

Investor Alert: Tahoe Resources' Escobal project in Guatemala

June 2017

- Lawsuit against Tahoe Resources in Canada cleared for trial
- Persistent and potentially far-reaching corruption allegations against Guatemalan authorities responsible for authorizing Escobal mine
- Lack of community support and human rights risks at Escobal affects investor confidence

Lawsuits in Canada and Guatemala against Tahoe Resources and its representatives, and the ongoing investigation for corruption of Guatemalan officials responsible for permitting the Escobal mine, put in question the legality and legitimacy of this company's flagship project, as well as the viability of its future expansion. Lack of support for the mine project from communities where Tahoe plans to expand, which the company itself has acknowledged is "mixed"¹ and which has prevented it from connecting to the national electricity grid, signals increased danger of further repression, conflict, and human rights violations should Tahoe persist to grow the project. Such risks have already affected investor confidence in Tahoe Resources.

I. Lawsuit against Tahoe Resources for violence at Escobal mine cleared for trial in Canada

From the time that Canadian mining company, Tahoe Resources Inc., acquired the Escobal silver project in southeastern Guatemala in 2010 and throughout the lead up to commercial operations in January 2014, the state and company responded to broad-based opposition from community members, civil society organizations and religious groups concerned about the human and environmental impacts of mining, with violence, criminalization and militarization. Between 2011 and 2013, some 100 people were legally persecuted for their role in organizing community referenda or for participating in peaceful protests. In 2013, efforts to suppress broad-based opposition to the project included a month-long state of siege and an attack led by Tahoe's security guards on peaceful protesters outside the mine site. Seven men were wounded when they were shot at close range as they ran away from the company's security guards.²

In June 2014, the seven men injured during the shooting outside the Escobal mine on April 27, 2013 filed a civil lawsuit in Vancouver, British Columbia (B.C.) against Tahoe Resources for negligence and battery. This suit is making history in Canadian courts.

In January 2017, a B.C. Court of Appeal ruled that Tahoe Resources Inc. could be tried for negligence and battery related to the April 2013 attack. The appellate court ruling, the first of its

¹ Reno Gazette Journal, Edie Hofmeister, "One View: Criticism of Tahoe Resources' Escobal mine biased, unfounded", September 13, 2016, <http://www.rgj.com/story/opinion/voices/2016/09/13/one-view-criticism-tahoe-resources-escobal-mine-biased-unfounded/90307834/>

² Tahoe On Trial, "Security Footage Outside Escobal Mine, April 27, 2013," November 19, 2015; <https://tahoeontrial.net/2015/11/19/security-footage-april-27-2013/>

kind in Canada, acknowledges the considerable risk that the plaintiffs would not be able to achieve justice in Guatemala, and determined that Canada is the preferred forum, stating: “There is some measurable risk that the appellants will encounter difficulty in receiving a fair trial against a powerful international company whose mining interests in Guatemala align with the political interests of the Guatemalan state.”³

Tahoe appealed the court’s decision, but on June 8th, 2017, the Supreme Court of Canada declined to hear the petition, leaving the Appeals Court ruling intact.⁴

In Guatemala, a criminal case was filed against Alberto Rotondo, then head of security for Tahoe’s wholly owned subsidiary, Minera San Rafael. Rotondo was charged in Guatemala with assault and obstruction of justice.⁵ He escaped house arrest in November 2015 and was rearrested in Peru by INTERPOL some months later. On June 1st, 2017, six Guatemalan police officers who monitored Rotondo during his house arrest were charged with breach of duty that enabled his escape.⁶

II. Government officials who issued Tahoe permits are under investigation for corruption

Government officials who suppressed dissent against the Escobal project and who approved Tahoe’s final permits, are now in jail or are wanted by the authorities for their involvement in ongoing corruption investigations. Notably, Tahoe pressured the administration of the former military general Otto Pérez Molina to secure its operations, which it did, employing numerous former military and military intelligence officials skilled at counterinsurgency tactics. The official responsible for permitting the mine is also being challenged in court for his decision. This puts in question the legitimacy, the legality and potentially the future of the Escobal operation.

At the time that Pérez Molina took office in January 2012, Tahoe Resources did not have the permits to operate the Escobal project and local opposition to mining in the region was growing. By the time the President was forced out of office for corruption in the fall of 2015, Tahoe Resources had secured final permits and reached commercial production.

