

## XINCA PEOPLE'S PARLIAMENT OF GUATEMALA

Communique from Xinka Authorities Regarding the Ministry of Environment and Natural Resources' Failure to Comply with the Constitutional Court Sentence, case file 4785-2017

As leaders and representatives of Xinka Communities, we denounce that since October 2018 we have been petitioning the Ministry of Environment and Natural Resources on numerous occasions to request that they allow us to fully participate in the definition of the Area of Influence of the Escobal mining project. However, as of now, none of our petitions have been resolved.

Our requests to participate in the definition of the area of influence are based on that which is established in the September 3, 2018 Constitutional Court sentence, file number 4785-2017, which establishes that the consultation should be carried out based on international standards and that these standards require the participation of Indigenous Peoples in **all** stages of the consultation. Moreover, the Constitutional Court's sentence establishes that we were not granted any participation in the process of granting the mining licences. Most importantly, it determined that we were not considered in the determination of the environmental impact of the El Escobal and Juan Bosco mining projects. This means that the determination of the area of influence is "**Void by Operation of Law**", and as a result, we do not now accept the definition of the area of influence, making it "**Void by Operation of Law**".

The Ministry of Environment and Natural Resources has acted in a **TOTALLY ILLEGAL** manner by ignoring our petitions and by issuing the resolution on November 12, 2018, to approve the area of influence of the Escobal mining project without establishing the legal, technical and scientific criteria it used to support its decision.

Moreover, this resolution was established in violation of the constitutional principle of due process since, as the Supreme Court of Justice resolved on November 15, 2018 in the numeral III "on that date the timeline on the dutiful deliberation of the sentence had not begun since the Supreme Court of Justice was preparing to remit the execution order to the obligatory institutions. And, as the aforementioned Court notes, in accordance with the due process of Constitutional Appeals of Protection, until the the execution order is remitted for the necessary enforcement of the sentence, will the timelines to comply with what is being ordered in the sentence be applied."

Notwithstanding the above, the Ministry of the Environment and Natural Resources, on March 8 of this year, notified us of two resolutions expanding upon the illegal November 12, 2018 resolution, which, as mentioned above, is illegal because it was issued in violation of due process. This is why on Monday, March 11, we appealed these resolutions to the Supreme Court of Justice given that it is evident that the Ministry of the Environment and Natural Resources is continuing to act in an arbitrary and illegal manner that seeks to limit our rights as Xinka People in the consultation process.

Similarly, we denounce the petitions presented by Minera San Rafael to the Ministry of the Environment and Natural Resources and the Supreme Court of Justice initiating spurious legal complaints aimed at intimidating our lawyer in this process, Quelvin Otoniel Jiménez Villalta. The unfounded complaints filed with the Guatemalan Bar Association and the courts, seek to punish Mr.

Villalta for the simple act of demanding transparency in the consultation process; that it strictly comply with international standards on the Rights of Indigenous People and that which was ordered by the Constitutional Court.

We believe that Minera San Rafael's actions are aberrant and seek to, at all cost, limit us from exercising our full rights during this consultation process in the same way it has since arriving in our territory. This is totally contrary to the principles of good faith and the free nature of the process, which should be respected above all else.

For these reasons we publicly denounce that attorney Quelvin Jiménez Villalta has been the victim of threats and express our concern for his security and that of all of the Xinka authorities and leaders who are participating in the consultation process. We hold the State of Guatemala and Minera San Rafael directly responsible for our safety and physical integrity.