

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

To the Ministry of Finance

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UNOFFICIAL ENGLISH TRANSLATION

Recommendation to exclude Tahoe Resources Inc. from the investment universe of the Government Pension Fund Global

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1 Summary

The Council on Ethics recommends the exclusion of the company Tahoe Resources Inc. (Tahoe Resources) from the Government Pension Fund Global (GPF) due to an unacceptable risk of the company contributing to serious human rights violations through its operation in Guatemala.

The company runs El Escobal, a mine located in the Santa Rosa region of south-eastern Guatemala. An at times very serious conflict has raged in and around El Escobal for several years. At least five people have been killed and around 50 have been injured. The situation came to a head in the spring of 2013, leading the authorities to declare a state of emergency in the region on 2 May 2013.

The involved parties strongly dispute the cause of the conflict and events during various clashes. The parties have accused one another of spreading lies and misinformation.

Tahoe Resources is of the opinion that the violence in and around El Escobal is the fault of external criminal groups, rather than real opposition to the mine. The company also believes that the majority of the local population supports the mining operation.

This view is not shared by the Guatemala office of the UN High Commissioner for Human Rights, which writes that the violent conflict in the area is due to dissatisfaction with the mine and the authorities' licensing process, in which the local population was not sufficiently consulted. Further, the office of the high commissioner points at the situation at the mine as an example of how human rights and indigenous rights activists are particularly vulnerable to violence and persecution in connection with extraction projects in Guatemala. Based on the violence that occurred at El Escobal in 2013, the office of the high commissioner concluded that extraction companies lack mechanisms capable of guaranteeing that their security practices meet international expectations.

The Council on Ethics has been in contact with Tahoe Resources several times, and the company has commented on a draft of the recommendation.

The situation described in the reports from the office of the UN high commissioner is serious, and in such circumstances it is particularly important that companies seek to comply with international standards and guidelines. The deadlocked situation and the company's replies to the Council make it difficult for the Council to conclude that the company's systems and strategies are suited to reveal, prevent and compensate for human rights violations connected to the operation.

Following an overall assessment, the Council has concluded that there is an unacceptable risk of Tahoe Resources contributing to serious human rights violations.

2 Introduction

In June 2013, the Council on Ethics decided to assess the Fund's investment in Tahoe Resources¹ against the Guidelines for the observation and exclusion of companies from the

¹ The company has *Issuer Id*: 18846897 and *ISIN no.*: CA8738681037.

GPFG's investment universe (the Ethical Guidelines).² The background for the decision was the existence of information about serious human rights violations connected to the company's mine, El Escobal. Peaceful resistance to the mine had escalated into a violent conflict in which both opponents of the mine and police officers had been killed.

At the end of 2013, the GPFG owned shares in the company valued at NOK 86.5 million, corresponding to an ownership interest of 0.59 per cent.

2.1 What the Council has considered

The Council on Ethics has assessed whether there is an unacceptable risk of Tahoe Resources contributing to serious or systematic violations of human rights as per paragraph 2, third subsection, letter a of the Ethical Guidelines.

In its assessment, the Council has given weight to the UN Guiding Principles on Business and Human Rights, which state that companies must ensure that they do not contribute to violations of the human rights of those affected by their operations.³ In this lies the obligation to follow national laws even if these are not enforced by the authorities in the area and, in the absence of national laws, to respect the principles laid down in relevant international instruments. The UN Global Compact and the OECD Guidelines for Multinational Enterprises also apply the UN Guiding Principles in their work focused on business and human rights.⁴

According to the UN Guiding Principles, companies should assess the actual and potential negative effects their operations may have on human rights. Companies should then implement measures adapted to the results of the assessment and investigate the effects of measures as well as adjust them so as to prevent future violations. Companies must also communicate externally how they are addressing the risk of violations. The principles state that this due diligence process:

- a) 'Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impact, and the nature and context of its operations;
- c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.'

This means that a company that has been granted a licence to extract natural resources in a given area should, before launching its operation and as early as possible, assess whether the operation may result in human rights violations. The required complexity of a due diligence process will depend on the scale of the operation, the risk of a negative impact on human rights and the situation in general. Accordingly, the establishment of a large operation in an

² http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277<http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/etiske-retningslinjer.html?id=425277>.

³ See the Guiding Principles on Business and Human Rights: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>.

⁴ See the Global Compact: http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html and the OECD Guidelines for Multinational Enterprises: <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

area presenting a high risk of human rights violations will require particularly extensive efforts to avoid contributing to human rights violations.⁵

The UN Guiding Principles also state in Article 18 that companies should conduct open, inclusive assessments to identify the parties on whose human rights they will have an impact:

‘In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should... involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.’

And further:

‘To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.’

In other cases in which the Council on Ethics has considered exclusion under the human rights criterion, the Council has taken the following considerations as its point of departure:

- Is there a clear connection between the company’s activities and the breaches of norms?
- Has the company contributed actively to the breaches of standards, or has the company known of the breaches but failed to seek to prevent them?
- Are the breaches of standards continuing, or is it likely that breaches will be committed in future?

In evaluating the relationship between the company’s operation and the breaches of norms, the Council has also emphasised whether the breaches have been committed with the aim of serving the company’s interests or to facilitate conditions for the company. Further, the Council has emphasised what the company has done to prevent future breaches.

