

August 18, 2021

Dra. Tania Reneaum Panszi
Executive Secretary
Inter-American Commission on Human Rights
Washington D.C.

Joel Hernández
Country Rapporteur
Inter-American Commission on Human Rights
Washington D.C.

CC:

Fiorella Melzi, Monitoring Coordinator for Mexico and Central America, IACHR
Pedro Vaca, Special Rapporteur for Freedom of Expression, IACHR
Flavia Daza, office of the Special Rapporteur for Freedom of Expression, IACHR
Soledad García, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, IACHR
Daniel Norona, office of the Special Rapporteur on Economic, Social and Cultural Rights, IACHR
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Montserrat Peniche, Rapporteur on Human Rights Defenders, IACHR

Ref: MC-487-19

Support for the request to extend precautionary measures
Guatemala

Dear Dr. Tania Reneaum Panszi,

We write on behalf of organizations¹ from the United States and Canada that accompany communities and organizations in resistance to the Escobal mine in Guatemala, several of which have done so since the resistance movement began in 2011. Based on the powers granted to you by Article 41 of the American Convention on Human Rights², we call on you to request information from the State of Guatemala about the measures it is adopting to protect defenders Julio David González Arango, Juan Eduardo Donis, Pablo Adolfo Valenzuela Lima, Edwin Alexander Reynoso Bran and Luis Fernando García

¹ Earthworks - <https://www.earthworks.org/>; Institute for Policy Studies, Global Economy Program - <https://ips-dc.org/global-economy/>; MiningWatch Canada - <https://miningwatch.ca/>; Network in Solidarity with the People of Guatemala - <https://nigua.org/>; Maritimes-Guatemala Breaking the Silence Network - <https://breakingthesilenceblog.com/>; Projet Accompagnement Québec - Guatemala - <https://www.pagg.org/>

² Article 41(d), American Convention on Human Rights, "The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers: d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights."

Monroy, and to request that the IACHR grant the extension of precautionary measures requested in their favor.

Our organizations' activities include physical accompaniment of defenders under threat, the documentation and publication of contextual analyses, and the formulation of urgent alerts and reports on the risks faced by defenders as a result of their work defending human rights and the rights of indigenous peoples. The most frequent threats that human rights defenders tend to face in Guatemala include defamation, criminalization, threats, state and corporate repression, and violent attacks.³

From our work and experience over many years accompanying the communities in resistance to the Escobal mining project, we have observed the constant and increasing risk faced by leaders and defenders who oppose the mine, especially those in a visible position of leadership and specifically in light of progress being made in the court-ordered pre-consultation and consultation processes.

For these reasons, we support the granting and extension of the precautionary measures currently in force in relation to defender Quelvin Otoniel Jiménez Villalta, registration number MC-487-19,⁴ and the request presented by Robert F. Kennedy Foundation and the Guatemalan Human Rights Ombudsman's Office on July 15, 2021 in favor of Julio David González Arango, Juan Eduardo Donis, Pablo Adolfo Valenzuela Lima, Edwin Alexander Reynoso Bran, and Luis Fernando García Monroy, all leaders in the peaceful resistance to the Escobal mining project. It is also of pressing importance to say that they have all suffered persistent and intensifying threats, acts of violence, stigmatization, defamation and criminalization campaigns, in a repeat and systematic way due to their opposition to the Escobal mine since 2011.

Likewise, we share the concerns raised about the continued and increasing risk that Quelvin Otoniel Jiménez Villalta faces, the implementation of his protective measures, the ongoing smear campaign against him and the lack of progress in the investigations into his aggressors.

I. Background

The Escobal underground mine is a silver project located in the department of Santa Rosa in southeastern Guatemala and one of the largest and most controversial mines in Latin America. Since 2011, Xinka and campesino communities have organized to peacefully oppose the mine-- imposed against their will in 2014 by Tahoe Resources. The company had strong government support in the use of violence against peaceful protests, the implementation of martial law in the region, military-like surveillance of project opponents, and legal persecution of community leaders. Nearly 100 people faced unfounded criminal charges for their role in organizing community referendums and peaceful protests.⁵ All were eventually acquitted for lack of evidence.

