

Rights Action – June 13, 2011  
CANADIAN MINING IMPUNITY WATCH

## **Open Letter to the bc-IMC and the CPP Concerning pension fund investments in HudBay Minerals**

### **HudBay Minerals annual shareholder meeting**

Thursday June 16, 2011, 10:00am  
Toronto Board of Trade, East Ballroom, Suite 350  
1 First Canadian Place, 77 Adelaide Street West, Toronto

### **WHAT TO DO:**

If you have pension funds in the bc-IMB and/or CPP, please write your own letter to the bc-IMC and/or CPP, with copies to your own government officials, media, etc. Check to see if your pension fund, in the USA or another province in Canada, is invested in HudBay, and consider writing your own letter to your pension fund manager.

### **NAMES & ADDRESSES:** below

- \* Please re-publish and re-post this information, citing authors and source
- \* To get on/ off RA's listserv: [www.rightsaction.org](http://www.rightsaction.org)
- \* Rights Action's Facebook group: <http://www.facebook.com/pages/Rights-Action/176850879028427?ref=ts>

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June 13, 2011

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Re: THE REAL PRICE & COSTS OF HUSBAY MINERAL'S NICKEL MINING IN GUATEMALA

Dear friends at the bc-IMC & the CPP,

Greetings from Rights Action. We write you again - this time concerning HudBay Mineral's nickel mining interests in Guatemala. It is our understanding that the bc-IMC has over \$281,000,000 invested in HudBay Minerals and the CPP over \$42,000,000. We write you now, as HudBay is about to hold its annual shareholder meeting:

### **HudBay Minerals annual shareholder meeting**

Thursday June 16, 2011, 10:00am  
Toronto Board of Trade, East Ballroom, Suite 350  
1 First Canadian Place, 77 Adelaide St. W, Toronto

## **QUESTIONS FOR THE bc-IMC & the CPP:**

- What criteria do the bc-IMC & the CPP use to determine what is a good company to invest in?
- What and who are the sources of information the bc-IMC and the CPP use to conclude that HudBay Minerals is operating its mines in a way that merits investment and that is beneficial not only to the company and investors but also to the people of Guatemala?
- Is the information we send you here consistent with information you have received from other sources? Or, are you receiving information from other sources that HudBay is operating its mine in Guatemala in a way that respects indigenous and human rights, and benefits the local populations?
- Will you agree to send an investigatory mission to Guatemala to directly investigate, yourselves, the harms and violations summarized below, half of the time of which would be set up and attended to by Rights Action and other groups that we work with in these countries?

## **SUPPORTING COMMUNITIES HARMED BY MINING ACTIVITIES**

Since 2004, Rights Action has been funding and supporting a number of community development, human rights and environmental defense struggles related to the harmful operations of international (mainly Canadian) mining companies in Guatemala and Honduras, as well as to a lesser extent, in El Salvador. These are struggles trying to stop, remedy and repair environmental and health harms and other human rights violations caused directly or indirectly by:

- HudBay Minerals' "Fenix" mine in Guatemala
- Goldcorp Inc's "Marlin" gold mine in Guatemala
- Goldcorp Inc's "San Martin" mine in Honduras
- Pacific Rim's planned gold mine in El Salvador

Recently, we sent the bc-IMC and the CPP a letter about harms and violations linked to Goldcorp's mines in Honduras and Guatemala. We did not hear back from the bc-IMC and from the CPP, we got a form letter.

## **MINING IMPUNITY**

Each of these mining related struggles is characterized by documented environmental and health harms and other human rights violations, and by impunity. No justice has been done in Guatemala or Honduras for any of the harms or violations. This is not due to a lack of legislation. It is due to the historically entrenched impunity that characterizes the Guatemalan and Honduran States and societies. Canadian mining companies along with the Canadian government are aware of the lack of democracy and rule of law in Guatemala and Honduras.

Neither has any justice been done in Canada, home to Goldcorp and HudBay (as well as Pacific Rim). This is due, significantly, to a lack of applicable criminal and civil legislation, and to a lack of political will. In large part, Canadian companies operate mines in countries like Guatemala and Honduras with immunity from prosecution and criminal or civil accountability in those countries and in Canada.

The willingness of investors – private to public, individual to institutional – to invest in companies while paying no attention to or actually ignoring the harms and violations is very much part of the problem.

## **THE REAL COSTS OF NICKEL**

Since 2004, Rights Action has funded and worked extensively with nickel mining affected, Mayan Q'eqchi communities in eastern Guatemala, including the families and communities implicated in the two legal cases summarized below.

### **A BIT OF HISTORY**

Before addressing 2 precedent setting cases filed in Canada, a bit of history.

