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Canadian lawyers rally to support Guatemalan colleague fighting world's second largest silver mine

Guatemalan lawyer under attack after representing Indigenous people opposed to controversial Canadian miner Tahoe Resources

Toronto, January 3, 2018 – Canadian lawyers and international organizations are pressuring the Canadian and Guatemalan governments to ensure the safety of Guatemalan lawyer Rafael Maldonado. The Canadian Bar Association wrote to Foreign Affairs Minister Chrystia Freeland expressing concern for Mr. Maldonado's safety on December 20, 2017.ⁱ Earlier in the fall, the Justice and Corporate Accountability Project, a group located at Osgoode Hall Law School wrote to the Canadian Embassy in Guatemala. Letters were also sent to the President of Guatemala by the Law Society of Upper Canadaⁱⁱ and the Law Society of England and Wales.ⁱⁱⁱ

Mr. Maldonado has actively defended community members concerned about the impacts of Canadian silver miner Tahoe Resources. He has received death threats, his office has been ransacked and shots were fired at his car earlier this year. The director and founder of the environmental organization where he works, the Guatemala Centre for Social and Environmental Legal Action (CALAS), survived an assassination attempt in 2008, and an employee was murdered in 2016. No one has been charged for any of these crimes.^{iv}

In June, 2017, Mr. Maldonado successfully argued that the silver mine should be suspended because the Guatemalan government had ignored the existence of Xinca Indigenous people in the area affected by Tahoe's Escobal project.^v Within two days, Tahoe stocks plummeted 40%.^{vi} Supporters of the Tahoe mine took out advertisements attacking Mr. Maldonado's organization, CALAS.^{vii}

"Advertisements like this are very dangerous in a country like Guatemala, which has one of the worst records in the world for the murder of human rights defenders,"^{viii} said Lisa Rankin who has supported communities around the mine for the last five years.

International organizations such as Frontline Defenders,^{ix} from Ireland and Amnesty International^x have also profiled Mr. Maldonado as a human rights defender in need of protection.

“Canada needs to be seen to be protecting the right to carry out legal representation without being intimidated or murdered” said Shin Imai, a professor at Osgoode Hall Law School and counsel to the Justice and Corporate Accountability Project.

Contact:

Shin Imai, Justice and Corporate Accountability Project (justice-project.org)
simai@justice-project.org +1 416 524 2312

Lisa Rankin

Guatemala Coordinator for the Maritimes-Guatemala Breaking the Silence Network
+11 502 4906 5626
btscoordinator@gmail.com

Backgrounder

Why write to the Canadian government – isn't this a problem for Guatemalan authorities?

Guatemala is one of the most dangerous countries in the world for people to speak freely about environmental and human rights concerns.^{xi} Canada has committed to promoting human rights and since December 2016, Canadian embassies are required to take steps to support the work of human rights defenders at risk under a policy called *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*.^{xii} These guidelines were enacted to bring Canada in line with the United Nations *Declaration on human rights defenders*.^{xiii}

Violence has swirled around the mine since 2011. Seven farmers were shot as they fled from Tahoe Resources private security forces in 2013.^{xiv} In addition, there have been at least three targeted killings of individuals from the communities surrounding the mine. According to Shin Imai, "By targeted, I mean a sixteen year old girl and her father ambushed in their car;^{xv} an Indigenous leader kidnapped and found dead;^{xvi} a man shot while standing at a bus stop.^{xvii} There are two things that all three murders have in common. First, they were all involved in organizing community referenda to vote on whether the community was in favour of mining. The second thing in common is that no one has been charged for any of these crimes." According to Imai, Tahoe and its supporters brought at least five court cases to try to stop or invalidate these community votes.^{xviii} Tahoe emphatically denies any connection to these deaths.^{xix}

The Canadian Voices at Risk Policy is necessary in order to address situations in countries like Guatemala where raising your voice will threaten your life.

In November 2017, four women, from Guatemala, the United States, Yemen and Iran, all of whom had been awarded the Nobel Peace Prize, travelled to the region affected by the Escobal mine to support community members who have been peacefully preventing mining trucks from accessing the mine for almost six months.^{xx}

What is the Canadian government's relationship with Tahoe Resources?

Over the last twenty years, Canadian embassy officials in Guatemala intervened on behalf of Canadian mining companies to ask the Guatemalan government to crack down on protests.^{xxi} In the case of the Escobal mine owned by Tahoe Resources, the Canadian Ambassador appeared at a public event in 2013 to support the company only three days after the mine's private security force shot fleeing farmers.^{xxii} The victims of the shooting are now suing Tahoe Resources in Canada.^{xxiii}

Why is Tahoe Resources' Escobal mine controversial? Tahoe's website says that they are providing jobs and benefits and the community is behind the mine?