³ Protection International International Mesoamerica. [Análisis de ataques contra defensoras y defensores de derechos humanos de la Resistencia Pacífica de Santa Rosa, Jalapa y Jutiapa](#), September 7, 2018.

⁴ MC-487-19. [Asunto Quelvin Otoniel Jiménez Villalta respecto de Guatemala](#), July 3, 2019.

⁵ Solano, Luis. [Under Siege: Peaceful Resistance to Tahoe Resources and Militarization in Guatemala](#), November 10, 2015.

In 2013, private security at the Escobal mine opened fire at point-blank range on peaceful protesters outside the mine, injuring seven men. This violence became the basis for an unprecedented civil lawsuit against Tahoe Resources in the province of British Columbia, Canada.⁶ Meanwhile, the company's former head of security fled the country and an extradition process is underway to return him from Peru to Guatemala for further prosecution.⁷ All other acts of violence against defenders who were attacked for their opposition to the mine remain unpunished, including the murder of resistance members such as Topacio Reynoso Pacheco, a 16-year-old human rights defender, poet and artist who was killed in 2014. Topacio was the daughter of Edwin Alexander Reynoso Bran⁸, a petitioner to the IACHR and defender for whom precautionary measures are currently being requested.

Since the sale of the Escobal mine and Tahoe Resources to Pan American Silver in February 2019, the risks for defenders have persisted and increased as the consultation process ordered by the Constitutional Court in September 2018 has progressed. This process is currently in the pre-consultation phase.

II. On the Escobal mine and the dynamics of violence since the arrival of Pan American Silver.

Following the sale of Tahoe Resources and the Escobal mine to Pan American Silver and as the consultation has advanced since October 2020, risks for defenders have persisted and are mounting.

In July 2019, five months after Pan American Silver purchased the Escobal mine, the Inter-American Commission on Human Rights granted precautionary measures for the Xinka Parliament's lawyer, Quelvin Jiménez, after he received multiple death threats.⁹

Since September 2020, the Xinka Parliament has denounced the appearance of a local group led by a former security guard of a mine employee who still works for Pan American Silver. The group aims to undermine the Xinka people's leadership, seeking to generate community division and insecurity.¹⁰ Representatives of the mining company and the Ministry of Energy and Mines participated in a meeting with this group,¹¹ which lends undue legitimacy and creates the impression that there is coordination between the group, the company and the government.

⁶ Resist Escobal. [Taking a Canadian mining company to court](#), retrieved August 12, 2021.

⁷ Maritimes-Guatemala Breaking the Silence Network; MiningWatch Canada; Earthworks; Institute for Policy Studies; Global Economy Program. [Plaintiffs Conclude Lawsuit with Pan American Silver over 2013 Shooting in Guatemala, Communities Reaffirm Opposition to Escobal Mine, Warn of Rising Tensions](#), July 31, 2019.

⁸ Linthicum, Kate. [‘If we’re attacked, we’ll die together,’ a teenage anti-mining activist told her family. But when the bullets came, they killed only her](#), Los Angeles Times, December 17, 2017.

⁹ Robert F. Kenney Human Rights. [The Inter-American Commission on Human Rights \(IACHR\) Grants Precautionary Measures for Xinka Parliament’s Lawyer](#), Quelvin Jiménez Villalta, July 7, 2019.

¹⁰ Xinka Parliament of Guatemala. [Xinka Parliament denounces ‘anonymous invitation’ to meet with Minera San Rafael](#). Septiembre 20, 2020.

¹¹ Visor GT Sur Oriente. [Casillas/Diálogo Reunión Entre Autoridades y La Resistencia](#), published on Facebook September 24, 2020.

