

Rights Action – August 31, 2011

CANADA: The Struggle to End the Canadian Impunity of Mining Companies

BELOW:

- A Canadian Lawyer Magazine article about lawsuits in Canadian courts against HudBay Minerals for the killing of a community leader and gang rape of 11 villagers in eastern Guatemala (where HudBay had nickel mining interests), committed by private security guards hired by Hudbay Minerals' Guatemalan subsidiary
- Statement from REMA (Mexican network of mining-affected communities) regarding the recent RCMP police raid on the offices of Blackfire Exploration, a Canadian mining company linked to corrupt practices and the killing of a community leader in Chiapas, Mexico where Blackfire had barite mining interests
- A news release (from MiningWatch Canada, Common Frontiers, United Steelworkers, Council of Canadians) about this same RCMP police raid on the Calgary office of Blackfire Exploration

A BENEFICIAL LEGAL VACUUM IN CANADA

These are all parts of serious political and legal efforts to chip away at the general impunity and immunity from prosecution with which Canadian mining companies operate, with respect to crimes and human rights violations caused directly or indirectly by their mining operations in other countries.

SEE BELOW: What to do

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FIRM HOPES TO KEEP HUSBAY LAWSUITS ALIVE DESPITE SALE

by Jennifer Brown, August 15, 2011

<http://www.canadianlawyermag.com/3823/firm-hopes-to-keep-hudbay-lawsuits-alive-despite-sale.html>

A Toronto law firm is pushing for lawsuits against Canadian mining company HudBay Minerals Inc. regarding alleged human rights abuses to continue despite the fact the company no longer owns the project where the alleged killing of one man and gang rape of 11 women occurred.

The claims stem from the death of Adolfo Ich in September 2009 and the alleged rapes of 11 women in January 2007 by mine security workers.

Ich, an indigenous community leader and an outspoken critic of Canadian mining activities in his community, was allegedly hacked and shot to death by security personnel employed at HudBay Minerals' Fenix mining project near the town of El Estor, Guatemala. Ich's family brought a lawsuit in Canadian courts against HudBay Minerals Inc. and HMI Nickel Inc., as well as their Guatemalan subsidiary, Compañía Guatemalteca de Niquel.

[A second lawsuit also claims] that on Jan. 17, 2007, Rosa Elbría Ich Choc, Margarita Caal, and nine other women from the community of Lote Ocho were raped by mining company

security personnel, police, and military during the forced removal of families from the community. The forced eviction was sought by Canadian mining company HMI Nickel Inc. (previously known as Skye Resources) in relation to the Fenix mining project. The 11 women have also brought a lawsuit against HMI and HudBay.

However, on Aug. 5, HudBay announced it had sold the Fenix ferro-nickel mining project in Guatemala to the Solway Group, a private Russian company incorporated in Cyprus. The sale of the Fenix project for \$170 million is considerably less than the \$460 million that HudBay paid for the project three years ago.

Despite the sale, the lawsuits against HudBay and HMI will continue, say lawyers working on behalf of the claimants. "HudBay and HMI Nickel cannot avoid liability for their past actions by selling the project," said Murray Klippenstein in a statement.

"We believe this sale was prompted in part by the severe human rights issues at HudBay's Fenix project that dogged the company at every turn. The killing of Adolfo Ich and the gang rapes of Rosa Elbira and 10 others at Lote Ocho are albatrosses that weigh heavily on the neck of HudBay," said Klippenstein, who is acting for the widow of Adolfo Ich and the 11 rape victims in Lote Ocho.

HudBay denies it sold the Fenix project because of the human rights issues, insisting instead that it was no longer a fit for the company. "We sold Fenix because it did not fit our strategy of focusing on VMS and porphyry," says John Vincic, vice president, investor relations and corporate communications with HudBay Minerals Inc.

Cory Wanless, a lawyer with Klippensteins in Toronto, told InHouse that despite HudBay's sale of the project, the firm is pushing forward with the lawsuits saying HudBay was ultimately responsible for the decisions made on the site. "The allegations are that they directly participated in decisions about security at the mine. Our position is the lawsuits will continue on; this is based on past actions," he said.

