

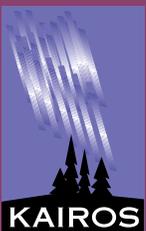


KAIROS Participatory Research with partners on Free, Prior and Informed Consent: CEIBA's experience in Guatemala

By: Teresa Sanic and Community Development
and Promotion Association (CEIBA)

Translation: Camila Rosales

Editing Team: John Dillon, Anne O'Brien, Rachel Warden



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Introduction

Systematization of Free, Prior and Informed Consent

Case Study/Partner's Testimonies

This investigation is based on a synthesis of documentation and interviews with a number of individuals and organizations in Guatemala. These include the members of Community Development and Promotion (CEIBA), the Peoples' Assembly of Huehuetenango (ADH), the Committee for Life and Peace in the Defense of Natural Resources of San Rafael, the mayor of Mataquescuintla and community leaders in San Rafael La Flores, Xalapan and Mataquescuintla. Documentation developed by various national and international organizations was also used, as well as information generated by state institutions such as the Ministry of Energy and Mines of Guatemala.

Further clarity on the consultation process was developed through a participatory reflective workshop organized by Oxfam America. A number of Guatemalan organizations, such as CALAS (Centro de Accion Legal y Ambiental de Guatemala), CUC (Comite de

Unidad Campesina) and CEIBA, and international leaders from Chile, Spain and Argentina shared their experiences.

CEIBA has overseen this process since 2006 when the first five community consultations were organized simultaneously in the Department of Huehuetenango. Information and awareness campaigns were held to address the impacts of mining activity on Indigenous territory and the growing practice of treating the leaders who defended the land as criminals. KAIROS has supported these actions and this study has been developed as a part of the KAIROS Participatory Research Project, with the objective of documenting Free, Prior and Informed Consent (FPIC) as a process of self-determination, analyzing the impacts of mining from different perspectives and identifying connections with Canada.

The content is divided into six parts:

1) Mining Conflict Background. This section presents a brief analysis of the elements which have caused the conflict; the perspective of FPIC; CEIBA's experience and the challenges of applying FPIC; and Indigenous development alternatives from the Huehuetenango Department and the Municipality of San Rafael Las Flores, Santa Rosa.

- 2) Context. This section aims to describe the economic, political and social state of the country and the promotion of mining extraction projects through exploration and mining licences which impact communities accompanied by CEIBA and a legal framework that protects FPIC.
- 3) This section reports on community responses to the impact of megaprojects and the responses of the different actors involved in this process.
- 4) This section sets out the positive and negative impacts of the exploration and mining license concessions.
- 5) Canadian connection. This section describes the role of Canadian citizens, the Government of Canada and Canadian companies that are mining in Guatemala, as well as CEIBA's message to these citizens, governments and investors.
- 6) Recommendations. This section details recommendations directed towards the government of Guatemala, the government of Canada, and citizens of both countries.

Mining Conflict Background vs. The FPIC Vision

2.1

Historical conflict: territorial control¹

The social conflicts in Guatemala are the result of several structural issues embedded in the history of the country. One of these issues is the power that certain economic and political groups have wielded over the majority of the mostly Indigenous population, resulting in domination and territorial control.

The Guatemalan society of today was built on repression and violent strategies including the occupation of territories, natural resource extraction and the displacement of communities. For centuries, Indigenous territory, essential to the survival and identity of these peoples, has been the focus of the powerful sectors of Guatemalan society in order to guarantee their ongoing accumulation of capital and consolidate their domination.

In the last decade, the political and economic oligarchy of the country, in response to

the demands of international markets, shifted the economy from one based on the export of traditional and agricultural Guatemalan products, such as coffee, rubber and bananas, to one based on financial accumulation and speculation. This was accomplished through such means as:

- a) the liberalization of markets;
- b) the privatization and control of basic services such as electric energy and telecommunications;
- c) the construction of infrastructure megaprojects such as highways, ports and airports;
- d) the extraction of natural resources such as oil, mining and forests, including the rainforest;
- e) the creation of huge tracts of land in order to cultivate such products as African palm, sugar and pine nuts for large-scale industrial oil and agro-fuel production.

This accumulative model began in the 1980s, when structural changes were implemented along with the repressive and genocidal campaigns led by the counterinsurgency. It was solidified during the

institutional process of liberal democracy, and the negotiation and signing of the Peace Agreements in December 1996. It was during this period that the legislative and institutional framework enabling the privatization of the generation and commercialization of electricity and the current Mining Law were put in place.

This new model was developed in the areas that were most affected by the counterinsurgency operations. The human and psychological impact and the social destabilization that these campaigns caused, along with the endemic poverty in the area, were key in facilitating and implementing this new model.

2.2

A Peace Agreement used for the development of a few

In 1996, as the Peace Agreements were being signed, the institutionalization of neoliberalism began. This included changes to the constitution, privatization of basic services, multilateral agreements with banks, reforms to the Mining, Maquila and Investment Laws, bank rationalization and negotiating

¹“Territorios indígenas y democracia guatemalteca bajo presiones” in *El Observador Análisis Alternativo sobre Política y Economía de Guatemala Magazine*. Pages 4-5.



In Sipakapa, San Marcos, Fausto and Pedro lay the groundwork for new coffee plantations. The municipality of Sipakapa started an organic coffee cooperative in 2009. The community organized a referendum where 98.5% of the community said no to mining because it threatened their water supplies and farm lands. | Photo credit: Allan Lissner

the Free Trade Agreements. All of this constituted the multiple dimensions of building post-war Guatemala: social and political stability, with a neoliberal stance and open to foreign investment, paving the way to modern times.

More than 350 mining concessions have been granted to national and transnational companies. Some 40 hydroelectric projects with reduced State participation are waiting for approval. The budget for the Ministry of Energy and Mines was reduced from 126 million *quetzales* (Guatemala's currency) in 2013, to 91 million in 2014 (Gamarro, 2013). This Ministry has one of the smallest budgets, indicating its role in the state – one that is weak, that readily hands concessions to the private sector and delegates the responsibilities of development to companies.

As a result of the State's limited capacity to assume any responsibility for the welfare of the people in rural areas, all projects related to health and education are left in the hands of private economic

groups. Government policies are focused on attracting international investment in key sectors such as *maquilas*, call centers, mining, hydro resources, tourism and infrastructure. This is reflected in the implementation of programs such as Plan Nacional de Competitividad (PRONACOM), Plan Visión País or Invest In Guatemala.

The State ensures the legal framework and institutions that favour investments, as well as the intervention of national and transnational capital, linking development to business while criminalizing all opposition and social resistance by peoples and their communities. This is done through the repressive intervention of security apparatuses, openly violating international agreements that validate human rights and the mechanisms that defend them.

Nevertheless, there is emerging an international consensus that companies looking to proceed with megaprojects and other kinds of initiatives on Indigenous territory must also secure a social license.

2.3 FPIC: Vision and perspective

Community consultations represent social licenses, a means of resistance and the defense of the territory. They are a legitimate means of democratic participation. They are a response to the violation and “invisibilization” of the rights of Indigenous peoples within an exclusionary state, dominated by a powerful minority.

Community consultations are meant to enforce rights such as:

- a) The right to self-determination. This right recognizes that a community can decide its own governance and direct its own economic, political, social, cultural and environmental development, without intervention. This is stipulated in the Constitution of the Republic of Guatemala; in international agreements such as Convention 169 of the International Labour Organization

(ILO), ratified in 1999; the United Nations Declaration on the Rights of Indigenous Peoples, International Human Rights Pacts and international resolutions, as well as the Agreement on Identity and Rights of Indigenous People, signed in 1996.

b) Right to the land/territory.

This is one of the fundamental pillars of international law. Indigenous communities are redefining the concept of territory, shifting it towards a fundamental right of Indigenous peoples, not as property for commercial exchange, but a space where culture, natural resources, and communities with identities and organizational structures come together. As the Mayan communities in Guatemala put it: it includes rivers, lakes, ocean, earth, renewable and non-renewable resources, people, air, flora and fauna.

- c) Right to Free, Prior, and Informed Consent. "This is a basic and fundamental element of the Indigenous peoples' capacity to sign and execute Treaties and Conventions, to exercise sovereignty and protect our land and natural resources, and to participate and create processes that repair violations against the earth and the rights stipulated in treaties. The right to Free, Prior and

Informed Consent is essential for establishing acceptable conditions and criteria for negotiating with the State, particularly and above all regarding issues concerning land and the way of life of our people" (Carmen, 2008).

FPIC is ratified in international laws including, among others, the XXIII General Declaration of the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Action Program of the General Assembly of the United Nations for the Second International Decade of the World's Indigenous People; and ILO Convention 169. In Guatemala, this is reinforced by the Municipal Code of Guatemala, the Decentralization Law and the Municipal Development Council Law.

The Sacred Book of the Maya, *Pop Vuh*, recognizes consensus as a decision-making process. Consultation is, therefore, not a new practice, but one that is rooted in ancestral practices. In fact, the principles of consent were also applied when asking permission from the plants, animals, minerals, rocks, water and spirits before using the land, harvesting food or medicines, digging the earth, hunting or fishing for eating or ceremonial purposes. This is why Free, Prior and Informed Consent is required in order to obtain permission before initiating actions that could affect the lives of others.

The approaches and proposals that arose from the first

community consultation, held in Sipakapa, San Marcos, in 2005, have become proposals/principles for structural changes. These include:

- Indigenous peoples' autonomy;
- exercising ancestral participatory democracy;
- establishing self-governance;
- recognizing social, economic, political, environmental, territorial and cultural sovereignty;
- establishing a Communal Right State rather than a private one (redefining "common good");
- organizing local power through community and ancestral authorities;
- reconfiguring of Indigenous peoples such as the Mam, Kich'é, Xinca as well as Mestizos;
- establishing areas free of megaprojects (hydroelectric, mineral extraction, monoculture, etc.) in the Huista, Kanjobal and Mam regions;
- creating the Kanjobalano Council that brings together Zapatecos, Chujes, Popt'is and Q'anjobales for the Defense of Territory and Life, committees for life and peace and in defense of the natural resources in Jalapa, San Rafael las Flores, Mataquesuintla, Casillas, and others;



The Candelaria brothers work on the family farm in San Miguel Ixtahuacan, San Marcos. | Photo credit: Allan Lissner

- creating strategies around land appropriation that ensure collective ownership, recognizing that there are Indigenous peoples who have legitimately owned land for thousands of years.

