

Transnational Mining Corporations, the Environment, and Indigenous Communities

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THE RISE OF MINING AND ESCALATING DESTRUCTION

MINING IS THE SINGLE MOST destructive assault on the environment. It moves more earth and produces more toxic waste than any other industry.¹ Large-scale use of minerals began with the Industrial Revolution and has grown exponentially in centuries since. The size and scale of modern mining operations is unprecedented. Between 1970 and 2004, the global extraction of major metals grew by over 75 percent, industrial minerals by 53 percent, and construction materials by 106 percent.² Worldwide demand for numerous metals, as well as for energy sources such as coal, oil, gas, and uranium, has been spurred by a variety of factors, including China and India's expanding economies, increased production of consumer electronic products, and the highest military and industrial consumption rates of these materials in history.³

The resulting boom in commodity prices and decrease in mineral stocks has led to a major reorganization of the global mining industry. Individual companies are scrambling for new supply sources in order to diversify their investments across commodities and geographic boundaries. In addition to direct owner-

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ship of mining operations, many large mining companies own partial shares of multiple other operations around the world.⁴ This reorganization has resulted in mining companies taking on an unprecedentedly multinational nature. A recent study by PricewaterhouseCoopers, a leading adviser to the mining industry, reports that globally, “the mining industry is experiencing an unprecedented period of change driven by [merger and acquisitions] activity that is running at record highs at all levels of the sector.”⁵

The number of deals valued at more than \$1 billion tripled in just two years from 8 in 2005 to 25 in 2007. The vast majority of mining deals took place in Canada, where 60 percent of the world’s exploration and mining companies are listed on the Toronto Stock Exchange and 50 percent of all mining-related equity financing takes place.⁶ As countries in the Global South become increasingly protective of their mineral sources, the larger, more diversified mining giants may have an advantage in gaining access to local resources.⁷ For example, mining giant Rio Tinto leveraged its reputation as a world class mining company to invest in a \$6 billion project in Mongolia that analysts describe as one of the world’s largest undeveloped copper and gold deposits.⁸ On the other hand, should host governments deny access to mineral resources, transnational mining companies can sue governments in international arbitration tribunals where corporations can invoke foreign investor rights contained in bilateral investment treaties and free trade agreements.⁹ Such expensive lawsuits put extreme pressure on the government to grant mining permits.

The critical question facing the global mining industry is whether the present system of producing and consuming minerals can continue in the face of a growing backlash to the new, globalized mining industry. Ironically, the same globalization process that has opened the far corners of the world to mining investment has also improved global communications and enabled activist groups such as Amazon Watch, Mines and Communities Network, and the Global Mining Campaign to expose the environmental destruction and human rights abuses perpetrated by mining companies in remote places. “Whether in Indonesia, Latin America or Africa,” says one U.S. mining consultant, “the increase in communications capability means that the essential isolation of resource colonies is largely a thing of the past.”¹⁰

INDIGENOUS RIGHTS AND SOCIAL CONFLICT

The expansion of the global mining industry has coincided with the emergence of indigenous movements opposed to the destructive impacts of large-scale min-

ing on their lands and cultures. It is estimated that in the next 20 years, about half of all mineral resources targeted by mining companies will come from territories used or claimed by indigenous people.¹¹ While indigenous people make up around 370 million, or 5 percent of the world's population, they have traditional claims to 20 percent of the earth's surface area and resources.¹² Indigenous peoples not only have rights to the lands they traditionally occupy but also "to the broader territory, encompassing the total environments of the areas which they occupy or otherwise use, inclusive of natural resources, rivers, lakes and coasts."¹³ One of the defining characteristics of indigenous peoples is that they have a specific attachment to their land and territory and their own specific modes of production—such as hunting and gathering, pastoralism, and shifting agriculture—which form the basis of their collective identity. Because of their direct dependence on the earth, they are disproportionately vulnerable to deteriorating environmental conditions.¹⁴

As transnational mining corporations extend their reach into every corner of the globe, they are disrupting and sometimes destroying the communal and subsistence cultures of both indigenous and non-indigenous communities in a process of capital accumulation and dispossession.¹⁵ A critical factor in the success of indigenous movements' ability to focus an international spotlight on their situation was their linkage with international environmental organizations during the 1992 United Nations Conference on Environment and Development, or the Earth Summit, in Brazil. Prior to the Earth Summit, indigenous peoples held their own summit at Kari Oca, near Rio de Janeiro, and informed the international community about the environmental issues facing indigenous peoples.¹⁶ These meetings opened up lines of communication with environmental networks that share information and coordinate responses to the mining industry.¹⁷ Through firsthand accounts of the destructive social, cultural, and environmental effects of mining projects on indigenous communities, indigenous activists were able to mobilize the vast resources of hundreds of environmental networks to organize campaigns to monitor the operations of multinational mining companies, advocate for more effective regulation of mining operations, and resist ecologically destructive large-scale mining projects on their lands and traditional territories.¹⁸

