

Pan American Silver forced to offer settlement to Guatemala victims of mining repression and violence

Commentary by Grahame Russell, Rights Action, July 31, 2019, grahame@rightsaction.org
<https://mailchi.mp/rightsaction/pan-american-silver-forced-to-offer-settlement-to-guatemala-victims-of-mining-repression>

Below:

- Press release: Lawyers for Guatemalan plaintiffs in Tahoe Resources lawsuit
- Statement: Breaking the Silence, Mining Watch, Earthworks & Jen Moore

On July 30, 2019, lawyers for the Guatemalan victims of Tahoe Resources' mining-linked repression in 2013, announced they reached a reparations settlement with Pan American Silver (new owner of Tahoe Resources).



2017: Four Guatemalan plaintiffs, two Guatemalan lawyers & two Canadian lawyers

Establishing a precedent in Canadian law, this settlement shows again how long and hard is the road to properly and fully hold Canadian companies accountable in Canadian courts for crimes, harms and/or violations they cause or are responsible for in other countries.

After five years of legal battle in British Columbia (Canada) courts, the decision of Pan American Silver to offer a fair settlement to the Guatemalan victims of Tahoe Resources' mining violence in 2013, is a hugely important, small step forward in on-going work and struggle to hold Canadian companies accountable crimes, harms and violations they cause or are responsible for in other countries.

In 2013, a Canadian court ruled for the first time in Canadian legal history (the Hudbay Minerals lawsuits, filed in 2010) that Canadian companies can be held accountable in Canadian courts if found responsible for crimes, harms and/or violations in other countries. After that precedent, the Tahoe Resources lawsuit was filed in 2014.

Now, the Tahoe Resources lawsuit is the first case of its kind to legally force a Canadian company to offer a reparations settlement found acceptable to the victim-plaintiffs.

Next step - Hudbay Minerals lawsuits

On September 17, 2019, the Hudbay Minerals lawsuits will be back in a Toronto, Ontario court. Lawyers for both sides will argue over a serious issue: Whether Hudbay Minerals can and should be held accountable for the actions of not only its private security guards, but also Guatemalan police and military who all participated together in the gang rapes of 11 Mayan Q'eqchi' women during an illegal January 17, 2007 eviction and destruction of their village. This eviction was called for by Hudbay Minerals (specifically by Skye Resources that was amalgamated into Hudbay Minerals in 2008).

Corporate documents released to the plaintiffs, as part of the lawsuits, reveal that Hudbay Minerals (then Skye Resources) made cash payments of hundreds of thousands of dollars to the military and police to coordinate and participate in the destructive and violent eviction in question.

Together, the Hudbay Minerals and Tahoe Resources (now Pan American Silver) lawsuits and now the Pan American Silver (Tahoe) settlement are hugely important precedents. They will continue to blaze a legal path forward to slowly but surely hold more Canadian companies accountable in civil law – and necessarily one day in criminal law (the sooner the better) – for crimes, harms and violations they cause or are responsible for in other countries.

Your funds at work

Since 2005 in the case of Mayan Q'eqchi' communities harmed by Skye Resources/Hudbay Minerals, and since 2012 in the case of Xinka and campesino communities harmed by Tahoe Resources/Pan American Silver, Rights Action has been funding the land, environmental, human rights and justice struggles of local community defenders.

Press release: Lawyers for Guatemalan plaintiffs in Tahoe Resources lawsuit

Guatemalan protestors reach landmark conclusion to lawsuit against Canadian mining company

By [CFM Lawyers LLP](#), Jul 30, 2019

<https://www.newswire.ca/news-releases/guatemalan-protestors-reach-landmark-conclusion-to-lawsuit-against-canadian-mining-company-855276548.html>

- **More information:** Joe Fiorante, QC, Camp Fiorante Matthews Mogeran LLP, JFiorante@cfmlawyers.ca, +1-604-377-8182

Conclusion reached with Pan American Silver, the acquirers of Tahoe Resources, includes a public apology to the protestors and the community for the conduct of mine security forces. Marks the first-time foreign plaintiffs have achieved justice in a human rights case against a Canadian mining company in the Canadian court system.

VANCOUVER and GUATEMALA CITY, July 30, 2019 /CNW/ - The six-year long legal battle between a group of Guatemalan protestors and Tahoe Resources of Vancouver, Canada, has come to a landmark conclusion. Pan American Silver, which acquired Tahoe in February 2019, has issued a public apology stating that "the shooting on April 27, 2013, infringed the human rights of the protestors," and "Pan American, on behalf of Tahoe, apologizes to the victims and to the community."