2.2 Sources

The recommendation is based on UN reports, court decisions, reports from interest groups – including the indigenous people’s organisation the Xinka Parliament and the human rights organisations Amnesty International and UDEFEGUA⁶ – news articles, and radio and television interviews.⁷ Information from these and other sources mentioned in the footnotes were collated with information from researchers at the University of Oslo with field

⁵ Articles 14 and 17(b) of the UN Guiding Principles on Business and Human Rights, with related comments.

⁶ UDEFEGUA stands for *Unidad de Protección a Defensoras y Defensores de Derechos Humanos, Guatemala*, and is a well-known human rights organisation in Guatemala.

⁷ Particularly from the Guatemala office of the UN High Commissioner for Human Rights (<http://www.ohchr.org.gt/informes.asp>), but also the UN Special Rapporteur on the Rights of Indigenous Peoples, see particularly <http://unsr.jamesanaya.org/special-reports/observations-on-the-situation-of-the-rights-of-the-indigenous-people-of-guatemala-with-relation-to-the-extraction-projects-and-other-types-of-projects-in-their-traditional-territories>, COPXIG (2012?) *Mapeo de la situación actual de la región Xinka por la operación de las empresas de extracción de Santa Rosa, Jutiapa y Jalapa* and COPXIG (2012), *Propuestas de desarrollo planteadas por las comunidades Xinkas de Santa Rosa Jutiapa y Jalapa*. See also *Petición de los Pueblos Maya y Xinka contra el Estado de Guatemala* (September 2013), and the reports from Amnesty International, CALAS and UDEFEGUA cited in the footnotes.

experience from the area and information from the Guatemala office of the UN High Commissioner for Human Rights. The company has commented on a draft of the recommendation, and has replied to questions from the Council. Information about Tahoe Resources and El Escobal has been taken from the company's website.⁸

The involved parties accuse one another of spreading lies and misinformation. This has complicated the Council on Ethics' gathering of information.

3 Background

3.1 About Tahoe Resources and the El Escobal mine

Tahoe Resources (formerly CKM Resources Inc.), is a US mining company based in Nevada, USA. The company is listed in Toronto and New York. Goldcorp Inc. (Goldcorp) is Tahoe Resources' largest shareholder, with a 40 per cent stake.

Tahoe Resources owns 100 per cent of the El Escobal mine through its wholly-owned subsidiary Minera San Rafael.⁹ An exploration licence was initially granted to Goldcorp's wholly-owned subsidiary Entre Mares de Guatemala in 2007.¹⁰ Tahoe Resources purchased this licence in 2010 and has subsequently renewed it once. The company has conducted an environmental impact assessment, which was approved by the authorities in 2011.¹¹ In April 2013, Tahoe Resources was granted an extraction licence by the Guatemalan Ministry of Energy and Mining. Tahoe Resources is licensed to operate the mine for 25 years, although this term may be extended to 50 years.

Commercial production of silver, gold, lead and zinc began in January 2014. According to the company, the mine will create more than 800 jobs and account for 2 per cent of Guatemala's GDP once it is in full production.¹² The closest town is San Rafael las Flores, which has approximately 3,000 inhabitants.

El Escobal is the company's only ongoing project. The company has also applied for other licenses totalling approximately 2,500 km² in the region. Of these, the company has thus far been awarded just under 130 km².¹³ The licences the company has applied for are spread across three departments (Santa Rosa, Jalapa and Jutiapa), and encompass 10 cities and up to 50 towns. In 2013 the Guatemalan president announced a temporary moratorium on new awards of exploration licences, but according to the company this will not have a major impact on its activities.¹⁴

⁸ www.tahoeresourcesinc.com. All websites in this recommendation were available as at 22 February 2013.

⁹ Minera San Rafael and Tahoe Resources Inc. are hereafter referred to as Tahoe Resources.

¹⁰ Entre Mares de Guatemala and Goldcorp Inc. are hereafter referred to as Goldcorp.

¹¹ <http://www.tahoeresourcesinc.com/tahoe-resources-receives-environmental-permit-to-commence-underground-development/>.

¹² Communications with the company and the company's factsheet: <http://www.tahoeresourcesinc.com/wp-content/uploads/2010/09/TahoeCSRSnapshot.pdf>.

¹³ http://www.tahoeresourcesinc.com/wp-content/uploads/2010/09/Escobal_NI43-101_PEA_May2012.zip.

¹⁴ <http://www.tahoeresourcesinc.com/guatemala-proposes-temporary-moratorium-on-new-mining-licenses/>.



Figure 1: Basic map of Guatemala showing the location of El Escobal.¹⁵

3.2 Brief details of the conflict at El Escobal

An at times serious conflict has taken place in and around El Escobal for several years. The conflict is complicated and appears to encompass more than just opposition to Tahoe Resources, although opposition to the mine is key in the events in and around San Rafael las Flores.¹⁶

Violent clashes between demonstrators and security forces in recent years have resulted in around 50 injured, at least five deaths and widespread damage to property. The violence escalated in the first half of 2013, leading the authorities to declare a state of emergency in the region on 2 May 2013.¹⁷

There is strong disagreement regarding the reason for the conflict. The company is of the opinion that the conflict is due to external circumstances unrelated to the mine, and that the mine enjoys the support of the local population.

Human rights and indigenous people's organisations, the Catholic Church, the mayors of two neighbouring municipalities, a number of interest groups and large parts of the populations of the three regions affected by the conflict (Santa Rosa, Jalapa and Jutiapa), take a different view.¹⁸ These parties have organised themselves in the form of an active protest movement that has demonstrated against the mine since 2011.