The ramp up began with the June 2012 lawsuit filed by Tahoe Resources against Pérez Molina’s government for not doing enough to protect its project from local opposition.⁷ The case did not prosper. But shortly after it concluded in February 2013, Guatemala’s National Security Commission declared Tahoe’s mine ‘strategic’ and labeled its opponents threats to national

³ Canadian Centre for International Justice, “In milestone, BC Court clears Guatemalans’ lawsuit against Vancouver mining company to go to trial,” January 27, 2017; <http://www.cciij.ca/news/milestone-bc-court/>

⁴ Canadian Centre for International Justice, “Supreme Court of Canada declines to hear appeal by Vancouver mining company in Guatemalans’ lawsuit,” June 8, 2017; <http://www.cciij.ca/news/supreme-court-canada-declines/>

⁵ MiningWatch Canada, “Tahoe Resources Former Security Guard to be Tried in Guatemalan Court,” December 18, 2014; miningwatch.ca/news/2014/12/18/tahoe-resources-former-security-manager-be-tried-guatemalan-court

⁶ Network in Solidarity with the People of Guatemala (NISGUA), “Six police officers on duty when former head of security for Escobal mine fled house arrest sentenced to multiple years in prison,” June 8, 2017; <http://nisgua.org/six-police-officers-on-duty-when-former-head-of-security-for-escobal-mine-fled-house-arrest-sentenced-to-multiple-years-in-prison/>

⁷ Expediente 2728-2012, Corte de Constitucionalidad, Guatemala, February 26, 2013, Apelación de Sentencia de Amparo

security.⁸ What followed were months of increased state violence, repression and criminalization of local leaders and communities leading the peaceful opposition to the Escobal mine. Notably, Tahoe's final exploitation license was granted in early April 2013, shortly after the Ministry of Energy and Mines (MEM) dismissed without consideration over 200 individual complaints community members raised over environmental concerns.⁹

The lack of due process in this decision is subject to an ongoing battle in Guatemalan courts.¹⁰ Most recently, Guatemala's highest court ordered MEM to review the opposition complaints, effectively suspending Tahoe's exploitation license¹¹ given that under Guatemalan law, an exploitation license cannot be granted as long as there are outstanding complaints. Tahoe has argued in the Guatemalan press the administrative process did not affect operations and has continued work at the Escobal mine. This case is ongoing in Guatemalan courts.

In 2015, President Pérez Molina, Vice President Roxanna Baldetti, both public champions of the mine,¹² resigned from office due to corruption allegations. Around the same time, more than 40 cabinet members, including Erik Archila, the Ministry of Energy and Mines (MEM) responsible for granting Tahoe's final permits, also resigned. Molina and Baldetti are currently in prison awaiting trial. In January 2017, Guatemala issued an extradition request for Archila on separate charges of illicit association and money laundering.¹³ Archila, who was in the U.S. illegally, is being investigated by Guatemalan public prosecutors and the UN-mandated International Commission Against Impunity in Guatemala (CICIG).¹⁴

In July 2015, the Guatemalan Center for Environmental and Social Legal Action (CALAS) filed separate criminal charges against Archila and former mines director at MEM, Fernando Castellanos, for violating the Constitution and for breach of duty for rejecting the more than 200 community complaints in order to approve Tahoe's final permit.¹⁵ CALAS called on the CICIG

⁸ Plaza Pública, Oswaldo J. Hernández, "El Gobierno crea en secreto un Grupo Interinstitucional de Asuntos Mineros," July 16, 2014;

<http://www.plazapublica.com.gt/La%20oposición%20a%20la%20miner%C3%ADa%2C%20la%20nueva%20amenaza%20a%20la%20seguridad%20nacional>

⁹ Luis Solano, "Under Siege: Peaceful Resistance to Tahoe Resources and Militarization in Guatemala," November 10, 2015; http://miningwatch.ca/sites/default/files/solano-under_siege_summary_2015-11-10_0.pdf

¹⁰ Centre for Environmental and Social Legal Action (CALAS), Maritimes-Guatemala Breaking the Silence Network and MiningWatch Canada, "Guatemalan Complainants Celebrate Effective Suspension of Tahoe Resources' Licence," July 25, 2013; <http://miningwatch.ca/news/2013/7/25/guatemalan-complainants-celebrate-effective-suspension-tahoe-resources-licence>