Over the past decade, indigenous peoples have increasingly asserted their right to the protection and control of their lands, territories, and natural resources. The right to natural resources is highly contested because most states in the Global South claim ownership of all subsoil mineral and oil rights, a violation of indigenous rights to land and territory under international law. Article 14

of the 1989 International Labor Organization (ILO) Convention 169 requires states to respect indigenous peoples' rights of ownership and possession of lands they occupy as well as those they depend on for their subsistence and traditional activities.¹⁹ With regard to Latin America, the Inter-American Commission on Human Rights has observed that Inter-American human rights legal doctrine "has acknowledged that the property rights of indigenous peoples are not defined exclusively by entitlements within a state's formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition."²⁰

Even where indigenous peoples have legal title to their lands, Latin American states often grant mining concessions without consulting the indigenous community.²¹ Nevertheless, the right to free, prior, and informed consent has been recognized in numerous international treaties including ILO Convention 169, which requires governments to consult with indigenous and tribal peoples within their countries regarding development projects affecting indigenous lands. Consent must be freely given and obtained prior to the beginning of any activity. The process also requires that potentially affected communities have access to all necessary information in order to negotiate on equal terms with project proponents. Thirteen Latin American states have ratified this convention.²²

Additionally, in 2007 the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) after more than 20 years of intensive negotiations. Canada, Australia, New Zealand, and the United States, all of which possess sizeable indigenous populations, were the only 4 of 147 states who voted against the declaration. Indigenous rights groups in the United States, Canada, and Australia publicly criticized their governments for this decision.²³ Between 2008 and 2010, new governments in Australia and New Zealand reversed the decision of previous governments and adopted the declaration.²⁴ Following these reversals, human rights groups urged the United States and Canada to reconsider their votes. By December 2010, all four countries had reversed their stance and accepted the declaration.²⁵ However, each nation qualified its endorsement, emphasizing that the declaration was "aspirational" and "non-binding."²⁶

Among the contentious issues for these four countries is an article stipulating that "states shall give legal recognition and protection" to lands, territories, and resources traditionally "owned, occupied or otherwise used or acquired" by indigenous peoples.²⁷ This provision theoretically empowers indigenous peoples to reject, restrict, or renegotiate extractive resource projects promoted by transnational mining corporations, governments, or international financial

institutions. The Canadian government is especially concerned that the growing influence of aboriginal peoples' rights could interfere with the government's proposed mining, oil, and gas projects on or near traditional aboriginal lands.²⁸ While the UNDRIP has symbolic value, it is not legally binding, and many countries and mining companies continue to violate indigenous rights, especially in resource-rich areas. According to James Anaya, the UN Special Rapporteur on the rights of indigenous peoples from 2008 to 2014, "the implementation of natural resource extraction and other development projects on or near indigenous territories has become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights."²⁹ In other words, the conflict of interest between indigenous peoples and mining corporations is far from resolved.

THE NEW EXTRACTIVE RESOURCE FRONTIER: LATIN AMERICA

Since 1990, more than 90 states in the Global South have adopted neoliberal economic policies, including the removal of restrictions on foreign ownership; reduced taxes; easier and faster acquisition of exploration and mining rights; and breaking up communal lands through the privatization of indigenous land and territory.³⁰ These measures have created new opportunities for the international mining industry, and there has been a dramatic redirection of mining investment away from the traditional targets of North America and Australia toward Latin America.³¹ In addition to neoliberal reforms, the dramatic increases in commodity prices and the discovery of new large-volume and relatively low-cost gold and copper deposits have made Latin America an attractive investment opportunity. Between 2001 and 2011, the value of mining investment in Latin America tripled from \$90 billion to \$306 billion.³²

Latin American presidents on both the left and the right welcomed foreign direct investments in mining and oil extraction as a source of income, employment, and increased government spending that could benefit the poor. Its critics have called such state promotion of natural resource extraction as an engine of economic development "the new extractivism."³³ While political leaders may believe that natural resource extraction will reduce poverty,

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the evidence that oil and mining revenues actually benefit poor people is mixed. Miguel Palacin, president of the indigenous organization Peruvian Communities Affected by Mining, calls the extractive industry part of “fictitious development.” In reality, the communities in regions with the greatest investments in mining are also among the poorest in the country.³⁴

The adoption of these neoliberal policies by many Latin American states has created unprecedented demand for mineral resources in areas with indigenous lands. A recent report by MiningWatch Canada and the International Civil Liberties Monitoring Group noted that “this ongoing expansion of extractivist activities continues to marginalize other visions of development and to pit the state against social movements and affected communities.”³⁵ The Observatory of Mining Conflicts in Latin America (OCMAL) identifies more than 200 mining conflicts affecting more than 300 local communities as of June 2015.³⁶

Mining companies have responded to community conflict over new projects by contracting with private military and security companies to guard mining facilities, conduct surveillance of potential opponents, and respond to community protests and organized resistance.³⁷ In addition to private security, mining companies have effectively privatized police forces where communities have resisted new mining projects. Official police records in Peru show that over 20 mining corporations have hired almost 500 police officers for private protection and contributed millions of dollars to police officers’ salaries.³⁸ The most serious human rights violations occur when mining companies employ private security forces in coordination with the host country’s use of police and security forces to repress opposition.