2.4 CEIBA's experience with FPIC

CEIBA has indirectly participated in 28 community consultations held in good faith² in Huehuetenango, supported by national and international observers. They have resulted in the distribution of information about FPIC and mining in Guatemala and other countries on the internet and through community radio stations. The consultations³

(including good faith, municipal and community member consultations) have been advanced by the communities and, in some cases, supported by the municipal mayors. They also reflect the different organizational and participatory structures of the communities.

In San Juan Atitán, Huehuetenango, for example, the mayor supported transportation for observers from other communities. In San Sebastián, with no support from the mayor, the people formed committees (logistics, education, transportation, communication) and held a very successful consultation. Each person donated two *Quetzal* for transportation and food for the national and international observers who witnessed the consultation. For the most

part, the resources to hold the consultations come from the same communities where they are held. They have been self-managed, and they use ancestral community practices.

The engagement of different sectors and organizations at the community, municipal and regional levels has been key for the success of the consultations. Some of these include Mayan, Xinca and Mestizo authorities, the *campesinos*, women, children, youth, NGOs, universities, municipal governments, religious entities, teachers and the Community Development Councils (COCODES, in Guatemala).

FPIC has had a domino effect in Guatemala, as well as in areas right across the border. Consultations began

² Consultations held in Good Faith are regulated by ILO Convention 169, as well as being traditional Indigenous practices.

³ Municipal Consultations: regulated by the Municipal Code, they can be held if 10% of the enumerated population requests the Mayor to consult regarding issues pertaining to the specific Municipality.



Marlin Mine, owned by Goldcorp Inc., San Miguel Ixtahuacan, San Marcos. | Photo credit: Rachel Warden

in San Marcos (SIPAKAPA and Comitancillo) and Zacapa (Río Hondo). Others were held in July 2006 in Huehuetenango, the first five simultaneous consultations of the Mam people. In March 2014, 78 consultations had been held all over the country, and two were held by migrant Maya Quiché people from the Department of Totonicapán, residing in Los Angeles, California (see Annex 1).

2.5 Main elements of FPIC according to CEIBA

There are several common and essential elements of FPIC:

- Free, Prior, and Informed Consent is achieved through methods pertinent to, and agreed on, by the different communities.
- Each territory and community has a permanent committee that maintains active participation in other organizations such as the Huehuetenango Peoples Assembly and the National Struggle Front, which are political and organizational spaces for developing actions to defend life on the territories and to present alternative proposals to extraction .
- These structures are inclusive and democratic. Different age groups, community actors, observers, migrants and national and international institutions participate.
- The consultations are ratified and validated by national and international observers.
- The process has facilitated collecting the experiences of each community consultation in a way that informs the general population.
- There has been active media coverage which includes community radio. This has informed the migrant population, as well as audiences in Canada and the United States, of the experiences with the consultations.
- While the consultations were initially held to decide if a mining project was accepted or not, they have expanded and now are also held to make decisions regarding any kind of natural resource exploitation including megaprojects, hydroelectric dams and monocultures.
- Consultations are not imposed. They are a community initiative, from where the proposal is put forward to the municipal governments.
- Mayan communities decide on appropriate dates for consultations according to the Mayan calendar. The anniversary of

the consultations is celebrated every year.

- In the Mayan and Xinca worldview, life is considered a part of nature, and no being is considered superior to another. Mother Earth is a living organism that provides food, air, water, fire, and forests for all living beings to live well.

2.6 **Main challenges in the application of FPIC**

There have been numerous challenges from the many interest groups involved in the consultations.

State. The key challenge has been in ensuring adherence to the principles of the consultations: free, prior and informed. The government has the duty to inform the communities about positive and negative social impacts (health, education and housing); economic factors (cost and benefit for the state, companies, municipalities, communities and families, budgets for the projects and final destination of the products); and environmental and cultural impacts of mining and oil extraction mega projects. It is important for these decisions to be respected, and the self-determination and sovereignty of the Maya, Xinca and Mestizo people to be asserted. Unfortunately, since these decisions are not considered legally binding, they are not respected.

Community. Achieving unity and organization within the community remains a challenge when it comes to defending the land and human rights. The results will be more positive if the awareness and information campaigns are constant before and after each consultation, in rural as well as urban areas.

It is also important that both mainstream and community media are within the reach and the service of the communities and that there is a bilateral flow of information from the communities to the media and vice versa.

National and transnational companies. Community resistance to the systematic attacks perpetuated by the national and transnational companies (supported by the government) against leaders and defenders of the land needs to be strengthened. These attacks cause divisions, internal conflict and dislocation, amongst other things. It is necessary to avoid the damages that are caused by resource extraction, megaprojects and monocultures and the plunder of natural, non-renewable resources. All injustices, such as the fact that the mining companies pay only 1% royalties to the country, must be denounced.

2.7 **Principles and practices of sustainable development**

It is important to understand that what is known in developed countries as “alternatives for

development,” is in reality ancestral wisdom. Victor Sales, currently a coordinator of the ADH (Peoples’ Assembly of Huehuetenango), states: “Ancestral knowledge is the starting point. We have learned how to struggle and live, we know the earth, what it produces and what our strengths are, what we are capable of, we do not talk about appropriating all the resources that there are and concentrating them in a person or a company. A way of life has been imposed on us that we do not want because it has not been informed by this. Capitalists always think of gold and silver, but the people think of agriculture, community tourism, a community development model that fits with the climate in which we live including organic agriculture and alternatives to commercialization. This has been our way of life for thousands of years.”

These ways of life have protected food sovereignty and the environment, through heirloom seed banks, agro-ecological practices for cultivating and livestock management, localized food consumption, and forest conservation.

Guatemala’s development has been based on agriculture which makes up 13.6% of the Gross Domestic Product⁴ and, according to the National Statistics Institute (INE), employs 37% of the workforce. The more than two million people that are directly employed, are located in rural areas where Indigenous peoples are concentrated,

⁴ Gross Domestic Product, 2001 database, Bank of Guatemala.



Agroecology workshop. Making organic fertilizer in the community of Palugua. | Photo credit: CEIBA

living in conditions of extreme poverty and high levels of food insecurity.

Alternative development proposals are related to agricultural and forestry activities, artisanal production as well as tourism that is responsible and respectful of the local culture and the environment. At the same time, Indigenous communities are aware that they should improve agricultural practices and create a qualified workforce, working with the government, development institutions and the companies that support their way of life.

There are real alternatives to development, such as the example of San Juan Sacatepequez where a cement company has been installed with Dutch capital and there is currently a thriving practice for the cultivation of roses for export. In the Municipalities of San Rafael, Santa Rosa and Mataquescuintla, Jalapa, where the Canadian-owned San Rafael Mining Company operates, the people have lived for many years off the cultivation of coffee,

corn, beans and vegetables (mainly tomato) and trading in nearby villages, as well as in El Salvador and Honduras.

Development is more local in Huehuetenango, due to the smaller portions of land that are available. However, corn, beans, coffee, vegetables, medicinal plants and livestock are available, depending on the climate and the area. Most of the production is for self-consumption, and any surplus products are sold in local markets, where the ecotourism and craft sale is also taken advantage of.

It is important to understand that urban areas depend on the food produced in rural areas. Any decrease in production related to the presence of mining companies and land appropriation, pollution of water and soil, and increases in illnesses, affects the food sovereignty of the communities as well as the cities.

CEIBA, along with some municipalities, supports ecological agro-forestry production. Several educational workshops related to climate

change, food sovereignty, sustainable local development and other topics have been held in order to empower the people of the communities and strengthen their capacity to affect decision making.

2.8 Alternatives to the extractive development model

There is no consensus in Guatemala as to the solutions to these problems. Some solutions that are being debated are the nationalization of the mines, or a redistribution of the royalties. A few *campesino* organizations such as CONIC propose raising the royalty rate to 35%, and distributing 15% to the municipalities and 20% for the state. The current government proposes an increase in voluntary royalties. The alternative that would be put in place, if the decisions made by the communities were respected, would include equitable land distribution and environmentally responsible agricultural production, along with forest management, artisanal production and tourism.



Context

3.1

Extraction activities in the communities CEIBA accompanies

CEIBA has presence in the Huehuetenango, Retalhuleu and Sololá departments. According to the Ministry of Energy and Mines, in Huehuetenango, there are seven mining licenses for exploration as well as 20 extraction licenses, with 44 requests for explorations licenses being processed. All of these are for metallic minerals. The following list details the most important licenses that have been granted for exploration, extraction and surveying in the areas where CEIBA works, as well as those that have a relationship with the Minera Montana Exploration Company, a subsidiary of Goldcorp Transnational Inc. (See Annex 2: Map of license locations.)

3.2

Existing Indigenous protocols

The framework that regulates the consultations is both national and international. What follows is a description of the laws, conventions,

resolutions and regulations that are related to FPIC.

a) International Conventions⁵

The norms related to human rights have been developed along with Indigenous Peoples rights (land and natural resources, the right to self-governance) and based on Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization.⁶ Convention 169 was ratified by Guatemala in 1996 and become active in 1997.

It is also important to indicate that ILO Convention 169 is internally validated in Guatemala by Article 46 of the Political Constitution of Guatemala, Decrees 9-96 of the Congress of the Republic and the opinions contained in files 199-95 of the Constitutional Court. Guatemala also voted in favor of the UN Declaration on the Rights of Indigenous Peoples (a resolution that was later approved on September 13, 2007, by the UN General Assembly), and played a key role in its development. Both legislative pieces establish the State's duty to consult.

The same UN General Assembly also approved the Declaration on the Right to Development, in resolution 41/28. The first article

establishes that Development is an inalienable human right and that all human beings and all peoples are entitled to participate, contribute and enjoy economic, social, cultural, and political development in which fundamental human rights and freedoms can be exercised. It is implicit that self-determination is a part of this, including rights and sovereignty over the natural resources and wealth.

The duty to consult is also found in other international treaties which Guatemala has signed on to, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the American Convention on Human Rights. This duty to consult is according to the interpretation given by the supervising entities, including the Inter-American Court of Human Rights and the Experts Commission on the Application of ILO Conventions and Recommendations (specifically for Convention 169).

