

CRIMINALIZATION OF PROTEST IN SAN RAFAEL LAS FLORES TO IMPOSE *EL ESCOBAL* MINING PROJECT

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Context:

In Guatemala defenders of civil rights related to extractive industry projects work in a complex legal and political environment because of the high level of conflict due to government granting of mining licenses over the strong opposition of local affected communities. Indigenous and non-indigenous communities have joined to oppose mining projects in over 80 consultations in which over a million citizens participated. Two of these consultations were legally challenged but were eventually declared legally binding by the Guatemalan Constitutional Court.

1. Location of the El Escobal mining project

The El Escobal mining project, a subsidiary of the Canadian company Tahoe Resources Inc., is located in the municipality of San Rafael Las Flores in the Department of Santa Rosa, 90 kilometers from Guatemala City. Yet its influence extends into the Santa Rosa municipalities of Nueva Santa Rosa, Casillas and Santa Rosa de Lima as well as the municipality of Mataquescuintla in the Department of Jalapa.

2. Industrial activity begins

The El Escobal mining project is owned by the company Minera San Rafael Inc., which in turn is owned by the Canadian-US Tahoe Resources Inc. This project began with the purchase of land from the San Rafael Las Flores municipality in 2009-2010, and the development of project infrastructure in late 2011 and early 2012. This infrastructure development was a powerful lightning rod for the community because it was initiated when the company had not yet obtained a license to operate the mine. To this day, the mining company continues its construction of project infrastructure, has already completed the construction of its mining operation tunnels and is seeking a license to expand the mine into adjacent areas.

3. Community Rejection of the Mining Project

From the beginning, the El Escobal mining project was overwhelmingly rejected by the citizens of the municipalities of San Rafael Las Flores (where the industrial plant for development of the mine began to be constructed), as well as Nueva Santa Rosa, Casillas and Santa Rosa de Lima in the Department of Santa Rosa, and Mataquescuintla and Jalapa in the Department of Jalapa. Yet according to publications by Tahoe Resources Inc., owner of Minera San Rafael Inc., these were precisely the municipalities where development of a two thousand square kilometer mining district was planned.

There are approximately 621,000 people living in the Departments of Santa Rosa and Jalapa who would be directly and indirectly affected by the mining project. The population in these communities is mostly mestizo, and about 5 percent identify themselves as Xinca (one of the 4 indigenous peoples in Guatemala.)

There are about 20,000 people who are directly affected and are dedicated to agricultural production for the domestic market and for export to the United States of products such as tomatoes, onions, chili peppers and coffee. They also produce beef and milk products for the local market. Their livelihoods and subsistence activities are at risk because the mining license occupies 60 square kilometers and reduces land available for agriculture while increasing the demand for water, as mining operations utilize a high volume of water resources.

Community rejection of the project is based on the threat of the project to the area's hydrological resources, including groundwater and natural springs that supply community drinking water, and water for agriculture and livestock; risk of other environmental impacts including air and noise pollution; and the refusal of the municipal government of San Rafael Las Flores to carry out a community consultation before the granting of the mining license in the project area.

This led the indigenous and non-indigenous communities in the affected municipalities to organize into various local groups (see below) that have been strongly supported by the catholic church (via the Diocese of Santa Rosa de Lima presided by Bishop Sagastume) and several networks of international organizations.

The affected communities filed several legal actions to try to stop the company from being granted a mining license by presenting at least 250 administrative actions of opposition to the Ministry of Energy and Mining. Instead of processing these administrative actions as required by articles 46 to 48 of the Mining Law, the Director General's office at the Ministry of Energy and Mining rejected the processing of the actions and granted the mining license that same day.

Communities in the Department of Santa Rosa organized in order to resist the mining project and stop it from being imposed on them. They formed the **Committee for the Defense of Life and Peace of San Rafael Las Flores**, a group of men and women from the municipality of San Rafael Las Flores who opposed the mining project. In addition, a pastoral commission – the **Diocesan Commission for the Defense of the Environment (CODIDENA)** – was founded by the Diocese of Santa Rosa de Lima in the Department of Santa Rosa and presided by Bishop Bernabé Sagastume, who has accompanied the municipalities in peaceful protests to defend the human rights of affected communities.

