

# **Update: Lawsuits and Risks to Communities from Tahoe Resources' Escobal project**

## **February 2015**

### **Lawsuits against Tahoe Resources and company employees:**

[Criminal case against Alberto Rotondo](#) will move to trial for Rotondo's alleged role in violence at the Escobal mine at which time he was head of security for the company.

- Rotondo is accused of ordering private security guards to open fire on peaceful protesters on April 27, 2013 and then tampering with the evidence. Seven men, including two minors, were seriously injured.
- Rotondo was arrested when he was about to board a plane leaving Guatemala.
- He was charged with assault and obstruction of justice on May 7, 2013.
- On December 17, 2014, a Guatemalan judge ordered Rotondo to stand trial for injuries caused to four of the seven men.

[Civil lawsuit filed in Canada against Tahoe Resources](#) for negligence and battery in connection with April 2013 shooting proceeds to first hearing about where the case should be heard.

- The seven men who were shot at close range by Tahoe security guards are suing the company for negligence and battery.
- They seek punitive damages against the company.
- Tahoe is seeking an order to strike, dismiss or stay the case, arguing that the British Columbia court should decline jurisdiction and that Guatemala is the more appropriate forum for the men's claims.
- The hearing is scheduled for April 8<sup>th</sup> to 10<sup>th</sup>, 2015.

[Criminalization of protest at the Escobal mine](#) is the subject of ongoing efforts in Guatemala to hold Tahoe management responsible for repressive tactics, including the persecution of community activists through the use of criminal charges.

- In early January, Tahoe CEO Kevin McArthur and Guatemala manager Donald Grey were summoned to testify about the company's criminalization practices against a prominent community leader.
- This is the second time that Tahoe CEO Kevin McArthur has been summoned to testify about this pattern of abuse.
- Since September 2012, some 90 people have been slapped with unfounded criminal charges and have had to endure legal processes causing them distress and hardship. Several spent months in jail before being cleared of all charges.
- The related hearing is scheduled to take place in Guatemala in April 2015.

### **Militarization is being used to generate fear and suppress protests**

- On March 26, 2013, the Guatemalan government secretly commenced a pilot initiative in San Rafael Las Flores called the "Inter-institutional Group on Mining Affairs" that frames opposition to mining as a threat to national security.
- Coronel Ricardo Bustamante, Technical Secretary for the National Security Commission oversees the group.
- Its low profile office, located on the edge of San Rafael Las Flores, was established with the help of Tahoe Resources. Locally, the office goes under a different name: "Interinstitutional Office for Comprehensive Development."
- In reference to the group, Guatemalan Minister of the Interior Mauricio López Bonilla

remarked, “Its role is to figure out what has failed” and, “We believe as a state, when we attract foreign investment, it is important to provide accompaniment from start to finish.”

- Tahoe Resources refers to it as a “High Level Commission [...] to address community issues and oversee security matters.”
- Guatemalan activists call it “counterinsurgency” and “a military intelligence operation.”
- A military post has remained in the area since the Guatemalan government imposed a stage of siege in May 2013 on municipalities that had voted against Tahoe’s operations.

### **New map illustrates threat to communities from Tahoe’s mining concessions:**

Information from Xinka indigenous leaders, community organizations and government authorities, primarily the Ministry of Energy and Mines, was used to map the threat to communities from potential and actual mining activities in Guatemala's southeastern departments of Santa Rosa and Jalapa.

- **Xinka Indigenous territory**
  - Tahoe reports that it has title to, or has applied for, four mining concessions for exploration activities that directly impact the Xinka community of San Carlos Alzatate: Oasis III, Cipreses, Lucero, and El Olivo.
  - Tahoe reports that it has title to, or has applied for, three other mining concessions that border San Carlos Alzatate. These include the Escobal concession on which the mine is currently operation, as well as Oasis 1 and Melisa.
  - Tahoe reports that it has title to the Soleded reconnaissance license that directly impacts San Carlos Alzatate.
  - Tahoe reports that it has title to the El Silencio reconnaissance license that impacts the Xinka community of Quesada and half of the communally owned land in Jumaytepeque.
  - Recent legal precedents around the world recognize that the mere granting of mineral concessions on indigenous lands without prior consultation – let alone consent – violates legal and human rights, since it creates third party interests on Indigenous lands, impacting Indigenous peoples’ right to decide on matters that affect them and failing to assess potential impacts at an early stage.\*
- **The community of San Juan Bosco**
  - [San Juan Bosco voted overwhelmingly against mining in a community consultation in 2013.](#) It is directly impacted by Tahoe’s Juan Bosco exploration license, located just seven kilometers from the Escobal mine.
  - Residents of San Juan Bosco have demonstrated firm opposition to mining since 2012 when community leaders filed a legal challenge demanding the cancellation of the Juan Bosco license in defence of their right to water. This case is currently before Guatemala's Constitutional Court.
  - Community members from Juan Bosco were among those that filed more than 250 complaints against Escobal’s extraction license with the Ministry of Energy and Mines in 2012 in defence of their right to water. All of these complaints were dismissed outright without due consideration days before the Ministry granted Tahoe Resources the license. A legal process is underway to determine whether due process was followed with regard to one of these complaints.
- **The municipality of Mataquescuintla**
  - Mataquescuintla held a referendum on November 11, 2012, in which more than

- 60% of registered voters said no to mining in the municipality.
  - Tahoe's Andres exploration license is situated in Mataquescuintla.
  - [Guatemala's highest court ruled in favor of Mataquescuintla's referendum](#) in December 2013. The decision acknowledged the responsibility that municipal authorities have to convene local votes and to make decisions according to their results, affirming their value as "adequate means by which peoples may exercise their right to give their opinion and be consulted on topics of interest."
- **Protected Areas**
    - In Santa Rosa, Tahoe's El Silencio reconnaissance license closely borders the Jumaytepeque Volcano protected area and the Private Natural Reserve of the Quesada Finca, territory that is communally owned and administrated by the Xinka Indigenous community of Quesada.
    - Numerous Tahoe holdings in the department of Santa Rosa are close to the Lake Ayarza special protection area, including El Silencio, Puente Quebrado, Oasis II, Juan Bosco, Barrera, and the Escobal extraction license.
    - The Alzatate Volcano protected area in the department of Jalapa is inside the Soledad reconnaissance license, and is bordered by the Lucero, Valencia and El Olivo concessions.

\*For Example:

- See: Ruling issued on December 12, 27 by the Court of Appeal for Yukon in the Yukon Territory, Canada in the case Ross River Dena Council v Government of Yukon, number 2012 YKCA 14.
- See: Ruling issued on 6 February 2014 by the Third District Judge in Acapulco, Guerrero, Mexico in *accion de amparo* number 131/2013 filed by the Community of San Miguel del Progreso, municipality of Malinaltepec, Guerrero v Government of Mexico.
- See: Ruling issued on 16 October 2013 by the Third Chamber of the Cundinamarca Administrative Tribunal in *accion de tutela* filed by Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato and others v Government of Colombia.