This militarization of social conflict has left little room for dissent by indigenous communities. When several thousand indigenous and non-indigenous people of the Peruvian Amazon assembled in the town of Bagua in June 2009

to protest laws that opened their land for oil exploitation, they were castigated as obstacles to development by then-President Alan Garcia, who stated, “Enough is enough. These people are not...first-class citizens. Who are 400,000 natives to tell 28 million Pe-

ruvians that you have no right to come here?”³⁹ As analyst Anthony Bebbington has noted, President Garcia’s statements were “only the most brazen” expression of a continent-wide push to open up new frontiers to extractive industries.⁴⁰ The ensuing confrontation between police and protestors resulted in the death

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of 10 police officers, five indigenous people, and five non-indigenous citizens, with more than 200 injured.⁴¹

Such stigmatization of indigenous peoples and environmental defenders frequently leads to physical violence and murder. Global Witness reports that between 2002 and 2013, more than 900 citizens were killed protecting rights to their land and environment.⁴² A recent UN report exposes a variety of human rights abuses in mining-conflicted communities where mining companies have employed private military and security companies.⁴³

Neoliberal extractivist policies have opened up some of the most remote and sensitive ecosystems, such as tropical rainforests and highland wetlands, to large-scale mining projects. These new extractive frontiers are frequently regions of high biodiversity and support a variety of critical ecological functions such as soil protection, climate regulation, water purification, and flood control.⁴⁴ The World Resources Institute has found that nearly one-third of all active mines and exploration sites are located within areas of intact ecosystems of high conservation value and where mining is most likely to compete with other water uses in communities where resources are already scarce and demand is high.⁴⁵

The value of indigenous peoples' traditional ecological knowledge in sustainable development was explicitly recognized in the 1992 Rio de Janeiro Convention on Biological Diversity, which affirmed that indigenous cultures protect biodiversity and should be compensated for their sustainable practices and products.⁴⁶ The subsequent proliferation of international treaties regarding biological diversity enabled indigenous activists to argue against large-scale mining projects that threatened their survival by referring to scientifically legitimated goals of preserving both biological and cultural diversity. This was yet another way in which indigenous issues became part of international environmental advocacy networks.⁴⁷

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POPULAR CHALLENGES TO GLOBAL MINING

Transnational mining corporations have grown in size, scope, and ability to shape state policy in both the Global North and South. Nevertheless, anti-mining movements are developing in many countries where mining companies fail to take into account the rights of local communities. There is growing evidence that community resistance can be very effective in raising costs for companies and can sometimes lead to the defeat of projects. Recent research from Harvard Kennedy School's Corporate Social Responsibility Initiative and the Sustainable Minerals Institute at the University of Queensland in Australia examined 50

cases where planned major extractive projects, from oil wells to mining projects, had provoked prolonged or intense company-community conflict. The most common triggers of conflict were water pollution impacts and the failure to obtain community consent for a project. Nearly half the cases involved a blockade constructed by mine opponents, while a third resulted in fatality or injury to either protestors or mine employees. Fifteen projects were suspended or abandoned because the protests and the negative publicity raised the costs of the project to the point where it became an unacceptable financial risk.⁴⁸ However, the greatest costs of conflict, according to the corporate executives interviewed, were the opportunity costs when the company was seeking to expand or acquire new assets and the residents of the local community opposed the project because they were aware of the company's track record elsewhere and did not want to risk the same treatment.⁴⁹ Community resistance thus has both immediate and long-term, precedent-setting effects.

The largest mining companies are extremely concerned about damage to their reputation, share prices, and earnings resulting from community protests, negative press, shut-downs, and lawsuits filed by victims of environmental and human rights abuses. A recent report by First Peoples Worldwide analyzed 370 oil, gas, and mining sites operated by 52 U.S.-based companies on or near indigenous land. An alarming 92 percent of these sites were found to pose a medium to high risk to shareholders and investors. Only 1 of the 52 companies had an explicit policy of agreeing to Free, Prior, and Informed Consent (FPIC) as mandated by UNDRIP. The study also found that mining sites are more prone to high risk for investors than are oil and gas sites.⁵⁰

The major themes discussed in this essay—the rise of an indigenous rights movement; the expansion of transnational mining corporations into Latin America's new extractive resource frontier; the militarization of social conflicts over mining; and the international spotlight on human rights abuses by transnational advocacy networks—are well illustrated by the following case study of Guatemala.

CASE STUDY: CANADIAN MINING COMPANIES IN GUATEMALA

Driven by record prices for gold in the 1990s, favorable geology, and neoliberal economic reforms, Canadian mining companies invested heavily in Guatemala's mining sector. By 2011, Natural Resources Canada reported that Canadian mining assets in Guatemala were about \$1.3 billion, the highest among Central American countries.⁵¹

Following the 1996 Peace Accords that ended Guatemala's 36-year civil war, the country passed neoliberal reforms to its mining code in 1997. The new law reduced the percentage of royalties that a company must pay to the state from 6 percent to 1 percent and opened indigenous lands to mining concessions without the prior consent of indigenous communities.⁵² This case study will examine the combined response of Canadian mining companies and the Guatemalan state to indigenous opposition to mining projects. It seeks to illustrate the increasing militarization of mining conflicts, specifically in many of the same indigenous communities that were targeted for repression during Guatemala's bloody civil war. It will also highlight the critical role of transnational advocacy networks in shining an international spotlight on human rights abuses by Canadian mining corporations.

INDIGENOUS PEOPLES IN GUATEMALA AS "THE ENEMY WITHIN"

Indigenous peoples, who make up more than half the population of Guatemala, have a contentious history with the government. During the country's civil war, the U.S.-supported Guatemalan army carried out a scorched-earth counterinsurgency against indigenous communities who were accused of sympathizing with Marxist guerrillas. Over 200,000 people were killed, primarily indigenous Maya in small villages in the western highlands. In February 1999, the UN-sponsored Commission for Historical Clarification (CEH) concluded that state forces and groups allied to the state were responsible for 93 percent of documented human rights violations and that an estimated 83 percent of the victims of the internal armed conflict were indigenous Maya.⁵³ The report described the massacres carried out during Guatemalan dictator General Rios Montt's 17-month reign in 1982 and 1983 as "genocide."⁵⁴ The report also states that a culture of racism had led to indigenous peoples being viewed as "the enemy within" the state.⁵⁵

The mistreatment of indigenous people has not only persisted, but has also been swept under the rug; in fact, the Guatemalan Congress passed a decree denying the genocide. Additionally, until quite recently, many military officials responsible for the slaughter of indigenous people still held powerful positions in the government, including the recently resigned President Otto Perez Molina. Given this context, it is not surprising that mining policies, such as the 1997 Mining Law that opened indigenous lands to mining concessions without the prior consent of indigenous communities, have shown little consideration for indigenous rights. As stated by the UN Special Rapporteur on the rights of indigenous peoples, the presence of large-scale mining has "generated a highly

unstable atmosphere of social conflict, which is having a serious impact on the rights of indigenous people and threatening the country's governance and economic development."⁵⁶ A recent study showed that social conflict exists in 78 percent of municipalities with mining licenses compared to 10 percent of municipalities without mining activity.⁵⁷

MINING CONFLICTS ON INDIGENOUS LANDS

Canadian mining companies received mining concessions from the Guatemalan governments during this period.⁵⁸ Since 1996, Guatemalan leaders have granted more than 300 mining licenses to Canadian mining companies.⁵⁹ Tahoe Resources, a U.S.-Canadian mining company, was founded by Kevin McArthur—former President and CEO of Goldcorp, the second largest gold mine company in the world. Goldcorp is in charge of the infamous Marlin mine in western Guatemala, where 95 percent of local residents disapprove of the mine.⁶⁰ The Marlin mine has been repeatedly criticized for its violation of indigenous and human rights and its contamination of local water supplies. Goldcorp is a majority shareholder of Tahoe with 40 percent of the company's shares.⁶¹ Six of Tahoe's eight directors are or were current or former Goldcorp executives.⁶²

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Tahoe's Escobal mine is located in an agricultural region where residents depend on cattle ranching and growing coffee, maize, and vegetables. Local farmers and ranchers oppose the project because they fear long-term water contamination and adverse health effects. Among the project's strongest opponents are the Xinca indigenous people who live in communities surrounding the Escobal mine. According to the legally binding ILO Convention 169, which Guatemala ratified in the 1996 Peace Accords, indigenous communities, including the Xinca, must provide "free, prior and informed consent" to projects in their territory.⁶³ This same provision is enshrined in the 2007 UNDRIP. Tahoe Resources' failure to consult with or obtain permission from the local communities has led to escalating protests against the mine similar to those at Goldcorp's Marlin gold mine, Hudbay Mineral's Fenix nickel mine, and Radius Gold/KCA's gold and silver mine.⁶⁴

ESCALATION & CRIMINALIZATION OF THE ESCOBAL PROTESTS

Even before Tahoe Resources acquired the Escobal mine, its president, Kevin McArthur, had a history of using repressive tactics; while in charge of the Marlin mine, he criminalized community leaders who were critical of the mine, bring-

ing trumped up criminal charges against mine opponents as well as those who pointed out the environmental or health risks of mining. Tahoe used the same tactic when it took over the Escobal silver and gold mine project from Goldcorp in 2010. Shortly thereafter, Tahoe contracted with the Golan Group, an Israeli private security company.⁶⁵

When hired by Tahoe, the Golan Group had already established a reputation in Guatemala for violating human rights at Goldcorp's Marlin mine and HudBay Mineral's Fenix mine. In 2012, Tahoe hired Alberto Rotondo—an ex-military officer from Peru trained in psychological operations and counterterrorism in low-intensity conflicts at the John F. Kennedy Special Warfare Center in Fort Bragg, North Carolina—to supervise its security contract with the Golan Group.⁶⁶ The criminalization and militarization of protests was thus a common practice from the beginning.