Therefore, the Guatemalan State has the duty to consult Indigenous peoples around all legislative and administrative

⁵ Instituto Centroamericano de Estudios Fiscales (ICEFI). Minería en Guatemala: realidad y desafíos frente a la Democracia y el Desarrollo. 2014. Pages 19-20

⁶ Onwards Convention 169

CHART 1

Important Mining Concessions in CEIBA coverage areas

Name	Registry	Square Kilometres	Type of License	License Holder	Date Granted	Mineral	Municipality (s)	Department (s)
ATACAMA	LEXT-509	1.0000	Extraction	Industriales Santorini, S.A.	20/10/2004	Sandstone	Santiago Chimaltenango	Huehuetenango
El Sacramento	LEXT-207	2.0607	Extraction	Juan Marco Antonio Díaz Alva	02/06/1999	Lead, zinc, silver	Nentón	Huehuetenango
Cantzela	LEXR-021-05	57.5334	Exploration	María Isabel Farnel de Obrist	02/02/2006	Gold, silver, copper, nickel, chrome, lead, and zinc	Chiantla, Aguacatán, Huehuetenango and Malacatancito	Huehuetenango
San Rafael II	LEXR-811	22.0000	Exploration	Montana Exploradora de Guatemala, S.A.	11/12/2003	Gold, silver, copper, lead and zinc	Tectitan, Tacana, San José and Ojetenam	Huehuetenango and San Marcos
ANABELLA	CT-007	2.4545	Extraction	Minas de Guatemala, S.A.	01/11/1997	Polymetallics	San Ildelfonso Ixtahuacán and Colotenango	Huehuetenango
San Cristobal	MT-0222	0.3	Extraction	Jorge Raul, Marco Antonio, Luis Roberto and Francisco Ricardo all of whom have the following surnames: Diaz Alva y Marta Jul	28/10/1993	Lead	San Juan Atitán	Huehuetenango
San Rafael III	LEXR-034-06	22	Exploration	Montana Exploradora de Guatemala, S.A.	16/04/2008	Gold, silver, nickel, cobalt, chrome, copper, lead, zinc, antimony and rare Earths	Tectitán and Tacana	Huehuetenango y San Marcos
ORBITA	LEXR-905	1.33	Exploration	Lori A. Walton	06/05/2005	Lead, zinc, copper, gold, silver, gallium, germanium, antimony, rare Earths, marble and serpentine	San Sebastián Huehuetenango	Huehuetenango
SATURNO II	LEX-032-05	24.2154	Exploration	Montana Exploradora de Guatemala, S.A.	23/09/2006	Gold, silver, argentite, galena, cerussite, lead, smithsonite, blende, hemimorphite, zinc, chalcopyrite, copper, antimonite, antimony, pentlandite, nickel	San Sebastián Huehuetenango, Chiantla, Huehuetenango and Santa Barbara	Huehuetenango
Casiopea II	LEXR-907	11	Exploration	Montana Exploradora de Guatemala, S.A.	28/02/2008	Gold and silver	Sipacapa, Malacatancito and San Carlos Sija	San Marcos, Huehuetenango and Quetzaltenango
La providencia	ET-056	4.49	Extraction	Josefina Granados widow of Tello	18/05/1978	Lead and silver	Nentón	Huehuetenango
ISA No. 1	LR-004-08	2492.0655	Reconnaissance	Firecreek Resources, S.A.	07/04/2010	Rare Earths, wolframite, cobalt, chromite, hematite, zircon, ilmenite, magnetite, rutile, nickel, monazite, cassiterite, sand and gravel	Adjoins several departments	Retalhuleu

Source: Chart made by CEIBA based on data obtained from Mining Rights in Guatemala, Ministry of Energy and Mines. February 2014.

measures that directly affect them including on development projects, infrastructure investment, exploration or extraction of natural resources on their territories that might directly or indirectly affect them and their rights (Articles 6 and 15.2 of ILO Convention 169; articles 19 and 32.2 of the UN Declaration on the Rights of Indigenous Peoples).

b) National legislation framework for Indigenous Peoples consultations

The state's obligation to consult Indigenous Peoples is not apparent in the Political Constitution of the Republic of Guatemala. Rather it incorporates a limited recognition of the ways of life, culture and lands of the communities - Indigenous or ethnic groups, as they are called.

There have been few developments regarding constitutional precepts and legislation that would regulate Indigenous issues. There are, however, laws applicable to all of the population that stipulate the duty to consult, such as Article 26 of the Rural and Urban Development Councils Law, Decree 11-2002, and Article 65 of the Municipal Code, Decree 12-2002, which mandates consultations for communities or Indigenous authorities as a general requirement.

The Constitution, in Article 46, also establishes that internal law is subject to treaties and conventions that have

been ratified by Guatemala. Moreover, in a proceeding number 199-9, dated May 18, 1995, the Constitutional Court states that Convention 169 does not contradict what is in the Constitution and complements the programs laid out in articles 66, 67, 68 and 69. Therefore, it consolidates the values of the constitutional text.

The Agreement on Identity and Rights of Indigenous Peoples, which was signed in 1995 during the peace talks that ended the armed conflict, was constituted as a State commitment by way of Decree 52- 2005 of the Congress. It provides the legal and institutional reforms that guarantee active participation of Indigenous organization representatives, including in setting the framework for mechanisms of consultation in cases of legislative or administrative measures that may affect them.

It also commits the government to approving or promoting (in cases involving the legislative organism) all measures that allow ownership, use and administration of natural resources, in order to strengthen Indigenous peoples collective rights over their land and natural resources. It specifies the obligation to obtain the approval of Indigenous peoples before moving forward with any project that might affect the survival and ways of life of the communities.⁷

3.3 Regulations of FPIC

In Iximulew-Guatemala, the good faith consultations and their regulations follow the ancestral practices of Mayan communities. According to Guatemalan judicial pluralism, consultations have always been active in the communities, and the decisions are legitimized by information, dialogue, and consensus. This is what is known as Free, Prior and Informed Consent in human rights language.

Judicial pluralism is acknowledged in the Municipal Code. Article 2 states that the Municipality is the basic territorial unit of the State, characterized by permanent multi-ethnic, pluri-cultural and multi-linguistic relationships, which are all organized to serve everyone's best interest.

The consultations are an ancestral practice as evidenced in the sacred book *Popol Vuh*, where there are references to the idea of an Elder's Council. Consultations are held to make decisions of all kinds, from domestic to community issues, such as the implementation of the Maya Community Justice system, collective use of natural resources, days for sowing corn and other issues.

There is no specific legislation approved for the country. During Álvaro Colón's government, an attempt was made to promote a consultation law. These efforts however,

⁷ Government of Guatemala and Guatemalan National Revolutionary Unity (1995). *Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas*. México, D. F., March 1995. P. 11.



Top: March in San Jose del Golfo; | Photo credit: CEIBA **Above left:** Consultation in Cajala; | Photo credit: CEIBA **Above right:** Demonstration in support of community consultations | Photo credit: CEIBA

faded once an appeal was made in the Constitutional Court on April 25, 2011, on behalf of several municipalities where previous consultations were invalidated by this new law.

Article 6 of the Convention 169, as well as Articles 65 and 66 of the Municipal Code, and the UNDRIP all establish that community consultations should be held respecting the criteria

of the communities. According to this, each community forms a consultation committee, which meets with the municipality to develop the rules and regulations for holding a consultation in good faith.

Although several municipalities have attempted to validate this law, most of the responses from the Constitutional Court have been negative

except for the case of the Municipal Consultation of Mataquescuintla, Jalapa Department, when it endorsed the consultation results of November 2012 and the law in December 2013. To this date, however, no consultation has been considered legally binding because mining extraction is considered to be of national interest.⁸

⁸ Carlos Estuardo Loarca Solórzano, Guatemalan, Bachelor of Legal and Social Sciences. Consultant for the Defenders of the Environment Legal Center for the V Mesoamerican REDLAR Encuentro in Boquete, Panama April 22-25, 2009. <http://www.edlc.org/es/>

Responses of Main Mining Activity Actors in Indigenous Communities

4.1 Community responses to proposed or imposed mining concessions and licenses

Between 2005 and 2014, 78 community consultations have been held where mining exploration, extraction and megaprojects were either a possibility or a reality. Over two million people from different municipalities have participated in these consultations. Data varies because each consultation has different modalities determined by the traditions of each community. (see Annex 1 for a list of consultations).

The results of these consultations have been brought forward to legislative bodies, but have not yet received any positive responses from those who should be representing the people. There have been several attempts at dialogue with the government and local authorities such as mayors and governors,

as well as representatives of the Ministries of Energy and Mines, Environment, and the Presidency.

The Special Rapporteur on the Rights of Indigenous Peoples was made aware of the violations of the rights of Guatemalan communities. In March 2012, a constitutional appeal against the Mining Law was filed in the Supreme Court on the grounds that the State does not guarantee, nor does it respect, the right to FPIC outlined in Convention 169.

A lawsuit that lasted for over six years against the State of Guatemala and the extraction in the Marlin Mine, property of Goldcorp Inc. began in the Inter-American Commission on Human Rights (IACHR) and was accepted in the Inter American Court on Human Rights which issued precautionary measures, ordering the suspension of extractive activities. This was later modified in December 2011.⁹

Affected communities have initiated different attempts at resistance. The people of Huehuetenango, San Juan Sacatepequez and Cobán Alta Verapaz marched all the way to the capital city. Community highways have been blockaded in the Barillas. Municipalities

of San Jose del Golfo and San Pedro Ayampuc, have set up permanent camps in the location of resistance movement known as “La Puya” and communities have occupied private lands in San Rafael Las Flores, Santa Rosa to demonstrate their resistance.

4.2 Strategies for acknowledging Indigenous models of FPIC and peoples’ self-determination

The specific goals of achieving recognition for the Indigenous models of consultations are respect for the right to Free, Prior and Informed Consent, self-determination, and sovereignty of the people. As a result, some municipalities and regions have been declared free of mining and megaprojects, rejecting the “development” model offered by the companies.

Movements against mining and megaprojects have expanded and generated resistance, in spite of the information and efforts made by mining companies, mainstream media and the government to weaken them. Civil society organizations have experienced qualitative and quantitative growth.

