

December 19th 2012

Dear Kappes, Cassidy & Associates and Mr. D.V. Kappes,

On November 22nd, 2012 President Daniel V. Kappes of Kappes, Cassidy & Associates (KCA) offered a counter position to a petition generated by the Guatemalan Human Rights Commission/USA (GHRC) and the Center for International Environmental Law (CIEL). The petition was a response to a violent group of provocateurs that targeted the peaceful roadblock at La Puya near San José del Golfo and San Pedro Ayampuc.

Since March of 2012, members of the communities have been peacefully protesting the El Tambor gold mine project, fearing the mine will pollute the local water supplies and cause environmental harms. Non-violent resistance has been met with ongoing threats, physically aggressive attacks, and other methods of intimidation to silence concern for their future.

We are writing to express our concerns about the misinformation that KCA is conveying through letters to both appellants and to the Board of Advisors, and Trustees of CIEL. We denounce the falsehoods as particularly damaging given the country context of political and social violence most often directed at those who work for social justice and human rights.

We, the undersigned, have long-term commitments and a deep understanding of the context in which your company is inserting itself. We understand the situations of resource development and political violence in Guatemala, and want to give you accurate information pertaining to the peaceful roadblock at La Puya.

In May and October 2012, we witnessed this peaceful protest of concerned citizens of San José del Golfo and San Pedro Ayampuc; we listened to local concerns and gained perspectives on the situation. As academics, activists, filmmakers, and researchers, we are well versed in Guatemala's history, and various avenues of 'development' pursued at local and regional levels. We find your methods for opposing the dignity and rights of those in resistance to your company a distasteful example of corporate bullying.

Peaceful protestors at the roadblock are concerned with the future of water, the environment, and the legacy left for future generations. Those who participate are young children, women, men, and the elderly. They are not paid by non-government organizations (NGOs) to be there, as you state in your letter. And which NGOs, in particular, do you believe to be paying the community members? Community members volunteer to participate in a cause that is important to them.

More egregiously, though, Mr. Kappes' letter states that community members who express peaceful activism are "the same people who supported the civil war that raged in Guatemala in the early 1990's. They want to keep the people poor, uneducated, and totally submissive."

This is a false and outrageous statement that cannot go unchallenged. First of all, Mr. Kappes needs brush up on his understandings of major historical events in Guatemala for the internal armed conflict reached its height in the early 1980s, not 1990s.

Mr. Kappes statement, more seriously, is a complete misinterpretation of the findings of the UN-sponsored Historical Clarification Commission (CEH), which examined the 36-year long internal armed conflict which became a genocide – that is, state-directed terror and mass murder against the country’s own Indigenous population and non-Indigenous people working for positive social change. By state-directed terror, the UN Commission identified that the State, the Government, and the Military were responsible for these genocidal acts.

To say that the people of San Pedro Ayampuc and San José del Golfo (those who survived these atrocious acts) are the same people who “supported the civil war” is beyond the pale. Individuals who take part in this struggle are survivors of the 36-year internal armed conflict. Today, these same individuals place their lives in danger once again in the search for justice and a say in the kind, type, and pace of ‘development’ in their communities.

On November 22nd, 2012, activists and NGO’s reported up to 70 people, who claimed to be employees of El Tambor mine, arrived at the site of the peaceful roadblock. Attempts were made to provoke individuals who sat in peace.

Included here is a link to near eighteen-minute video circulated by the *Guatemalan Centro de Medios Independientes*. This film shows KCA and your subsidiary *Exploraciones Mineras de Guatemala* (EXMIGUA) employees, wearing their EXMINGUA shirts, and – particularly the male leader wearing the yellow hard hat using the megaphone – acting in a highly aggressive and threatening manner towards peacefully singing community members of San José del Golfo and San Pedro Ayampuc. We demand transparency and an inquiry into the KCA/EXMINGUA methods of intimidation and involvement at the peaceful roadblock at La Puya.

Please see the *Guatemalan Centro de Medios Independientes* video “Aggression in La Puya” here: <http://vimeo.com/54258266#>

This strategy mirrors those utilized during the genocide by the military and police. This tactic of terror is meant to incite violence to legitimate the use of force by Guatemalan police and military. Threatening acts such as this are a means to intimidate, suppress and frighten the parties involved. Companies who support their workers in such acts of violence should be held accountable to the fullest extent of the law. Encouraging workers to intimidate the local populace displays a lack of understanding of contemporary violence issues and promotes the criminalization of individuals whom have not broken any laws.