In October 2020, the Xinka Parliament and the Ministry of Energy and Mines published a joint press release announcing agreements reached to begin the pre-consultation process.¹² This situation led to an increase in threats, defamations and attacks against Xinka leaders who participate in the peaceful resistance. It is important to recall that for more than two years, since the Constitutional Court issued resolution 4785-2017 on September 3, 2018, the consultation process failed to advance due to multiple irregularities and the exclusion of the Xinka people's delegates elected to participate in the process according to their customary practices.¹³ As a result of the social pressure exerted by the Xinka people on the government and the Canadian mining company during this time, the Guatemalan authorities finally agreed to include the Xinka people's representatives. Notably, the Xinka Parliament and Ministry of Energy and Mines joint statement determined that the consultation should "be carried out without pressure or conditions imposed by any of the parties", evidence of the heightened tensions in this context.¹⁴

Nonetheless, during the following months, six members of the peaceful resistance against the Escobal mine have suffered serious attacks and death threats. On January 16, 2021, Julio David Gonzalez Arango was shot and wounded in his home by armed assailants. In the following days, Juan Eduardo Donis, Pablo Adolfo Valenzuela Lima and Edwin Alexander Reynoso Bran, members of the peaceful resistance, received death threats. Then, on February 7, Xinka leader and Xinka Parliament employee Luis Fernando Garcia Monroy was threatened by a supporter of the mine near his home. Finally, in April, armed individuals fired three shots at the home of two Xinka representatives involved in the consultation process.¹⁵

In response to the attacks, in January 2021 we sent a letter endorsed by more than 195 Guatemalan and international organizations, as well as almost four thousand citizens from across the Americas condemning the acts of violence and demanding that the company cease fomenting tension and violence in Xinka communities, while undermining the consultation process ordered by the Constitutional Court.¹⁶ It is important to note that the Constitutional Court, in resolution 4785-2017, "has been emphatic in asserting that a context of confrontations, violence and distrust does not contribute to the consultation being carried out in a truly productive way."¹⁷ To avoid a deterioration of

¹² Ministerio de Energía y Minas; Parlamento del Pueblo Xinka de Guatemala. [The Government of Guatemala and the Xinka Parliament agree to start pre-consultation process over the Escobal mining project in the department of Santa Rosa](#), October 15, 2020.

¹³ Earthworks; Institute for Policy Studies, Global Economy Program. [Guatemalan government discriminates against Xinka, puts Escobal mine consultation at risk](#), September 12, 2019.

¹⁴ Ministerio de Energía y Minas; Parlamento del Pueblo Xinka de Guatemala. [The Government of Guatemala and the Xinka Parliament agree to start pre-consultation process over the Escobal mining project in the department of Santa Rosa](#), October 15, 2020.

¹⁵ Moore, Jen; Moore Ellen. [Vancouver Mining Corp Shrugs off Violence against Guatemala's Indigenous People](#), Earth Island Journal, July 6, 2021.

¹⁶ Resist Escobal. [195 international organizations denounce latest attacks against members of the Peaceful Resistance to Escobal mine](#), January 21, 2021; Moore, Jen. [Pan American Silver Pressured to Shut Down Community Interference in Guatemala](#), Inequality.org, May 6, 2021.

¹⁷ Constitutional Court of Guatemala, [File 4785-2017](#), September 3, 2018.

security in the context of the consultation, since 2019, the Xinka population¹⁸ and their international allies¹⁹ have demanded that the company stop its interference in local communities. Although the company recognizes that its active role in the communities may have an impact on the consultation process,²⁰ it has not stopped its activities.

It is worth underscoring the large economic and political interests behind the Escobal mine's reopening, given that it is considered to be one of the largest silver mines in the world. As a result, the Xinka people leading the consultation process and demanding their rights face great risks. Although Pan American Silver is a larger and more diversified mining company than Tahoe Resources, the Escobal mine remains an extremely important asset for the company and the main reason behind its acquisition of Tahoe in 2019. Out of a total of fourteen mining projects with established mineral reserves, Escobal contains forty percent of Pan American Silver's identified silver reserves.²¹ making it important to future company growth. In its corporate presentations since acquiring the mine, the company refers to the Escobal project as "a catalyst" for enhancing its shareholders' interests in the future.²²

In addition, since acquiring Tahoe Resources, Pan American Silver has expressed its intention to reopen the mine at the conclusion of the consultation process.²³ This reduces the consultation to an administrative process with a single, predetermined outcome that the company presumably wants to achieve as soon as possible in order to resume operations at one of its most profitable assets. Furthermore, at its investor meeting on August 11, 2021, the company spoke of "a court-ordered dialogue" instead of a consultation that must respect international law. This shows a clear lack of respect for the self-determination of the Xinka people and their right to free, prior and informed consent, enshrined in international law and jurisprudence as referenced in the 2018 Constitutional Court ruling.

