

Rights Action – April 30, 2011

Global Mining Companies & Impunity in Canada and USA

BELOW:

PRESS RELEASE: "Ecuadorians lose appeal in lawsuit against Canadian mining company and Toronto Stock Exchange (tsx): Canadian law continues to fail communities harmed by Canadian mining overseas", by Klippensteins law firm

ARTICLE: "No Justice, No Peace: Canadian Mining in Ecuador & Impunity", by Carlos Zorrilla and Cyril Mychalejko

DOCUMENTARY FILM: "Under Rich Earth", an award-winning doc-film about the resistance of local farmers and villagers in Ecuador to the illegal incursions of the Canadian mining company, that also used brutal violence to try and terrorize the local population to end their resistance to mining.

EDUCATIONAL DELEGATION: Rights Action delegation to Guatemala

- What to do: See below
- To get on/off Rights Action's listserv: www.rightsaction.org

ECUADORIANS LOSE APPEAL IN LAWSUIT AGAINST CANADIAN MINING COMPANY & TORONTO STOCK EXCHANGE (TSX): Canadian law continues to fail communities harmed by Canadian mining overseas

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"Armed men linked to Canadian mining company Copper Mesa came into their community and attacked them. The directors of Copper Mesa based in Toronto were shown photographs of this attack. You would think at the very least, that when directors of a Canadian corporation have been warned and given evidence that company personnel are assaulting people, they would have to do something to stop further violence. The Court said that under Canadian law, directors don't have to do anything whatsoever.

"This is a disturbing state of affairs. Do Canadians really want to have their legal system on the one hand authorize Canadian mining companies to go abroad to developing countries, and then on the other hand totally absolve the directors in Canada of any responsibility whatsoever for human rights abuses those companies may perpetrate there?"

(Murray Klippenstein, legal counsel for the Ecuadorians)

[RIGHTS ACTION congratulates Klippensteins for taking on this case, and working to pierce the wall of 'immunity from prosecution' that the mining industry, major investors and many politicians are working hard to keep in place in Canada. Rights Action is collaborating with Klippensteins as they represent Angelica Choc, a Mayan-Qeqchi woman from Guatemala, in a wrongful death lawsuit against HudBay Minerals for the assassination of her husband Adolfo Ich by private security guards in the hire of HudBay Minerals and its subsidiary company in Guatemala, CGN, and as they represent 11 Mayan-Qeqchi women who were gang-raped by private security guards in the hire of HudBay Minerals.]

ECUADORIANS LOSE APPEAL IN LAWSUIT AGAINST CANADIAN MINING COMPANY AND TSX

Canadian law continues to fail communities harmed by Canadian mining overseas

MARCH 14, 2011 – On Friday, March 11, 2011, the Court of Appeal for Ontario dismissed an appeal by Ecuadorian campesinos who say they were assaulted by security forces hired on behalf of a Canadian mining company in their native Ecuador.

Marcia Ramírez, Polivio Pérez and Israel Pérez had sued Canadian mining company Copper Mesa Mining Corporation and two of its directors as well as the Toronto Stock Exchange, which the Ecuadorians say listed the mining company on its stock exchange after having been warned that money from the listing would lead to violence. Ramírez, Pérez and Pérez had appealed an earlier decision that dismissed their lawsuit.

In the ruling, the Court recognized that “[t]he threats and assaults alleged by the plaintiffs are serious wrongs. Nothing in these reasons should be taken as undermining the plaintiffs’ rights to seek appropriate redress for those wrongs”, but nonetheless ruled against the Ecuadorians.

“I know Marcia, Polivio and Israel will be disappointed that no one will be held accountable for the violent attacks they endured at the hands of the Canadian mining industry,” said Murray Klippenstein, legal counsel for the Ecuadorians. “Armed men linked to Canadian mining company Copper Mesa came into their community and attacked them. The directors of Copper Mesa based in Toronto were shown photographs of this attack. You would think at the very least, that when directors of a Canadian corporation have been warned and given evidence that company personnel are assaulting people, they would have to do something to stop further violence. The Court said that under Canadian law, directors don’t have to do anything whatsoever. When you think about it, this is a disturbing state of affairs. Do Canadians really want to have their legal system on the one hand authorize Canadian mining companies to go abroad to developing countries, and then on the other hand totally absolve the directors in Canada of any responsibility whatsoever for human rights abuses those companies may perpetrate there?”

