

May 30, 2018

Ambassador Luis Arreaga
U.S. Embassy in Guatemala

CC: Ambassador Deborah Chatsis
Canadian Embassy in Guatemala

CC: Program Officer Jennifer Echeverría
Grupo Filtro

RE: Interference in Guatemalan courts in favor of Tahoe Resources

Dear Ambassador Arreaga,

The below signed organizations are deeply concerned about U.S. government interference and threats of international lawsuits, since a Guatemalan court [provisionally suspended Tahoe Resources' Escobal silver mine](#) in southeastern Guatemala. The mine has been suspended by order of the court since July 2017 in response to a suit filed against the Ministry of Energy and Mines for discrimination and for not having obtained the prior consent of the Xinka Indigenous population. One month prior, in a separate community-led initiative, residents from five municipalities began a [peaceful protest](#) on the road leading to the mine over concerns about the environmental and social impacts of the project. The protest effectively halted mine activity and continues to date.

Since then, U.S. congressmen, representatives of the U.S. Commerce Department, and the U.S. Embassy in Guatemala have made extraordinary efforts to influence the outcome of the lawsuit in favor of Tahoe Resources. On various occasions, U.S. officials have reinforced and repeated the company's problematic rhetoric via direct communication with the Guatemalan President, in internal letters written by U.S. representatives that were made public by the company, and in a Congressional letter urging the government to do more to improve the investment climate for U.S. businesses.

On May 21st, 2018, the U.S. Embassy in Guatemala released a [public statement](#) highlighting the importance of natural resource extraction and calling on the Constitutional Court to "issue without delay" the final resolution on Tahoe's case. Given the overwhelming opposition to mining throughout Guatemala and the pattern of conflict and violence associated with Tahoe's project in particular, the U.S. Embassy statement is reprehensible. The U.S. Embassy's effort to interfere with the independence of the Guatemalan judiciary is out of place and puts environmental defenders and indigenous leaders who are legitimately and peacefully opposing mining projects at greater risk of repression.

While U.S. intervention in Guatemala's independent judicial processes is fundamentally wrong, [Tahoe Resources has lobbied for and stated](#) that U.S. intervention will swing the court decision in their favor. On September 25th, 2017, Tahoe CEO Ron Clayton remarked that, upon Tahoe's request, the U.S. government "had a big influence on even this last court decision", referring to the Guatemalan Supreme Court ruling earlier the same month, which temporarily reinstated the company's operating license.

Adding to the climate of conflict and pressure on the courts is the threat of international arbitration. On May 8th, 2018, the Washington-based International Law Institute [submitted a brief to the Constitutional Court](#) flagging the risk of international arbitration should the court not permit Tahoe Resources to continue operating its conflict-plagued mine. The brief was filed by Guatemalan lawyers whose firm represents Tahoe Resources' wholly owned subsidiary in Guatemala, Minera San Rafael. Just over a week later, on May 16th, Nevada-based Kappes, Cassidy & Associates (KCA) [filed notice of its intent to sue the Guatemalan government](#) under the Dominican Republic–Central American Free Trade Agreement (CAFTA-DR) for at least US\$300 million. KCA based its claim on the 2016 suspension of its Tambor gold mine for lack of prior consultation with affected communities, as well as the Ministry of Energy and Mine's suspension of its export license and community protests that it claims prevent it from further exploration work.

Such interference, through U.S. government lobby and threats of costly international lawsuits against the Guatemalan government, only serve to escalate tensions and cast doubt on judicial independence in Guatemala. These actions heighten the threat of violence and repression against Indigenous and non-Indigenous communities opposed to Tahoe Resources mine, as well as risks for the ongoing peaceful resistance to KCA's Tambor project.

Finding a "win-win solution", as the U.S. Embassy bulletin states, should not be the priority of the Constitutional Court. Rather, affected communities must be guaranteed due process concerning discrimination and the violation of their right to self-determination.