As an indication of the company's political influence, at the start of the current administration in Guatemala, a mining executive with close ties to Pan American Silver was appointed to an important position in the government, raising concerns about conflict of interest in favor of reopening the Escobal mine. In early 2020, the former general manager of the Escobal mine, Juan José Cabrera Alonso, was appointed Special Secretary to the Vice President.²⁴ From January 2013 to May 2019, Cabrera was general manager and legal representative of the Guatemalan subsidiary operating the Escobal project, Minera San Rafael (now called Pan American Silver Guatemala, S.A.). Cabrera now represents the office of the vice president in mining-related matters. Cabrera takes credit for obtaining the operating license

¹⁸ Xinka Parliament of Guatemala. [Press Release - Xinka Peoples Parliament Of Guatemala On The Occasion Of Pan American Silver's Annual Shareholders' Meeting In Vancouver, Canada](#), May 8, 2019.

¹⁹ Earthworks. [Indigenous people call on Pan American Silver to Cease local interference out of respect for the consultation process in Guatemala](#), May 8, 2019.

²⁰ Woodin, Hayley. [Central American mine resistance visits Vancouver](#), Business in Vancouver, December 10, 2019.

²¹ Pan American Silver. [Annual Information Form for the year ended December 31, 2020](#). Published February 17, 2021.

²² Pan American Silver. [The World's Premier Silver Mining Company, Investor Presentation](#), June 2021.

²³ Taylor, Susan. [Pan American Silver offers \\$1.1 billion to buy out Tahoe](#), Reuters, November 14, 2018.

²⁴ Gordillo, Ivonne. [Vice Presidente Guillermo Castillo nombra a sus secretarios](#), Publinews, January 15, 2020.

for Escobal in 2013,²⁵ a process marked by irregularities and currently the subject of shareholder lawsuit against Tahoe Resources (now Pan American Silver) in the United States.²⁶ As mentioned above, the license was granted in the midst of violence and a barrage of criminalization attempts against social leaders and members of communities in resistance, evidently in retaliation for the municipal and community referendum they had been organizing.

As a whole, the presence of such an economically and politically powerful actor in Xinka territory, results in asymmetrical conditions that put the Xinka people at a disadvantage in their efforts to exercise, defend and demand their rights during the consultation in accordance with the Constitutional Court decision and international law. This also puts them at great risk of repercussions and reprisals, especially when the Xinka have fought back against discrimination and irregularities in the consultation process, and achieved some of their demands.

Concurrent with progress being made in the current pre-consultation stage of the process, we have observed an increase in threats, defamations and attacks against Xinka leaders and members of the peaceful resistance.

III. Regarding the constitutional crisis in Guatemala and concerns about declarations made by government representatives in the context of the consultation

Since the expulsion in January 2019 of the International Commission against Impunity in Guatemala (CICIG) and with greater intensity since the inauguration of the government of President Alejandro Giammatei in early 2020, Guatemala's judicial system has seen a concerted process of co-optation by corrupt and criminal interests.²⁷ Widely known as the Pact of the Corrupt, a group composed of businessmen, members of congress and public officials has driven a movement to undermine the independence and impartiality of the country's highest judicial bodies with serious implications for human rights defenders and consultation processes mandated by the Constitutional Court.

