



The Peaceful Environmental Justice Movement at 'La Puya'

VIOLENCE, REPRESSION AND RESISTANCE AT THE EL TAMBOR GOLD MINE IN GUATEMALA



The Guatemala Human Rights Commission/USA | November 2014

Since 2010, the communities of San José del Golfo and San Pedro Ayampuc, just outside of Guatemala City, have denounced the imposition of a gold mine without community consent. Residents are concerned about the health and environmental impacts of the mine.

On March 2, 2012, community members from around the mine site joined together to form a human blockade, preventing machinery and mining employees from entering the site. Working in shifts, members of the peaceful resistance movement -- which became known as "La Puya" -- maintained a continuous, 24-hour presence for over 2 years. Then, on May 23, 2014, community members were violently evicted from the entrance to the site by Guatemalan riot police. At least 20 people were injured, and 7 were taken to the hospital in Guatemala City.

Although Guatemalan police have since escorted mining equipment onto the site, the men, women and children of La Puya have maintained a constant presence and continue to oppose the project. They have received overwhelming support from national and international organizations and individuals in solidarity with their struggle in defense of water, life and community wellbeing.

THE EL TAMBOR MINING PROJECT

- Canadian company Radius Gold, Inc. discovered gold in the area in 2000.
- In February of 2012, Radius announced it had received all the necessary permits for construction of the mine and would begin gold production 2-3 months after receiving the mining permit.
- In August of 2012, Radius announced that it had sold 100% of the interest in its Guatemalan subsidiary company, EXMINGUA, to US company Kappes, Cassidy & Associates (KCA). Radius cited a "corporate strategy to divest problematic assets."
- The mine is expected to produce 150 tonnes/day or 52,500 tonnes/year.
- In Guatemala, mining companies receive 99% of the profits, leaving just 1% to be split between the state and municipal governments of Guatemala.

COMMUNITY CONCERNS

- Residents were neither informed nor consulted about the project, as required under both Guatemalan law and ILO Convention No. 169.
- Residents are concerned about environmental degradation and contamination of their water supply. The Environmental Impact Assessment (EIA) conducted by the mining company was heavily criticized by mining experts, who found it inadequate, misleading, and full of faulty data.
- In an already dry region, where families sometimes only have access to fresh water twice a week, the mine would use 155 cubic meters of water per day -- an amount approximately equivalent to what one family would use in a year.
- Residents desire the ability to determine what constitutes "development" in their communities, calling for the prioritization of wellbeing over profit and recognition of the importance of protecting the environment.

REPRESSION AGAINST LA PUYA

MAY 8-9, 2012: Two months after the beginning of the blockade, the mining company -- backed by 400 riot police in 50 trucks -- attempted to break the resistance at La Puya and bring mining machinery into El Tambor at 1:00 AM in the morning. Hundreds of residents stood in front of the police and machinery, denying them passage. The police and mining vehicles ultimately turned around.

JUNE 13, 2012: Yolanda Oqueli -- an anti-mining activist and leader at La Puya -- was shot in the back by two men on a motorcycle while leaving her shift at the blockade. Before the attack, Yolanda and other activists had received threats and suffered acts of intimidation. Just days before the shooting, they had presented a formal complaint to the public prosecutor's office. Yolanda was granted protective measures from the Inter-American Commission on Human Rights, but the attack has not been adequately investigated, and no one has been charged for the crime.

MID-NOVEMBER 2012: At least 70 people from San José del Golfo and surrounding municipalities wearing EXMINGUA hard hats and shirts tried to force their way into the mine demanding their right to work. Hoping to open the door for intervention from public security forces, the mine personnel acted in a highly aggressive manner, attempting to provoke the population. Throughout late November and early December, people hired by the mining company continued to harass and threaten the peaceful protesters.

DECEMBER 7, 2012: Hundreds of riot police arrived at the roadblock and began tearing down the banners and temporary kitchen. The members of La Puya sang, prayed and lay down in the road as the police attempted to forcefully evict them.

APRIL 12, 2014: Trucks carrying bulldozers arrived early in the morning, accompanied by a police escort. By the afternoon, 200-300 police officers were present in an attempt to intimidate members of La Puya. The situation remained tense, but calm, and the machinery was ultimately removed from the site.