Tahoe Resources' Corporate Social Responsibility strategy provides royalty payments to some mayors in the vicinity of the mine. However, six municipalities adjacent to the mine have held municipal referendums where community members voted overwhelmingly against mining, and five mayors in the directly affected area have refused royalty payments.^{xxiv} Tahoe Resources does not have a social license, as shown by the sixteen municipal and community referendums held since 2012 where tens of thousands of local residents have voted no to mining in their community.^{xxv} The company's gifts, such as giving musical instruments to Indigenous people who visit the mine, are no substitute to consultation and consent.^{xxvi}

What is Tahoe's position?

Position on court case

After the suspension of the mine Tahoe President and CEO, Ron Clayton said, "We are extremely disappointed in the Court's ruling suspending the license indigenous communities affected by Escobal's operations." See "Guatemalan lower court issues ruling on Tahoe's mining license" (July 5, 2017). online: <http://www.tahoeresources.com/guatemalan-lower-court-issues-ruling-on-tahoes-mining-license/>

Position on deaths

Tahoe denies any connection to any of the deaths. See for example, see the statement by Tahoe spokesperson Ira Gostin, after the shooting of 16-year-old Topacio Reynoso: "We find it repugnant that anyone would try to align that tragic incident with anything to do with the mine. It is totally unconnected and unrelated, and we send our sympathies to the family" quoted in Dennis Myers, "Silver state residents protest Guatemala silver mine" Reno News and Review (October 15, 2015) online: <https://www.newsreview.com/reno/common-cause/content?oid=18731983>

Photos

Rafael Maldonado

https://www.frontlinedefenders.org/sites/default/files/pedro_rafael_maldonado_flores.jpg

Nobel Laureate women visit peaceful resistance against Tahoe in Guatemala

<https://nobelwomensinitiative.org/wp-content/uploads/2017/11/WomenLandPeace-7.png>

ⁱ Justice and Corporate Accountability Project “Letter to the Canadian Embassy in Guatemala” (November 29, 2017) online: <https://justice-project.org/wp-content/uploads/2017/12/embassy-letter-final-sent.pdf>

ⁱⁱ Paul Schabas, “Letter to the President of Guatemala” Law Society of Upper Canada (May 19, 2017), online: https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Guatemala%20-%20Pedro%20Rafael%20Maldonado%20Flores.pdf

ⁱⁱⁱ Law Society of England and Wales, “Attacks against the human rights lawyer Mr. Pedro Rafael Maldonado Flores in Guatemala “ (December 11, 2017) online: <http://communities.lawsociety.org.uk/human-rights/interventions/2017/attacks-against-the-human-rights-lawyer-mr-pedro-rafael-maldonado-flores-in-guatemala/5063758.fullarticle>

^{iv} For an overall description, see Front Line Defenders, “Case History: Pedro Rafael Maldonado Flores”, online: <https://www.frontlinedefenders.org/en/profile/pedro-rafael-maldonado-flores> and Amnesty International, “Guatemala Environmental Defender Intimidated” (April 6, 2017) online: https://www.amnesty.ca/sites/amnesty/files/85%20Guatemala_1.pdf. See also Annie Hylton, “Is Canada to blame for human rights abuses in Guatemala?” The Walrus (June, 2017) online: <https://thewalrus.ca/is-canada-to-blame-for-human-rights-abuses-in-guatemala/>

^v Sofia Menchu, “Guatemala court confirms suspension of Tahoe mining licenses” Reuters (July 6, 2017) <https://ca.reuters.com/article/topNews/idCAKBN19R3AF-OCATP>

^{vi} Uwe Gneiting, “One of the world’s largest silver companies just lost 40% of its value”, Oxfam (July 13, 2017) online: <https://politicsofpoverty.oxfamamerica.org/2017/07/one-of-the-worlds-largest-silver-companies-just-lost-40-of-its-value-it-shouldnt-have-surprised-investors/>; Sunny Freeman, “Tahoe Resources shares plunge 33% after permit revoked for flagship silver mine” *Financial Post* (July 6, 2017) <http://business.financialpost.com/commodities/mining/tahoe-resources-shares-plunge-30-after-permit-revoked-for-flagship-silver-mine>

^{vii} Amnesty International, “Guatemala: Smear Campaign against environmental defenders” (July 7, 2017) online: <https://www.amnesty.ca/get-involved/take-action-now/guatemala-smear-campaign-against-environmental-defenders>

^{viii} The United Nations Special Rapporteur on the situation of human rights defenders, reported that of all attacks against human rights in the world in 2015-2016, an astounding 10% was from the small country of Guatemala , making it one of the most dangerous countries in the world for human rights defenders. *Report to the General Assembly, A/72/170* (July 19, 2017) at parag.15. See also *They spoke truth to power and were murdered in cold blood* (2017) https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf

^{ix} Front Line Defenders, “Case History: Pedro Rafael Maldonado Flores”, online: <https://www.frontlinedefenders.org/en/profile/pedro-rafael-maldonado-flores>

^x Amnesty International, “Guatemala Environmental Defender Intimidated” (April 6, 2017) online: https://www.amnesty.ca/sites/amnesty/files/85%20Guatemala_1.pdf.