Prior to Tahoe's hiring private mine security, citizens from San Rafael Las Flores, where the Escobal project is located, formed the Committee in Defense of Life and Peace with assistance from the Catholic Church. Together with the Xinca Parliament and the Diocesan Commission for the Defense of Nature, they filed legal objections against Tahoe's mining application and organized peaceful marches against the project, complaining that Tahoe had ignored requests to disclose the details of its mining plan and its potential negative impacts upon the community.⁶⁷ In 2012, these groups sought the assistance of the Center for Legal, Environmental and Social Action in Guatemala (CALAS) because of local

complaints of contaminated water discharge from mine installations affecting crop irrigation. CALAS filed a complaint

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against Tahoe Resources for contamination of the Escobal Creek and the El Dorado River near Tahoe's project, which was still in its exploratory phase at the time.⁶⁸ In April 2015, Tahoe's administrative manager was ordered to serve pretrial detention in Guatemala on charges of industrial contamination of the water from Tahoe's mine operations.⁶⁹

These same groups also organized community referenda in communities around the Escobal mine. In San Rafael Las Flores, referenda have been held in 8 of 26 communities that make up the municipality. In each case, over 90 percent of participants voted against the mine.⁷⁰ A representative of Tahoe Resources responded by filing a criminal complaint against seven leaders of the Commit-

tee in Defense of Life and Peace, alleging kidnapping and terrorism.⁷¹ Tahoe Resources also challenged the legality of municipal referenda in two lawsuits filed with the Constitutional Court. In both cases, the Constitutional Court ruled that citizens have a right to express their opinions for or against mining.⁷²

While the referenda are not legally binding, they are an indication of what the mineral industry has recognized as a “social license to operate” from the communities where mining projects are proposed.⁷³ Mining companies that fail to obtain the support of local communities are at greater risk of protests, blockades, media campaigns, or legal challenges to their mining permit.⁷⁴ Investors are also wary of risking their capital on projects that have not secured a social license to operate.

In January 2013, unknown armed men attacked the Escobal mine site, resulting in the deaths of two security guards and one of the attackers.⁷⁵ To date, no one has been prosecuted. Guatemalan human rights organizations allege that this attack is related to one or more clandestine armed groups operating in the area.⁷⁶ Their objective, according to these organizations, is to discredit peaceful resistance to the project.⁷⁷ In March 2013, four Xinca indigenous leaders in the community of El Volcancito, San Rafael Las Flores were abducted by a dozen heavily armed men as they were returning home after observing a referendum regarding mining. Two of the Xinca leaders managed to escape their captors, but Exaltacion Marcos Ucelo was killed. The fourth victim was freed when his captors learned that a search effort was underway. The men reported that they had received threats because of their opposition to the mining project.⁷⁸

Finally, in April 2013, 26 people were detained for protesting the decision by the Ministry of Energy and Mines to approve the exploitation license for the Escobal project, a decision made on the same day that over 200 official complaints filed by local residents against the license over concerns about potential impacts on health and water supplies were dismissed without due process.⁷⁹ The protestors were on private property by permission of the owner when security forces illegally entered the premises and detained them without a search warrant. They were held for four days before being released without charges. In July 2013, the protestors appealed the dismissal of their complaint against the license and won, calling into question the legality of Tahoe’s mining license. The protestors and their legal representatives at CALAS have filed motions asking for the revocation of Tahoe’s license from the Ministry of Energy and Mines of Guatemala.⁸⁰

Since September 2012, over 90 people have been detained on false criminal charges related to the Escobal protests. While the courts eventually dismissed all of the charges, several people spent months in jail before being cleared. The

Inter-American Commission on Human Rights has stated that “the criminalization of protest affects the individual as well as the collective; it stigmatizes and marginalizes movements and exposes them to violence, which may ultimately damage democracy and the rule of law.”⁸¹