Several Xinka indigenous community organizations joined the community's struggle for life and natural resources: Parliament of the Xinka People of Guatemala; Xinka Indigenous Community of Santa María Xalapán, Jalapa; and community groups from the municipality of Mataquescuintla, Jalapa.

4. The process of criminalization of community groups by Minera San Rafael and the Guatemalan government

Based on community opposition of the mining project, the mining company began a process of criminalization of protest that was endorsed and supported by the Guatemalan government. The actions of over 125 people have been criminalized in various legal proceedings. Despite the large number of people who have been persecuted, denounced, imprisoned and taken to trial, all have managed to maintain their innocence before the respective courts. No advocate of resistance to the El Escobal mining project has been convicted of any charge, and all current legal proceedings have now been completed.

5. List of the cases of criminalization

- Criminal complaint against seven members of the Committee for the Defense of Life and Peace of San Rafael Las Flores presented by Minera San Rafael Inc. in December 2011.
- Illegal detention and incarceration of 33 members of the Diocesan Commission for the Defense of the Environment in September 2012.
- Illegal detention and incarceration of 26 members of community groups from the municipality of Mataquescuintla, Jalapa on 11 April 2013.
- Incarceration of 17 members of various community groups who oppose El Escobal, on 2 May 2013.
- The attack against Alex Reynoso and his daughter Topacio Reynoso on 14 April 2014, in which Topacio was killed. This case remains unresolved and is under investigation by the public prosecutor's office of Jalapa. Alex Reynoso was injured during a second attack a few days ago, on 17 October 2015. Both Topacio, before she was killed, and her father to this day have been active members of the local resistance movement that is demanding the right to community consultation.

6. Active Legal Proceedings

There are active legal proceedings related to the two mining licenses for the "El Escobal" and "Juan Bosco" operations:

- The "El Escobal" license was suspended by the Appellate Court of Guatemala in June 2013 for not following due process of law prior to the granting of the license. Currently, the Constitutional Court must issue a final opinion in this regard.
- The environmental impact study presented for the "Juan Bosco" license has been suspended by an administrative court (Sala Quinta del I Tribunal de lo Contencioso Administrativo) of the Constitutional Court in response to a legal action presented by CALAS. The Constitutional Court is expected to issue a decision regarding the approval of the Environmental Impact Statement in a few days.
- The mining company is facing criminal proceedings around the industrial pollution of water in the El Escobal creek which is a tributary of the Los Esclavos river. This has resulted in house arrest of the manager and legal representative of the company during the initial oral and public phase of the proceedings. (Source: Record #1048-2012 of the criminal court of first instance of the Department of Santa Rosa).

- Alberto Rotondo, the Chief of Security for Minera San Rafael SA, a subsidiary of Tahoe Resources, is on trial in the criminal court of the Department of Santa Rosa, for ordering the shooting of members of the community and causing 11 to be severely wounded. He is currently under arrest. His trial starts on 20 January 2016.
- Tahoe Resources is facing a civil action in the Supreme Court of British Columbia, Canada, presented by 7 of the victims of the Chief of Security of Minera San Rafael S.A. demanding justice and reparations.

7. Recommendations

We ask members of US Congress to consider the following actions to help bring justice and resolution to this case in Guatemala:

1. A congressional delegation visit to see the impact of the project and to talk to affected communities.
2. A letter to Guatemalan members of Congress from the Members of this Commission and your colleagues in US Congress urging them to revise and strengthen Guatemalan mining law on human rights, community consultation and environmental impacts.
3. A letter from members of this Commission and your colleagues in US Congress to the next President of Guatemala (the runoff election is October 25th – in 2 days) urging him to spearhead a new initiative to protect defenders of human rights who work peacefully to secure citizen rights around mining projects.
4. A letter to Secretary of State Kerry requesting that he do all he can to pressure the Guatemalan government to hold accountable and punish those who have been implicated in corruption and human rights abuses, including and in particular members of the armed forces, the police and local officials.
5. Continued strong support and funding for CICIG and a request that CICIG take on an in depth investigation of Minera San Rafael S.A. (Tahoe Resources) and perhaps one or two other key cases of corruption and collusion between the government and the mining sector.