The judgment also confirmed that the Toronto Stock Exchange is under no legal duty to consider human rights records when deciding whether to list corporations on its stock exchange, even in cases where the TSX has been informed of past violence caused by the corporation.

This ruling paves the way for Canadian mining companies to continue to raise money on the Toronto Stock Exchange without the TSX having any regard at all for potential violence and harm that is likely to be caused by these funds in areas of the world where human rights abuse is common.

The Toronto Stock Exchange is a for-profit corporation that took in \$142.1 million in 2009 through listing fees. The TSX lists more mining corporations than any other stock exchange in the world and routinely lists corporations with mining projects in countries known for severe problems with violence including the Democratic Republic of Congo, Burma, Zimbabwe and Guatemala.

“This judgment raises some questions for the future,” said Mr. Klippenstein, who is also legal counsel for a widow in Guatemala whose husband was murdered by the head of security of a Canadian mining subsidiary because of his outspoken concerns about the activities of the

company. "There are a number of other legal cases that are pending in Canadian courts that raise these issues, in slightly different legal settings. One wonders whether Canadian courts in the long run want to adopt rules that have the effect of sticking a Canadian flag on human rights abuses in developing countries."

"There is a silver lining to this story. Copper Mesa ran out of money. It was delisted from the Toronto Stock Exchange, and it lost its mining concession. In the end, there is no massive open pit copper mine destroying the environment and villages around Junín, which were what Marcia, Polivio and Israel were fighting to protect from the start."

The Plaintiffs are considering a possible appeal.

The full text of the judgment can be found at:
<http://www.ontariocourts.on.ca/decisions/2011/2011ONCA0191.pdf>

For more information: <http://www.ramirezversuscoppermesa.com/>

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NO JUSTICE, NO PEACE: CANADIAN MINING IN ECUADOR AND IMPUNITY

by Carlos Zorrilla and Cyril Mychalejko
26 April 2011

<http://upsidedownworld.org/main/ecuador-archives-49/3015-no-justice-no-peace-canadian-mining-in-ecuador-and-impunity>

On December 2, 2006, 14 paramilitaries armed with 38-caliber guns and pepper spray fired into a group of unarmed Ecuadorian campesinos from a community that has been resisting a copper mining project for over a decade. Thankfully no one was killed, but there were several injuries, not to mention the psychological suffering caused by such a vicious attack.

This assault led three of the local campesinos from Intag, Ecuador to file a lawsuit against the Toronto Stock Exchange (TSX) and Copper Mesa Corporation, the Canadian mining company responsible for hiring the "security firm" that sent the paramilitaries to intimidate the anti-mining residents of the region.

"I ask the noble people of Canada," said Ramírez when she filed the lawsuit in March 2009, "that you demand from your elected authorities significant changes in your national legislation so that what has happened with Copper Mesa in Intag will never happen again, not in Intag nor in any other part of the world."

John McKay, a Liberal Member of Parliament from Canada, actually introduced legislation that would have been a concrete first step in holding Canadian mining companies accountable for their behavior overseas. Bill C-300 would have sanctioned the Canadian

federal government to investigate human rights and environmental complaints filed against companies with the authority to cancel any governmental funding if found guilty. While some activists and NGO's leveled criticism against the bill for being too tepid, most supported the legislation. Unfortunately the Canadian government, largely perceived to be in the pockets of the mining industry, did not and the bill was voted down. Catherine Coumans, research coordinator for MiningWatch Canada, has charged the government with "aiding and abetting" the industry's inhumane, if not criminal, behavior.

Injustice and Impunity Continues

Last month, when three judges at the Court of Appeals in Canada ruled against the three Intag residents, a lot more than a lawsuit was lost. The court basically said that people overseas have no right to sue a Canadian institution or company for human rights violations in Canadian courts. Their statement to the world reaffirmed what many communities effected by Canadian mining projects in the developing world already know: institutions like the TSX and Copper Mesa will never be held accountable for human rights abuses and environmental destruction they fund and carry out.

"Do Canadians really want to have their legal system on the one hand authorize Canadian mining companies to go abroad to developing countries, and then on the other hand totally absolve the directors in Canada of any responsibility whatsoever for human rights abuses those companies may perpetrate there?" asked Murray Klippenstein, legal counsel for the Ecuadorians, who is also legal counsel for a widow in Guatemala whose husband was murdered by the head of security of a Canadian mining subsidiary because of his outspoken concerns about the activities of the company.