¹⁵ http://www.tahoeresourcesinc.com/wp-content/uploads/2010/09/Escobal_NI43-101_PEA_May2012.zip.

¹⁶ For an overview of specific incidents, see: <http://www.plazapublica.com.gt/content/cronologia-del-conflicto-en-torno-la-mina-san-rafael>.

¹⁷ See for example the report from the office of the UN High Commissioner for Human Rights, 'Approval of licenses for mining and energy projects continued to generate conflict. In the mining site of El Escobal (San Rafael las Flores, Santa Rosa), peaceful anti-mining protests involving neighbouring communities were held, but there were also recurring outbreaks of violence. In January, two private security guards were killed by armed persons. In April, six villagers were injured by security guards, one policeman was killed in San Rafael and 25 police officers were detained by the communities for 14 hours in Xalapán. These incidents led to the declaration of a state of emergency in May.' A/HRC/25/19/Add.1 (2014), *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, section 64, available at: <http://www.refworld.org/docid/53353ed24.html>.

¹⁸ Aguilar Støen (2013), 'Cada día somos más'; *The campaign against 'El Escobal' mine in south-eastern Guatemala*.

The protest movement argues that the source of the conflict is that the local population, which does not want a mining operation in the area, was not consulted or sufficiently informed when the exploration and extraction licences were awarded to the company. The protesters state that many people did not know about the mining plans until it was too late, and that the Ministry of Energy and Mining did not take the appeals that were submitted into account before granting the company a licence to establish the mine.¹⁹ According to the protest movement the local population is protesting against this situation, but in recent years it has been met with violence, threats and legal prosecution by the company and the authorities.²⁰

According to the protest movement, the mining operation has no support among the local population. The protesters refer to Article 63-66 of Guatemala's Municipalities Act, which gives the local population in a municipality the right to be consulted, 'when the matter involves general issues affecting all of the inhabitants'.²¹ Based on this act, a number of consultations (so-called *consultas*) have been arranged since 2011 to examine whether 'the mine' (El Escobal particularly and all mining activities in general), has the support of the local population in the cities and villages surrounding El Escobal. Almost all of the *consultas* conducted show that a large majority in the region is against the mine.²² The protest movement is therefore of the opinion that further activities should be stopped.

Tahoe Resources and the Chamber of Industry of Guatemala (*Camara de Industria de Guatemala*), take the view that these *consultas* are contrary to the Guatemalan Constitution, given that their purpose is to stop an extraction project for which the State has already granted a licence. Further, the company believes that the *consulta* processes have been manipulated, and that the population was sufficiently consulted in accordance with the statutory requirements as part of the licence award process.²³

One of these *consultas* was appealed to the Guatemalan Supreme Court, which concluded in December 2013 that the *consulta* was not unconstitutional, and that the local population is entitled to be consulted on issues affecting it directly.²⁴ *Consultas* do not give the local population a right to veto state authorities' grants of licences, but are intended to be a part of the state's decision-making process.²⁵

The fact that this was not the case when Tahoe Resources was granted the licence for El Escobal apparently created great distrust in the authorities and the company, not least among

¹⁹ The protest movement is of the opinion that the licence should not have been granted before the appeals were heard. According to the Ministry, the appeals were rejected because the appellants had no legal interest. In July 2013, the district court ordered the Ministry to consider the appeals. The Ministry has appealed this decision. http://www.prensalibre.com/noticias/justicia/Sala-ordena-conocer-oposicion-mineria_0_962303773.html.

²⁰ Amnesty International (2012), *Submission to the UN Human Rights Committee*, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT_CCPR_NGO_GTM_104_8958_E.doc, page 13.

²¹ *Codigo Municipal de Guatemala* (paragraph 64), available at: <http://derechoyleyes.com/wp-content/uploads/2013/02/Co%CC%81digo-Municipal-Guatemala.pdf>.

²² The Council on Ethics has gained access to the results of 13 *consultas* in five municipalities and eight villages (in the municipality of San Rafael las Flores). The number of participants in the *consultas* has varied, from several hundred in the villages to 24,500 in Jalapa. In 12 *consultas*, more than 96 per cent were against the mining operation in the area. In one of the votes, 53 per cent of the population of the village voted for the mine, while 47 per cent voted against.

²³ See section 5, Information from the company.

²⁴ <http://www.businessweek.com/ap/2013-12-09/guatemala-top-court-local-polls-on-mining-legal>.

²⁵ See the conclusion and page 24 onwards (particularly page 27) of the judgment. The case reference numbers are 4639-2012 and 4646-2012.

the Xinka people.²⁶ The majority of the remaining Xinka population (16,000 people according to the most recent census), lives in Santa Rosa, Jutiapa and Jalapa, where Tahoe Resources is operating or has applied for licences (see Figure 2). According to the UN Special Rapporteur on the Rights of Indigenous Peoples, the lack of real consultations is one of the main reasons for violent conflict in connection with extractive projects in Guatemala.²⁷

Generally speaking, the Xinka people have little confidence in Guatemala's authorities, whom they consider racist.²⁸ The Xinka Parliament and other Xinka organisations have engaged actively in opposing the mine and what they consider the imposition of a development model based on major interventions in nature. Accordingly, they oppose the mining operation and demand that they be consulted before licences are granted in the areas in which they live.²⁹

San Rafael las Flores is not considered a traditional Xinka village, and the majority of the population (99.6 per cent) are *ladinos*, i.e. descendants of the indigenous population who speak Spanish and wear Western clothing. Nevertheless, the Xinka people consider themselves to be directly impacted by the company and its mining licences in the region. Like the rest of the protest movement, they point out that the company has been granted or is seeking licences covering large parts of Santa Rosa, Jalapa and Jutiapa (see Figure 2). They regard El Escobal as the first of a number of mining projects that will affect them directly, which they do not want and which they feel unable to stop.³⁰

²⁶ The Council's e-mail exchange with Mariel Aguilar-Støen. Aguilar-Støen is a senior researcher at the University of Oslo who conducted fieldwork in Santa Rosa in 2009 and has regularly visited the area since then to conduct research into the protest movement.

