country's mining law. The CPO first challenged the constitutionality of the law last year in domestic courts. In March, the Constitutional Court upheld the mining law, forcing the CPO to turn to international courts to hold the state accountable.

On behalf of the CPO Lolita Chávez declared, "The invasion, forced displacement and plundering of our natural resources has over time represented a historic and systematic violation of our collective rights. It is impossible to live under these conditions."

For more than eight years, NISGUA has actively supported communities in their struggle for self-determination in the face of large-scale development projects. Our accompaniment began with communities impacted by Goldcorp's Marlin mine in northwestern Guatemala and with communities facing displacement as a result of the proposed Xalalá hydroelectric dam in the Ixcán region of northern Quiché. Since then, our work has expanded to support community and indigenous organizations demanding the right to consultation and self-determination throughout Guatemala.

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