But the ruling also produces another very unsettling effect, or better put, reinforces a widely-held belief in the extractive industry resistance movements overseas: that it is a waste of time, energy and funds to try to use the judicial system in order to have their rights recognized and communities protected. The implications are troubling.

One example to illustrate this point is the infamous Chevron-Texaco case where 18 long years had to pass before the 30,000 Ecuadorian indigenous and campesino plaintiffs got a favorable sentence in an Ecuadorian court for their lawsuit based on the grave health impacts from years of petroleum extraction- and contamination- in the Amazon. The destruction has been such that it's been labeled a "Rainforest Chernobyl". But even now the case could be held up in courts for an additional decade from appeals, meaning that many of the plaintiffs will have died before the possibility of collecting what is due them.

Canadians don't hear too much about the environmental destruction and social upheaval their oil, gas and mining industries are spreading overseas. In spite of countless reports of human rights violations all over the world, Canadian corporations have been very successful at greenwashing the news back home and replacing it by images of the "socially responsible" Canadian corporate citizen bringing wealth and development abroad.

However, if the lawsuit contributed to the company being expelled from the TSX, as it was on February 2010, leads to its bankruptcy, and as a result pressures the judicial system in Canada to open itself up to legitimate lawsuits brought by communities overseas against their extractive industries, then it was very much worthwhile. If, in the long run, it will contribute to bringing about legislative reforms that will effectively reduce or stop the murders of anti-mining activists, like what happened in El Salvador and Mexico, and other human rights, social and environmental abuses, then it will have been a major victory. Much depends on

how much information is able to filter through to the average Canadian, and what it will take to get them outraged to demand such changes.

Another Victory for the Mining Industry

Added to this failing of the justice system in Canada, the same week saw the superior court in Quito throw out my (Carlos Zorrilla) lawsuit against film producers working for Ecuacorriente for criminal libel. Unfortunately, this was also no major surprise given the state of the judicial system here. I had initiated a criminal lawsuit against Chinese-owned Ecuacorriente for a 45-minute documentary film paid for by the company where they falsely linked me to anti-mining violence in the south of the country.

The question that begs answering is: When the judicial system so utterly fails to guarantee minimum justice in cases of clear abuses by transnational corporations, or when the litigation is economically so out of reach for the majority of effected people, what other route is there for communities to seek justice? (The costs of the Canadian case was over a \$100,000, although luckily it was all pro bono thanks to the law firm Klippensteins in Toronto.)

Communities understand, not only at a gut level but also through experience, that they are politically and legally outmatched by powerful corporations with deep pockets and decades of experience thwarting justice by manipulating the court systems. Rulings such as Ramirez vs. Copper Mesa only reaffirm this belief.

Therefore, many communities could read into the defeat of the lawsuit that their only practical (and affordable) solution to the threats that mining and other extractive industries pose on their rights, land and cultures lies in physically standing up to these projects - even at the risk of being labeled terrorists or saboteurs. Ramirez vs. Copper Mesa will reinforce the idea that direct, physical resistance is the only way to prevent community members from being murdered, indigenous cultures from being annihilated, and the environment from being decimated. This, at a time when special laws are being enacted in countries rich in natural resources, such as Ecuador, to judicially categorize acts of civil disobedience as terrorism. As of today, there are nearly 300 activists in Ecuador facing terrorism and sabotage charges for standing up to mining and other extractive activities that threaten the livelihood, or well-being of communities and the environment. Over half of these targeted activists are indigenous, including the leaders of the most important indigenous groups in the country. Ironically enough, this happens in the context of Ecuador's progressive Constitution, which recognizes that nature has rights, and that Ecuadorians have the right to a good life (Sumak Kawsay). Take away the only effective tool that communities and indigenous people have to protect these rights from transnational corporations and you have the making of a major, and sustained, human rights nightmare supported by the State.

This is why the court decision in Canada matters, not just in Ecuador, but throughout the world.

[Carlos Zorrilla is director of DECOIN, Defensa y Conservación Ecológica de Intag (Intag Defense and Environmental Conservation). Cyril Mychalejko is an editor at www.UpsideDownWorld.org. He worked as a human rights observer in solidarity with the mining resistance in Intag.]