⁹ But in late December of 2011 the IACHR, bowing to political pressure, rescinded its call to suspend operations. Nevertheless it continued to call on the Guatemalan government to ensure an adequate supply of uncontaminated water for domestic and agriculture uses for 18 communities in the two municipalities where the Marlin mine is located.

Another strategic aspect of this is the regional and pluri-national articulation of movements into broader alliances such as the Mesoamerican Movement Against Mining Extraction (M4), which includes southern Mexico, Guatemala, El Salvador and Honduras.

Attempts to shake things up on the legal front have also been made. Petitions for the revocation and annulment of national mining laws looking to forbid highly contaminating extractive activities and megaprojects that would affect various communities have provoked debate and analysis in the UN around issues of Indigenous self-determination and whether or not the consultations are legally binding.

The redefinition of certain terms, such as common good, territory, natural asset, democratic and participatory process, autonomy, historic community organization, is strategic for understanding Indigenous models of development as well as for promoting alternative life philosophies such as “*Buen Vivir*,” or Living Well.

4.3 Government responses

Governments have supported mining activities and megaprojects in a variety of ways:

- a) showing little or no political

interest for implementing the alternatives proposed by social movements and communities, preferring an extractive development model;

- b) creating a legal framework that facilitates natural resource extraction;
- c) disregarding the decisions of the community consultations held in good faith;
- d) disregarding and violating human rights and using state institutions to protect transnational and national extractive mining company property;
- e) criminalizing, persecuting and remilitarizing social protest.

The consequences of these responses by governments at the state and federal level can be seen in the following examples:

- a) Six military detachments have been deployed to the Huehuetenango Department; one military base has been set up in Malacatan, San Marcos; one military detachment is in the San Juan Sacatepequez Municipality; five detachments are in the Mataquescuintla and Jalapa Municipalities of the Jalapa departments and San Rafael Las Flores y Casillas

of the Santa Rosa Departments.

- b) In May 2013, a state of siege¹⁰ was declared in the Mataquescuintla and Jalapa Municipalities of the Jalapa Department, and the Casillas and San Rafael Las Flores Municipalities of the Santa Rosa Department because these areas were not in favour of the San Rafael Mining Company, subsidiary of Tahoe Resources Inc. In May 2012, a state of siege was declared in the Barillas Municipality, Huehuetenango, due to the protests against the Hidro Santa Cruz hydroelectric plant.
- c) The rise of social protest has motivated the government to decrease state budgets for social programs (health, education, recreation, food, etc.) and increase the budget assigned for the Ministry of the Interior and the Army.
- d) The conflict has caused divisions in the communities.
- e) Municipal governments, such as San Rafael Las Flores in Santa Rosa, have refused to hold Municipal Consultations in spite of the fact that all requirements for a consultation to be held at

¹⁰“The State of siege is a state of extreme emergency and it is declared in situations when there are serious disruptions to the peace or public security, such as an armed conflict or a civil war. It is equivalent to a state of war, without the armed assault from outside of the border. Therefore, it implies that military forces rather than police forces, will be mobilized for repressive purposes. It also suppresses fundamental civil rights. Under the State of Siege, military authorities may (1) intervene and dissolve any organization, group, entity or association, with or without *personalidad jurídica*, without prior warning; (2) arrest and incarcerate, without previous trial, any person that is suspicious of conspiring against the government, disrupting the peace, or fostering these actions; and (3) repel or repress, by any defensive or offensive means necessary, any individual or collective action that goes against the measures taken to re-establish normal public order.” (Editorial, *El Periódico*. 2013).



Left: Eight-year old Lisandro has itchy rashes all over his body which first appeared about four years earlier when the mine started operations. | Photo credit: Allan Lissner **Right:** “Since the company came we have diseases, before we didn’t have anything like this,” says Irma, whose daughter Yahira has itchy rashes all over her body. “Before the children were all healthy. Not any more!” | Photo credit: Allan Lissner

the request of the community as stipulated by the Municipal Code, have been complied with.

- f) Some municipalities, acting on the awareness of the social, environmental, economic and cultural damages that would be caused by mining industries, have followed through with their duties of promoting community consultations.

4.4 Responses from mining extraction companies

The mining companies carry out diagnostic studies before beginning their projects to assess strengths, weaknesses, vulnerabilities and

opportunities. They map out actors and key people to create strategies in order to overcome any barriers that might impede them reaching their objectives. They enter communities promising false “development,” jobs, promotion of community and municipal economies, and large incomes in return for mining extraction.

Assuring that environmental damage will be minimal, the companies take advantage of the extreme poverty of Guatemala and the vulnerability of the population which makes it easy to buy people off and purchase land where there are non-renewable resources. In the San Miguel Ixtahuacan Municipality for example, the Marlin Mining Company bought land from the people of the community for approximately

US\$460 dollars per *manzana* (1.72 acres or 6,961 m²) and for US\$130 dollars per *manzana* in San Rafael Las Rosas.

Community resistance has caused the companies and the government to impose their presence, causing internal conflicts when promoting people, foreign to the community, disparage existing social structures, criminalize and persecute community leaders, and discredit ancestral knowledge and community development models.

Mining companies launch propaganda campaigns to improve their image, highlighting their view of “development,” omitting the reality of the effects of mining on the environment and human health in the short, medium and long term.

Impacts

5.1

Impact of exploration concessions and mining projects

Open pit and underground mines have had a serious impact on the communities where these are located:

a) Social impacts

- i) Families where some members are employees of the mining companies and others are opposed, have become divided.
- ii) The lifestyle of people in communities (recreational activities, consumer habits, world vision) has been disrupted due to the presence of strangers.
- iii) The damages to the environment (forestry, changes to their ecosystem, water pollution) have caused the loss of important sources of subsistence.
- iv) The repression and persecution of community leaders has created an environment of terror. This is reminiscent of the armed internal conflict, during which time homes were raided, people were persecuted for long periods

of time and forced to flee, people were jailed, and food was stolen by the army and the national police force.

- v) The criminalization of social protest, the loss of land, income and the means to grow food has forced many to migrate to other parts of the country or abroad.

b) The community

Highways that access the communities have deteriorated due to the presence of mining exploration and extraction. Homes have been damaged by dynamite explosions or heavy transportation in San Miguel Ixtahuacán, San Marcos and surrounding areas. At least one of the wells that provides water for the land that is destined for growing food, has dried up because of the redirection of the water sources.

The levels of violence, drug addiction, alcoholism and prostitution have increased in the municipalities and surrounding communities where the mines are located.

c) Health

The impacts on health have been both physical and mental, due to the traumas suffered by the people and their families who have been persecuted and attacked. Houses of community members and leaders have been flattened.

In August 2008, the Peoples Council of the Western region (COP), composed of people from San Marcos, Quetzaltenango, Huehuetenango, Quiché and Las Verapaces and CEIBA held a medical day in three villages close to the Marlin Mine. Seventy-five per cent of the patients were ill with scabies associated with the lack of water and the presence of fine particles in the air along with high levels of humidity.

“In May 2010, the University of Michigan did a study about the metal levels in the blood and urine of the mine workers and the people living close to the mine. The results showed that those living close to the mine were exposed to metals through their work or environment. The levels of lead, mercury, arsenic, zinc and copper in the urine of those living close to the mine (usually adjacent or downriver from the mines) were higher than those living farther away.

“Aside from this, in 2010, the Ministry of Health and Social Assistance pointed out that skin diseases are the third most common reason for seeking medical assistance in both Sipakapa and San Miguel Ixtahuacán, although it is in tenth place in the rest of the country. Van de Wau, Evens and Machiels of the University of Ghent in Belgium found the arsenic levels of

the groundwater in areas close to the mine to be above acceptable safe drinking water levels. Urine also held alarming concentrations of arsenic. The illnesses caused by arsenic are generalized and require immediate action to be taken". (COPAE, 2012)

d) Impacts on women's lives

Impacts of mining and its effects have been more devastating for the women of the communities. Women are more frequently in direct contact with water and therefore more exposed to the problems produced by polluted water. Another problem is the destruction of homes caused by dynamite explosions. Since women remain for longer periods in the home, they are

exposed to the dangers of falling structures.

Women who are on the front lines of the struggle for the land, are victims of sexual abuse, rape and other forms of intimidation perpetrated by different company and security agents. Women have taken a strong lead in the defense of their territories, demonstrated by the fact that more than 50% of the participants in the community consultations, are women.

e) The environment

The Municipality of San Rafael in Santa Rosa lives off coffee, beans, corn and vegetables. All surplus products are sold in neighboring communities, the urban areas of the Guatemalan

capital or El Salvador. However, their products are beginning to be rejected due to concerns that they are contaminated by the mining activity located two kilometres away from the municipality.

Another important consideration is the direct contamination of water sources by cyanide, which causes irreversible damage to the environment. Underground or open pit mining requires around five million litres of water a day, which makes water scarce for other uses such as irrigating crops, livestock and drinking.

The following graph details the environmental damages caused by mining activity:

PROCESS	ENVIRONMENTAL CONSIDERATIONS	EFFECTS ON		
		Global warming	Energy	Water
Removal of vegetation – soil removal – separation of fertile soil and rock	Destruction of the vegetation – migration of native species	✓	✓	✓
	Liquid waste	✓	✓	✓
	Elimination of fertile soil	✓	✓	✓
	Air pollution related to pulverization	0	✓	✓
	Noise emissions	0	✓	0
	Dynamite detonations	✓	✓	0
Transportation of material	Air pollution due to carbon monoxide and carbon dioxide emissions	✓	✓	✓
Accumulation and unloading material to the rock crusher – Vibration feeders and breakers	Air pollution due to carbon monoxide and carbon dioxide, noise emissions, use of water and energy.	✓	✓	✓
Sag mill, vibration screen, static security screen, feeding pump, ball mill and cyclones, cone breaker.	Air pollution due to carbon monoxide and dioxide, noise emissions, use of water and energy	✓	✓	✓
Merrill-Crowe leaching process, grinding condenser, grinding condenser pump, leaching tanks	Toxicity in biotic and abiotic organisms caused by direct contact or vapours of chemical substances, water and energy use.	✓	✓	✓

Source: Asociación para la promoción y el desarrollo de la comunidad CEIBA, La Ruta del Oro, Página 24, Actualización año 2012. A check mark "✓" signifies there is a direct impact from the processes mentioned. A zero "0" indicates that there is no direct impact.