²⁷ See Anaya, James (7 June 2011), *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya - Observations on the situation of the rights of the indigenous people of Guatemala with relation to the extraction projects, and other types of projects, in their traditional territories*. http://unsr.jamesanaya.org/docs/special/2011-special-guatemala-a-hrc-18-35-add3_en.pdf, section 14.

²⁸ COPXIG (2012?) *Mapeo de la situación actual de la región Xinka por la operación de las empresas de extracción de Santa Rosa, Jutiapa y Jalapa*.

²⁹ COPXIG (2012), *Propuestas de desarrollo planteadas por las comunidades Xinkas de Santa Rosa Jutiapa y Jalapa*.

³⁰ Aguilar-Støen, Mariel (2013): 'Central to the dispute between "El Escobal's" proponents and opponents is the geographical location of the activities of the mine. In discussions about the mine, the government and the company refer only to the area where the infrastructure of the mine is visible in the municipality of San Rafael las Flores and to the 29 square kilometres for which the exploitation license has been granted (marked in red in the map). Opponents to the mine refer to the almost three thousand kilometres involved in exploitation, exploration and reconnaissance licenses. That is one of the reasons why the anti-mining campaign gathers people from over thirty communities from ten municipalities and three departments'. See also <http://www.plazapublica.com.gt/content/xalapan-el-fuerte-en-la-montana>.

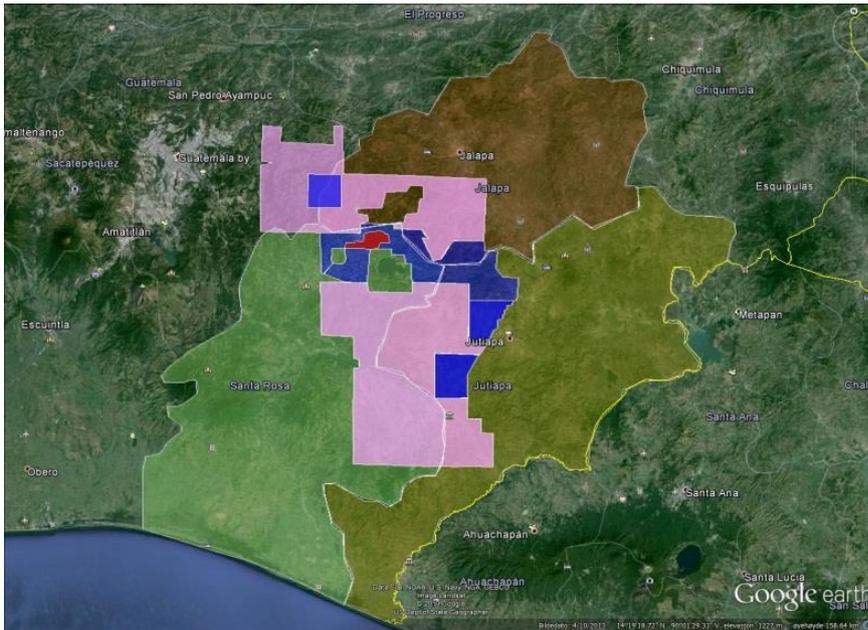


Figure 2: Google Earth map of the relevant area. The three regions of Jalapa, Santa Rosa and Jutiapa are indicated. The licences which the company has applied for or been granted are also indicated. Pink indicates prospecting activities, blue indicates exploration licences and red indicates an extraction licence.³¹

4 Allegations concerning human rights violations at El Escobal

The protest movement, human rights organisations and indigenous people's rights organisations are of the opinion that the company and the authorities are using violence, threats, arbitrary detention and military power to combat, blacken and criminalise legitimate human rights activists.³²

Allegations concerning the use of violence against demonstrators

Following a number of violent episodes in recent years, Guatemala's prosecuting authorities are to have investigated the potential role of the company's former security manager, Alberto Rotondo, in some of the conflicts relating to the mine. The authorities apparently interviewed Mr. Rotondo in connection with the violent clashes that took place on 11 January 2013, which among other things resulted in the deaths of two security guards and one demonstrator. The demonstrator apparently died as a result of the injuries he sustained after being thrown out of a moving car.³³ The prosecuting authorities apparently subsequently ordered telephone surveillance of Mr. Rotondo.³⁴

³¹ The Council on Ethics' own map, solely intended for illustration purposes. The company's licences are taken from: http://www.tahoeresourcesinc.com/wp-content/uploads/2010/09/Escobal_NI43-101_PEA_May2012.zip.

³² See for example Amnesty (2013), *Public Statement on Tahoe Resources' Escobal Project*, <http://www.amnesty.ca/news/public-statements/public-statement-on-tahoe-resources%E2%80%99-escobal-project>, *Petición de los Pueblos Maya y Xinka contra el Estado de Guatemala* (September 2013) and UDEFEGUA (2013) *Denuncia 9-2013* dated 2 May 2013.