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^{xii} See *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders* http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

^{xiii} UNGAOR, 53rd Sess, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Doc A/RES/53/144 (1999). The General Assembly adopted this Declaration by consensus, and as such, it represents a strong commitment by states to its implementation. See OHCHR, “Declaration on Human Rights Defenders”, online: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

^{xiv} See the decision of the British Columbia Court of Appeal in *Garcia v. Tahoe Resources Inc.*, 2017 BCCA 39

^{xv} KAIROS, *An Expression of Solidarity in Response to the Death of Marilyn Topacio Reynoso*, (1 May 2014), online: <https://perma.cc/K8VR-A7HK>; MiningWatch Canada, *International Organizations Demand Justice in Deadly Attack*

Against Opponents of Tahoe Resources' Mine, (30 Apr 2014), online: <https://perma.cc/6BMV-BSPE>; Tim McSorley, Canadian Pensions Are Being Invested In a Mining Company with Questoinable Human Rights Record, Vice, (22 May 2014), online: <https://perma.cc/8SJV-NG5B>.

^{xvi} Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala* (13 January 2014), A/HRC/25/19/Add.1, at para. 45, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/101/61/PDF/G1410161.pdf?OpenElement>>.

^{xvii} Observatorio de Conflictos Mineros de América Latina, Guatemala: Asesinato del defensor de derechos humanos Señor Telésforo Odilio Pivaral González, (10 Apr 2015), online: <https://perma.cc/K5Z4-5MUB>; Sonia Perez D., Grupos piden investigar crimen de ambientalista en Guatemala, Associated Press, (11 Apr 2015), online: <https://perma.cc/5APD-2L6H>; Noticias, Miembro de Resistencia en San Rafael Las Flores fue asesinado, (7 Apr 2015), online: <https://perma.cc/X7FB-8XWK>.

^{xviii} Marco Oved, "Canadian company tried to stop referendum on mine in Guatemala" Toronto Star (August 11, 2016) online: <https://www.thestar.com/news/world/2016/08/11/canadian-company-tried-to-stop-referendum-on-mine-in-guatemala.html>

^{xix} See for example, statement by Tahoe spokesperson Ira Gostin, after the shooting of 16-year-old Topacio Reynoso: "We find it repugnant that anyone would try to align that tragic incident with anything to do with the mine. It is totally unconnected and unrelated, and we send our sympathies to the family." Dennis Myers, "Silver state residents protest Guatemala silver mine" Reno News and Review (October 15, 2015) online: <https://www.newsreview.com/reno/common-cause/content?oid=18731983>

^{xx} "Women Land Peace Delegation Last Three Days in Guatemala" online: <https://nobelwomensinitiative.org/womenlandpeace-delegation-last-three-days-guatemala-storify/>

^{xxi} The Canadian Embassy intervened for HudBay Minerals to get more troops to deal with Indigenous people claiming their land: "Our Embassy had also communicated with the Government of Guatemala via the Ministers of the Interior and Defense...The Minister of Interior reported that he dispatched some 60 special police to the area...the Minister of Defense informed her that he too had sent a special contingent of soldiers to El Estor." See Access to Information request: A201200634_2013-01-09_08-39-47.pdf,p.81.

^{xxii} For photo of Canadian Ambassador at signing ceremony, see James Rodriguez, "San Rafael Mine Signing" at http://mimundo.photoshelter.com/galleryimage/2013-04-Escobal-Mine-SigningCeremony/G0000ZRXlceE6xD8/I0000UU0XOYtQhWM/C0000cpKO_Cp0Z38

^{xxiii} See the decision of the British Columbia Court of Appeal in *Garcia v. Tahoe Resources Inc.*, 2017 BCCA 39

^{xxiv} See Justice and Corporate Accountability Project, "Letter to the British Columbia Securities Commission on Tahoe Resources' Failure to Disclose Material Information" (May 8, 2017) pp.11-13, online: <https://justice-project.org/wp-content/uploads/2017/12/FINAL-BCSC-Cover-Letter-re-Tahoe-May-15-2017.pdf>

^{xxv} Marco Oved, "Canadian company tried to stop referendum on mine in Guatemala" Toronto Star (August 11, 2016) online: <https://www.thestar.com/news/world/2016/08/11/canadian-company-tried-to-stop-referendum-on-mine-in-guatemala.html>

^{xxvi} Tahoe Resources Inc., 2015 Annual Information Form, 2015 (March 9, 2016), at 24: "indigenous peoples have participated in our Guatemalan avocado and coffee rust prevention programs and received donations of agricultural supplies and musical instruments." The Norwegian Council on Ethics, which investigated Tahoe's human rights problems, notes that the Xinca and Xinca Parliament "oppose the mining operation and demand that they be consulted before licences are granted in the areas in which they live." Council on Ethics for the Government Pension Fund Global, Annual Report, 2014, (December 31, 2014) at 172, online: <<https://perma.cc/54TQ-QEUP>>.