The crops were much better before,” says Crisanta holding up some of the corn her family harvested this year, “but since the mine came, they don’t come out the same anymore.” | Photo credit: Allan Lissner

The environmental damage affects all elements of nature including water, earth, wind, and forest, as well as causing global warming. All of this also negatively affects the food sovereignty of both the rural and urban populations.

Although mining companies are supposed to present an environmental reparation and exit plan for when they cease operations, most have not done so. The exception is Goldcorp, which paid an eight million Quetzal deposit, although several studies have shown that the cost for environmental reparations would be much more.

f) Economic impacts

There is very little quantitative information available regarding economic impacts of mining in the communities. However, the following relevant information is available:

- i) The territories for mining extraction have been bought for ridiculously low prices. In San Rafael Las Flores and Mataquesuintla, parcels were bought for US\$130 dollars per manzana, while in San Marcos, approximately

US\$460 dollars per manzana were paid.

- ii) The five million litres of water used daily are not paid for.
- iii) The costs of the consequences on human health have not been incorporated into the analysis of the costs and benefits by the municipalities and the country.
- iv) National budgets for the Army and Ministry of the Interior have been increased to provide security for mining operations, using the taxes of Guatemalans and at the expense of the budgets for the health, educational and infrastructural.
- v) Community defense leaders and their families have been forced to survive on no income due to state persecution.
- vi) Municipal income from mining extraction is minimal. An average of

400 people are given employment as unqualified workforce. The rest of the workforce comes from other parts of the country or abroad.

- vii) Water contamination has caused the loss of corn, bean and vegetable crops. There is no available information regarding the cost of environment reparations (forests, cleaning water, soil recovery).

- viii) There are some 200 damaged homes in San Miguel Ixtahuacan, which would cost around US\$5,000 dollars each to repair. There has been a loss of opportunities to initiate environmentally friendly activities such as coffee production, organic flower and vegetable growth and ecotourism.

What follows is a cost and benefit analysis by IPNUSAC, a research institute at the University of Guatemala for the San Miguel Ixtahuacan Municipality, where the Marlin mine is located.



Left: Delegates from the Guatemala Study Tour in San Marcos in front of a banner, "In Defense of Mother Earth", Counsel of Peoples of the Western Guatemala (CPO) | Photo credit: Rachel Warden
Right: Natalia Atz Sunuc, general coordinator of CEIBA, at a press conference in support of community consultations | Photo credit: Rachel Warden

CHART 3

Chart 3: Consolidated Costs and Benefits for San Miguel Ixtahuacan, San Marcos 2009
(Exchange rate: 7.75 Quetzal = 1 USD)

Concept	Quetzal	USD
Benefits		
Royalties	26,978,178.00	3,481,055.23
Sipakapa Royalties	2,697,817.00	348,105.42
Property Taxes	557,870.00	71,983.23
Direct employment	35,970,000.00	4,641,290.32
Indirect employment	49,266,000.00	6,356,903.23
Sierra Madre Foundation	3,307,605.00	426,787.74
Sustainable Development Department	4,000,000.00	516,129.03
Purchases	66,362,980.00	8,562,965.16
Total Benefits	189,140,450.00	24,405,219.35
Costs		
Health	4,900.00	632.26
Reconstruction of damaged homes	4,800,000.00	619,354.84
Land (forgone revenue)	345,600,000.00	44,593,548.39
Agriculture (loss of crops)	1,510,509.00	194,904.39
Water (Use)	638,175.00	82,345.16
Water (Treatment)	2,995,920.00	386,570.32
Royalty losses	134,890,890.00	17,405,276.13
Royalty losses (Sipacapa)	13,489,085.00	1,740,527.10
Total costs	503,929,479.00	65,023,158.58
Difference between costs and benefits	-314,789,029.00	-40,617,939.23
Ratio costs/benefits	2.66	

Source: *The Case of the Marlin Mine in San Marcos. Study of the economic dimensions of mining activity in Guatemala*, by IPNUSAC (Instituto de Problemas Nacionales de la Universidad de Guatemala).



German Chub (in wheel chair) says he was shot in the back after witnessing the murder of anti-mining leader Adolfo Ich Chaman. "Where is the justice for the death of my husband?" asks Angelica Choc (in blue shirt). | Photo credit: Allan Lissner

The information presented above shows that for every *Quetzal* accruing in benefits the municipality lost 2.66 times as much rebuilding damaged homes and on health, security, and other costs. Therefore, the mining project in the San Marcos Department is economically unsustainable. These expenses do not include the costs of environmental and health reparations when the mine closes.

g) Positive impacts

Although most of the impacts have been negative, there have been qualitative changes from an organizational point of view:

- i) Increased participation, organization and articulation between communities, municipalities and regions.
- ii) The communities from the eastern part of the country made up mostly of mestizos, have become aware of the importance of the Indigenous struggle and have advocated for organizational support.
- iii) A common goal is now shared by the mestizos, Mayas, Xincas, Garifunas, peasants and people of different generations: the DEFENSE OF THE LAND AND LIFE.
- iv) Innovative proposals concerning agroecological agriculture and local community development have been proposed as alternatives to the imposed development model.

5.2 **Impact of community resistance**

Both the government and the mining companies have contributed to the increase of social conflict, violence, repression towards community leaders and human rights defenders. Social protest has been discredited and criminalized, and the peoples' decisions have been ignored in favour of other types of development.

Community resistance has stopped the mining activity in Huehuetenango. However, in San Rafael Las Flores, the Escobal mine has been operating even though their license should have been suspended after a local court upheld a complaint filed by a community leader, a member of the Xinca Parliament.

Canadian Connection

6.1

Canada's connection with mining extraction projects

The Marlin company, located in San Miguel Ixtahuacan, San Marcos Department, is a subsidiary of Goldcorp Inc. The San Rafael mine, which extracts silver and is located in the San Rafael Las Flores Municipality, Santa Rosa Department, is a subsidiary of Tahoe Resources Inc. Both Goldcorp and Tahoe Resources are Canadian companies with headquarters in Vancouver. Aside from these two companies, Table 1 shows the licenses granted to the Montana Exploration Company, Inc., which is a Guatemalan subsidiary of Goldcorp Inc.

6.2

Role of the Canadian Government

The Canadian Embassy states that it has merely a diplomatic role in Guatemala. However, its political and legal pressure has eased conditions for Canadian capital to enter the country. The Canadian Government continues to ignore the outcome of consultations that oppose the negative impacts of extractive companies.

Aside from this, the Canadian government is promoting a new Mining Law that will regulate the community consultations held in good faith. This new law is modelled on the Peruvian Law that has already posed legal obstacles for the Peruvian people.

Other examples of Canada's support for mining and Canadian capital, including interference and discrediting of social protests are the following:

a) Santa Rosa, Guatemala: Tahoe Resources – April 2013

"Canadian ambassador Mr. Hughes Rousseau participated as an honorary witness in the signing of an agreement between the Guatemalan Government and Tahoe Resources that voluntarily raised the royalties paid by the Escobal silver mine upon entering into production from 1% to 5%. This agreement is another attempt to legitimize an unwanted project. Twelve community and municipal plebiscites have been held in southeastern Guatemala, where the Tahoe project is located, and the results have been overwhelmingly against the mine.

Guatemalan and Canadian authorities are adding to the volatility of the situation by exerting pressure in favour of

these mining projects. Two days before Rousseau participated in this official ceremony, six men were shot at by the Escobal Mine's private security guards as they walked by the company's property. Two of the men were seriously injured and had to be hospitalized. Tahoe's head of security was arrested for attempted murder as he was trying to leave the country. An illegal armed group is also operating in the area, which has prompted several Human Rights organizations and other international groups to open an investigation on behalf of the International Commission Against Impunity in Guatemala (CICIG).

Three days after the royalty agreement was signed, the Guatemalan government declared a state of siege in the area where the Tahoe mining project was operating, and all civil rights, including the right to protest or public gatherings, were suspended, allowing the police to carry out raids and detentions without the impediment of a court order."¹¹

b) Guatemala: Skye Resources – February 2007

Ex- Canadian ambassador in Guatemala, Kenneth Cook, appeared before an Ontario court charged with slander against student and cameraman Steven Schnoor.

¹¹ Original text includes a footnote that links to three articles in English: <http://upsidedownworld.org/main/guatemala-archives-33/4270-state-of-siege-mining-conflict-escalates-in-guatemala/>; <http://nigqua.blogspot.ca/2013/05/guatemalan-govt-declares-state-of-siege.html>; <http://www.mimundo.org/2013/05/03/2013-05-02-taho-s-san-rafael-mine-conflict-leads-to-state-of-siege/>

In February 2007, Cook made false statements about a documentary Schnoor filmed, which criticized the practices of a Canadian mining company that operated in eastern Guatemala. In January 2007, Schnoor filmed a short documentary which depicted Mayan farmers being violently evicted from their homes in rural Guatemala, at the request of Skye Resources. Images of a woman protesting loudly were included in the documentary.

In a meeting at the Canadian Embassy in Guatemala City in February 2007, Ambassador Cook said the woman had been paid to act in the video and that a photo, depicting a man's desperation during the event (taken by renowned journalist James Rodríguez), was not taken during the eviction but was actually a stock image that had been published before. In June 2010, Judge Pamela Thomson ruled that the comments had been defamatory and were untrue. She also stated that the ambassador had been indiscreet and that he "should have known better." Commenting on the importance of this case, Schnoor said: "This isn't just about me and one particular video. I am concerned that this is an example of how the Government of Canada is quick to discount the voices of people who are harmed by Canadian mining companies."

Hudbay Minerals, which bought the Phoenix nickel project and

merged with Skye Resources in 2008 is now facing three law suits: 1) for the rape of 11 women during a forced eviction, 2) the murder of a land rights activist, and 3) the shooting and paralysis of a man in Sept 2009.¹²

c) Guatemala: Glamis Gold – November 2004

In 2002, Glamis Gold Ltd. (purchased by Goldcorp Inc. in 2006), began developing the Marlin gold mine in Guatemala. Marlin was the first large mining investment in Guatemala following the neoliberal reforms intended to attract foreign mining capital. It was an important test run for the mining industry. On November 4, 2004, a national newspaper published a survey, with results indicating that 95.5% of the people living close to the Marlin mine, the majority of them Indigenous, were opposed to the project. The same day, in the same paper, the Canadian ambassador James Lambert, published an article describing the benefits that mining had for around 200 Indigenous communities in Canada. The following month, the Canadian embassy also co-sponsored a National Mining Forum, intended to promote the mining industry. All of this convinced the Guatemalan public that the Embassy was more interested in promoting Canadian mining interests than human rights.

