

**UNBC Geography + Rights Action Emergency Delegation to Guatemala,
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Mining Impunity Emergency Delegation Final Report & Call for Action

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(Guatemala City, Guatemala) In May 2016, Grahame Russell and Dr. Catherine Nolin lead an emergency delegation to Guatemala to re-examine and update documentation on four major mining struggles throughout the country, all related to Canadian (and partially American) owned mining operations.

Documentary photographer James Rodríguez, filmmaker Steven Schnoor, and fellow researchers participated in the emergency delegation to document, yet again, the continued environmental, human rights and community defense struggles of Indigenous and non-Indigenous communities that have suffered repression and a wide-range of harms caused directly and indirectly by Canadian (and American owned) mining operations. Since 2004, Russell and Nolin have been leading regular fact-finding trips to mining harmed communities summarized below.

We underscore again the ugly point that the Canadian government and Canadian businesses have earned handsome profits conducting business, since the 1990s, with Guatemala's genocidal generals, militaries and with corrupted politicians. Some of these same military officials and politicians are facing criminal trials today over corruption and money laundering, as well as for their roles in the genocides and other war crimes of the 1970s and 1980s.

Our experiences, revisiting the mining hard communities, reinforces our call on Canadians, to Parliament and the government of Prime Minister Trudeau to bring about long overdue civil and criminal law reforms in Canada so as to be able to hold our companies fully accountable in Canada for repression, harms and violations they are causing in other countries.

Key Findings:

Over two weeks, we traveled across Guatemala and met with community members, activists, lawyers, and concerned citizens involved in well-documented struggles related to repression, human rights violations and environmental harms caused by:

- Vancouver-based Goldcorp Inc.'s Marlin Mine,
- the Fenix Mine, formerly owned by Vancouver-based Skye Resources and Toronto-based HudBay Minerals,
- the El Escobal Mine owned by Vancouver-based Tahoe Resources, and
- the mining struggle of La Puya against American-owned Kappes, Cassidy & Associates (KCA) as owners of the El Tambor mine previously owned by Toronto-based Radius Gold (that maintain significant interests in the mine).

Underlying Problem:

The underlying problem in all of these cases (let alone in other sectors of the economy) is that the Canadian government and our companies are choosing to do business in the racist, exploitative, repressive conditions of Guatemala wherein corruption, impunity and a fundamental lack of democracy are the norm. In fact, the Canadian government and mining companies are contributing to and benefitting from racism, exploitation, repression, corruption, impunity and the lack of democracy.

Fundamental Violation:

From this underlying reality, the first right that all mining companies are violating is the ***lack of consultation and lack of free, prior and informed consent (FPIC) of the Indigenous communities prior to mine development***. Most community members learned of the mine once the equipment arrived and the shovels hit the ground – usually accompanied by well-armed police and/or soldiers. All other harms and violations flow from this initial violation.

Case by case:

Goldcorp Inc.'s Marlin Mine

- Since 2004, repression, human rights violations and environmental harms have been widely documented and denounced, and yet no legal measures, no international condemnation, no orders to cease operations have stopped Goldcorp in their efforts to continue to maximize profits at its “endless mine.”
- We met with the family of 24-year old Jaime Otero Pérez López who was killed on April 14, 2016 in a collapsed Marlin Mine tunnel. Though the company is paying out the required workers' compensation for death on the job, Jaime's father contradicts the company's claim of “bringing development” to the communities. Julian Gerardo Pérez stated: "There is such economic need [in our country], that one has to risk their life for 2,500 Quetzales [\$310 CDN or approx.. \$15 CDN per day] a month. Then, [when one is killed], we are discriminated against and there is no support from the company."