There is also a dispute with HudBay about where the case should be heard — here in Canada or in Guatemala. "We're headed to a jurisdiction motion as HudBay says it should be heard in Guatemala, not Canada," said Wanless. "We say because the decisions were made in Canada it firmly belongs in Canadian courts. And because of the severe and continuing problems with Guatemala's justice system there is no hope of a fair and impartial hearing there."

HudBay says it intends to "vigorously defend the lawsuits until they are disposed of by a court of law," Vincic told InHouse, adding the next step is for the Ontario Superior court to hear motions that have been brought by HudBay seeking:

- a) To strike out the two statements of claim on the grounds they do not disclose a reasonable cause of action; and
- b) In the alternative, to permanently stay the two actions on the grounds that Ontario is not a legally convenient forum for the case to be heard.

Wanless says the claim is based in common law principles of negligence, "Obviously, there are related issues of human rights. HudBay has publicly stated they adhere to the voluntary principles on security and human rights, which are a set of standards they say they applied to their projects. They may have said they subscribe to these standards, but we say they didn't insist upon their application."

"The question of what happened on the ground isn't the difficult part of this case," says Wanless. "The difficult part is showing that HudBay is responsible for it."

All of the security employed for the project was locally based, says Wanless. "Much of the security was directly employed by CGN, which was the Guatemalan subsidiary."

The allegations are that it was the head of security who shot Adolfo Ich and a criminal investigation is continuing, but there has been no progress. "There has been a warrant out for his arrest for almost two years now and despite that no real action has been taken by Guatemalan authorities. That is not surprising," says Wanless. "Guatemala's justice system is greatly troubled."

Wanless says at least three eyewitnesses have gone to police to say they saw the head of security shoot Adolfo Ich at close range in an unprovoked attack.

[In the second case filed], "the entire community was there and all the 11 women have given statements about what happened to them."

The case came to Klippensteins via a non-governmental organization called Rights Action. "We have been doing on-the-ground grassroots work with this group for years," says Wanless.

The statement of claim indicates that Adolfo Ich's family is seeking \$11 million in damages while the families of the women who were allegedly assaulted are claiming \$5 million each.

**STATEMENT FROM REMA (MEXICAN NETWORK OF MINING-AFFECTED COMMUNITIES)
REGARDING RCMP RAID ON BLACKFIRE OFFICES**

August 29, 2011

The Royal Canadian Mounted Police (RCMP) raided the offices of Blackfire Exploration Ltd in Calgary, Canada on July 20 as part of investigations into accusations against the company and its directors of having bribed the former mayor of the Municipality of Chicomuselo, Chiapas, Mexico, Julio César Velázquez Calderón. [1]

This conflict, which is steeped in irregularities, illegalities, and collusion between the Canadian mining company, the Mexican federal government and environmental authorities, the Chiapas state government, and the municipal authorities, culminated with the assassination of anti-mining leader Mariano Abarca Roblero on November 27, 2009.

One year and four months after a complaint was made to the RCMP for investigation into bribery in this case, in March 2010, [2] the RCMP has begun to act on the evidence brought forth and on the confession of the company. Not in vain, Transparency International published a report in May, which put Canada in last place in the struggle against bribery and corruption among G7 countries and among member countries of the Organization for Economic Co-operation and Development (OECD), which includes around forty nations. [3]

The Canadian government's slow pace continues to cover up those companies that violate laws beyond its borders. This also explains why the majority of the world's mining companies have their headquarters in Canada or are registered in this country, a paradise for corporate impunity. Since Canada approved the Corruption of Foreign Public Officials Act in 1998 only

two cases have been addressed. In 2005, a small fine was levied against an Alberta based company, and there has been an additional case of corruption in [Bangladesh].