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UNDER RICH EARTH

- Educational and home video DVDs are now available

UNDER RICH EARTH is a surprising and poignant tale of courage and determination. In a remote mountain village in Ecuador, farmers face the prospect of being forced off their land to make way for a mining project. Unprotected by the police and ignored by their government, they prepare to face down the 'invaders' on their own. Their resistance leads to a remarkable and historic stand off between farmers and a band of mysterious armed men hiding in the cloud forest. UNDER RICH EARTH recently won FIRST PRIZE at the International Festival of the Unseen in Bilbao, Spain. It also picked up the award for BEST ENVIRONMENTAL FILM at the We the Peoples Film Festival in London, U.K.. Over the last two years, the film has screened at festivals from Bucharest to Sao Paulo.

PRICES:

DVDs for home video \$24.99 plus shipping from Titlehouse Distribution or Amazon.com
DVDs for educational institutions and NGOs (please contact wandav@vtape.org at Vtape for prices and ordering)

Under Rich Earth documents the dramatic events that ultimately led to the Ramírez v. Copper Mesa transnational human rights lawsuit being brought in Canadian courts. The three plaintiffs, Marcia Ramírez, Polibio Pérez and Israel Pérez appear in the film. For more information about the lawsuit, go to: www.ramirezversuscoppermesa.com

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RIGHTS ACTION DELEGATION: JULY 3 TO 10, 2011
“ELECTIONS; NO DEMOCRACY”

Join a Rights Action delegation to Guatemala from July 3 to 10, 2011. This pre-elections delegation will speak with human rights and social movement organizations struggling to create conditions for truly democratic processes, and limit the control organized crime and big business hold over the state through illegal networks of influence.

MEET WITH:

Human rights organizations pressing forward the 'exemplary cases' against war crimes; even as they meet constant setbacks;
Land rights movements of communities that support each other against the appropriation of their lands by politically influential plantation owners and organized crime bosses;
Indigenous rights movements that seek full recognition of their rights including recognition of traditional authorities and their territory;
Justice reform activists who seek to reform legal mechanisms that maintain impunity and criminalize human rights defenders; and
Communities defending their territory against transnational interests (mines, dams or biofuels) backed by political power holders.

FOR MORE INFORMATION: Annie Bird; (202) 680-3002, annie@rightsaction.org

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WHAT TO DO:

WWW.RIGHTSACTION.ORG

Rights Action is a not-for-profit organization, with tax charitable status in Canada and the USA. We directly fund and work with community-based development, environmental, disaster relief and human rights projects and organizations fighting to eliminate poverty and impunity and the underlying causes of poverty and impunity in Guatemala and Honduras, as well as in Chiapas [Mexico], El Salvador and Haiti. We educate about and are involved work aimed at critically understanding unjust north-south relations and global development, environmental and human rights issues and the challenges of poverty eradication.

SPEAKERS: Contact us to plan educational presentations in your community, school, place of worship, home (info@rightsaction.org)

EDUCATIONAL DELEGATIONS TO CENTRAL AMERICA: Form your own group and/ or join one of our educational delegation-seminars to learn first hand about community development, human rights and environmental struggles (info@rightsaction.org)

TO MAKE TAX-DEDUCTIBLE DONATIONS

for indigenous and campesino communities working for community controlled development and environmental protection in Central America, make check payable to "Rights Action" and mail to:

UNITED STATES: Box 50887, Washington DC, 20091-0887

CANADA: 552 - 351 Queen St. E, Toronto ON, M5A-1T8

CREDIT-CARD DONATIONS: <http://rightsaction.org/contributions.htm>

DONATIONS OF STOCK: info@rightsaction.org

CREATE YOUR OWN email and mail lists and re-distribute our information

RECOMMENDED DAILY NEWS: www.democracynow.org / www.upsidedownworld.org /

www.dominionpaper.ca

RECOMMENDED BOOKS: Eduardo Galeano's "Open Veins of Latin America"; Howard Zinn's "A People's History of the United States"; James Loewen's "Lies My Teacher Told Me"; Naomi Klein's "The Shock Doctrine"; Paolo Freire's "Pedagogy of the Oppressed"; Dr Seuss's "Horton Hears A Who"

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