- The story of the Mayan Q'eqchi people in the nickel mining region of El Estor, eastern Guatemala, is a very old story of racism, repression and impunity. In the late 1800s, vast tracts of Mayan Q'eqchi' lands were 'granted' to German immigrants by the repressive regime of Justino Rufino Barrios. The Rufino Barrios regime had illegally expropriated these lands from the Mayan Q'eqchi communities.
- During World War II, the Guatemalan government expropriated back the land holdings from many Guatemalans of German ancestry.
- After the US-sponsored military coup in 1954, the regime "sold" these same lands to INCO (International Nickel Company).
- INCO operated the mine from 1979-1981, while engaging in acts of repression with the Guatemala army against local Mayan Q'eqchi communities, including forced and violent evictions, disappearances and killings. Some of these violations were documented in the 1999 United Nations Truth Commission report. No justice was done for the violations that INCO participated in and benefited from.
- INCO shut the mine from 1981-2004. In 2004, former INCO mining executives incorporated Skye Resources. Then, INCO sold its ill-gotten lands, concessions and the mining plant to Skye. In 2008, HudBay Minerals bought Skye.
- From 2004-today, many of the same harms and violations are recurring: illegal and violent evictions and destruction of entire villages of Mayan Q'eqchi families; beatings; killings; and – in one community – the gang rape of 11 women.

### **LAWSUIT #1 - KILLING OF ADOLFO ICH**

#### **CHOC v. HUSBAND**

On December 1, 2010, Grahame Russell participated in a press conference in Toronto with Murray Klippenstein (of Klippensteins Barristers & Solicitors.)

Angelica Choc (photo) and Klippensteins announced (December 1, 2010) a lawsuit against Canadian mining company HudBay Minerals Inc. relating to the killing of her husband, Adolfo Ich Chamán.



On September 27, 2009, Adolfo Ich, a respected Mayan Qeqchi (Kek-chi, phonetically) community leader and critic of environmental and health harms and other human rights violations caused by mining activities in his community, was hacked and shot to death by security forces employed at HudBay Minerals' "Fenix" mining project in an unprovoked attack near the town of El Estor, Guatemala. (Photo-center)



Adolfo's widow has brought a lawsuit in Ontario courts to seek accountability for his death. The lawsuit claims general and punitive damages against Canadian companies HudBay Minerals Inc. and HMI Nickel Inc., as well as their Guatemalan subsidiary, Compañía Guatemalteca de Níquel ("CGN").

Adolfo's murder was brutal. Mining security forces recognized Adolfo as a community leader, surrounded him, beat him and hacked at him with machetes before shooting him in the head at close range.

"I believe my husband was killed because he spoke out about the rights violations caused by Canadian mining in Guatemala" said Adolfo Ich's widow, Angelica Choc. "I believe he was killed because he was encouraging communities to stay united against the harmful practices of the mining company."

Angelica Choc has brought the lawsuit in Canada because of the strong connections between the mining project and Canada. "The bullet that killed Adolfo was shot in Guatemala" said Murray Klippenstein, lawyer for Angelica Choc. "But the decisions that ultimately led to Adolfo's death were made in Canada. HudBay Minerals' head office is a mere five blocks away from the Canadian court where the case will be heard."

Because Guatemala suffers from very high rates of impunity, there is little chance that Angelica Choc could get justice in Guatemala. In 2005, the United Nations Special Rapporteur on Extrajudicial Execution stated that "Guatemala is a good place to commit a murder, because you will almost certainly get away with it." In 2009, CICIG (the International Commission Against Impunity in Guatemala) reported that "the impunity rate in Guatemala amounted to some 98 per cent, with only 2 out of every 100 cases actually going to court".

## **LAWSUIT #2 - GANG-RAPE OF 11 MAYAN QEQCHI WOMEN CAAL v. HUDBAY**



Rosa Elbira Coc Ich, and ten other indigenous Mayan Q'eqchi' women, announced today (March 28, 2011) a lawsuit brought against Canadian mining company HMI Nickel, and its corporate owner, HudBay Minerals, relating to rapes suffered by them near the town of El Estor, Guatemala.

On January 17, 2007, the eleven women were gang-raped by mining company security personnel, along with Guatemalan police and military, during the forceful expulsion of Mayan Q'eqchi' families from their farms and homes in the community of "Lote Ocho" (and the complete destruction of 100 homes in Lote 8). These armed, forced evictions were sought by HMI Nickel in relation to its Fenix mining project, located on the north shores of Lake Izabal, which it operates, in part, through its Guatemalan subsidiary Compañía Guatemalteca de Níquel (CGN). The communities believe these evictions were illegal.

The lawsuit, filed in HudBay and HMI Nickel's home jurisdiction of Ontario, Canada, claims general and punitive damages.

HMI Nickel was previously known as Skye Resources. All shares of HMI Nickel were purchased by HudBay Minerals in 2008. HMI is currently a wholly-owned and controlled subsidiary of HudBay Minerals. HudBay Minerals did not own HMI Nickel at the time of the rapes.