- (May 15, 2016 – Alert #1) **Goldcorp Inc’s Marlin Mine: A Family’s Pain: Death of Jaime Otero Pérez López**, <http://www.rightsaction.org/action-content/may-14-2016-alert-1-goldcorp-inc%E2%80%99s-marlin-minea-family%E2%80%99s-pain-death-jaime-otero-p%C3%A9rez>
- Surrounded by Goldcorp’s ever expanding mining operation, We met with Diodora Hernández who, on July 7, 2010, survived an assassination attempt by two Goldcorp mine employees. Diodora was shot in the right eye, the bullet exited by her right ear, permanently blinding her right eye and causing loss of hearing. Shortly before this attempt on her life, company employees told local men, in a meeting at the Marlin Mine, that they could not expand their open pit mine because Diodora would not sell her plot of land. Men in the meeting said 'We'll take care of that.' Some apparently tried; Diodora survived. Diodora spoke of the lack of justice and no attempts by Goldcorp to assist the Attorney General’s office to conduct an investigation, though they know the two men – two former employees – who attacked her.
 - (May 16, 2016 – Alert #2) **Diodora Hernandez and Goldcorp - A Stark Contrast**, <http://www.rightsaction.org/action-content/diodora-hernandez-and-goldcorp-inc-stark-contrast-may-16-2016-alert-2>

KCA’s El Tambor Mine & La Puya resistance encampment

- We attended the May 16th public hearing at the Guatemalan Supreme Court of Justice regarding the legality/legitimacy of the KCA-owned El Tambor Mine. Guatemalan lawyer Rafael Maldonado (CALAS) argued that the license for KCA’s mine should be definitively suspended (revoked) on two grounds: (1) the lack of free, prior and informed consent with the Indigenous people of the region prior to the development of the mine; and (2) the egregious behaviour of the company in ignoring the Constitutional Court ruling, more than one year ago, to cease operations.
- KCA President Daniel W. Kappes attended the hearing but refused to reveal his identity to our delegation, while his lawyer told a delegation member: *“Since there is so much insecurity in the country, it is best to keep this gentleman's identity anonymous. But yes, he is a major investor in KCA.”* The country is “safe for investment” but not safe enough for KCA President Daniel Kappes to acknowledge his attendance at a public hearing?
- Later in the day at the La Puya encampment outside the entrance of the El Tambor mine, Amalia Sandoval Palencia, a key member of the peaceful resistance encampment, appealed to Canadians and Americans:
 - *“Here we live from corn and beans. And with the company here, we’re not going to have any more corn and beans.... I ask the people of Canada and the United States to please help us if they can, to help get the company out of here. We want to live and for our kids not to be sick. We’re doing this struggle for them.... for a mother the kids are the most important. So I ask the Canadian and American people to reflect on this. They have kids and they don’t want anything bad to happen to them either.”*

- May 17, 2016 – Alert #3) **KCA (& Radius Gold) vs. La Puya Land & Environmental Defenders**, <http://www.rightsaction.org/action-content/guatemalan-supreme-court-justice-kca-radius-gold-vs-%E2%80%9C-la-puya%E2%80%9D-land-environmental>

Fenix Mine & Murder Trial of Hudbay Minerals' Head of Security Mynor Padilla

- Mynor Padilla, former head of security for Canadian-owned Hudbay Minerals (and ex-colonel in the Guatemalan military), is on trial for the September 27, 2009 murder of Mayan Q'eqchi' community leader Adolfo Ich and the shooting-paralyzing of German Chub, a young community member. After Padilla and his lawyers noted our delegation's presence outside and later inside the foyer of the Puerto Barrios courthouse, Guatemalan Judge Ana Leticia Peña Ayala ordered that a 9-person police security detail be provided for Padilla. It should be noted that Padilla is in jail without bail because he was a fugitive from justice for three years after the crimes. His lawyers (Carlos Rafael Pellecer Lopez, Frank Manuel Trujillo Aldana, David Antonio Barrientos) convinced Judge Peña Ayala that Padilla's personal security was at risk because he was "harassed" by people when entering the Puerto Barrios courthouse on May 17, 2016. Those "people" are members of our Mining Impunity Delegation with cameras and notepads. No such security was provided for Ich's widow Angelic Choc who told our delegation of repeated attempts to intimidate and threaten her during the long course of this murder trial.
- Our questions are many: Who is protecting the family? Why is there no court ordered protection in place for the family? What role does HudBay Minerals continue to play in this murder trial? Who is paying for the defence lawyers (noted for their work related for transnational corporations and the high-profile genocide trial against former President Gen. Ríos Montt)?
 - (May 19, 2016 – Alert #4) **Mynor Padilla, Hudbay Mineral's Former Head of Security, Is Provided With Police "Security Detail" For Safety!**, <http://www.rightsaction.org/action-content/may-19-alert-4-mynor-padilla-hudbay-mineral%E2%80%99s-former-head-security-provided-police->