In June 2012, Tahoe responded to mounting protests against the Escobal project by suing the Guatemalan government, stating that the protests were interfering with its operations and that the state was not doing enough to allow the mining project to proceed. A Guatemalan court dismissed Tahoe’s lawsuit in February 2013. However, in March, the Guatemalan government decided that the Escobal mining project was a “strategic natural resource” as defined by the National Security Council. A common definition of a strategic mineral is one that is necessary to supply a country’s military, industrial, or civilian needs and that is vulnerable to supply disruption.⁸² It is not clear how a disruption in gold extraction would constitute such a threat for Guatemala. Nevertheless, the Council secretly began a pilot project in San Rafael Las Flores called the Inter-institutional Group on Mining Affairs, which has labeled opposition to mining a threat to national security. The purpose of the group, according to the plan approved by the National Attorney General’s office, is

to draw up recommendations, policies, strategies, and political, social, economic, and security projects for the National Security Commission in order to provide holistic attention to the security problems created by natural resources exploration and extraction.⁸³

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Guatemalan Minister of the Interior Mauricio Lopez Bonilla added that the role of the group was to find out what went wrong at the Escobal project. He elaborated, “We believe as a state, when we attract foreign investment, it is important to provide accompaniment from start to finish.”⁸⁴ Headed by General Ricardo Bustamante, Technical Secretary for the National Security Commission, the group has an office in San Rafael Las Flores that was set up with support from Tahoe Resources.⁸⁵ The company describes the commission as providing oversight for community relations and security concerns.⁸⁶ Guatemalan activists call it “counterinsurgency” and “a military intelligence operation.”⁸⁷

On 13 April 2013, a sixteen-year-old Guatemalan girl, Topacio Reynoso, was murdered near her home in Mataquescuintla, where she had led a youth movement against mining. Her father, a leading organizer of a municipal vote on the mine, was shot four times in the same incident.⁸⁸ The Network in Solidarity with the People of Guatemala, along with 35 other international organizations, immediately condemned the attack and called upon the Attorney General of Guatemala to conduct a full and impartial investigation to ensure that those

responsible would be brought to justice.⁸⁹ At the same time, MiningWatch Canada requested that the Canada Pension Plan Investment Board divest from Tahoe Resources because the investment was considered “a dangerous and unacceptable gamble.”⁹⁰ Then, on 27 April, Tahoe’s private security forces shot and injured seven men who were peacefully protesting outside the Escobal mine in San Rafael Las Flores.⁹¹ The company’s former security manager, Alberto Rotondo, was arrested as he was trying to leave the country.⁹² As of the time of writing, he is awaiting trial in Guatemala for his alleged role in the attack.

A STATE OF SIEGE

On 30 April, in response to the shooting of peaceful protestors, local groups kidnapped and disarmed 20 members of the Guatemalan National Police in the neighboring town of Jalapa. The operation to free the police hostages left several police officers wounded and one protestor killed.⁹³ On 2 May, President Molina responded by sending over 3,000 soldiers and police officers to the area and declaring a 30-day State of Siege in four municipalities around the Escobal mine.⁹⁴ Under a State of Siege, civil liberties, including freedom of movement, freedom of assembly, and the ability to protest, are suspended. Those who are arrested can be detained indefinitely without judicial review or access to counsel. The government justified its decision as a reasonable response to organized crime. However, the police and military used this State of Siege as an excuse to ransack the homes of known mine opposition leaders.⁹⁵

Subcontractors to Tahoe Resources took out paid advertisements in local newspapers supporting the State of Siege and government efforts to restore “the rule of law.”⁹⁶ Human rights organizations called the action a “criminalization of the legitimate demands of the population opposed to the mine.”⁹⁷ More than 30 human rights, environmental, church, and solidarity groups from 43 countries sent a letter and petitions signed by 4,300 individuals to President Molina calling for the revocation of Tahoe Resources’ mining permit because of Guatemala’s “consistent disregard for Indigenous rights and community participation in decisions that will impact their lives, livelihoods, lands and territories.”⁹⁸ The letter also called on the Attorney General of Guatemala to request that the International Commission Against Impunity in Guatemala (CICIG) investigate the root causes of the violence around the Escobal project.

The ongoing militarization of the region has created a climate of fear that has resulted in some community leaders going into hiding. In July 2013, the Guatemalan government put a two-year moratorium on awarding new mining

licenses.⁹⁹ Tahoe began commercial silver production at the Escobal mine in January 2014. However, that was not the end of the resistance to Tahoe's Escobal mine. The site of the resistance now shifted to Canadian courts. In June 2014, the seven Guatemalan men shot at close range by Tahoe's security personnel filed a lawsuit in a Vancouver court against Tahoe Resources for the injuries they had suffered. The claimants were represented in Canada by a legal team comprised of Vancouver law firm Camp Fiorante Matthews Mogerman and the Canadian Centre for International Justice (CCIJ). Six of the seven shooting victims are also civil parties in the Rotondo prosecution in Guatemala, where he has been criminally charged with obstruction of justice and causing serious and minor injuries. In Guatemala, they are represented by CALAS. "Rotondo must be punished in Guatemala for his criminal acts," said Rafael Maldonado, legal coordinator of CALAS.¹⁰⁰