"Nine men came into my house and raped me," said Rosa Coc. "They were police, soldiers and private security of the company. They left me just completely battered and bruised." Rosa and others have said that, at the time of the attacks, some of their assailants wore uniforms bearing the initials and logo of HMI Nickel's Guatemalan subsidiary, CGN.

At the time of the rapes, HMI Nickel maintained close control of operations at the Fenix Project from its head offices in Canada. In public relations statements made in Canada, HMI Nickel promised that security forces at the Fenix mine would abide by specific international standards regarding the screening, conduct, training, and supervision of their security personnel. Ian Austin, the then-President and CEO of HMI Nickel, stated to Canadian investors that all activities related to the evictions would be carried out by personnel specially trained to avoid violence.

Despite HMI's public promises, HMI Nickel and CGN took aggressive action against Mayan Q'eqchi' communities living on land related to the mining project by seeking the forced expulsion of these communities. The Plaintiffs are not aware of any evidence that indicates that HMI Nickel took reasonable steps to implement the promised international security standards or to protect the community against the violence that was the predictable result.

The gap between what was happening on the ground and what was being said by company executives is shocking. On the very day that men wearing uniforms bearing CGN logos were committing gang-rape during the eviction of a community as requested by his company, Ian Austin, the then-CEO of HMI Nickel, released a public letter in Canada that stated: "[t]he company did everything in its power to ensure that the evictions were carried out in the best possible manner while respecting human rights."

No investigation or prosecution for these crimes has been initiated in Guatemala.

Rosa and the others are seeking justice in Canada in part because of the poor track record of Guatemala's justice system. Human Rights Watch noted in January 2011 that "there was 99.75 percent impunity for violent crime as of 2009," meaning that virtually all violent crime goes unpunished. The report goes on to say that "[v]iolence against women is a chronic problem in Guatemala, and most perpetrators are never brought to trial."

"We remain traumatized by the attack," said Rosa. "Not just myself but the entire community."

The claim represents assertions that have not yet been proven in court. All defendants will have the opportunity to respond in these proceedings.

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## **BACKGROUND INFORMATION**

Please view films:

- El Estor eviction 10 minute film, by Steven Schnoor:  
<http://rightsaction.org/video/elestor/index.htm>
- CTV's W5 special "Lost Paradise":  
[http://www.ctv.ca/CTVNews/WFive/20100415/w5\\_paradise\\_lost\\_100415/](http://www.ctv.ca/CTVNews/WFive/20100415/w5_paradise_lost_100415/)

Please read:

"Formal Complaint", submitted by Rights Action and the University of Northern British Columbia, to the Canadian government: [http://rightsaction.org/articles/Complaint\\_HR\\_&Guate\\_Mining.html](http://rightsaction.org/articles/Complaint_HR_&Guate_Mining.html)

For information about the 2 civil suits:

<http://www.chocversushudbay.com/> and contact lawyers Murray Klippenstein ([murray.klippenstein@klippensteins.ca](mailto:murray.klippenstein@klippensteins.ca)) and Cory Wanless ([cory.wanless@klippensteins.ca](mailto:cory.wanless@klippensteins.ca)).

## **THE LEGAL CASES**

These cases are important for the family of Adolfo Ich and for the community of Lote 8. Because of Guatemala's historic impunity, there is no chance they will achieve justice or remedy in Guatemalan courts.

The cases are important for other Mayan-Qeqchi communities in the El Estor region that have historically, and on-going today, suffered harms and human rights violations at the behest of, or in the interests of Canadian nickel companies, including INCO, Skye Resources and HudBay Minerals.

The cases are also important with respect to all international mining companies operating in Guatemala and elsewhere. Over the past 10 years, there has been growing awareness in Canada and the USA about harms and violations caused by North American companies operating mines in many countries and about the lack of legal remedy available in Canada and the USA for harms and violations caused by Canadian and American companies.

## **QUESTIONS FOR THE bc-IMC & the CPP:**

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- Will you agree to send an investigatory mission to Guatemala to directly investigate, yourselves, the harms and violations summarized below, half of the time of which would be set up and attended to by Rights Action and other groups that we work with in these countries?

Thank-you.

Grahame Russell, co-director  
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 860-352-2448

& Annie Bird (co-director) and Karen Spring

\* \* \*

#### RIGHTS ACTION

Originally founded in 1983, Rights Action is a not-for-profit organization with tax charitable status in the US and Canada. The Canadian Rights Action Foundation, founded in 1999, is independent from and works in conjunction with Rights Action (USA). Since 1995, Rights Action has been funding and working to end the underlying causes of poverty, environmental destruction and repression in Guatemala and Honduras, as well as in Chiapas (Mexico) and El Salvador. We directly fund and work with community-based development, environmental, disaster relief and human rights organizations.

GRAHAME RUSSELL is a non-practicing lawyer, author, adjunct professor at the University of Northern British Columbia-Prince George, and, since 1995, co-director of Rights Action.

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