³³ <http://www.plazapublica.com.gt/content/cronologia-del-conflicto-en-torno-la-mina-san-rafael>.

³⁴ <http://www.plazapublica.com.gt/content/el-pico-del-conflicto-minero>.

On 6 May 2013, the prosecuting authorities produced several telephone conversations in court during which Mr. Rotondo appears to order the killing of demonstrators.³⁵ The conversations apparently took place in connection with events on 27 April, when the company's security forces fired rubber bullets at demonstrators.³⁶ Seven people were injured, including two individuals who suffered serious injuries. The company claims that the injured persons were among a group of 20 people with machetes who tried to break into the mine grounds.³⁷ The demonstrators, on the other hand, claim that they were simply standing outside the mine and talking to one another.³⁸

During one of the conversations produced in court, Mr. Rotondo apparently said to Tahoe's communications and security adviser, Juan Pablo Oliva, that they had to 'remove the garbage', and that they could not allow the development of permanent opposition to the mine. During the conversations he also ordered a clean-up of the scene and that the official police report be changed. During a later conversation, Mr. Rotondo told his son that he had ordered the killing of demonstrators and had to leave Guatemala to avoid problems with the law.³⁹

As a result of the conversations, Mr. Rotondo was arrested at the airport and charged with causing bodily injury, among other things.⁴⁰ Mr. Rotondo resigned as security manager on 29 April 2013. The legal proceedings have not concluded.

The Guatemala office of the UN High Commissioner for Human Rights mentioned this incident as one of several examples of 'abuse by security company personnel during protests against mining projects' in its 2013 report to the UN Human Rights Council. The high commissioner concluded: 'The absence of mechanisms within the business sector, particularly among extractive companies, to guarantee that company security practices are in compliance with international standards, is of concern.'⁴¹

Allegations concerning murders and threats

On 17 March 2013, four people were apparently kidnapped while travelling home after participating in a *consulta* in the village of El Volcancito, which lies close to El Escobal. Three of the four individuals held leading positions among the Xinka people: the president, deputy president and secretary of the Xinka Parliament. The car in which they were travelling was stopped by between 10 and 12 armed persons. The secretary was later found dead. According to the police report, he had been bound and gagged. The deputy president escaped by leaping from a moving car, while the third person ran away. The president was found alive the following day. During the kidnapping, he was apparently asked questions about his connections with El Escobal and the protest movement. As far as the Council is aware, the kidnapping and murder have not been solved.⁴² The Guatemala office of the UN High

³⁵ During a telephone conversation with his subordinate, Mr. Rotondo apparently said the following, among other things: '*Maten a esos hijos de la gran puta*'; '*malditos perros que no entienden que la mina genera trabajo*'; and '*Hay que quitar a esos animales pedazos de mierda*'. <http://www.s21.com.gt/node/302047>.

³⁶ UDEFEGUA (2013).

³⁷ <http://www.tahoeresourcesinc.com/tahoe-clarifies-reports-regarding-incidents-near-escobal-project/>.

³⁸ <http://www.plazapublica.com.gt/content/el-pico-del-conflicto-minero>. See also UDEFEGUA (2013), *Denuncia 9-2013*.

³⁹ <http://www.s21.com.gt/node/302047>.

⁴⁰ <http://www.mp.gob.gt/2013/05/asesor-de-mina-san-rafael-ligado-a-proceso/>.

⁴¹ A/HRC/25/19/Add.1 (2014), section 44: '*Additionally, OHCHR-Guatemala registered new complaints of abuse by security company personnel during protests against mining projects. In May, a security official from the San Rafael mine was charged with bodily injury and obstruction of justice during an attack by the company's private security guards against a group of demonstrators.*'

⁴² See <http://www.elperiodico.com.gt/es/20130319/pais/226108> and <http://www.elperiodico.com.gt/es/20130320/pais/226150/>. See also an interview with the Xinka Parliament's

Commissioner for Human Rights mentions the murder as one of three murders of human rights activists in Guatemala connected to conflicts concerning the extraction of natural resources.⁴³

The organisation *Centro de Acción Legal Ambiental y Social de Guatemala* (CALAS) has challenged the company's extraction licence in court. On 3 April, a motorcyclist apparently drove up to CALAS's office and fired three shots into the air. On the same day, someone apparently broke into the house of CALAS's lawyer, Rafael Maldonado, for the second time (the first time was apparently on 19 March).⁴⁴

Human rights organisations and the protest movement interpret these and similar incidents as attempts to frighten members of the protest movement into silence.⁴⁵

Criminalisation of legitimate human rights activists

According to the Guatemala office of the UN High Commissioner for Human Rights, people fighting for economic, social, cultural and environmental rights in connection with extraction projects in Guatemala are particularly vulnerable. San Rafael las Flores is quoted as an example of this in the 2013 report to the UN Human Rights Commission, which states, among other things, that, 'Protests by indigenous and peasant communities and social organizations, as in the land conflicts in Los Regadillos, Quiché; Santa María Xalapán, Jalapa; San Rafael Las Flores, Santa Rosa; and Santa Cruz Barillas, Huehuetenango, often resulted in the use of disproportionate criminal charges, such as those of resistance, attack, terrorism and illegal association'.⁴⁶

The office of the UN High Commissioner for Human Rights also referred directly to San Rafael las Flores in its 2014 report: 'OHCHR-Guatemala observed that protests by communities and social organizations against projects for the exploitation of natural resources frequently triggered criminal proceedings against protestors with charges such as terrorism and criminal conspiracy, which appear disproportionate to the gravity of the alleged offences. Several cases were dismissed by the judiciary due to the lack of evidence and the inability to prove individual responsibility. Examples include... the cases of 26 people detained in San

president and deputy minister for security immediately after the incidents here:

<http://noticias.emisorasunidas.com/noticias/primera-hora/lider-comunitario-santa-maria-xalapán-relata-secuestro>. The dead man apparently choked on his own vomit, and showed signs of having suffered strong blows to the head.