In April 2013, the protestors gathered at the entrance to Tahoe's Escobal Mine in south-east Guatemala to protest the lack of community consultation on the project. The head of security for the mine, Alberto Rotondo, ordered security personnel to break up the demonstration by shooting at the protestors. Several were injured, one very seriously. The victims retained Vancouver-based Camp Fiorante Matthews Mogerman (CFM Lawyers) to represent them in a civil suit against Tahoe in Canada.

"This is an important victory for us and our community," said claimant Luis Fernando García. "It vindicates our right to protest and to continue our resistance against mining operations in our community."

The conclusion of the case does not impede the ability of the protestors to exercise their legal rights of protest related to the mine in the future.

In 2017, the BC Court of Appeal overturned a lower court decision and confirmed that the case should be heard in Canada, concluding that there was a real risk that the Guatemalan protestors would not get a fair trial in their own country.

"The case sets a very important precedent," said Joe Fiorante, Q.C., partner at CFM Lawyers. "It confirms that Canadian courts are the appropriate forum for human rights claims arising from the foreign activities of Canadian mining companies."

University of Ottawa law professor Penelope Simons, co-author of *The Governance Gap*, a leading textbook in the field of business and human rights, agrees, "These types of claims are crucial in terms of ensuring access to justice for victims of business-related human rights violations. They are one of the only means through which such victims can hold businesses accountable and seek reparations for the harm they have suffered."

Shin Imai, professor emeritus at Osgoode Hall law school, calls the resolution "a major breakthrough in the struggle to hold Canadian companies responsible for the wrongs committed at their overseas operations. It forms an important piece of an emerging legal framework to address human rights issues arising from conflicts between Canadian mining companies and communities abroad."

The Canadian lawsuit is not related to the suspension of Tahoe's mining license by the Constitutional Court of Guatemala. The conclusion of the Canadian case will not impact the ongoing consultation process in Guatemala regarding the mine. Likewise, the conclusion of the Canadian lawsuit does not affect the criminal proceedings in Guatemala against Alberto Rotondo.

Camp Fiorante Matthews Mogerman LLP (CFM Lawyers) is a Vancouver-based law firm that focuses on the representation of plaintiffs in human rights, class actions, aviation and complex tort claims. The firm has extensive experience in transnational cases involving corporate accountability, anti-trust and product liability claims arising from cross border conduct. Joe Fiorante, Reidar Mogerman and David Jones lead the firm.

Statement: Breaking the Silence, Mining Watch, Earthworks & Jen Moore

Plaintiffs Conclude Lawsuit with Pan American Silver over 2013 Shooting in Guatemala

Communities Reaffirm Opposition to the Escobal Mine and Warn of Rising Tensions

July 31, 2019

- **More information:** Lisa Rankin (Guatemala), btscoordinator@gmail.com, +11 502-4906-5626 (WhatsApp); Kirsten Francescone (Canada), kirsten@miningwatch.ca, (437)-345-9881; Ellen Moore (U.S.), emoore@earthworks.org, (202)-887-1872 x128; Jennifer Moore, jenmooreips@gmail.com.

(Guatemala City, Ottawa, Washington D.C.) — On Tuesday, lawyers representing four Guatemalan members of the peaceful resistance to the Escobal mine [announced the conclusion](#) of the precedent-setting lawsuit against Tahoe Resources, recently acquired by Pan American Silver. The lawsuit, filed in the Supreme Court of British Columbia, accused Tahoe of negligence and battery after [the company's security](#) forces fired on peaceful protesters outside the mine in 2013. Now, the plaintiffs, and the broader resistance movement, celebrate a victory: a [Canadian parent company has taken responsibility for violence](#) at a mining project abroad.

However, communities warn of growing tensions that could lead to further aggressions against peaceful protestors.

The case against Tahoe Resources set an important precedent in Canada, establishing that Canadian courts are the preferred forum when Canadian companies commit human rights violations, except in cases where the foreign tribunal has clearly proven capable of providing justice more efficiently.

The lawyers note that the conclusion of this case will not affect ongoing criminal proceedings in Guatemala against Tahoe's former head of security, Alberto Rotondo. Rotondo escaped house arrest in 2015, and fled to his native Peru, where extradition processes are underway. Nor does it affect the ongoing court-ordered consultation process with the Xinka people.