On January 11, 2005, after a 40-day-blockade, hundreds

of residents that opposed the Marlin mine faced 700 soldiers and 300 police. In June of that year, the Indigenous communities of Sipakapa, an area affected by the project, held a referendum and the majority voted against mining extraction. In other press articles, Ambassador Lambert defended his controversial article, arguing that promoting Canadian interests and Canadian values such as sustainable development were part of diplomatic obligations and they did not necessarily conflict, but rather increased Canada's credibility in the country.¹³

6.3

What is CEIBA's message for Canadians?

Both the Canadian government and the general population must become aware, and in turn raise awareness, of violations to human and environmental rights. At a minimum, Canada must respect all international conventions. Instead of imposing the development model desired by Northern countries, Canadian companies have the duty to accept the decisions of local consultations and respect Indigenous self-determination based on development models that have existed since before colonization.

Canadians citizens should seek alternative information from

¹² Original includes footnote links to articles in English: <http://www.schnoorversuscana.ca/y> <http://www.chocversushudbay.com/>

¹³ Canadian Network on Corporate Accountability, "Dirty Business, Dirty Practices: How the Federal Government Supports Canadian Mining, Oil and Gas Companies Abroad." May 2007. <http://www.halifaxinitiative.org/sites/halifaxinitiative.org/files/DirtyPractices.pdf>



Top left: Community Planning Meeting, the International Health Tribunal in San Miguel Ixtahuacán, San Marcos, Guatemala. | Photo credit: Allan Lissner **Top right:** Reyna does her laundry in the river with her brother Alex. "We don't have any water at the house and our well has dried up, so we have to come down here." | Photo credit: Allan Lissner **Bottom left:** Rosalia stands on what used to be part of her families' farm until the mine expanded a single lane dirt road to accommodate large mining trucks. Rosalia's family says they were never consulted or compensated for the loss of their land. | Photo credit: Allan Lissner **Bottom right:** A farmer in Sipakapa inspects his crops. | Photo credit: Allan Lissner

trustworthy sources to inform their opinions and decide whether or not they support the foreign investments of Canadian companies. Listening only to mainstream media that omit key information, such as the reasons for community resistance, is inadequate for making sound decisions.

Resistance to destructive mining practices has to go two ways. Not only will affected countries continue to resist destructive mining extraction, the countries that are consumers of these resources must resist

the irresponsible consumption that is promoted by capitalism.

Canadians must demand of their governments, employers and investment firms full disclosure as to where their pension funds are invested. If these are in mining extraction, megaprojects or monocultures, they must demand that their money be withdrawn from these investments.

Oscar Morales, a community leader from San Rafael Las Flores, Santa Rosa, stated: "Northern countries and their pension and investment

funds are tainted with blood, because of the criminalization, persecution and murder of human rights defenders and those who are defending land and the environment."

KAIROS can provide support by participating in and promoting campaigns that raise awareness about the human rights violations that are occurring in countries affected by mining extraction. It can keep the general population informed of the environmental, social, cultural, and economic costs and impacts that companies cause, and demand public audits.

Recommendations

1) The most important recommendation for our National Government, all companies and the Canadian Government is to respect sovereignty, self-determination and the results and decisions of over 78 community consultations of good faith held in 12 Guatemalan Departments, in which well over 90% of the people have stated their position: "NO TO MINING, YES TO LIFE AND LAND."

2) International organizations and institutions must support campaigns and raise awareness so that human rights are respected. Initiatives that seek to promote other sustainable development models such as *Living Well*, must be supported.

3) We recommend the general population inform itself and divest from all funds that may contribute to negative impacts of mining extraction on communities and the environment, as well as denounce human rights violations.

4) We ask the Guatemalan government to

- respect national and international laws regarding human rights;
- respect community organizational forms, their particular consultation traditions, avoiding attempts to standardize the procedures for all communities;
- respect the dignity, collective and individual rights of the Mayan people of Guatemala;

- strengthen community economy to achieve real development for Indigenous communities.

5) We ask KAIROS to continue its work of strengthening social organizations and denouncing the violations that are a consequence of the extractive activities and megaprojects. We ask, as well, that KAIROS maintain ongoing communication with Guatemalan organizations to work on influencing Canadian policy.

6) We ask for the Indigenous peoples of Canada to show their solidarity with the Indigenous peoples of Guatemala.

7) We ask the Canadian government to ensure that Canadian companies do not violate human and collective rights in Guatemala.

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ANNEX 1

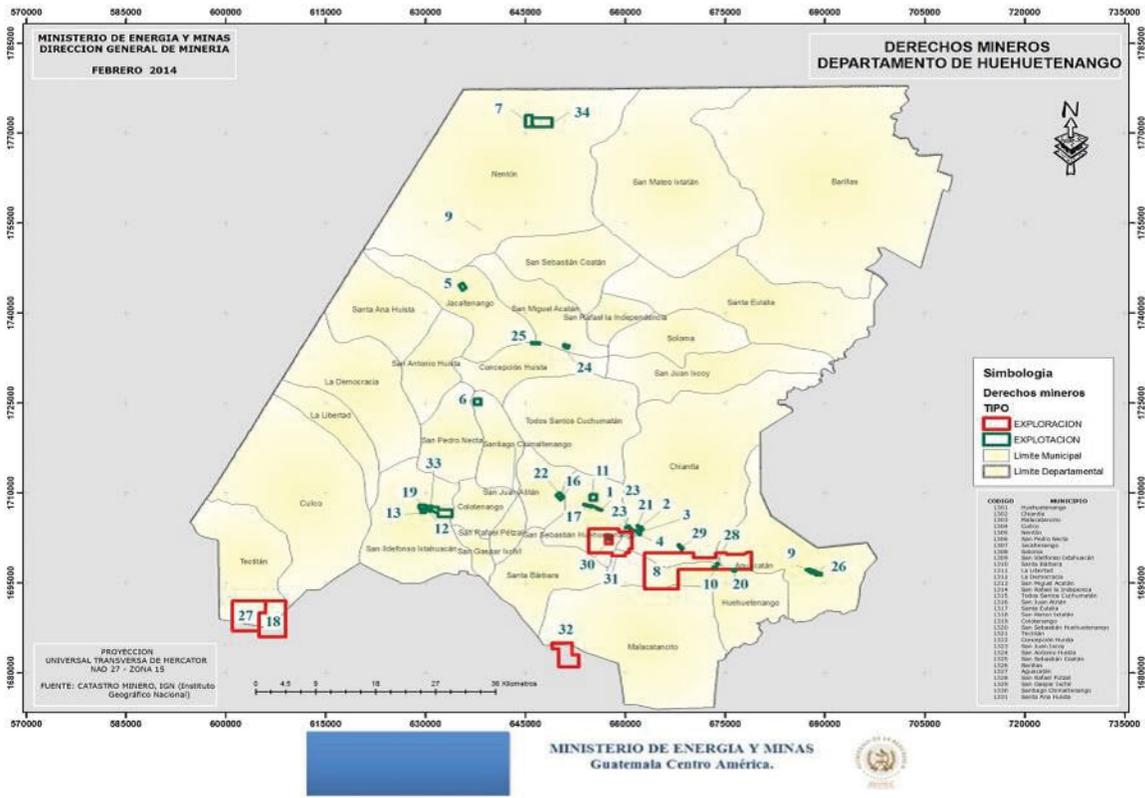
List of community, Good Faith and municipal consultations held in Guatemala up until April 2014

Departament	#	Municipality	Reason for consultation	IN FAVOUR OF		Year
				YES	NO	
San Marcos	1	Comitancillo	EntreMares of Guatemala Inc. metal exploration	0	13,600	2005
	2	Sipakapa	Montana, Gold Corp., Marlín project	89	2,415	2005
	3	Tajumulco	Montana, Gold Corp., Marlín project	Data unavailable		2006
	4	Concepción Tutuapa	Montana, Gold Corp., Marlín project	0	11,300	2007
	5	Sibinal	Montana, Gold Corp., Marlín project	0	13,200	2008
	6	Ixchiguan	Montana, Gold Corp., Marlín project	0	7,617	2007
	7	Tacana	Montana, Gold Corp., Marlín project	15	8,215	2008
	8	San José Ojetenam	Montana, Gold Corp., Marlín project	3	9,733	2008
	9	Tejutla	Montana, Gold Corp., Marlín project	0	6,817	2008
	10	Malacatán	Montana, Gold Corp., Marlín project	Data unavailable		2009
	11	San Cristóbal Cucho	Montana, Gold Corp., Marlín project	0	4,617	2009
Zacapa	12	Rio Hondo	Pasabien Hydroelectric extension	64	2,735	2005
Huehuetenango	13	Colotenango	Community consultation regarding mining	50	7,811	2006
	14	San Juan Atitán	Community consultation regarding mining	0	5,919	2006
	15	Todos Santos Cuchumatan	Community consultation regarding mining	0	7,100	2006
	16	Concepción Huista	Community consultation regarding mining	0	4,985	2006
	17	Santiago Chimaltenango	Community consultation regarding mining	0	3,100	2006
	18	Santa Eulalia	Community consultation regarding mining and hydroelectric plants	5	18,089	2006
	19	San Miguel Acatan	Community consultation regarding mining	7	12,854	2007
	20	San Pedro Necta	Community consultation regarding mining	0	17,741	2007
	21	San Antonio Huista	Community consultation regarding mining	0	5,774	2007
	22	Santa Cruz Barillas	Community consultation regarding mining and hydroelectric plants	9	46,490	2007
	23	San Juan Ixcoy	Community consultation regarding mining	3	12,011	2008
	24	Tectitan	Community consultation regarding mining	5	4,527	2008
	25	Chiantla	Community consultation regarding mining	27	32,971	2008
	26	Jacaltenango	Community consultation regarding mining	0	27,250	2008
	27	San Ildefonso Ixtahuacán	Community consultation regarding mining	0	14,469	2007
	28	Nentón	Community consultation regarding mining and hydroelectric plants	0	19,842	2007
	29	San Sebastián	Community consultation regarding mining	0	6,770	2007
	30	Santa Ana Huista	Community consultation regarding mining	0	4,696	2008
	31	Aguacatan	Community consultation regarding mining	0	23,523	2008
	32	San Pedro Solomá	Community consultation regarding mining	4	23,764	2008
	33	Cuilco	Community consultation regarding mining	0	12,703	2008
	34	Santa Bárbara	Community consultation regarding mining	0	10,236	2008
	35	San Rafael Petzal	Community consultation regarding mining	0	3,500	2009
	36	San Rafael La Independencia	Community consultation regarding mining	0	5,831	2009
	37	San Mateo Ixtatán	Community consultation regarding mining	1	25,646	2009
	38	San Gaspar Ixil	Community consultation regarding mining	0	3,933	2009
	39	San Sebastián Coatan	Community consultation regarding mining	3	13,566	2009
	40	Unión Cantinil	Community consultation regarding mining	0	6,879	2009