MAY 1, 2014: Despite the absence of credible evidence against them, three members La Puya were found guilty of illegal detention, coercion and threats against employees of EXMINGUA. They were each sentenced to 9 years in jail, though the jail time can be waived if they pay a fine of about \$4,212 (a little over a dollar a day for the entirety of their sentence). The three men decided to appeal the sentence.

MAY 23, 2014: After more than two years of peaceful resistance to the mine and repeated calls for dialogue, the communities in resistance were violently evicted from the entrance to the mine. Hundreds of police used tear gas and flash bombs to remove the women who formed the front lines of the resistance. Police beat protesters -- including women, children and the elderly -- and were also caught on video throwing rocks and sticks at community members. These actions left 23 people injured, and there has been no response from the Guatemalan government about allegations of excessive use of police force.

MAY 27: Five other leaders were tried for illegal detention, coercion and threats against mine employees. A judge ordered the house arrest of the four male leaders, and they are still awaiting the conclusion of their case. The judge dismissed the charges against the fifth leader of the peaceful resistance movement, Yolanda Oqueli, on the grounds of lack of evidence.

ONGOING: Though the physical resistance has been broken, members of La Puya continue to maintain a presence at the mine site and investigate other legal and political actions which may halt the mine. Residents report that members of the police, who have been permanently stationed at La Puya, continue to harass and intimidate them.



Community members react to tear gas during the May 23 eviction

A FAULTY ENVIRONMENTAL IMPACT STUDY

Community members were never given the opportunity to read and submit comments on the Environmental Impact Assessment (EIA) conducted by mining company KCA.

In March of 2013, Rob Robinson, mining and environmental engineer, reviewed the EIA and deemed it severely inadequate. "As a firm with operations all over the world," Robinson commented, "KCA should be aware of the levels of engineering, analysis and documentation typically required for responsible EIAs."

Then, in June of 2014, Dr. Robert Moran -- a water quality, geochemical and hydro-ecological specialist -- confirmed that the EIA conducted for the El Tambor Mine was full of misleading information, faulty or absent data, and concerning omissions and ambiguities. Dr. Moran stated:

"The Progreso VII EIA [El Tambor] is the worst quality EIA / EIS I have reviewed in more than 42 years of professional hydrogeology / geochemistry experience, involving hundreds of mines, worldwide."

"...this [project] goes against the interests of the Guatemalan population."

NO RESPECT FOR RULE OF LAW

The government granted permits for the El Tambor mine over a decade ago without informing communities, and has failed to carry out legally required community consultations.

The government has also failed to properly investigate acts of violence committed against peaceful protesters -- while at the same time criminalizing community leaders of La Puya and targeting international solidarity organizations. After the violent eviction on May 23, 2014, two volunteer human rights companions with Peace Brigades International (PBI) who were present at La Puya on that day were notified that their temporary Guatemalan residence permits had been revoked. After the international community raised alarm and when government authorities were unable to produce any evidence against them, the two volunteers were ultimately allowed to stay.

After the May eviction, two members of the Guatemalan Congress called on government officials to answer questions. Congressman Carlos Mejia requested that the mine license be immediately suspended while Congressman Amilcar Pop requested that the ministries carry out a study of the water around the mine and issue a statement about the veracity of the Environment Impact Statement. So far, however, none of the requests have been carried out.

LEGAL COMPLAINTS

While calling for dialogue and rebuffing repeated acts of repression, citizens affected by the mine also filed several complaints seeking to address a series of violations:

- A criminal charge was filed against two employees of KCA's Guatemalan subsidiary (EXMINGUA) for threats and coercion against independent journalists. Both eventually pleaded guilty and were sentenced to 2 years in prison. As a result of their plea bargain, the employees were allowed to pay a fine instead of serving time in jail.
- A legal complaint has been filed against the Director of Energy and Mines for approving the mining license without having previously consulted with the affected communities.
- A legal action has been filed against the municipality of San Pedro Ayampuc for allowing the mine to build infrastructure without an approved construction license, potentially threatening the water and health of the communities and endangering the environment.