TAHOE ON TRIAL

Canadian courts have historically refused to admit lawsuits against Canadian companies for their actions abroad. The Tahoe lawsuit is the first time a Canadian company has been sued in British Columbia for events that occurred outside of Canada. However, it follows a 2013 procedural decision by an Ontario Superior Court judge that allowed three lawsuits against Toronto-based Hudbay Minerals related to alleged violent incidents in Guatemala to proceed.¹⁰¹

In the Tahoe case, the seven plaintiffs maintain that they were peacefully protesting in front of the Escobal mine gates when security personnel attacked them using shotguns, pepper spray, buckshot, and rubber bullets. The security personnel allegedly continued firing at the protestors even as they retreated down the road back to the protest camp. One of the plaintiffs, Luis Fernando Garcia, was shot in the face and then in the back while retreating down the road. The lawsuit alleges that Tahoe was aware of widespread opposition to the Escobal Mine and that "the shooting was intentional and was intended to intimidate protestors and suppress peaceful opposition to the Escobal Mine."¹⁰² The suit further alleges that Tahoe's Guatemala Security Manager at the Escobal Mine, Rotondo, had "concocted a plan to use force against the peaceful protestors, fabricated a story that the protestors had attacked mine employees, ordered security personnel to tamper with evidence at the crime scene and tried to flee the country to avoid legal problems."¹⁰³ The plaintiffs are asking the court to order Tahoe to pay damages to compensate them for pain, suffering, loss of income, and medical costs. They are also seeking punitive damages against Tahoe for

reprehensible and malicious conduct aimed at intimidating peaceful protestors in order to advance Tahoe's business interests.¹⁰⁴

On 1 May 2013, Tahoe CEO Kevin McArthur offered a very different version of the events that had occurred on 27 April. According to him, the number of anti-mining protests around the mine increased significantly after the Escobal mining license was issued on 3 April. "While many of these activities have been peaceful and respectful, violence from outside influences has escalated in the past weeks since we received our operating permit," said McArthur. On 27 April,

a protest involving approximately 20 people armed with machetes turned hostile. The Escobal security force used tear gas and rubber bullets to repel the protestors at the mine gate. Our investigation has shown that only non-lethal measures were taken by our security. We regret any injuries caused by rubber bullets, but we take the protection of our employees and the mine seriously.¹⁰⁵

Tahoe's repeated claim that only nonlethal rubber bullets were used against the protestors is contradicted by an official analysis from the Guatemalan government's National Forensic Sciences Institute. "The evidence is conclusive," said Dr. Yuri Melini, the director of CALAS. "Those were not rubber bullets. They were shotgun pellets and 9mm caliber bullets."¹⁰⁶ Further evidence that Rotondo specifically targeted peaceful protestors comes from wiretap transcripts ordered by Guatemala's Public Prosecutor two weeks before the 27 April shooting in response to earlier violence at the mine site. The transcripts were first presented at a public hearing in Guatemala in May 2013, when Rotondo was charged with assault and obstruction of justice. The wiretap evidence has also been submitted as part of the court case in British Columbia. In Intercept No. 4010, Rotondo tells Tahoe's communications advisor of his intention to stop the protests against the mine through violence: "I ran them out with bullets... And I let them have it... There is no way I am ever going to allow these people to get confident."¹⁰⁷ In Intercept No. 4052, a conversation with one of his subordinates, Rotondo says, "They say that one has a bullet in the face and... if it exploded in their face, it's with bullets that they learn."¹⁰⁸ According to court documents, Rotondo also ordered security personnel to break their own riot shields so they could claim that the protestors had attacked them.¹⁰⁹ Tahoe fired Rotondo shortly after the shooting, saying he had violated the company's security protocols.¹¹⁰

While the suit will proceed over the next several years, shareholders in Tahoe Resources have already raised concerns about the case. In May 2013, MiningWatch Canada and the Network in Solidarity with the People of Gua-

temala published an alert discouraging investors from continuing to invest in Tahoe because of widespread community opposition and violence around the Escobal project.¹¹¹

In April 2014, the Norwegian Council on Ethics for the Government Pension Fund, an independent agency that keeps track of Norwegian government funds, raised concerns about Tahoe's human rights practices.¹¹² In its written response to the council, Tahoe stated, "The violent criminal incidents 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."¹¹³ The council rejected Tahoe's argument and recommended the exclusion of the company from the government pension fund's holdings "due to an unacceptable risk of the company contributing to serious human rights violations."¹¹⁴

HOLDING CANADIAN MINING COMPANIES ACCOUNTABLE

The Tahoe suit has the potential to change the way that Canadian mining companies view the political risk of their operations abroad. Until quite recently, Canadian mining companies enjoyed immunity from lawsuits based on the actions of their foreign subsidiaries or contractors. The legal theory was that a parent company based in Canada was distinct and therefore legally immune from the actions of its foreign subsidiary or contractors.¹¹⁵ This changed when indigenous people

in Guatemala, working with NGOs and law firms in Canada, filed three lawsuits against HudBay Minerals for

negligence and failure to prevent violence against indigenous Guatemalans at its El Estor nickel mine. Lawyers for the plaintiffs pointed to public statements that Canadian parent companies had made about their commitment to corporate social responsibility. In the Tahoe case, lawyers claimed that Tahoe had a responsibility to the plaintiffs because it knew that its security personnel did not adhere to internationally accepted standards on the use of private security personnel that Tahoe had agreed to follow.¹¹⁶ When Canadian companies fail to adhere to these standards they can be sued for negligence and other harms based on traditional and recognized Canadian legal principles.¹¹⁷ The judge in those cases agreed, opening the door to holding Canadian companies accountable for human rights abuses by security personnel at their overseas operations.