Representatives from the Xinka Parliament of Guatemala and five municipalities in the area affected by the project gathered at a press conference with the plaintiffs and their lawyers in Guatemala City on Tuesday to express their support for the four men involved in the case. "Thanks to these men's bravery, the company has taken responsibility for the violence in April 2013," said Emy Gomez, Coordinator of the Xinka Parliament.

"This is just one of numerous grave incidents that have occurred as a result of the imposition of this project on our communities. Throughout the legal process, the plaintiffs remained front and center in the resistance, despite the risks. Together with them, we will continue resisting the Escobal project that has robbed us of peace in our communities and that puts our territory, water and health at great risk."

The Escobal mine has been suspended since June 2017, first as a result of the ongoing, 24-hour peaceful encampments that prevent mine-related traffic from reaching the site, as well as by the July 2017 court order mandating the Ministry of Energy and Mines to consult with Xinka people living around the mine.

Since the consultation process was announced in September 2018, the Xinka Parliament with support from municipalities in the area has been denouncing irregularities and illegalities in the process. They have also been speaking out about rising tensions as a result of a new wave of defamation, intimidation and threats.

“The settlement is an important victory for the plaintiffs who brought this case at great personal risk and sacrifice, and for the tens of thousands of people who continue to peacefully oppose the Escobal silver mine,” said Lisa Rankin, coordinator for the Maritimes-Guatemala Breaking the Silence Network. “However, the conflict on the ground surrounding this project is far from over, and leaders participating in the resistance and consultation continue to face grave threats.”

Since 2010, more than 100 people involved in the peaceful resistance have faced legal persecution. Days after the 2013 shooting, a month-long state of siege was imposed in the region and military outposts put in place in order to quash the local referenda and protests against the mine. More than five residents active in the resistance movement have been murdered.

Since the court ordered the consultation with Xinka Indigenous people, members of the resistance have suffered a sharp increase in threats, including acts of provocation, criminalization, and defamation by armed groups and individuals aligned with the project.

Earlier this month the Inter-American Commission on Human Rights [granted precautionary measures](#) for the Xinka Parliament lawyer, Quelvin Jiménez, noting that the Escobal mine’s suspension and the consultation process have increased tension and hostility in the region, leading to death threats against Jiménez.

“The rising tensions, proliferation of threats, and acts of provocation and intimidation are making us feel like we are back in 2013,” Jiménez said. “Now as then, this is a result of this mining project being forced on our communities against our will and right to self-determination.”

“Taking responsibility for the shooting in 2013 is important, but it doesn’t address the underlying reasons why people opposed this project in the first place,” said Ellen Moore, International Mining Campaigner at Earthworks. “What would be truly commendable is if Pan American Silver would respect communities’ demands and stop trying to restart a risky project that doesn’t have social license to operate.”

Hudbay Minerals September 17, 2019 ‘amendments motion’ hearing

- **More information, contact lawyers for Mayan Q’eqchi’ plaintiffs:** Murray Klippenstein, murray.klippenstein@klippensteins.ca & Cory Wanless, cory@waddellphillips.ca. www.chocversushudbay.com

Background information

- Is justice possible in Canada or Guatemala for Hudbay Minerals mining repression?, by Grahame Russell, June 12, 2019, <https://mailchi.mp/rightsaction/is-justice-possible-in-canada-or-guatemala-for-hudbay-minerals-mining-repression>
- Canadian Companies Mining With The Genocidal Generals In Guatemala, by Grahame Russell, Rights Action, April 6, 2019, <https://mailchi.mp/rightsaction/mining-with-the-genocidal-general-in-guatemala>

- Defensora. A 2013 award-winning 40 minute film by Rachel Schmidt, documenting Maya Q'eqchi' peoples' struggle in Guatemala to reclaim ancestral lands and to seek justice in Canadian and Guatemalan courts for murder, shootings and rapes committed by police, soldiers and private security guards working for Canadian mining company Hudbay Minerals/Skye Resources and their former Guatemalan subsidiary CGN. Trailer: www.defensorathefilm.com. Film: <https://vimeo.com/75725049>

Tax-Deductible Donations (Canada & U.S.)

Funds are need to continue to support community defenders in Guatemala and Honduras, and – most immediately – to help bring two (perhaps three) Hudbay Minerals plaintiffs to Toronto, to attend the September 17, 2019 hearing. Funds will help pay for all aspects (travel, lodging, food, visas, etc.) of their trip. Make check payable to "Rights Action" and mail to:

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