As the Constitutional Court assesses this case, the U.S. Embassy, the mining companies and their associates, must stop interference aimed at pressuring the Court to rule in Tahoe's favor. We urge the Embassy to retract its most recent statement and take concrete steps to support human rights defenders currently at increased risk for their legitimate and peaceful defense of their land, water, and livelihoods.

Please contact Becky Kaump from the Network in Solidarity with the People of Guatemala at becky@nigua.org; we look forward to your reply.

Signed:

Network in Solidarity with the People of Guatemala
Maritimes-Guatemala Breaking the Silence Network
United for Mining Justice
Earthworks
MiningWatch Canada
Guatemala Human Rights Commission
Mining Injustice Solidarity Network – MISN
Protection International
Consejo Diocesano de Defensa de la Naturaleza – CODIDENA
Parlamento del Pueblo Xinca de Guatemala

BACKGROUND

“Human rights defenders, especially those protecting their communities’ lands and resources, suffer threats and attacks on a consistent basis...

At the root of this violence is institutionalized racism and discrimination against Guatemala’s indigenous population. Their inherent rights to their traditional lands, territories and resources are not recognized,” [Victoria Tauli-Corpuz](#), UN Special Rapporteur on the Rights of Indigenous Peoples following her mission to Guatemala in May 2018

Tahoe Resources is a Canadian company headquartered in Reno that has consistently [undermined impacted communities’ right to consultation](#) and consent, both of indigenous and non-indigenous people in order to impose the Escobal silver mine in San Rafael Las Flores in southeastern Guatemala. It has repeatedly [misrepresented broad-based peaceful organizing](#) against mining in the region, [defaming and deligitizing](#) those lawfully and peacefully organizing against mining in the region; an action that has put human rights defenders at greater risk of repression and criminalization.

Tahoe Resources also [pressured the Guatemalan state to militarize the area](#) in order to impose the mine. Its presence has provoked [violence, conflict and criminalization](#), including an [armed attack by private security guards](#) against peaceful protesters, which landed the company in British Columbia courts where a [case is proceeding for negligence and battery](#).

Since Tahoe’s exploitation license was effectively suspended in June 2017 due to community opposition, and [legally suspended in July 2017](#) due to a Supreme Court ruling, Tahoe has [ramped up lobbying efforts in Canada and the U.S.](#), urging both governments to take action on the company’s behalf.

Despite [well documented cases](#) of violence, environmental contamination and lack of local support, the Canadian and US Embassies in Guatemala have ceded to the company’s demands and have used their diplomatic and economic trade power to ensure that mining operations at Tahoe Resources’ Escobal project have moved forward. These governments have overtly backed the Tahoe project; from the licensing and construction phase to the current legal battle before the Constitutional Court. [A report](#) by the Washington-based Council on Hemispheric Affairs goes so far as to note, “The Canadian government actively assists the extractive industry without requiring that their mining companies respect the environment and human rights.”

Timeline of Tahoe Resources lobby efforts and intervention in Guatemala:

February 2011: According to [The Walrus](#), Canadian embassy emails report being pressured by the Canadian mining sector to dialogue with the newly inaugurated Otto Pérez Molina government to push a new, modernized mining law, and to commend the newly appointed Ministry of Energy and Mines, Erik Archila. Archila, the “chosen minister” referenced in the emails, was later forced to resign and is currently facing charges for his involvement in the corruption scandal that brought down the government of Otto Pérez Molina. Goldcorp Inc, fully owned the Escobal project until May 2010 and retained 40% of shares until June 2015. [Goldcorp personnel have also been implicated](#) in illicit campaign financing to the government of Otto Pérez Molina.

November 2011: More than 250 Indigenous Xinca and Mestizo people from affected communities present formal objections to Tahoe's request for a licence from the Ministry of Energy and Mines. There is mounting pressure in Guatemala to approve the exploitation licence.