⁴³ 'According to the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEUGA), attacks and threats against human rights defenders increased in the past five years... These included the killings of... Excaltación Marcos Ucelo, a member of the Council of Santa María Xalapán... These three cases took place in the context of conflicts related to the exploitation of natural resources-' A/HRC/25/19/Add.1 (2014).

⁴⁴ UDEFEUGA (2013) *Denuncia 9-2013* dated 2 May 2013. See an interview with Rafael Maldonado her: <http://noticias.emisorasunidas.com/noticias/primera-hora/lider-comunitario-santa-maria-xalapán-relata-secuestro>. The break-in was also mentioned in the report from the Guatemala office of the UN High Commissioner for Human Rights; see A/HRC/25/19/Add.1, section 46.

⁴⁵ The Council has also received credible information regarding another Xinka, who was apparently threatened on 17 April 2013. He was apparently told not to criticise the mine project. For yet another example, see <http://cmiguatemala.org/comunicado-unsitragua-detencion-ilegal-de-roberto-gonzalez-ucelo/>.

⁴⁶ A/HRC/22/17/Add.1 (2013), *Annual report of the United Nations High Commissioner for Human Rights; Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add1_EN.pdf.

Rafael las Flores, in April, on charges of “unlawful assembly” and attacks on public authorities, who were subsequently released due to lack of evidence.’⁴⁷

In September 2013, Xinka and Maya organisations filed a complaint against Guatemala with the Inter-American Commission on Human Rights (CIDH). The organisations are of the opinion that the Mining Law and the process preceding it violate human rights. In their complaint, the organisations criticise the fact that mining licences are granted without the local population being consulted. They claim also that authorities criminalise protest leaders who protest against existing mines and licence-award processes, and that violence against demonstrators is not investigated. The complaint quotes El Escobal as an example in this regard.⁴⁸

The protest movement claims that the police rely solely on information from the company when arresting demonstrators.⁴⁹ Among other things, the demonstrators refer to a list of opponents of the El Escobal mine which the company’s security manager, Mr. Rotondo, apparently gave to the chief of police and which formed the basis for the arrests.⁵⁰

The state of emergency in May 2013

A state of emergency (*estado de sitio*) was declared on 2 May 2013 in Jalapa, Mataquescuintla, Castillas and San Rafael las Flores.⁵¹ During the state of emergency, the authorities mobilised 2,500 soldiers, 600 police officers and 1,000 support staff, as well as armoured vehicles and helicopters.⁵² A permanent military force numbering several hundred soldiers was established close to the mine.

The Guatemala office of the UN High Commissioner for Human Rights associated the state of emergency directly with the conflict at El Escobal in its 2013 report to the Human Rights Council: ‘Energy and mining projects, especially those in indigenous territories, were one of the main sources of unrest. The conflicts related to these projects occasionally led to episodes of violence, such as in El Escobal and Santa Cruz Barillas. In May, a state of emergency (*estado de sitio*) was declared in some municipalities in the departments of Jalapa and Santa Rosa. A common denominator in these social conflicts was the failure to inform and to consult with indigenous and other local communities potentially affected by these projects.’⁵³

Guatemala’s Human Rights Ombudsman (*Procurador de los derechos humanos*) writes that the Guatemalan authorities use states of emergency to limit the rights of local populations in situations where local populations protest against extractive projects. The situation in San Rafael las Flores is quoted as an example of this, and the state of emergency of 2 May 2013 is

⁴⁷ A/HRC/25/19/Add.1 (2014), section 47.

⁴⁸ *Petición de los Pueblos Maya y Xinka contra el Estado de Guatemala* (September 2013).

⁴⁹ According to the human rights organisation Nisgua (*Network in Solidarity with the People of Guatemala*), more than 70 different legal cases have been brought against people in the opposition movement since November 2011. All of the cases have been dismissed. <http://nisgua.org/r77.pdf>. See also Amnesty International (2013) and *Petición de los Pueblos Maya y Xinka contra el Estado de Guatemala* (September 2013) (particularly footnote 31).

⁵⁰ <http://www.plazapublica.com.gt/content/el-pico-del-conflicto-minero>.

⁵¹ The state of emergency was based on a) a series of serious acts of sabotage ‘affecting the production activities of people and legal persons’, b) the theft of explosives, c) violence against military and police forces, and d) the interruption of free traffic movement. The president has publicly linked these actions to organised crime, drug smugglers and other ‘external groups’ that he holds responsible for the recent violence in the region.

⁵² <http://www.plazapublica.com.gt/content/las-mentiras-del-estado-de-sitio>.

⁵³ A/HRC/25/19/Add.1, section 16. San Rafael las Flores is located in Santa Rosa.

mentioned as an example of how the police suppress the popular protest movement against El Escobal.⁵⁴

As the Council understands it, the state of emergency resulted in the break-up of organised resistance to the mine and a temporary stoppage in the consultation process. Arrest orders were apparently also issued against leaders of the protest movement, including the president of the Xinka Parliament. All of the charges were apparently later dropped.⁵⁵ The local population is apparently of the clear opinion that the purpose of the state of emergency was to protect the interests of the mining company.⁵⁶

5 Information from the company

The Council on Ethics has received information from Tahoe Resources on several occasions, initially on 14 August 2013. The company has also answered follow-up questions asked in subsequent exchanges of emails with the Council, and commented on a draft of the recommendation.