Your letters directed towards the CIEL and petitioners displays a narrow view of development. As we interpret your statements, KCA believes in top-down ‘development’ and mining as a means to solve the problems of poverty and inequality. This vision is a failing of the Global North’s comprehension of what ‘development’ means to those who are being ‘developed.’ Not everyone shares a vision of a market-led ‘development.’ Those who oppose mining are not “dooming the locals to a life of subsistence living.” You are assuming that everyone in this area

wants live like those in the Global North. This is false. Subsistence living is not a definition of being poor, it is a way of life many strive for as it means living harmoniously with the environment. Subsistence living is a very positive lifestyle, as it promotes sustainability and equality amongst community members, and the environment.

To argue this point in a different way, in keeping with a pro-mining position, currently, under the new Guatemalan Mining Law (2012), international mining companies take 99 percent of the profits for their directors, shareholder and investors, leaving only 1 percent to be split between the federal and municipal governments in Guatemala. If KCA were really concerned about and motivated by the “development” of the local communities, and the people of Guatemala in general, why would KCA not take, say, 30-40% of the profits for yourselves, shareholders and investors, and leave 60-70% of the profits to set up a community support fund to be controlled and managed by the very communities you are purporting to help? We suspect we know your answer to this division of profits scenario.

“We are not stepping on anybody’s rights”, Mr. Kappes explains in his letter to concerned global citizens who signed the aforementioned petition. However, for the past 9 months, individuals who inhabit the roadblock are peacefully demonstrating against the company’s lack of consultation and engagement, which is a violation of Guatemalan citizens’ rights under Guatemalan legislature and Indigenous rights under ILO Convention No. 169. Your company has not upheld the right to informed and prior consent, even though you were granted exploitation licenses by the Guatemalan government. Your subsidiary EXMIGUA, which was jointly owned between KCA and Vancouver based Radius Gold Inc. until August 31st, 2012, has not responded to community requests for proper consultation. This is not solely a problem of communication between activists and the Guatemalan government; this is an issue with your company's due diligence.

Concerns for environmental degradation are at the forefront of community member’s consternation. San José del Golfo and San Pedro Ayampuc are located in the dry corridor of Guatemala, making water a primary concern. Gold mining requires significant amounts of water and chemicals to extract minerals from the sub-terrain. Open pit and underground extraction both involve significant relocation and damage to the natural landscape. Mr. Kappes specifically states that “the disturbance will disappear” once the project is complete. Mountains take millions of years to form. “Disturbances”, such as mining, cannot replace natural formations and ecosystems and it seems ridiculous to make false claims to communities that a corporation can.

“Disturbances” stem deeper environmental disruptions alone. Mining is dangerous and poses health risks. In Guatemala, individuals who apply for work in mines are often financially stricken and in exchange for a routine wage, employees are subjected to short and long-term health concerns. Furthermore, community health implications are of great concern. Those not participating in mining operations are still at risk. Leaks, spills and errors even under ‘best practices’ are always a hazard. Those opposed to the El Tambor mining project are equally concerned for acute and chronic health problems.

By making false claims about the participants of the peaceful roadblock, as well as national and international actors who are in solidarity with this resistance movement, KCA is wrongfully

criminalizing individuals and groups. Such accusations further endanger human rights defenders (HRDs) in Guatemala and attempts to delegitimize justifiable concerns surrounding ‘development.’ Your statements perpetuate a climate of fear that fosters community divisions and social strife. Furthermore, your response to critiques by a reputable NGO shows a lack of openness to legitimate concerns to how you are operating Guatemala. As concerned global citizens, it is our right to question why individuals are opposing your mine.

Your letter makes very vague statements about a number of issues. In answer to your call for questions, we request the following information:

1. If you will not “pollute or commandeer the local water supply”, how do you intend to recover gold using conventional grinding and leaching methods Radius Gold Inc. outlines in 2004 Technical Report for the El Tambor Gold Project?
2. You outline in your letter to the Board of Advisors and Board of Trustees at CIEL that you will include a summary of your projects with communities. Where is this?
3. Where are the three-volume environmental/social outlines that you stated in your letters? Did Radius Gold Inc., KCA, or a third party group conduct the three-volume environmental/social outlines?
4. A recent video made by *Guatemalan Centro de Medios Independientes*, shows attempts by KCA/EXMIGUA employees to disband the peaceful resistance at La Puya. We demand transparency and an inquiry into the KCA/EXMINGUA methods of intimidation and involvement at the peaceful roadblock at La Puya. What is your role in this group’s attempts to insight fear at the community roadblock?
5. You write that you are not “stepping on anybody’s rights”. Have you complied with the Guatemalan Constitution providing an open and public community consultation? If you have, where are these results published? You write that the “majority of the local citizens are supporting us.” Where is the documentation of this? Who makes up this majority? Did Radius Gold Inc., KCA, or a third party conduct a legal consultation?
6. Mr. Kappes states that once the mining project is terminated, “the disturbance will disappear.” What is your plan for reclamation once El Tambor mine is complete? How will you return the geographical landscape to its original state and ensure environmental and health safety for communities in the future?
7. Mr. Kappes states that members of the peaceful protests at La Puya “involve a few people who are being paid to be there by NGO’s.” Which NGO’s are paying community members to be there Mr. Kappes?

Finally, beyond a request for your responses to our questions listed above, we demand that you publically retract the statements made about those who oppose the mine's development. Will you publically apologize for mis-characterizing concerned citizens as supporters of Guatemala's internal armed conflict ("civil war" as you wrote) and desiring to keep their communities in poverty?

We respectfully request a response to our questions and demands above.

Signed:

Alexandra Pedersen

Ph.D. Candidate, Queen's University

Catherine Nolin

Associate Professor of Geography, University of Northern British Columbia (UNBC)

Grahame Russell

Co-Director of Rights Action

Background Information

Guatemala's violent history is well documented. After the CIA coup d'état in 1954, Guatemala endured a 36-year civil conflict (1960-1996) that is internationally recognized as genocide against the Indigenous Maya people. The 1999, United Nations sponsored the Commission on Historical Clarification (CEH) and the Catholic Church led Recovery of Historical Memory (REMHI) which both estimate as many as 200,000 people were killed during the conflict, 50,000 were 'disappeared', 1 million internally displaced, and 200,000 refugees fled the country. According to the CEH, the Guatemalan government's security forces committed 93 percent of the human rights violations. While majority of the human rights abuses targeted the Indigenous Maya, non-Indigenous human rights defenders (HRDs) were targeted for opposing state policies and demanding social justice.

After the Peace Accords were signed in 1996, legacies of terror from military tactics and policies during the war continued to permeate contemporary Guatemala. Impunity is the norm in this

Central American country; few perpetrators from the genocide are brought to justice, and the legal system is riddled with corruption and limited punishment. Despite the civil war, mining companies continued to operate within Guatemala during the conflict. In the early 1960's, the Canadian corporation INCO helped construct Guatemala's mining laws. This mining company is the only corporation mentioned in the CEH, as having part in one of the most infamous massacres of 1978 in Panzós. Neoliberal policies promoted foreign direct investment (FDI) as a means to 'develop,' while the Government pursued the extermination of the country's mainly Indigenous population. Today, former General from the war and now President Otto Pérez Molina, continues to welcome corporations, such as KCA, into socially and environmentally sensitive areas, despite local opposition. President Pérez Molina encourages the military and national police to violently suppress Indigenous and non-Indigenous communities who oppose 'development' in the forms of hydroelectric dams, petroleum ventures, and mining among others. While the government promotes methods of terror, transnational corporations continue to view Guatemala as a responsible place for investment.

HRDs are singled-out for reprisal in Guatemala. If you recall, on June 13th of this year, local community leader Yolanda "Yoli" Oquelí Veliz was ambushed by two armed gunmen and shot for her participation in the peaceful resistance outside San José del Golfo. Ms. Oquelí Veliz, suffered life threatening injuries, but today she continues in solidarity and peace with her community. This is just one of hundreds of attacks against those who propose an alternate way of life in Guatemala. In a GHRC 2008 report, between 2000 and 2008, there were more than 1,300 attacks made on HRDs in Guatemala, and this number continues to grow. Reports included physical and verbal assault, murder and death threats. The targeting of HRDs is of primary concern for many national and international non-government organizations (NGOs) that promote peace and security for marginalized populations in the Global South.