



## PARLAMENTO DEL PUEBLO XINKA DE GUATEMALA

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### STATEMENT

IN REGARDS TO THE COMMEMORATION OF THE 09/03/2018 JUDGMENT, MANDATED  
BY THE CONSTITUTIONAL COURT IN RECORD 4785-2017

It has been one year since the Constitutional Court confirmed that the government approval of the EL ESCOBAL and JUAN BOSCO mining projects violated our right to consultation, and ordered the suspension of all MINERA SAN RAFAEL SOCIEDAD ANÓNIMA operations during a consultation process meant to determine whether or not said projects are viable. The Constitutional Court assigned the Ministry of Energy and Mining to be responsible for consulting the Xinka People once the Ministry of Environment and Natural Resources approved the updated area of influence and the environmental management plan presented by the Minera San Rafael. This sentence fulfilled international standards that were not fulfilled in the original negotiation of these mining rights.

Over this past year it has become clear that both the Ministry of Energy and Mines and the Ministry of Environment are completely at the service of the San Rafael Mining Company. They have violated the administrative due process and disobeyed a sentence from the Constitutional Court. We are left with a consultation process in which the Xinka people have no opportunity to adequately contribute our opinions.

The recurring breach of Constitutional Court orders by both ministries and the Minera San Rafael has led us to present the corresponding complaints before the Supreme Court on repeated occasions. The complacency of the Supreme Court in the face of such violations, represented by its silence in the face of such complaints, directly allows for the violations of our rights.

Under the complacency of the Supreme Court, innumerable violations of Constitutional Court orders have occurred despite the fact that our representatives were appointed before the Ministry of Energy and Mining in February of this year. On August 8 and 29 of this year, the head of said ministry sought to carry out a consultation process with the Xinka community without the actual participation of the Xinka people. Some participants of the meeting chose not to continue with the consultation process without the participation of Xinka community leaders, and, as ordered, suspended this illegal process.

The above point, coupled with statements of the mining company to its shareholders, reveal the ongoing conflict between the consultation process and the ministries responsible for carrying it out. We expose this fact before the Attorney General in the hope of developing a prompt and objective investigation of the present case and the possible charge of influence peddling.

Aware of our rights and with hope, we lay the groundwork for Guatemala to develop its consultation process with Indigenous communities. One year after the historical sentence by the honorable Constitutional Court that led to the consultation process, we denounce compliance by the Ministry of Environment and Natural Resources, the Ministry of Energy and Mines, and the Supreme Court. Indigenous people, on the other hand, have very much complied with the consecrated standards of international instruments related to indigenous rights, the jurisdiction of the system of inter-American human rights, and observations by distinct organizations such as the United Nations.

We want to make it clear that the Ministries of Environment & Natural Resources and of Energy & Mining, as well as the Minera San Rafael are responsible for the delay in the consultation process. We will not allow our rights to be trampled on, nor the Constitutional Court judgement issued on September 3, 2018 in file 4785-2017 to be violated. We will mobilize to ensure compliance with this sentence as many times as it is necessary.