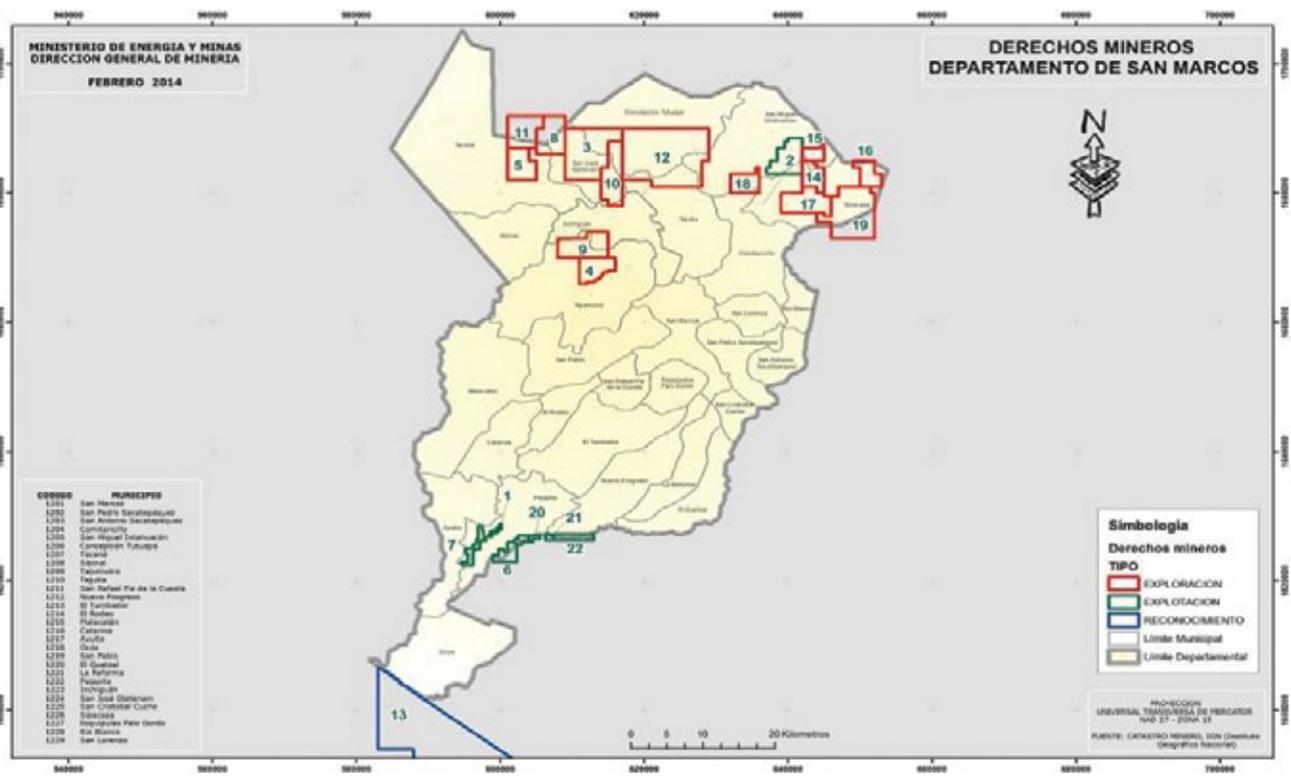
Departament	#	Municipality	Reason for consultation	IN FAVOUR OF		Year
				YES	NO	
Guatemala	41	San Juan Sacatepéquez	Community consultation regarding Cementos Progreso	4	8,936	2007
	42	San Pedro Chuarrancho	Consultation regarding El Sisimite Hydroelectric	571	2,748	2009
Quiche	43	Ixcán	Consultation regarding Xalala Hydroelectric	1,829	18,992	2007
	44	Cunén	Consultation regarding mining and hydroelectric	0	18,924	2009
	45	Santa Cruz del Quiché	Consultation regarding mining and hydroelectric	0	27,778	2010
	46	Uspantán	Consultation regarding mining and hydroelectric	0	25,260	2010
	47	Sacapulas	Community consultation regarding natural and hydroelectric resource extraction	209	28,000	2011
	48	Chinique	Community consultation regarding mining	1	4,669	2012
Alta Verapaz	49	San Agustín Lanquín	Community consultation regarding mining and megaprojects	15	14,065	2010
Quetzaltenango	50	Cabricán	Maquivil Registry LR-074, CALEL Registry LEXR-828, Eluvia Registry LEXR-010-06, Marina Registro LEXR-08-06	73	13,610	2010
	51	Huitán	Community consultation regarding mining	30	6,758	2010
	52	San Juan Ostuncalco	Community consultation regarding mining	0	33,428	2011
	53	Olintepeque	Community consultation regarding mining	69	14,450	2011
	54	San Martín Chile Verde	Community consultation regarding mining	62	14,450	2011
	55	Concepción Chiquirichapa	Community consultation regarding mining	0	12,194	2011
	56	San Miguel Siguilá	Community consultation regarding mining	0	5,303	2011
	57	Cajola	Community consultation regarding mining	Data unavailable		2013
	58	San Carlos Sija	Community consultation regarding mining	65	16,856	2012
	59	San Martín Sacatepequez	Community consultation regarding mining	62	17,871	2011
	60	Sibilia	Community consultation regarding mining	Data unavailable		
	61	San Francisco La Unión	Community consultation regarding TRECSA electric company cabling in the area and mining	12	4,522	2013
	62	Palestina de los Altos	Community consultation regarding mining and megaprojects	89	6,639	2013
Santa Rosa	63	Nueva Santa Rosa	Consultation regarding San Rafael Mine, Tahoe Resources and set of licenses Minera San Rafael already hold including Juan Bosco exploration license	83	7,246	2011
	64	Santa Rosa de Lima	Consultation regarding San Rafael Mine, Tahoe Resources and set of licenses Minera San Rafael already hold including Juan Bosco exploration license	86	5,338	2011
	65	Casillas	Consultation regarding San Rafael Mine, Tahoe Resources and set of licenses Minera San Rafael already hold including Juan Bosco exploration license	71	5,043	2011
	66*	Los Planes community, San Rafael Las Flores	Consultation regarding San Rafael Mine, Tahoe Resources	Data unavailable		2012
	67*	El Chan community, San Rafael Las Flores	Consultation regarding San Rafael Mine, Tahoe Resources	Data unavailable		2013
	68*	El Barrio Oriental community, San Rafael Las Flores	Consultation regarding San Rafael Mine, Tahoe Resources	Data unavailable		2013
	69*	La Cuchilla community, San Rafael Las Flores	Consultation regarding San Rafael Mine, Tahoe Resources	Data unavailable		2013
	70*	San Juan El Bosco	Consultation regarding San Rafael Mine, Tahoe Resources	Data unavailable		2013
Retalhuleu	71	Champerico	Consultation regarding San Rafael Mine, Tahoe Resources	175	17,291	2012
Totonacapan	72	Momostenango	Licenses granted to Tikal Minerale S.A. subsidiary of Mayan Iron Corp. and Firecreek Resources, for iron and metal extraction	0	54,230	2013
	73	Santa Lucía La Reforma Totonacapan	Community consultation regarding mining projects	Data unavailable		2013
	74	San Francisco el Alto	Community consultation regarding mining projects	27	45,593	2013
	75	Community members of San Francisco El Alto, residing in Los Angeles, California			4,257	2013
Jalapa	76	Jalapa	Municipal consultation regarding extraction licenses (Centauro II) granted to Montana Exploradora, S.A. (Goldcorp Inc. Subsidiary) and Los Cimientos license granted to Nichromet (Australian capital)	399	23,152	2013
	77	Mataquescuintla	Municipal consultation regarding San Rafael Mine, Tahoe Resources	625	10,375	2012
Petén	78	Las Cruces	Community consultation regarding dams	120	10,814	2012
TOTAL OF PEOPLE				4,962	941,021	
PERCENTAGE				1%	99%	

Source: Chart made by CEIBA based on data obtained from "La Ruta del Oro", CEIBA; Madre Selva list of community consultations and list of consultations found on <http://resistenciadlp.webcindario.com/consultas.html>