The company is of the opinion that the Council's analysis is based on imprecise media coverage and speculations without a factual basis. Further, in the company's view, the Council is assuming that Alberto Rotondo is guilty of the things of which he is accused even though the case against him is ongoing.

The company considers that the situation in and around El Escobal has been peaceful since the authorities declared a state of emergency. The company writes,

‘...President Perez Molina lifted the regional state of emergency in late May and established a much needed permanent police force in San Rafael. The residents of the San Rafael communities have seen significantly decreased tension since that time, as outside interference has diminished. Permanent security forces have also been established in several departments in the region because of criminal activities unrelated to the mine. The re-establishment of law and order has calmed the region.’

The company believes that it has the support of the local community:

‘According to San Rafael Mayor Victor Leonel Morales, 70% of the population of San Rafael supports the project and the rest do not have an opinion with the exception of a very small number of vocal opponents who unfortunately foment discord in the region.’

The company also writes,

⁵⁴ Procurador de los Derechos Humanos (2013), *Cuestionario Relatora Especial de Naciones Unidas para Defensores y Defensoras de Derechos Humanos; Grandes proyectos de desarrollo y un entorno favorable y seguro para defensores y defensoras de derechos humanos*. See also UDEFEGUA (2013b) “*Condenamos el uso del estado de sitio para resolver problemática social derivada de imposición de empresa minera canadiense*”. UDEFEGUA has also written that, for some time, the State has employed a strategy whereby it provokes violent conflicts in order to undermine legitimate opponents, who are described as terrorists, criminals and lawbreakers.

⁵⁵ <http://noticias.emisorasunidas.com/noticias/nacionales/quedan-libres-capturados-disturbios-protestas-contramineria>.

⁵⁶ <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/177113-declaran-estado-de-sitio-en-cuatro-municipios-de-jalapa-y-santa-rosa> and <http://www.plazapublica.com.gt/content/xalapan-el-fuerte-en-lamontana>.

‘Numerous consultations were held with local communities prior to submission of the EIS [Environmental Impact Statement]. These consultations formed a significant basis for the EIS’s socio-economic assessment, assuring all involved parties that the project would provide significant positive benefits to our workers, the local and regional communities and the Guatemalan economy... Given the thorough nature of the EIS and its public availability, and further given our extensive community outreach efforts and support, the Company is confident that we met or exceeded the requirements of local, regional, national and international law prior to issuance of the exploitation license.’

The company states that the EIS was made publicly available in Guatemala City from 15 June to 13 July 2011, but that no objections were received. According to the company, any peaceful opposition to the mine has come from

‘outlying municipalities that are not directly impacted by the project—Nueva Santa Rosa and Mataquesuintla, to name two primary villages. These towns are led by very vocal mayors who gained office by running on anti-mining platforms. We have engaged a number of municipal councilmen from these areas who have visited the project and expressed their support. Still, those two mayors refuse to visit the mine or engage with our community relations staff.’

With respect to the cause of the violence in and around El Escobal, the company writes the following:

‘[...] the violent criminal incidents of Sept. 2012 and Jan. 2013 and others that we have experienced in the vicinity of the Escobal project are largely perpetrated by a few bad local actors and outside groups who financially and politically benefit from causing chaos in and around the San Rafael community.’

The company denies that the four Xinka leaders were kidnapped and that one of them was killed. In its reply to the Council, the company refers to a report from the Ministry of Justice (*Ministerio de Gobernación*), which apparently states that the cause of death of the one Xinka leader was that he choked on his own vomit after drinking too much alcohol, and that the president of the Xinka Parliament orchestrated his own kidnapping. The company was unable to provide this report in response to the Council’s request.

As regards the events of 27 April, the company writes the following:

‘On April 27, 2013, non-lethal force (rubber bullets and tear gas) was used at the mine gate against protestors armed with large sticks, clubs and machetes who were engaged in impeding traffic to and from the mine. Seven individuals were injured by rubber bullets and were treated and released at local hospitals. The security management contractor, Alberto Rotondo, was later charged with causing injuries and obstruction of justice. Within 24 hours of the incident, Mr. Rotondo was dismissed from his position... After the incident the Company conducted a thorough internal investigation, including a review of all the evidence presented by the [prosecuting authorities] at Mr. Rotondo’s arraignment. From that investigation, the Company concluded that Mr. Rotondo violated the Company’s rules of engagement, security protocols and direct orders from management when he ordered the use of non-lethal force to clear the mine entrance.’

The Council has requested further information on the investigation and the company’s rules of engagement, but has not received this.

The company denies that Mr. Rotondo ordered the murder of demonstrators but did not wish to expand on this in view of the ongoing proceedings. In a later reply to the Council, the company questioned whether the prosecuting authority had grounds for tapping Mr. Rotondo's telephone.

As regards the use of security forces, the company writes the following: 'The project's perimeter security is provided by Grupo Golan, a well-established Israeli-based security company that was founded in Guatemala in 1987.' Grupo Golan does not follow the International Standards on Protocol for Security Service Providers, but,

'[After] the armed attack on our security forces in January 2013 resulted in two deaths and several injuries to our contract guards, we began private consultations with an international security consultant which adheres to the International Standards on Protocol for Security Service Providers.'

