



GUATEMALA HUMAN RIGHTS COMMISSION/USA

3321 12th Street NE, Washington, DC 20017 | 202-529-6599 | www.ghrc-usa.org

A May 21 US Embassy statement puts pressure on the Guatemalan Constitutional Court to rule in a manner favorable to US mining interests, undermines community's ability to thrive

May 24, 2018

On May 21, the US Embassy released a statement that refers to a lawsuit by communities impacted by the San Rafael/Tahoe Resources silver mine against the Government of Guatemala for licensing the project without free, prior and informed consultation of Xinka communities as is mandated by international indigenous peoples rights treaties ratified by Guatemala.

Though the statement may appear benign to the casual reader, many human rights advocates closely monitoring the case perceive it pressures, or even intimidate the CC to rule in a manner favorable to Tahoe Resources silver mining company, a Canadian company with an office in Reno, Nevada.

This landmark case will either obligate the state to enforce the rights of indigenous communities as mandated by International Labor Organization Convention 169, or send the message to investors that binding international law will not be enforced.

Since 2011, Xinka indigenous communities and small farmers in the southeastern department of Jalapa have held 18 municipal referendums and community consultations barring mining in the area, but government agencies ignored the legally binding decisions. As the project advanced without consent, a pattern of violence directed against the indigenous and small farming communities opposed to the project emerged.

In July 2017, communities filed the lawsuit. The Guatemalan Supreme Court ruled to suspend all mining operations while the case was being considered. In response, Tahoe Resources sent a [letter to the U.S. Embassy](#) making the unsubstantiated claim that Constitutional Court magistrates were subject to "improper manipulation" and accused the court of "potential judicial impropriety."

The recent US Embassy statement calling for "transparency in the application of the law," could be understood to refer to those baseless accusations made by Tahoe Resources against the Constitutional Court. The Embassy statement also calls for the CC to "decide without delay on cases such as the Minería San Rafael," which is directly in line with the request of Tahoe resources, so that they may resume suspended mining operations.

Through the use of the phrase "clear legal framework" it also appears that the US Embassy is advocating for the creation of secondary legislation to guide the implementation of

consultations with indigenous people at a time when the Guatemalan indigenous movement is rejecting proposed secondary legislation that they see as a threat to their self determination. There are also serious concerns that the Guatemalan legislature, heavily influenced by mining and other special interest groups, might not be capable of writing legislation that would uphold the internationally recognized rights of indigenous people. In many countries in the region, courts apply indigenous rights conventions in their decisions; provisions of ratified international human rights treaties have the same judicial hierarchy as constitutional law in Guatemala and Honduras.

Another Nevada based mining company, Kappes, Cassidy, and Associates, is also awaiting a Constitutional Court ruling, and on May 16 notified the Guatemalan government of its intent to sue for \$300 million in damages and lost profits after the Supreme Court ordered the closure of mining operations.

The overriding national interest of the United States in Guatemala should be to promote a viable, sustainable way of life for its people. This cannot be accomplished by using international leverage that prioritizes profit for a few corporations, exploiting irreplaceable mineral and hydro resources, over the protection communities from the negative impacts of high risk projects.. The Guatemalan people, particularly the indigenous people of Guatemala, need time and the support of the international community to purge their political systems of criminal corruption networks.

The U.S. Embassy statement is in Spanish, below please find a GHRC translation and a link to the original Spanish text.

“A stable investment climate depends on a clear legal framework, respect for the rule of law and transparency in the application of the law. These components are essential to develop Guatemala's abundant natural resources, which drives economic growth, job creation, and improved livelihoods for Guatemalans. Investments must adhere to legal requirements, including respect for human rights and local environmental laws, and must also comply with international conventions.

“In this context, it is important that the Constitutional Court decide without delay on cases such as the Minera San Rafael. The Government of the United States encourages all parties, relevant authorities and local communities to work together to achieve a transparent and win-win solution.

<https://gt.usembassy.gov/es/comunicado-de-prensa/>