September 2012: Within the context of uncertainty over the future of the Escobal project due to local opposition, four Canadian members of Parliament and a member of Senate accept an invitation from Goldcorp Inc to travel to Guatemala. Goldcorp Inc is still the major shareholder in Tahoe Resource at this point. The visit came after Goldcorp informed the Parliamentary Standing Committee of Foreign Affairs and International Development: "In Guatemala, I would like to see them modernize their mining regulations." While in Guatemala, the junket visited with private sector and Guatemalan Ministers.

December 2012: Governor General David Johnston visits Guatemala. He reportedly urged communities in opposition to mining to dialogue with mining companies and their promoters, noting he was "convinced that with all the information on the table, communities can understand that mining activities are good for the development of society." During his visit, communities in resistance to the Tahoe mine staged a protest in front of the Canadian Embassy to draw attention to the lack of local consent for the project and to denounce Canadian government support.

April 29, 2013: Two days after seven men peacefully protesting near the Escobal project are shot by mine security, and amidst growing opposition, conflict and violence, Canadian Ambassador Rousseau acts as honorary signatory to the royalties agreement between Tahoe Resources and the Guatemalan State.

June 30, 2017: Consultant Don Boudria, former long-standing Liberal Member of Parliament and Cabinet Minister, lobbies Caitlin Mounce, Policy advisor of the Office of the Minister of International Trade, Global Affairs Canada, on behalf of Tahoe Resources.

July 5, 2017: The Guatemalan Supreme Court provisionally suspends Tahoe's exploitation licence.

July 7, 2017: Don Boudria on Tahoe's behalf lobbies Liberal Member of Parliament Hon. Robert Nault, Chair, Canadian Section of ParIAmericas, Chair of the Standing Committee on Foreign Affairs and International Development. The same day, he also lobbies Omar Alghabra, Liberal Member of Parliament and Parliamentary Secretary to the Minister of Foreign Affairs (Consular Affairs).

July 10, 2017: According to the Guatemalan Chamber of Industry (CIG), Ambassador of the United Kingdom, Thomas Carter, gives a public statement where he notes: "We hope that Minera San Rafael restarts operations soon. The suspension is very harmful to the perception of Guatemala as a place to do business."

July 12, 2017: Don Boudria, on behalf of Tahoe Resources, lobbies Caitlin Mounce, Policy advisor to the Minister of Trade's office, Global Affairs Canada, Yanique Williams, Policy advisor Minister of Trade's office, Global Affairs Canada and Duane McMullen, Director General of the Trade Commission Services, Global Affairs Canada.

July 20, 2017: [Tahoe VP of Corporate Affairs, Edie Hofmeister](#), urges Deputy Assistant Secretary of the Department of State Bureau of Western Hemispheric Affairs, John Creamer, to take action to protect Tahoe's investment.

July 21, 2017: Don Boudria, on behalf of Tahoe Resources, [lobbies](#) Liberal Member of Parliament [James Maloney](#), Chair of the Standing Committee on Natural Resources.

August 11, 2017: [Nevada Representative Mark Amodei](#) submits a letter to U.S. Secretary of Commerce, Wilbur Ross, urging intervention on behalf of Tahoe Resource.

August 23, 2017: [Tahoe VP of Corporate Affairs, Edie Hofmeister](#) requests assistance from U.S. Ambassador to Guatemala, Todd Robinson, and seeks counsel on the actions the company could take to protect its interests in Guatemala. The letter lodges unsubstantiated accusations of "judicial impropriety" within the Constitutional Court.

August 24, 2017: [Senator Heller writes to then Secretary of State, Rex Tillerson](#), expressing support for the mine and requesting an update on what was being done to promote U.S. business interests in the region.

August 30, 2017: Don Boudria, on behalf of Tahoe Resources, [lobbies](#) Conservative Member of Parliament [Dean Allison](#), Vice-Chair of the Standing Committee on International Trade.