FAILED NEGOTIATIONS

Residents have been calling for negotiations with the government through the National Dialogue System -- a formal mechanism for resolving national conflicts -- to address their concerns about the mine's impact on their health and environment.

After an intense period of aggression and intimidation against protesters in late 2012, which failed to break their blockade of the mine entrance, the government entered into a dialogue process with La Puya. The first dialogue occurred on December 20 and was witnessed by the UN Office of the High Commissioner for Human Rights and GHRC.

Two high-level conversations happened in March and June of 2013, including a meeting with the President himself. However, the government then cut off dialogue and failed to follow through with any aspect of prior agreements made with community members.

Community members involved in the process have expressed concerns that the dialogue process is not transparent, and that government officials represent corporate interests and are unwilling to compromise.

Despite these challenges, residents continue to call for a substantive and legitimate dialogue process with their government.

THE ROLE OF THE US-OWNED MINING COMPANY & SUBSIDIARY

Despite the weak rule of law in Guatemala, an insufficient Environmental Impact Assessment and overwhelming opposition to the mine, KCA continues to push the El Tambor project forward.

KCA has failed to properly respond to actions taken by its subsidiary, *Exploraciones Mineras de Guatemala (EXMINGUA)*, to harass, threaten and intimidate protesters. In mid-November 2012, activists and NGOs reported that up to 70 people, who claimed to be employees of the Tambor mine, arrived at the site of the peaceful roadblock. A video circulated by the *Guatemalan Centro de Medios Independientes* shows KCA and employees of EXMINGUA acting in a highly aggressive and threatening manner toward peaceful community members. EXMINGUA has also paid gang members to act as "company employees" and accuse the protesters of denying them access to jobs. The US denied a visa to EXMINGUA's attorney due to suspected connections to illicit trafficking.

A report from the American Bar Association includes a summary of the response of KCA CEO Dan Kappes to concerns raised by civil society groups about abuses related to the El Tambor mine:

Throughout November 2012, the president of KCA, Dan Kappes, distributed several open letters to advocacy groups in Guatemala and the United States, accusing non-governmental organizations that support those opposed to the mine of violating the human rights of the company and of local citizens. He also accused non-governmental organizations of paying locals to engage in protests, without providing any evidence to substantiate this claim. In one letter, Mr. Kappes asserted that the "people who oppose us are the same type of people who supported the [Guatemalan] civil war....They want to keep the people poor, uneducated, and totally submissive." This letter was widely distributed, and many copies of it were plastered on a stadium the day that various activist groups had gathered there to discuss attacks on human rights defenders. Several human rights groups expressed concern that Mr. Kappes' assertion could inflame social conflict and marginalization in an already fraught environment.

-- The American Bar Association Report: *Tilted Scales: Social Conflict and Criminal Justice in Guatemala*

RECOMMENDATIONS

Citizens affected by the mine are calling on the Guatemalan government to halt the mine until:

- A good-faith dialogue process, respecting the communities' terms, is re-initiated
- A new environmental impact assessment is carried out
- A hydrology study is carried out
- A study is carried out to understand the cumulative impacts of the 20 mining projects planned in the area
- A full investigation is carried out into the shooting of Yolanda Oqueli
- Mechanisms are implemented to protect human rights defenders

Non-state actors have a responsibility to protect human rights. The US company KCA should:

- Follow the American Bar Association's recommendation to adopt "human rights policies and procedures and conduct ongoing human rights due diligence of their operations"
- Ensure proper training and vetting of personnel hired by KCA or its subsidiaries
- Halt all operations until the completion of a dialogue process between the Guatemalan government and affected communities

The US Government should:

- Attend hearings of community members facing trumped-up criminal charges
- Encourage all US Companies and their subsidiaries to respect Guatemalan law and abide by international human rights standards



The Guatemala Human Rights Commission/USA | www.ghrc-usa.org | (202) 529-6599

The Guatemala Human Rights Commission/USA (GHRC) is a non-profit, grassroots, solidarity organization dedicated to promoting human rights in Guatemala and supporting communities and activists who face threats and violence. GHRC documents and denounces abuses, educates the international community, and advocates for policies that foster peace and justice.