On the other hand, only six days after assuming his post on January 6, 2011, the new mayor of Chicomuselo, Límbaro Miguel López, decried that "the ex-public officials (ex Municipal President, Julio César Velásquez Calderón, ex Trustee Alirosay Muñoz Pérez, ex Alderman Conrado Flores Hernández, in collusion with ex Treasurer Lidubin Ramos Cifuentes and ex Director of Public Services Abigail Morales Ramírez) still had not handed in the cheque-books for the city's public accounts, leaving the books of the treasurer in disorder (...), nor have public works records and tax records had been found." [4]

Terri Lynn Batycki of the RCMP alleges that Blackfire illegally paid Julio César Velásquez Calderón "to keep the peace and prevent local members of the community from taking up arms against the mine." In response to these accusations against Blackfire, Pierre Gratton, President and Executive Director of the Mining Association of Canada, said that he supports the law, indicating that Blackfire is not a member of this association, and denying that bribery is a big problem within the mining industry.

Not only is the culture of corruption and of poor public management under ex Mayor of Chicomuselo clear, but bribing municipal authorities is a common practice among multinational mining companies given that it is the municipality that must authorize land use changes and other aspects necessary for mining companies, as well as who may assert territorial control and security for mining investments.

Within this context, we demand that the RCMP determine who is responsible and punish those found guilty as soon as possible. It is also urgent that the RCMP make a visit to Chiapas in order to further their investigations. In the same way, we demand that the governor of Chiapas, Juan Sabines Guerrero, facilitate investigations into the corruption of ex Mayor of Chicomuselo in response to the complaint and supporting evidence of money changing hands between Blackfire and former Mayor of Chicomuselo, which REMA and Otros Mundos A.C. brought before the Prosecutor's Office of the State Congress of Chiapas and the Council of the Municipality of Chicomuselo.

TIMELINE [5]

Between 2008 and 2009, the mayor of Chicomuselo was bribed by Blackfire. Otros Mundos, AC and REMA-Chiapas brought the evidence to light. [6]

In June 2009, Blackfire complained about the mayor's excesses before the congress.

On November 27, 2009 employees of Blackfire assassinate the representative of REMA in Chicomuselo, Mariano Abarca Roblero.

December 2009, the government of Chiapas temporarily suspends Blackfire's mine operations and jails three people implicated in the assassination.

February 2010, Horacio Culebro Borrayas, legal counsel for Blackfire, is jailed.

March 10, 2010, nine Canadian organizations request that the RCMP investigate Blackfire for alleged violation of the Corruption of Foreign Public Officials Act.

June 30, 2010, REMA and Otros Mundos A.C. make a formal complaint for intervention from the Superior Prosecutor's Office of the State Congress and of the Congress of the State, as well as the Municipal Council of Chicomuselo, with the objective that the alleged bribes that Blackfire made to the Municipal President be clarified. To date, there has been no response to this complaint. [8]

Blackfire out of Chiapas!

[1] <http://www.theglobeandmail.com/news/national/rcmp-raid-calgary-miner-over-bribery-allegations/article2145226/>

[2] See the following document: <http://www.otrosmundoschiapas.org/index.php/mineria/86-mineria/631-solicitan-a-la-policia-real-montada-de-canada-investigar-a-la-minera-blackfire.html>

[3] <http://www.theglobeandmail.com/news/politics/canada-ranked-worst-of-g7-nations-in-fighting-bribery-corruption/article2032347/>

[4] <http://www.diariodechiapas.com/noticias/2011010619312/region/siembran-el-caos-exfuncionarios-municipales-corruptos-de-chicomuselo>

[5] To see all of the prior incidents in the Blackfire case, see: <http://www.otrosmundoschiapas.org/index.php/mineria.html>

[6] See the following documents: <http://www.otrosmundoschiapas.org/index.php/mineria/99-mariano-abarca/583-los-pagos-de-la-minera-canadiense-blackfire-al-presidente-municipal-de-chicomuselo-chiapas.html>

[7] See the following document: <http://www.otrosmundoschiapas.org/index.php/mineria/86-mineria/631-solicitan-a-la-policia-real-montada-de-canada-investigar-a-la-minera-blackfire.html>

[8] See the following: <http://www.otrosmundoschiapas.org/index.php/mineria/99-mariano-abarca/781-rem-a-chiapas-demanda-investigacion-por-corrupcion-del-ayuntamiento-y-la-empresa-canadiense-blackfire.html>