The company has also engaged the organisation Business for Social Responsibility (BSR) 'to help guide our CSR and human rights programs in Guatemala.' BSR is to conduct a 'Social Performance Gap Analysis'. The analysis is to provide the company with a 'baseline of current status and provide recommendations'. Further, BSR is to conduct a 'Security and Human Rights Assessment' through which the organisation is to assist the company 'in identifying and managing key human rights and security risks. BSR will review compliance with the Voluntary Principles and [Tahoe's] security risks in the context of human rights.' BSR is also to run a capacity-building programme 'to increase staff knowledge and skills to implement Tahoe Resources' CSR, human rights and security strategies and practices in order to improve management and communications internally and externally. The capacity building will compliment and build off of the Social Performance Gap Analysis and Human Rights and Security Assessment.' The Council on Ethics has requested access to BSR's reports and materials but not been given these.

6 The Council on Ethics' assessment

The Council has assessed whether there is an unacceptable risk of Tahoe Resources contributing to serious or systematic violations of human rights.

The situation in San Rafael las Flores is complex. The ongoing conflict is characterised by reciprocal allegations by the involved parties regarding the spreading of lies and misinformation. The Council notes that both the company and the protest movement accuse one another of serious human rights violations such as murders and kidnappings.

The Council on Ethics' point of departure is the reports from the Guatemala office of the UN High Commissioner for Human Rights. The high commissioner points at the situation at El Escobal as an example of how the security forces of mining companies engage in violence against demonstrators. The high commissioner also refers to the situation in San Rafael las Flores as an example of how human rights activists are particularly vulnerable to violence and persecution.

The company has engaged security personnel and received assistance from local and special police forces to protect the company's property. These parties were apparently provided with the company's human rights policy and human rights training. At the same time, the company's own security chief appears to have ordered the use of violence against demonstrators.

The Council notes that a lack of confidence in the authorities appears to be the primary reason for the spread of the conflict to surrounding municipalities, including Xinka villages. The local populations in these areas are fighting against what they consider a continuous restriction of their territories, which are being awarded to mining companies without their being sufficiently consulted or having an opportunity to stop the projects. According to the UN Special Rapporteur on the Rights of Indigenous Peoples, the lack of real consultation processes is one of the main reasons for violent conflict in connection with extractive projects in Guatemala.

There is disagreement as to whether the company conducted a proper consultation process before the mine was established. Tahoe Resources has informed the Council that it complied with Guatemalan law during the consultation process, and that the local population has therefore been adequately consulted. The company also points out that it has held information meetings, arranged mine visits and dialogue meetings, and established a complaints scheme. The company has also referred to ‘extensive stakeholder identification’, but has not shared the details of this with the Council.

Members of the protest movement, on the other hand, complain that they did not discover the plans for the mine until it was too late. They point out that the environmental impact assessment was only available at the offices of the Ministry of the Environment in Guatemala City, and was thus in practice inaccessible to most people. It has also been pointed out that a number of formal complaints were made against the licence award process, but that these were rejected by the Ministry of Energy and Mining.

The Council on Ethics is of the opinion that it is insufficient for a consultation process to satisfy formal legal requirements if the legislation does not accord with international guidelines. The Council notes the criticism expressed by the UN High Commissioner for Human Rights, and the fact that indigenous people’s organisations filed a complaint against Guatemala with the Inter-American Commission on Human Rights in September 2013, based precisely on a lack of consultation. The Council on Ethics also notes that the results of various ‘*consultas*’ indicate considerable resistance to the mining operation in the local population.

As regards the risk of future violations, the Council notes that the company has engaged the organisation BSR to conduct a Social Performance Gap Analysis. The Council has asked for information about the content of this process, but the company has informed the Council that this information is confidential.

The Council has received the company’s human rights policy, in which human rights are described as an ‘integral part of Tahoe Resources’ ethical standards’. However, the document makes it clear that the company’s obligation to the local community is limited to respecting national laws and ‘cultural values’ in the country of operation. The Council has also requested other parts of the company’s policy and systems in the human rights area, but the company was unable to share these because the Council could not guarantee full confidentiality.

Given the many conflict situations and violence in connection with demonstrations against the mine, it is difficult for the Council on Ethics to assume that the company is taking sufficient steps to comply with international standards and guidelines.

The Council is of the opinion that a social due diligence process in accordance with the UN Guiding Principles could have helped to reduce future risk. In this process, it is important for the company to take responsibility for its role in the ongoing conflict, carefully identify and analyse the stakeholders in the specific area, and accept that critical stakeholders should also be heard. Given the deadlocked situation and the company’s replies to the Council, it appears unlikely that such a due diligence process will be conducted in the near future.

As regards the immediate risk of violence, the company’s statement that the situation in and around San Rafael las Flores is now more peaceful than in the months preceding the state of emergency is probably correct. As the Council understands it, this is due to the militarisation occasioned by the conflict.

Following an overall assessment, the Council is of the view that there is an unacceptable risk of Tahoe Resources contributing to serious human rights violations.

7 Recommendation

The Council on Ethics recommends the exclusion of Tahoe Resources Inc. from the investment universe of the Government Pension Fund Global due to an unacceptable risk of the company contributing to serious human rights violations.

Ola Mestad Chair	Dag Olav Hessen	Ylva Lindberg	Marianne Olsson	Bente Rathe
(Signature)	(Signature)	(Signature)	(Signature)	(Signature)