¹¹ Prensa Comunitaria, "Guatemala: La Corte de Constitucionalidad confirma cancelación de empresa Minera San Rafael en Santa Rosa," 28 de noviembre del 2015; <https://comunitariapress.wordpress.com/2015/11/28/guatemala-la-corte-de-constitucionalidad-confirma-cancelacion-de-empresa-minera-san-rafael-en-santa-rosa/>; Also, Prensa Libre, "CC ordena revisar oposición a mina El Escobal," 26 de noviembre del 2015;

<http://www.prensalibre.com/guatemala/comunitario/cc-ordena-cierre-de-mina-el-escobal>

¹² Maritimes-Guatemala Breaking the Silence Network, MiningWatch Canada and NISGUA, "Crumbling Political Support for Tahoe Resources in Guatemala," September 14, 2015; <http://miningwatch.ca/blog/2015/9/14/crumbling-political-support-tahoe-resources-guatemala>

¹³ Emisoras Unidas, Manolo García, "MP solicitará extradición de exministro Erick Archila Dehesa," January 2, 2017; <https://emisorasunidas.com/noticias/nacionales/localizann-a-exministro-archila-dehesa-dehesa-en-estados-unidos-fianza-emisoras-extradicion/>

¹⁴ Prensa Libre, "Univisión localiza a Erick Archila en apartamento en Miami," January 5, 2017;

<http://www.prensalibre.com/guatemala/justicia/univision-localiza-a-erick-archila-en-apartamento-de-miami>

¹⁵ Prensa Libre, "Calas denuncia a exministro de Energía y Minas," July 12, 2015;

<http://www.prensalibre.com/guatemala/justicia/calas-denuncia-a-exministro-de-energia-y-minas>

to fully investigate the Escobal licensing process, citing Archila's possible involvement in influence trafficking and illicit enrichment.

III. Lack of community support for Escobal project and human rights risks affect investor confidence

At least two European pension funds have excluded Tahoe Resources from their profiles due to concerns about violence and human rights abuses in relation to the project.

In its 2014 Annual Report, the Council of Ethics for the Norwegian Pension Board recommended the exclusion of Tahoe Resources from their investments, stating the company ran an "unacceptable" risk of human rights violations at the Escobal mine and that acts of violence had resulted from the company's presence in the region. Tahoe is also excluded from the Dutch pension fund Pensionenfonds (PGB). In 2016, this fund cited "human rights abuses in Guatemala"¹⁶ as cause for the exclusion.

The fifth edition of *Dirty Profits* by the German organization Facing Finance listed Tahoe Resources as one of fourteen companies considered a dangerous investment. The article highlights the lack of respect for communities, violence and militarization.¹⁷

Impunity for violence against community leaders persists, as does the potential for future abuses, given ongoing protests over property damage and loss of water sources, and other demonstrations of local opposition to Tahoe's project and possible expansion. During the past year, residents have carried out peaceful protests and blockades, and dispatched delegations to speak with elected representatives¹⁸ regarding the drying up of wells and natural water sources, as well as tremors, believed to be from underground mine blasting, which have caused damage to homes.¹⁹ Affected residents report that company representatives in Guatemala wrote off changes in access to water since the time that the company began operations as a result of climate change. The spokesperson for Tahoe's subsidiary in Guatemala recently blamed an increase in vibrations in the region on regular seismic activity.²⁰

Meanwhile, incidents of violence against opponents of the mine remain in impunity. One emblematic example is that of Topacio and Alex Reynoso, organizers in opposition to mining in the region, who were attacked on April 13, 2014. 16-year old Topacio died from her injuries the

¹⁶ List of companies excluded from the Pensionenfonds, period October 1, 2016 to December 31, 2016; <http://www.pensioenfondspgb.nl/nl-nl/Documents/Beleggingen/PGB%20Exclusion%20List%20%28period%20October%201st%20-%20December%2031st%202016%29.pdf>

¹⁷ Facing Finance, *Dirty Profits* 5, February 9, 2017; http://www.facing-finance.org/files/2017/03/DP5_final.pdf

¹⁸ La Cuchilla San Rafael, <https://www.facebook.com/proyectos.lacuchilla/videos/156299228167339/> also <https://www.facebook.com/photo.php?fbid=164865287310733&set=pcb.164865390644056&type=3&theater>