CANADIAN CIVIL SOCIETY WELCOMES RCMP RAID ON BLACKFIRE EXPLORATION'S OFFICES

29 August 2011

<http://www.miningwatch.ca/news/canadian-civil-society-welcomes-rcmp-raid-blackfire-explorations-offices>

(Ottawa and Toronto) MiningWatch Canada, Common Frontiers, the United Steelworkers (USW), and Council of Canadians welcome news of an RCMP raid on the Calgary office of Blackfire Exploration, the privately-held company whose barite mine in Chiapas, Mexico has been in the news since the November 2009 murder of anti-mining activist Mariano Abarca.

The Globe and Mail reports that the RCMP raided Blackfire's offices on July 20, 2011, alleging that Blackfire "illegally paid local mayor, Julio César Velázquez Calderón about \$19,300 (CDN) 'to keep the peace and prevent local members of the community from taking up arms against the mine.'"

"It's encouraging that Blackfire's operations are being investigated under the Corruption of Foreign Public Officials Act," says Jamie Kneen, Communications Coordinator for MiningWatch Canada. "It's really the only law that holds Canadian companies accountable for their activities outside the country. We hope that it will bring about some justice in this case."

"If a case this egregious can't be successfully prosecuted there's little hope for accountability in the myriad of other cases we are hearing complaints about."

Following Abarca's murder, and at the request of the Mexican Network of Communities Affected by Mining, MiningWatch, Common Frontiers, and USW organized a fact-finding delegation to Chiapas. The delegation's findings brought serious social and environmental impacts of the mine to public attention and led to the request for a bribery investigation, sponsored by nine organizations including the Council of Canadians.

"The RCMP investigation is a positive development, but it's also just the tip of the iceberg," says Rick Arnold, former coordinator of Common Frontiers, who accompanied the delegation. "Local residents with whom we spoke held Blackfire responsible for the murder of Mariano Abarca, which also has yet to be fully investigated."

Following the shooting of Abarca in front of his home on November 27, 2009, three past company employees were jailed, but they still await court appearance relating to this murder.

Despite company claims that it practices environmentally responsible mining, the delegation also found no indication of any environmental mitigation at the mine site, which remains suspended since December 2009. The company initiated legal action in the Chiapas court system to try to overturn the decision of the Chiapas Ministry of Environment and Housing (SEMAVI) to suspend the mine.

"Blackfire should leave Chiapas, once and for all, and issue a public apology to local communities," said Mark Rowlinson, Legal Counsel for the United Steelworkers who also participated in the delegation. "We saw first hand the human and environmental impact of the company's presence in Chicomuselo. The costs to the community have already been too great."

José Luis Abarca Montejo, son of Mariano Abarca, who has taken a leadership role in his community since his father was killed, made a visit to Canada in September 2010, when he supported calls for stronger legislation to regulate Canadian mining companies overseas. "I think the government of Canada should be more careful with these companies who come to Mexico and treat us badly," Abarca said to Embassy Magazine in Ottawa. "I call on the Canadian government to do something because we're the same as any other citizens. We have rights too."

FOR MORE INFORMATION, PLEASE CONTACT:

- Jamie Kneen, Communications Coordinator, MiningWatch Canada, jamie(@)miningwatch.ca (613) 569-3439
- Rick Arnold, former Coordinator, Common Frontiers – Canada, rickarnold(@)i-zoom.net
- Mark Rowlinson, Counsel, United Steelworkers, mrowlinson(@)usw.ca, (416) 544-5983
- Stuart Trew, Trade Campaigner, Council of Canadians, strew(@)canadians.org, (416) 979-0451

For more information about the Blackfire Explorations / Chiapas barite mining struggle, contact the groups listed above.

WHAT TO DO - TO MAKE TAX-DEDUCTIBLE DONATIONS

for indigenous and campesino organizations working in defense of mining harmed communities and for community-controlled development, environmental justice, human rights & justice in Guatemala & Honduras, 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

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)

- 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"; Paulo Freire's "Pedagogy of the Oppressed"; Dr Seuss's "Horton Hears A Who"

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