As we have documented, the sustained attacks on Guatemala's judiciary could leave indigenous peoples and campesino communities without any independent backstop in consultation processes ordered by the Constitutional Court, for which the Supreme Court of Justice is designated as arbiter.²⁸ The situation also bodes ill for the possibility of increased authoritarianism and state repression. As a result, organizations such as the Xinka Parliament of Guatemala joined with others in legal actions seeking to address corruption in the designation of new judicial appointments. They have also participated in

²⁵ LinkedIn profile of Juan José Cabrera Alonso. Accessed August 16, 2021 at <https://www.linkedin.com/in/juan-jos%C3%A9-cabrera-alonso-22565a35/?originalSubdomain=gt>. En su cuenta de LinkedIn, Cabrera writes: "It is important to highlight that I obtained the authorization of the Operating license for Minera San Rafael, where I held the positions of Vice President and General Manager and Director of Government and Institutional Relations".

²⁶ Stanford Law School Securities Class Action Clearinghouse. (Updated August 2020) Accessed <http://securities.stanford.edu/filings-case.html?id=106242>; Faruqi & Faruqi LLP. July 19, 2019.

²⁷ Beltrán, Adriana. [Behind the Fight to Hijack Guatemala's Justice System](#), WOLA, July 10, 2020.

²⁸ Earthworks, IPS - Global Economy Program, Maritimes-Guatemala Breaking the Silence Network, [Advances in the Escobal Mine Consultation Process Overshadowed by Constitutional Crisis](#), December 21, 2020.

various moments of protest in which they are now demanding the resignation of the president and the Attorney General.

Specifically regarding the mining sector, during his election campaign, President Alejandro Giammattei promised to restore confidence in the mining industry during his first 90 days in office.²⁹ In his first nine months, Giammattei declared states of emergency in eight municipalities with historic mining conflicts as part of his so-called anti-crime policies.³⁰

Furthermore, this year, Guatemalan government institutions responsible for carrying out the consultation have publicly stated that the demands of the Xinka people are an obstacle to the process, which heightens tensions within communities and increases risks to visible leaders in the resistance, including the potential beneficiaries of the precautionary measures being requested. In particular, since April 2021, the Minister of Energy and Mines, the principal person responsible for the consultation, has stated several times that the consultation is an administrative process aimed at reopening the mine and that it has a time limit of 6 to 9 months.³¹ In such a short period of time, it is not possible to envision a process that could be truly respectful of the Xinka people's rights, especially given the enormous social, cultural, spiritual, environmental and health consequences that such a project has and would have.

In sum, we support the request for the extension of precautionary measures MC-487-19 presented by the Robert F. Kennedy Foundation and the Guatemalan Human Rights Ombudsman's Office to the Inter-American Commission on Human Rights with respect to Julio David González Arango, Juan Eduardo Donis, Pablo Adolfo Valenzuela Lima, Edwin Alexander Reynoso Bran and Luis Fernando García Monroy. We share their concern for the life and integrity of Xinka defenders and the entire Xinka people, as the pre-consultation and consultation process progresses.

IV. Petition

By virtue of the foregoing, we respectfully request the Inter-American Commission to:

FIRST: Ensure **close and ongoing monitoring** of the security situation of communities in resistance to the Escobal mining project, especially visible authorities and leaders, as a result of their efforts to ensure the consultation process is in compliance with international standards and carried out with respect for the self-determination of the Xinka people;

SECOND: Recognize the situation of risk in which the leaders Julio David González Arango, Juan Eduardo Donis, Pablo Adolfo Valenzuela Lima, Edwin Alexander Reynoso Bran and Luis Fernando García Monroy are facing; and consequently, **extend the requested precautionary measures** in their favor; and

²⁹ Pernas, P. [Giammattei propone un "muro económico" para frenar la migración en Guatemala](#), EFE, June 7, 2019.

³⁰ Uno TV. [En Guatemala, por violencia declaran "estado de sitio" para 5 municipios](#), July 19, 2020.

³¹ Curruchich, Selvyn. [Por iniciar consultas sobre El Escobal](#), Diario de Centro América, April, 2021.

THIRD: In accordance with Article 41 of the American Convention on Human Rights, follow up concerning the risks that the persons mentioned throughout this document are facing and urgently communicate with the State of Guatemala to request information on the measures adopted in order to protect the life and integrity of the leaders in resistance to the Escobal project, as well as to ensure compliance with the consultation of the Xinka people in accordance with the respective international standards, the guarantee of their right to self-determination, and their free, prior and informed consent.

Sincerely,

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