Where is the Mining License, Tahoe Resources? (Alert #6):

- Oscar Morales is clear in his analysis of the illegality of Tahoe Resources El Escobal mining operation: "*Show me the license, Tahoe Resources?*," he rhetorically asked, over and over.
 - (May 23, 2016 - Alert #6) **Tahoe Resources: Where Is Your Mining License?**, <http://www.rightsaction.org/action-content/may-23-alert-6-tahoe-resources-where-your-mining-license>

Recommendations & Calls for Action:

According to the Government of Canada (2015, 2)*, in 2013, “over 50% of the world’s publically listed exploration and mining companies were headquartered in Canada. These 1500 companies had an interest in some 8000 properties in over 100 countries around the world.” As major players in the global mining scene, we call on the Canadian government to:

1. Make long-overdue changes to **Canada’s foreign policy regarding the global mining sector via the adoption of a legislative framework that would hold state agencies and companies legally to account for abuses** related to Canadian mining companies’ overseas operations.

In a recent editorial, the Toronto Star

(<https://www.thestar.com/opinion/editorials/2016/08/21/ottawa-should-make-mining-companies-more-accountable-editorial.html>) called for “the government [to] make it a priority to re-introduce — and strengthen — a private member’s bill that was narrowly defeated in 2010. [Bill C-300](#) was introduced by Liberal MP John McKay to establish corporate accountability for Canadian mining companies in developing countries.” While the Toronto Star’s call for legal reform are correct, re-introducing Bill C-300 – and the weak administrative law framework it offers - is not what Canadians should be advocating for. (In a forthcoming article, Russell and Nolin will address this in further detail.)

2. Therefore, there must be **mandatory, not voluntary, compliance** with legal and human rights norms.
 - a. Government financial and diplomatic support must be dependent on compliance with legal and human rights norms
 - b. Corporate social responsibility (CSR) policies are not enough. Actually, they are a smoke screen that evokes serious attention to human rights and social/economic community needs of mining-affected communities. In fact, they reinforce a climate of impunity and immunity from accountability. CSR steps over a community’s right to consultation, right to informed consent (i.e., their right to say ‘yes’ or ‘no’ to any given mining project) and becomes a tool to ignore any community’s vocal ‘no’ by recommending dialogue, conflict resolution, and positive outcomes for all.
3. And, finally, we echo the demand of Guatemalan scholar Irmalicia Velásquez Nimatuj for the Guatemalan Attorney General and CICIG (International Commission Investigating Corruption in Guatemala) to **investigate the corrupted parallel structures of power within the State apparatus** that have approved hundreds of mining licenses across Guatemala since the Peace Accords were signed in 1996. In addition, we argue that **Canadian and American parliamentary, congressional and senate committees should investigate the engagement (and profit-making) of Canadian and American mining companies within this corrupt Guatemalan state apparatus** and mining license process.
 - o (May 19, 2016 – Alert #5) **Canadian & U.S. Authorities Should Investigate Mining Companies Participating In Corrupted “Structures of Power Within Guatemalan State**

That Approve Mining Licenses”, <http://www.rightsaction.org/action-content/may-19-alert-5-canadian-us-authorities-should-investigate-mining-companies>

No More Impunity for Mining Related Repression, Violations, and Harms

In Guatemala’s historic and ongoing context of corruption and impunity, and of staggering mining profits, the mining related repression, violations and harms - that have been documented since 2004, and that we will be revisiting on this trip - are both logical and predictable, with no end in sight. We must act now and hold Canadian and American mining companies accountable for their crimes, harms and violations that take place abroad. The time is now.

“Wake up. Wake up, humanity. We are out of time.” – Berta Cáceres

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* http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf