

Rights Action
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Another civil lawsuit in Canada, against another mining company that the CPP (Canada Pension Plan) – and many other pension funds and private funds – invests in, for more repression in Guatemala

Landmark Suit against Canadian Mining Firm Filed in BC Human rights group seeks to hold BC-based company liable for shootings at Guatemalan mine.

By [Sebastian Salamanca](#), 18 Jun 2014, TheTye.ca
<http://thetyee.ca/News/2014/06/18/Tahoe-Suit/>

On a hot day in May of last year, Erick Fernando Castillo, with a stitched wound in his right leg, limped his way to the front row in a courtroom in the small southern Guatemala town of Barberena. Castillo listened intently as the prosecutor played a wiretapped conversation for the judge. In it, an angry male voice orders his men to "clean the weapons." "Clean them well," says the voice. "We say 'nothing happened here.'" In another wiretap played the voice says, "With shots is that they learn."

Castillo was among seven people shot on April 27, 2013, when security guards at the Escobal silver mine fired at 20 local villagers protesting the project owned by Tahoe Resources.

The cell phone recordings Castillo had come to hear in court are potentially groundbreaking in Guatemala, and Canada too.

[Tahoe Resources Inc.](#) is based in Vancouver, British Columbia. The voice on the tape allegedly belongs to Alberto Rotondo, who was Tahoe's manager of security in Guatemala when the shootings occurred. Rotondo is slated to be tried in Guatemala on charges of aggravated assault, simple assault and obstruction of justice.

The legal implications of those secretly captured words may soon be tested, as well, in the Canadian justice system.

The [Canadian Centre for International Justice](#), an NGO that brings human rights cases to Canada, has today filed a civil lawsuit in British Columbia's Supreme Court asking to declare Tahoe Resources legally responsible for the injuries caused to Guatemalan local villagers by the mine's security on April 2013.

"This case is about bringing justice for the seven men who were shot and for holding Tahoe responsible as a company," says Matt Eisenbrandt of the Canadian Centre for International Justice.

Tahoe Resources has maintained it is not responsible for any wrongdoing.

The suit, depending on the outcome, could forever change assumptions about how Canada's international mining sector -- the world's largest -- must conduct business overseas.

In recent years, a number of human rights abuses connected to global Canadian mining operations have made headlines but rarely are they investigated, in part because the Canadian legal system hasn't offered a venue with "real teeth," as Eisenbrandt puts it.

Similarly, Canadian courts largely have [refused](#) to admit lawsuits against Canadian mining corporations for their foreign activities. That may be changing after the Supreme Court of Ontario last July admitted three claims against Toronto-based Hudbay Minerals that allege the company was [negligent](#) when it failed to prevent violence against indigenous Guatemalans near its El Estor nickel mine -- claims Hudbay Minerals deny.

Eisenbrandt hopes Canadian courts now will be more open to hear these kind of cases: "A victory in a case like this can send a message that the companies that operate abroad need to make sure that they are complying with international standards about interaction with local communities and security operations," he says.

Controversial mining project

Erick Fernando Castillo quit school after the third grade to work in the coffee and bean fields near his town of San Rafael Las Flores. Now 27, he says he fears the Escobal mine will contaminate local water sources and undermine his family's livelihood "What are we going to do that day?" Castillo asks.

In 2010, Catholic priests met with environmental NGOs and community leaders from San Rafael Las Flores to discuss the potential impact of Tahoe's proposed mine near the town. Those discussions led to the creation of the "Committee for the Defense of Life and Peace" in San Rafael, an organization that according to its leader Oscar Morales "has always had the purpose of being the peaceful resistance" against the mining project.

At the same time, members of a Xinca indigenous community located 30 kilometres from San Rafael Las Flores started to oppose the Escobal project as a threat to their land, culture, traditions and sovereignty. As an agronomist, Oscar Morales was concerned about the project's impact on local water. The mine uses a lot of it, and Morales worries about acid pollution.

Ira Gostin, Tahoe Resources' vice president for investor relations, says such concerns are baseless. The process used at Escobal means "there is no acid mine drainage," and the mine taps a new supply of deep well water that "bypasses the community aquifer" using a closed loop system "treated internally and then recycled back into the plant," he says. Gostin also says Tahoe Resources is making sure its engineering operation exceeds the requirements set by the government.

Robert Moran, a mining expert with 40 years of experience around the world including Guatemala, has a different view. The makeup of Guatemala's volcanic soil means "in the mountainous areas, acid mine drainage is almost always a risk." And "almost no aquifers are totally isolated from the other aquifers. Sooner or later they are all interconnected." Closed loop systems, Moran warns, "all leak. They all generate liquid waste and contamination."

Surrounding communities [voted](#) overwhelmingly against the mine in 2011. But the vote was non-binding and Tahoe went ahead. Gostin says the vote was orchestrated by NGOs "coming in with their own

agenda, handing out pre-printed ballots and providing lunch for everybody that votes against the mine. Not a very objective referendum."

There is much local support for Escobal, says Gostin, given the mine employs 850 workers, almost all living nearby. Tahoe Resources' CEO Kevin MacArthur sees "amazing community support for the project."

Morales suggests the company is not "really giving us their money as a non-strings attached gift," but receives large tax deductions from the Guatemalan government. Tahoe's social investments "come from the (taxes paid by) 14 million inhabitants of Guatemala."

Mine attacked, indigenous opponents kidnapped

On Jan. 12, 2013, an organized group of hooded men bearing assault rifles and carrying Molotov cocktails [assaulted](#) the mine site in the middle of the night. The attackers killed two mine security guards and injured five working under Rotondo's command.

Two days after the attack, Tahoe's McArthur said, "Our workforce and entire management team are devastated by the deaths and injuries that occurred." The perpetrators remain unknown.

Two months later, four leaders of a nearby Xinca indigenous community were kidnapped as they returned from a community consultation about the silver mine. Three of them were later released while one was found dead the next day. The identities of the kidnapers remain unknown.

Oscar Morales admits he doesn't know who was behind the kidnapping, but says it was part of a pattern of attacks by people who "always wear caps, ski-masks and carry lethal weapons."

Tahoe's Gostin blames "outside" people -- by which he means NGOs -- for the rise of violence around Escobal. "That is what NGOs do, they say 'mining causes violence,' but they are the ones causing violence in the name of protesting violence," says Gostin. He would not name the NGOs he believes were responsible.

Amid protests, riots and organized armed attacks, Alberto Rotondo was the man hired by Tahoe Resources to be in charge of security in the Escobal project. Oscar Morales described Rotondo as a muscular white man acting self-assured around town. On one occasion, Morales encountered Rotondo and two security guards with automatic rifles blocking a road in San Rafael Las Flores, "stopping the traffic so cars wouldn't pass in front of the company's office."

Rodrigo Baires, a Salvadorian investigative journalist who [wrote](#) a five-part series about the Escobal mine for Plaza Pública, says he discovered a LinkedIn.com profile for a former Peruvian navy captain named Alberto Rotondo. The document says he specializes in mining operations, physical security, risk management and executive protection. According to the profile, Rotondo received training in the U.S. Army's JFK Special Warfare School in North Carolina where he learned about psychological operations, civil affairs and terrorism in low intensity conflicts. It also states Rotondo studied political theory, international relations and communications in the Inter American Defense College in Washington D.C.

Baires concludes that Rotondo also worked for the Peruvian state during the 1990s when that country's military and rebel organizations committed crimes against humanity while fighting each other.

Shooting incident at mine's gate

On the afternoon of April 27, 2013, Erick Fernando Castillo and others demonstrators against the Escobal project approached the mine's gate. Castillo saw Rotondo inside the mine talking on his cell phone as he climbed out of a pickup truck, 50 to 70 security guards standing near him. Castillo says he then heard Rotondo yelling to his men, "'Let's get rid of this garbage!'" Castillo says Rotondo and the guards immediately "took out their arms and started to shoot."

Castillo and roughly 20 protestors at the mine's gate ran when they heard the first shots. But he stopped to help his 18-year-old cousin Luis García whose face was bleeding. "That is when I got hit," says Castillo. "I just felt like a little burn in my leg." Castillo managed to walk with his cousin to a nearby land lot. As Castillo's leg started to bleed, he realized his father Artemio Castillo had also been shot. Artemio Castillo says he suffered 14 wounds in his back and legs caused both by rubber bullets and live ammunition. Of six people shot and taken to hospitals, all survived, but Erick Fernando Castillo's younger cousin Luis García needed facial reconstruction surgery.

Journalist Baires gathered testimony from eyewitnesses. They told him that after the shooting, officers in a Guatemalan police vehicle arrived, cleaned up bloodstains, picked up bullet cartridges and left before the attorney general's office arrived to do the crime scene management.

Three days after the incident, Rotondo was arrested in Guatemala's La Aurora International Airport as he was about to leave the country for Peru. Rotondo's lawyer Jose Toledo Paz says his client wasn't present at the mine's gate on the April 27 afternoon, in contradiction to Castillo's recollection. He would not say where Rotondo was at the moment of the shooting.

Nor, says Paz, did Rotondo give an order to shoot. Rotondo, he says, was an "external advisor" who provided "security suggestions" to the mine. But the mine's security guards who were "provoked" by protestors with rocks and machetes actually work for a Guatemalan private security company that has nothing to do with his client. "Those guards that repelled that illegal attack do not obey orders from Rotondo, they obey orders from their (security company) superiors."

What about the wiretaps that allegedly incriminate Rotondo directly in the shooting incident? Paz would not deny or admit they exist.

State of siege

In the days following the shooting, the violence increased in San Rafael. On April 29, an angry mob of Xinca people took 23 Guatemalan police officers hostage on their reserve. The Xinca group disarmed the police and demanded cancellation of the mine's license. That same night in San Rafael a different group of 50 hooded people burned five houses rented for the mine's workers and set four vehicles ablaze. The police responded to the fire but were met with gunfire. One policeman was killed.

Guatemala's president Otto Pérez Molina responded by declaring a [stage of siege](#) in the region. A former top general, he suspended constitutional rights and sent more than 2,500 soldiers to the region. Oscar Morales says he thought the government was trying to destroy the resistance against the mine, so he left his home and went into hiding. Then his house was raided by "around 300 soldiers and cops. They told my wife to tell me to stop messing with the mine."

Morales returned home only after the state of siege was lifted 25 days later. That marked the end of local organizing to stop Tahoe from extracting silver in San Rafael Las Flores.

Prosecution of Tahoe's former security manager

Tahoe Resources [denies](#) its security guards used live ammunition in the shooting incident. Instead, when a protest involving people "armed with machetes" turned hostile, the security force used tear gas and rubber bullets to repel the demonstrators at the mine gate. "Only non-lethal measures were taken by our security," assured CEO McArthur. "We regret any injuries caused by rubber bullets, but we take the protection of our employees and the mine seriously."

That's not the version of events given by the director of CALAS, the Guatemalan human rights NGO working with the people shot at the mine's gate. Dr. Yuri Melini said that an official analysis from the Guatemalan government's National Forensic Sciences Institute contradicts McArthur. "The evidence is conclusive. Those were not rubber bullets. They were shotgun pellets and 9 mm caliber bullets," he says.

Rotondo's lawyer Paz calls that assessment a "tremendous" mistake he will prove in court when given the opportunity.

In January, claiming ill health, Rotondo failed to attend a Guatemalan hearing that would have remanded him to prison awaiting trial. The judge declared Rotondo in contempt and ordered his arrest. Instead, Rotondo was transported by ambulance to Guatemala City's military hospital where he remains being treated for kidney failure problems. "He only has one kidney and suffers from high blood pressure," says Rotondo's lawyer.

None of the accusations against Rotondo have been proven in court. The case will be tried after a high court resolves a motion against the judge set by the victims' lawyer claiming the judge sympathizes with Rotondo.

'With shots they will learn'

Eisenbrandt expects Rotondo to be found guilty in a Guatemalan court for the shooting incident. He is bringing suit against Tahoe Resources in the B.C. Supreme Court, he says, in order to "seek justice against a company that is responsible for what happened. If a company would not have been allowed to do something like this in Canada, they shouldn't be able to do it outside of Canada either."

None of the allegations against Tahoe Resources in Eisenbrandt's suit has been proven in court, and Tahoe Resources has continuously denied culpability.

The suit filed today marks another milestone in a legal journey that began in May of last year when Erick Fernando Castillo sat in court hearing a recorded voice growl not only "With shots is that they learn," but also "Fuck them! Those starving people coming here, fuck! Go to make a living somewhere else, get a job!"

As Castillo, sitting next to his father, listened, he felt, he admits, "rancour in my heart."

Rotondo's lawyer Toledo Paz says he cannot confirm if the wiretaps contain Rotondo's voice because the prosecutor hasn't provided him an official copy of the tapes.

Paz does say, "In Guatemala people are foul-mouthed. Those are expressions many people use. Let me ask: Who died? Who has a bullet wound? How can I order to kill certain people with rubber bullets? That is impossible."

By the end of the hot afternoon spent in the Barberena courtroom last May, Fernando Castillo was wracked with pain in his leg. The throbbing grew so bad he could not walk. He was taken to the hospital where he was treated and released. The pain persisted, and later a doctor poring over an x-ray discovered something. "I got screwed," says Castillo. "Eleven days after, I still had the bullet inside me."

Castillo says he doesn't remember if the bullet that was taken out of his right leg was a .38 or a nine-millimetre caliber. The slug extracted is now part of the evidence in the Rotondo case.

On May 1, 2013, Tahoe Resources described Rotondo as "Tahoe's Guatemala security manager." After the hearing, with the prosecution set to move forward, the company referred to Rotondo as "the security management contractor." Tahoe also said it expected Rodondo "to be released when the government investigation is complete." In July, the company stated Rotondo "is no longer engaged with the company."

Tahoe Resources declined to comment on anything related to Alberto Rotondo.

[Sebastian Salamanca, a lawyer with a Master's degree from the University of British Columbia Graduate School of Journalism, has a special interest in international development issues.]

More information:

- Canadian Center for International Justice, lawsuit website: http://www.ccij.ca/programs/cases/index.php?DOC_INST=24; email: info@ccij.ca; tel: 1-604-569-1778
- NGO website: www.TahoeOnTrial.net

Supporting Community and Environmental Defense Work

In Guatemala, Rights Action supports the community and environmental defense work of the Committee in Defense of Life and Peace and the El Estor Territorial Defense Committee in the nickel-mining harmed Mayan Q'eqchi' communities of Guatemala.

For more information about the precedent setting "Hudbay lawsuits":

- Klippensteins Barristers & Solicitors: www.chocversushudbay.com
- Rights Action: www.rightsaction.org

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