

●●● **Speaker's Corner: Mining company lawsuit shows need for international law reform**

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In a case that once again demonstrates the lack of international legal protections, a civil suit filed against Tahoe Resources Inc. alleges the Vancouver-headquartered mining company is liable for injuries sustained by seven Guatemalan men at a protest in April 2013.

The suit, filed in Vancouver this June on behalf of the men, alleges that a private security firm engaged by Tahoe shot protesters at close range and caused serious injuries. Six of the plaintiffs are farmers while the seventh is a local student who was a minor at the time of the incident. Tahoe had received an exploration licence for its Escobal mine near the Guatemalan municipality of San Rafael Las Flores last year.

Tahoe's security manager, Alberto Rotondo Dall'Orso, is facing criminal charges in relation to the shootings. Authorities arrested him as he attempted to leave Guatemala in what they interpreted as an attempt to evade capture. The plaintiffs allege he ordered the shootings that caused their injuries. At the time of publication, neither the criminal charges nor the civil claims have been proven in court.

Following the shooting of the protesters, the Guatemalan government imposed a state of emergency in neighbouring municipalities, including those that had voted against the mine.

More than a year later, relations between Tahoe and the community do not appear to have cooled. Local activists blame the April 13, 2014, murder of 16-year-old youth leader Topacio Reynoso on the conflict. Reynoso's father was shot and seriously injured in the same incident.

This is the first case of its kind in British Columbia courts. However, there have been similar lawsuits in Ontario and Quebec with three cases alleging human rights abuses by Hudbay Minerals Inc. set to proceed to trial in Toronto after an Ontario Superior Court judge rejected the company's move to dismiss the matter for lack of a duty of care owed to the plaintiffs.

The case shows the high cost of a lack of consent. Despite Tahoe's assertion that it has local support, more than half of San Rafael Las Flores communities and a majority of voters in five neighbouring municipalities opposed the mine.

According to a study released by the Harvard Kennedy School's corporate social responsibility initiative this year, the protests that followed Tahoe's licensing should come as no surprise to corporations operating in the extractive industry. For mining companies, the failure to obtain community consent and social licence at an early stage can result in significant losses. Protests cause costly delays as well as reputational harm that make it difficult for companies to recruit top talent, sell mines or work with other communities in the future.

The case, therefore, points to need for accessible accountability mechanisms. Given the seriousness of the complaints lodged by mining-affected communities and the substantial losses experienced by companies that fail to foster good relations with people living near their projects, the Canadian extractive industry is in desperate need of an accessible accountability mechanism.

Meanwhile, in the absence of legislation explicitly permitting lawsuits or offering an effective alternative to the court system, those affected by Canadian corporations have increasingly turned to domestic courts for recourse. Others turn to international bodies, such as the United Nations human rights committee that recently passed a draft resolution to work towards the development of a legally binding international human rights instrument to regulate transnational corporations and other business enterprises despite international law's traditional focus on state actions.

As former Supreme Court justice Ian Binnie explained at a Canadian Bar Association and Department of Justice event in 2008, "You cannot have a functioning global economy with a dysfunctional global legal system: there has to be somewhere, somehow, that people who feel their rights have been trampled on can attempt redress."

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