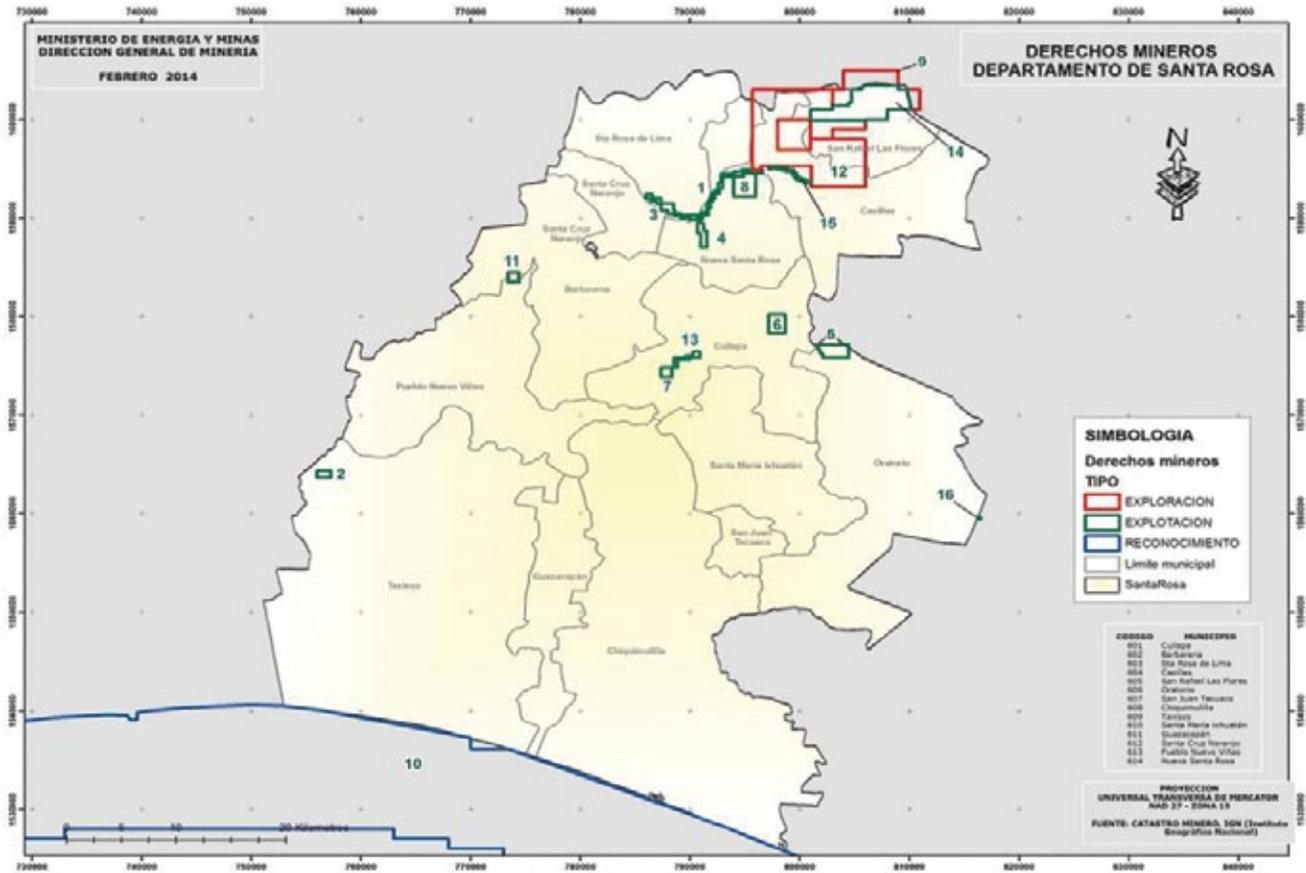
ANNEX 2 HUEHUETENANGO MAP OF MINING CONCESSIONS



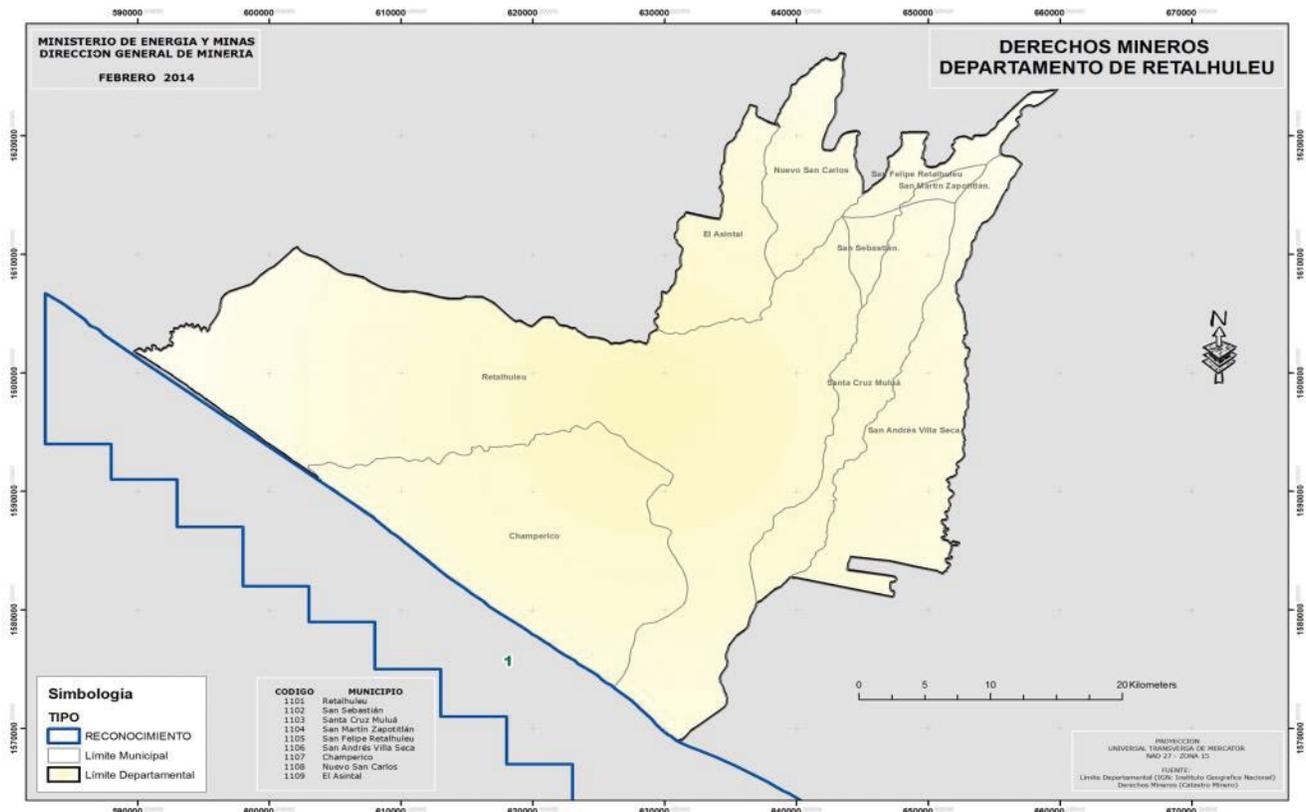
SAN MARCOS MAP OF MINING CONCESSIONS



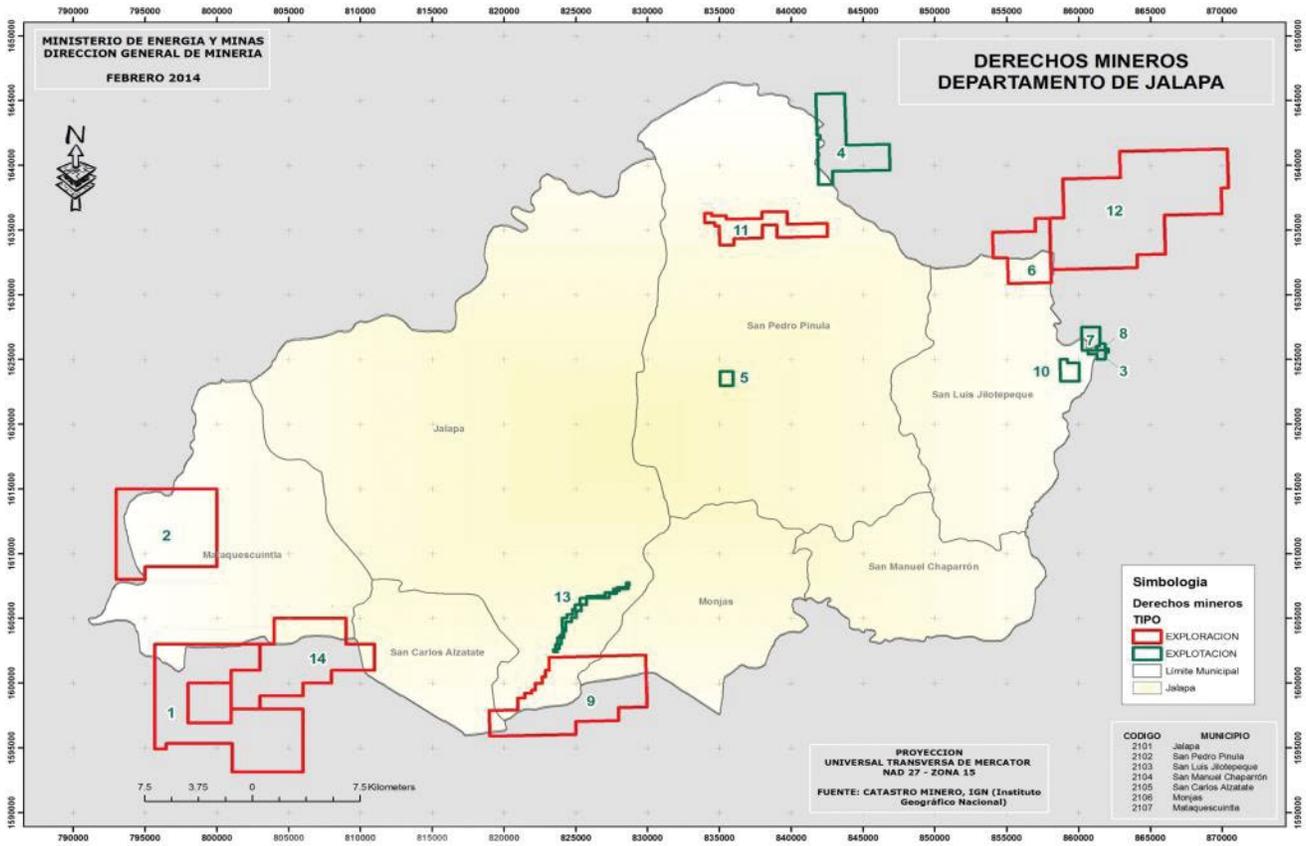
SANTA ROSA MAP OF MINING CONCESSIONS



RETALHULEU MAP OF MINING CONCESSIONS



JALAPA MAP OF MINING CONCESSIONS



MINISTERIO DE ENERGIA Y MINAS
Guatemala Centro América.





Above: Community consultation in Santiago, Chimaltenango. | Photo credit: CEIBA



**KAIROS: Canadian Ecumenical
Justice Initiatives**

310 Dupont Street, Suite 200

Toronto ON M5R 1V9

416-463-5312 | 1-877-403-8933

info@kairoscanada.org

www.kairoscanada.org

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