This is part of a larger movement of NGOs assisting indigenous peoples in defending their territories from extractive industries. Indigenous groups, their allies in local communities, and the Catholic Church provide international organizations—such as the Canadian Centre for International Justice (CCIJ)—with the information necessary to ensure that those in Canada accused of serious human rights violations are held accountable. “Victims of violence related to Canadian mining abroad are turning to Canadian courts because they cannot find justice against the corporations in their own countries, and because they feel strongly that Canadian law must be applied to Canadian companies,” said Matt Eisenbrandt, CCIJ legal director.¹¹⁸ On 9 November 2015, the British Columbia Supreme Court declined jurisdiction over the case, concluding that Guatemala would be the more appropriate place to hear it.¹¹⁹ As of this writing, the seven plaintiffs have not yet decided whether to appeal this decision. They have thirty days to file an appeal. Whether or not the plaintiffs receive a favorable settlement, this case has already had a negative financial and political impact on Tahoe Resources.

This case study of militarized mining illustrates some of the major advantages of transnational advocacy networks around indigenous rights and human rights abuses. These networked groups bring together indigenous peoples, the UN Special Rapporteur on the rights of indigenous peoples, and solidarity groups in both the United States and Canada to reframe the debate about indigenous rights, shift the site of the debate, and mobilize the legal and political resources necessary to hold accountable transnational mining corporations whose operations overseas are responsible for human rights abuses.

The effectiveness of this strategy can be seen in Goldcorp’s recent decision to divest its financial interests from Tahoe Resources and its Escobal mine.¹²⁰ Goldcorp explained its sale of its 26 percent stake (down from its original 40 percent stake) in Tahoe Resources as a routine financial decision to divest noncore assets. However, one must ask if that is the true reason for Goldcorp’s decision. Tahoe Resources is facing a number of legal challenges in Guatemala that could result in significant fines for alleged crimes against the environment and the revocation of its mining license at Escobal.¹²¹ These significant financial and political risks could damage Goldcorp’s share price, earnings, and reputation. This is likely part of the reason Goldcorp decided to avoid further liabilities associated with Tahoe Resources.

As popular resistance to controversial mining projects spreads across global resource frontiers, transnational mining companies go to great lengths to construct a narrative that ignores or minimizes the effectiveness of this resistance.

They would rather blame depressed metal prices, unexpected technical problems, or divestment of noncore assets than acknowledge the role of organized opposition on two continents in shaking investor confidence and raising the political and financial risk profile of projects such as Tahoe's Escobal mine. The attempt to impose unwanted large-scale mining projects through militarizing the area and criminalizing community leaders can impose a heavy toll upon individuals and entire communities, but it cannot create social acceptance of controversial mining projects. The assertion of indigenous rights to protect their lands, and of rural communities to have a voice in decisions regarding new mining projects, represents a fundamental shift in the power relations between transnational mining corporations, the Guatemalan state, and organized local communities. Since 2005, more than 1.5 million people have participated in community consultation processes in over 70 municipalities in Guatemala.¹²² These consultations sparked a national and international awareness about mining and contributed to the massive national mobilizations that forced the resignation of President Molina on charges of corruption and human rights violations in June 2015.¹²³

This case study of militarized mining and the criminalization of social protest is not unique to Guatemala, but is illustrative of a widespread trend in Latin America, Asia, and Africa.¹²⁴ The situation of indigenous communities in resource-rich areas of the global economy is one of dramatic contrasts. On the one hand, indigenous communities have increasingly asserted their right to free, prior, and informed consent regarding mining projects on indigenous lands. Mining companies that fail to take this issue seriously increase the political and financial risks of their investments. At the same time, indigenous and non-indigenous communities continue to be targeted by state and mining company security forces. Transnational mining companies responsible for human rights violations are not held accountable because of weak national laws in host countries and nonexistent or unenforceable international law.¹²⁵ In November 2013, a group of over 140 civil society organizations addressed this gap in human rights protection, issuing a joint statement calling for a legally binding instrument to address corporate human rights violations through the UN Human Rights Council.¹²⁶ An Intergovernmental Working Group on transnational corporations and human rights is now drafting such a legally binding instrument in international human rights law. In the meantime, a transnational advocacy network seeks to hold Canadian mining companies accountable in Canadian courts. 

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