September 19, 2017: Don Boudria, on behalf of Tahoe Resources, [lobbies](#) Conservative Member of Parliament [Dean Allison](#), Vice-Chair of the Standing Committee on International Trade. The same day, he also [lobbies](#) Liberal Member of Parliament [Sukh Dhaliwal](#), Member of the Standing Committee on International Trade.

September 22, 2017: In a letter to U.S. Congressman Amodei, [Commerce Secretary Wilbur Ross](#) confirms that U.S. Ambassador Todd Robinson intervened on behalf of Tahoe Resources by speaking with Guatemalan President Jimmy Morales. Ross states that Robinson urged Morales to quickly resolve the issue in order to preserve a stable investment climate for U.S. businesses.

September 25, 2017: [Tahoe CEO Ron Clayton, confirms U.S. government intervention](#) in Guatemala courts in support of the company during question and answer session at the Denver Gold Forum.

April 25, 2018: Jim Nicholson, former U.S. Secretary of Veteran Affairs, and Miriam Sapiro, former U.S. State Department staff, [visited Guatemala](#) on behalf of the American Chamber of Commerce. They reportedly came to talk about the importance of international investment and noted, "that an unstable institutional climate demotivates international investment," referring to the Tahoe case.

Nicholson was formerly the Ambassador to the Holy Sea and Republican Party Chairman. Miriam Sapiro has served on the National Security Council, and was Deputy U.S. Trade Representative and Acting U.S. Trade Representative. She was a senior member of the Committee on Foreign Investment in the United States (CFIUS) and on the Board of the Overseas Private Investment Corporation (OPIC).

February 14, 2018 - Nine member of the [U.S. Congress write to Guatemalan President Jimmy Morales](#) urging him to do more to improve the investment climate for U.S. business in the country citing Constitutional Court rulings that “create uncertainty for U.S. businesses considering investing in Guatemala.”

May 8, 2018 - [Don Wallace, Chairman of the Washington-based International Law Institute, submits an Amicus brief to the Constitutional Court](#), that warns of consequences, including international arbitration if Tahoe’s license is not reinstated. The brief was presented by Guatemalan lawyers whose firm represents Minera San Rafael, Tahoe Resources’ wholly owned subsidiary.

May 16, 2018 - [Nevada based Kappes, Cassidy & Associates \(KCA\) notify the Guatemalan government](#) of its intent to file a complaint against the state of Guatemala through CAFTA arbitration system. KCA seeks compensation after it lost a court battle over rights to exploit the El Tambor mine in 2016.

May 21, 2018: Elected community representatives from the Xinka community of Santa Maria Xalapan [denounce a letter](#) submitted to the Constitutional Court on their behalf that expresses support for Tahoe Resources and [reiterate the opposition to the project](#) since 2007. They note that a local politician tricked residents into signing a blank piece of paper (in exchange for water pipes) that was then used to write the letter to the Court. The elected members denounce this as a common tactic that has been used by the company to show local support for their project.

May 21, 2018: Mineral San Rafael workers and affiliates hold a march to confront the communities of Santa Maria Xalapan to distract media from the misleading letter submitted to the Court on behalf of Xinka communities. One sign they carry blames NGOs of benefitting from the mine closure, trying to delegitimize the voices of Indigenous and campesino communities. That day, the powerful Chamber of Commerce, Agribusiness, Trade and Finances (CACIF) announces via Tweet that it is necessary to promote a law to regulate NGOs.

May 21, 2018: The U.S. Embassy in Guatemala [releases a press statement](#) urging an immediate resolution from the Constitutional Court. It reads:

“A stable climate of investment depends on a clear legal framework, respect for the rule of law and transparency in the application of law. These components are essential to develop Guatemala’s abundant natural resources, which boosts economic growth, the creation of jobs and the betterment of Guatemalans. Investments should adhere to legal requirements, including the respect of human rights and local environmental laws and should also fulfill international agreements.

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