

International Organizations Reiterate Support for Guatemalan Communities and Institutions Upholding Rule of Law and Respect for Human Rights in the case of the communities of La Puya and El Tambor Mine

May 24, 2016

The undersigned human rights and environmental law organizations applaud recent efforts by Guatemalan courts to enforce domestic laws and international norms in relation to the right to consultation and corporate accountability in the case of the El Tambor mine, also known as “Progreso VII Derivada.” We reiterate our support for the Communities in peaceful resistance of La Puya in Guatemala.

Guatemalan courts have granted a provisional injunction, ordering the suspension of the license for gold and silver extraction at the El Tambor mine.ⁱ The mine is owned by the company Exploraciones Mineras de Guatemala, SA (Exmingua), subsidiary of US company Kappes, Cassidy & Associates. KCA acquired 100% interest in Exmingua from Canadian company Radius Gold in 2012; Radius receives royalty interest and cash payments from the project.ⁱⁱ

The injunction was granted because Guatemala’s highest court recognized that the State failed its duty to consult the affected communities prior to awarding the license and did not initiate processes to seek the consent of affected Indigenous peoples. The right of Indigenous peoples to consultation is enshrined in ILO Convention 169 and the right to free, prior and informed consent is recognized by Guatemala, a signatory to the UN Declaration on the Rights of Indigenous Peoples.

The recent rulings have affirmed the concerns expressed by communities in San Pedro Ayampuc and San Jose del Golfo. From the time they learned of the mining concession in 2011, they have raised concerns about the lack of consultation, violation of Indigenous peoples’ rights, and detrimental health and environmental impacts of the mine.

International organizations have closely observed the case since the La Puya movement initiated a non-violent sit-in at the entrance to the mine in 2012 to demand their government comply with constitutionally-required protections for Guatemalan citizens. Their legitimate concerns have been met with repression, public defamation and trumped-up criminal charges. Violence has been committed against human rights defenders with impunity. There still has been no real investigation into the June 2012 shooting of a La Puya activist, nor has there been investigation or redress for the serious injuries sustained by protestors during the violent eviction by the police in May 2014. Questions also remain about the incident on the night of April 29, in which two people were injured at the sit-in in front of the MEM.

We reiterate the importance of investigating these acts of violence, as well as addressing the serious concerns raised by the communities in terms of the environmental impact of mining activities on their

water and health. International experts who reviewed the company's Environmental Impact Assessment found numerous deficiencies and concluded that it did not meet basic international standards.

We also draw attention to the fact that the court injunction has set in motion a series of investigations that reveal evidence of possible illegal activity by Exmingua.

On March 10 of this year, the Ministry of Energy and Mines (MEM) enforced the injunction through corresponding administrative measures by suspending Exmingua's license for mineral extraction. A MEM inspection in April verified the company continued to operate, and on May 9, police and prosecutors arrested four Exmingua employees on charges of illegal resource extraction. They had in their possession 19 sacks of gold and silver concentrate, worth an estimated US\$1.9 million in total.ⁱⁱⁱ We are concerned that on May 10, charges were dropped against the men for "lack of merit," released the workers and ordered the sacks of minerals returned to the company, an action that suggests a lack of understanding of the resolutions of Guatemala's highest courts. However, just days later, police and prosecutors carried out four more raids at a clandestine warehouse and recovered 300 sacks, worth a total of approximately \$30 million.^{iv}

The media has revealed that investigators had traced helicopters contracted by the company – allegedly used to transport minerals from the mine site to a farm in El Progreso -- to Juan Carlos Monzón, former Private Secretary to ex Vice President Roxana Baldetti, and to Raúl Osoy Penado, a business man who allegedly served as a front man for Baldetti.^v All have been embroiled in a series of major corruption scandals that led to the arrest of Baldetti and former President Otto Pérez Molina, among many others in 2015.^{vi}

A separate legal case has raised serious questions regarding whether the company possessed the necessary municipal construction permits to operate at the site, including the alleged falsification of these permits.^{vii}

Guatemala has taken important strides to address long-standing challenges of government corruption and impunity. **We commend the Guatemalan courts for their recent rulings that uphold rule of law as well as the efforts of the Ministry of Energy and Mines and the Public Prosecutor's Office** for their actions to uphold the right to prior consultation and ensure corporate accountability in this case.

We call on US company KCA and its subsidiary Exmingua to immediately halt all operations and comply with the recent MEM resolution and the provisional court injunction.

We call on the Public Prosecutor's Office to continue all relevant investigations into alleged criminal acts related to Exmingua, KCA and the El Tambor mine.

We call on the Guatemalan government and the Interior Ministry to ensure the safety of those who participate in La Puya and of Guatemalan citizens who engage in peaceful protest.

We urge the US Embassy to support human rights defenders and condemn the use of hate speech and defamation as a tool to impede their work. Further, we call on the Embassy to take all possible measures to ensure US companies respect the law and human rights, in accordance with domestic legislation, court rulings, and guided by the highest international standards for multinational corporations. **We urge US Ambassador Todd Robinson** to make a public statement to this effect.

Signed:

Guatemala Human Rights Commission/USA
Network in Solidarity with the People of Guatemala
Center for International Environmental Law
Maritimes - Guatemala Breaking the Silence Network
Progressive Leadership Alliance of Nevada
Rights Action Canada
Rights Action USA
Chicago Religious Leadership Network on Latin America
Latin America Working Group
Oxfam
American Friends Service Committee (AFSC)
Maryknoll Office for Global Concerns
American Jewish World Service
Sisters of Mercy of the Americas – Institute Justice Team
International Platform against Impunity

ⁱ See Nov. 2015 Supreme Court ruling granting a provisional Amparo (AMPARO 1592-2014) and May 2016 Constitutional Court ruling.

ⁱⁱ See Radius Gold new release from May 11, 2016, “Radius Gold Comments on Media Reports of Temporary Suspension of Mining Operations at KCA’s Tambor Mine in Guatemala.” Online at: http://www.radiusgold.com/s/NewsReleases.asp?ReportID=748701&_Type=News-Releases&_Title=Radius-Gold-Comments-on-Media-Reports-of-Temporary-Suspension-of-Mining-Ope

ⁱⁱⁱ “Fiscalía de Delitos contra el Ambiente coordina aprehensión de cuatro personas por explotación ilegal de recursos naturales,” Ministerio Público. May 9, 2016. Available online at <https://www.mp.gob.gt/2016/05/09/fiscalia-de-delitos-contra-el-ambiente-coordina-aprehension-de-cuatro-personas-por-explotacion-ilegal-de-recursos-naturales/>

^{iv} “Extraen oro en La Puya y lo transportan en aeronave de Monzón” por Paolina Albani. Diario Digital. May 17, 2016. Available online at <http://diariodigital.gt/2016/05/extraen-oro-en-la-puya-y-lo-transportan-en-aeronave-de-monzon/>.

^v Id.

^{vi} Id. See also information from the CICIG and Public Ministry in the cases of “La Linea” and Puerto Quetzal.

^{vii} See July 13, 2015 ruling from the Juzgado Tercero de Primera Instancia Civil re AMPARO 01050-2014-00871.