¹⁹ Plaza Publica, "La aldea que se agrieta a orillas de la mina San Rafael," November 24, 2016; <https://www.plazapublica.com.gt/content/la-aldea-que-se-agrieta-orillas-de-la-mina-san-rafael>

²⁰ La Hora, "Minera San Rafael justifica ausencia de licencia denunciada por CALAS," June 7, 2017; <http://lahora.gt/minera-san-rafael-justifica-ausencia-licencia-denunciada-calas/>

next day, while her father, survived with serious injuries²¹. Both were from the municipality of Mataquescuintla, which neighbours San Rafael Las Flores where the Escobal mine was built and where opposition to the mine has prohibited the company from connecting to the national electrical grid.²²

Other unsolved attacks include the 2013 kidnapping of four members of the Indigenous Xinca Parliament after they left a community consultation that voted against mining that left one member dead;²³ the attack by mine security against peaceful protestors in April 2013;²⁴ the murder of Telesforo Pivaral in April 2015;²⁵ and the November 2016 attack against the General Coordinator of the Diocesan Committee in the Defense of Nature (CODIDENA) and the murder the same month of Jeremy Abraham Barrios, 22-year old assistant to the director of the Guatemalan Centre for Legal, Environmental and Social Action (CALAS).²⁶

National and international human rights monitoring organizations concur that attacks against environmental defenders in Guatemala are on the rise. The Unit for the Protection of Human Rights Defenders (UDEFEQUA) 2016 report²⁷ states that of the fourteen human rights defenders killed in Guatemala in 2016, five were environmental defenders. Similarly, a 2016 report by the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, finds that Guatemala is one of the ten most dangerous countries for environmental defenders.²⁸ The increased violence perpetrated against environmental defenders opposing Tahoe's Escobal mine is an example of this heightened risk.

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Center for International Environmental Law
Maritimes-Guatemala Breaking the Silence Network
Mining Injustice Solidarity Network
MiningWatch Canada
Network in Solidarity with the People of Guatemala

²¹ NISGUA, "More than 2900 concerned individuals from 59 countries ask Guatemalan Public Prosecutor's Office to investigate murder of environmental defender," May 17, 2017; <http://niscgua.org/three-years-after-murder-of-topacio-guatemala-public-prosecutor-asked-to-investigate/>

²² NISGUA, "Mataquescuintla reaffirms its commitment to uphold the results of the 2012 consultation that rejected mining," November 16, 2016; <http://niscgua.org/mataquescuintla-reaffirms-its-commitment-to-uphold-the-results-of-the-2012-consultation-that-rejected-mining/>

²³ NISGUA, "Mining license approved in wake of violence, investigation into murder pending," April 8, 2013; <http://niscgua.org/mining-license-approved-in-wake-of-violence-investigation-into-murder-pending/>

²⁴ Amnesty International Canada, "Wiretap transcripts raise troubling questions about Tahoe Resources' militarized security detail," April 7, 2015; <http://www.amnesty.ca/news/public-statements/joint-press-release/wiretap-transcripts-raise-troubling-questions-about-tahoe>

²⁵ Guatemalan Centre for Legal, Environmental and Social Action (CALAS), "Guatemalan Centre for Legal, Environmental and Social Action (CALAS), "Urgent Action: Telesforo Pivaral murdered near Tahoe Resources' mine," April 6, 2016; <https://mininginjustice.org/urgent-action-telesforo-pivaral-murdered-near-tahoe-resources-mine/>

²⁶ MiningWatch Canada, "Murder of Young Assistant from Guatemalan Environmental Organization is Evidence of Escalating Risk to Human Rights Defenders, November 16, 2016; <http://miningwatch.ca/news/2016/11/16/murder-young-assistant-guatemalan-environmental-organization-evidence-escalating>

²⁷ Unidad de Protección de Defensoras y Defensores de Derechos Humanos de Guatemala (UDEFEQUA), Informe Annual 2016, January 2017; <http://udefegua.org/wp-content/uploads/2017/05/Informe-Genaral-2016-FINAL6.pdf>

²⁸ United Nations Special Rapporteur on the Situation of Human Rights Defenders, "They Spoke Truth to Power and were Murdered in Cold Blood," 2016; https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf