

Rights Action
March 7, 2013

COURTROOM 808: PRECEDENT SETTING LAWSUITS IN CANADA
Mayan Qeqchi people ~versus~ Hudbay Minerals, chipping away at global impunity and immunity from prosecution

BELOW:

- NOT RESPONSIBLE FOR KILLING AT GUATEMALAN MINE, HUSBAY SAYS, Globe and Mail, March 5, 2013
- AMNESTY INTERNATIONAL WEIGHS IN ON HUSBAY CASE, Globe and Mail, March 5, 2013
- CANADA MUST LEAD IN MINING, Ottawa Citizen Editorial, March 4, 2013

Rights Action was honored to bring Angelica Choc – one of the plaintiffs – to Toronto, to attend 2 days of court hearings concerning 3 civil suits filed against Hudbay Minerals concerning the killing of Adolfo Ich, the shooting-paralyzing of German Chub and the gang rapes of 11 women in the community of Lote 8 (all in the municipality of El Estor, department of Izabal, Guatemala).



(At the end of two days of hearings, Angelica stands in courtroom 808, University Ave, Toronto, with lawyers Murray Klippenstein and Cory Wanless. Photo: Grahame Russell, Rights Action, March 5, 2013)

Since 2004, Rights Action has been supporting this amazing struggle for truth, justice and remedy, by the Mayan Qeqchi victims of serious harms and violations caused directly and indirectly by Hudbay Minerals and its related companies Skye Resources, HMI and CGN. We are deeply thankful for the commitment and legal brilliance of the Klippensteins law firm that, since 2010, has been arguing these now precedent setting lawsuits. We believe Canadians owe a profound thank-you to Klippensteins and to the mining harmed Mayan Qeqchi people of Guatemala, who are already setting significant and long overdue precedents in our courts in terms of finally beginning to hold a Canadian company to account

in civil court for serious harms and violations caused directly and indirectly by that company in another country.

There is a lot more that needs to be done in these 3 over-lapping cases, let alone to bring about serious reforms (political, legal, economic) across the board in Canada, so as to put an end to the impunity and immunity from accountability with which Canadian resource extraction companies operate in many places around the world.

MORE FUNDS ARE NEEDED:

For more information about these cases, and to make tax-charitable donations in Canada and the USA for this work and struggle ... see below.

Grahame Russell, Rights Action
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NOT RESPONSIBLE FOR KILLING AT GUATEMALAN MINE, HUSBAY SAYS

By Jeff Gray, The Globe and Mail, Mar. 05 2013

<http://www.theglobeandmail.com/globe-investor/not-responsible-for-killing-at-guatemalan-mine-hudbay-says/article9318696/>



[Angelica Choc, the widow of a Guatemalan activist allegedly killed by mine security, speaks Tuesday outside court in Toronto. (Peter Power/The Globe and Mail)]

As the widow of a slain Mayan community leader looked on, lawyers clashed in a Toronto courtroom on Tuesday over whether a Canadian mining company, HudBay Minerals Inc., can be held liable for alleged violence at a Guatemalan mine owned by a subsidiary.

Lawyers for HudBay, who are trying to have the case tossed out, say allowing it to proceed would "wreak havoc" with the well-established corporate law principle that parent companies are not liable for the actions of their subsidiaries. They also claim it would encourage "meritless" cases against other mining companies.

"They are trying to change the law," HudBay lawyer Robert Harrison told court Tuesday on the second day of a two-day hearing on the firm's motions to have the case thrown out.

Lawyers for the plaintiffs, and Amnesty International Canada, which intervened in the case, denied their arguments are radical. They argued that HudBay itself can be held liable for alleged negligence in the case, alleging the company's executives made key decisions "on the ground" for its subsidiary about its security guards, relations with nearby indigenous people, and the "forced evictions" of Mayan protesters who claim the mine's land as their own.

The judge, Madam Justice Carole Brown of the Ontario Superior Court, reserved her decision.

HudBay is facing three lawsuits grouped together demanding tens of millions of dollars in damages after clashes between protesters and security forces at the Fenix nickel mine in 2007 and 2009. The allegations have not been proven. HudBay has since sold the mine.

In one case, a local Mayan community leader who spoke out against the mine, Adolfo Ich Chaman, was allegedly snatched by mine security guards and beaten, hacked with a machete and shot in the neck and killed. Another man was shot and is now in a wheelchair. And 11 women were allegedly gang raped by men in mine security uniforms.

HudBay has denied all the allegations, and posted its own version of events on its website that blames protesters for some of the violence. The former head of security for the mine was arrested last year in connection with the killing.

The dead man's widow, Angelica Choc, a 47-year-old mother of five who flew to Toronto for the hearing, had a translator who whispered the arguments in her ear during the proceedings.

"I have come a long way, but I have come here because of the things that happened to us. We've come in search of justice," Ms. Choc said in an interview through a translator.

The hearing comes after a series of similar allegations against Canadian mining firms in recent years. It also comes amid increased attention to corporate social responsibility in the industry.

No similar lawsuit has made it past the preliminary stages.

One of the plaintiffs' lawyers, Cory Wanless, told the court HudBay knew the mine's security forces were unlicensed and armed with unlicensed firearms – including 34 shotguns – and were hired without a written contract. Mr. Wanless argued the risks posed by the mine's security were foreseeable: "HudBay sent untrained, unsupervised men with guns ... into a land conflict ... They did this in a country where, unfortunately, violence is not the exception, it's the norm." But Mr. Harrison argued that the very allegations suggest HudBay could not have foreseen what happened, since the alleged killing, shooting and gang rapes were deliberate acts and not the result of merely "nervous guards."

AMNESTY INTERNATIONAL WEIGHS IN ON HUBBAY CASE

By Jeff Gray, The Globe and Mail, Mar. 05 2013

<http://www.theglobeandmail.com/report-on-business/amnesty-international-weighs-in-on-hudbay-case/article9277534/>

Lawyers for Amnesty International Canada were in a Toronto courtroom on Monday, arguing that Canadian mining companies should face justice here for alleged human-rights abuses by their subsidiaries in foreign countries. "Canadian society has a strong interest in ensuring that Canadian corporations respect human rights, wherever they may operate and whatever ownership and other business structure they may put in place to advance their operations," Amnesty's submission to the court reads.

The human-rights group was granted intervenor status by a judge in order to weigh in on three lawsuits launched by a group of Guatemalans against Toronto-based HudBay Minerals Inc. in Ontario Superior Court over alleged human-rights abuses that date back to 2009.

The lawsuits demand \$67-million from the company and allege that security personnel working for its Guatemalan subsidiary killed a local Mayan activist who opposed the company's Fenix nickel mine, located near El Estor, in eastern Guatemala. The lawsuits also allege that mine security was responsible for a shooting that paralyzed another man and for 11 gang rapes allegedly carried out during clashes between local protesters, mine security and police.

HudBay, which has since sold off the mine, denies the allegations, which it calls "without merit." It has filed motions, being heard by a judge this week, to have the case tossed out, arguing that well-established law holds that a parent company is normally not liable for the actions of its subsidiaries.

The company laid out its case in court on Monday. HudBay has also posted its version of the events in Guatemala on its website, denying that its subsidiary's security guards were involved and alleging that witnesses were pressured. The former head of the mine's security was reportedly arrested last year by Guatemalan authorities for the killing.

Angelica Choc, the widow of the dead activist, Adolfo Ich Chaman, was in the courtroom as the hearing began on Monday, wearing traditional Mayan clothing and grey winter boots, listening as a translator relayed the proceedings to her.

Amnesty International argues that the case against HudBay should be tried here in Ontario, citing previous decisions by Canadian and British courts as well as evolving international legal principles they say hold that parent companies can be held liable for the actions of subsidiaries "where the possibility of injury or harm" is "foreseeable."

The hearing comes as the world's mining industry gathers this week in Toronto for the annual Prospectors & Developers Association of Canada convention, where corporate social responsibility has become a more prominent topic in recent years.

Allegations of human-rights abuses have also been made against other Canadian mining companies with operations in developing countries, but no other lawsuit of this kind has made it past preliminary stages in Canadian courts.

The mining industry lobbied to defeat a private member's bill in the House of Commons in 2010 that would have subjected Canadian mining companies and their human-rights standards abroad to federal government scrutiny, insisting instead on industry-led voluntary moves.

HudBay, in its court submissions, points to that bill's defeat, saying the plaintiffs are trying to use the courts to achieve something Parliament has declined to do. The company's lawyers argue that allowing this kind of lawsuit to go ahead would risk "exposing any Canadian company with a foreign subsidiary to a myriad of claims, many of which will likely be meritless. This, in turn, could wreak havoc on an already overtaxed judicial system."

CANADA MUST LEAD IN MINING

By Ottawa Citizen Editorial, Ottawa Citizen, March 4, 2013

<http://www.ottawacitizen.com/news/Canada+must+lead+mining/8047693/story.html>

One of the world's biggest mining industry convention takes place in Toronto every year at this time. This year, the Prospectors and Developers Association of Canada convention, which draws tens of thousands of delegates and a handful of politicians, among others, coincides with a court case that many in the mining industry are watching closely.

The mining industry should welcome the fact that the case is being heard in Canada. So should government officials.

The case involves allegations of human rights abuses, gang rape and murder against security at a mine site in Guatemala owned by a former local subsidiary of the Canadian mining company Hudbay Minerals. It is the first time human rights allegations against a Canadian mining company have been heard in a Canadian court. Until recently, lawyers for the company had argued that Canada was not the place to hear the case.

That legal argument has now been dropped, although Hudbay says it intends to fight the allegations. A lawyer representing alleged victims of violence and abuse by security guards at the mine has called it historic that the case will go ahead in Canada.

A Canadian court is the right place for this case, not only because Guatemala's justice system, in the words of Human Rights Watch, is "weak and corrupt" but also because mining is so important to Canada, as the PDAC convention illustrates. Whatever the outcome of the case, it is important that it be heard in Canada where it will get a fair hearing.

While the majority of Canadian companies operating overseas do so within the law, and provide jobs and revenue to countries where they operate, it is crucial that those that don't are called to account. In extreme cases, that should be done in Canadian courtrooms.

Canada has many reasons to take a lead role in addressing unethical and illegal behaviour of mining companies around the world. A compelling one is that Canada is a major player on the world stage and companies that get into trouble are, therefore, frequently Canadian.

And, although the mining industry and the federal government have both been behind a major push to encourage corporate social responsibility, the federal government must do more, especially now that the giant mining industry is also at the centre of a shift in Canadian foreign aid toward more partnerships with private companies operating overseas.

With so much riding on our mining industry, Canada must move to remove the shadow that bad corporate citizens cast on it.

One way Canada can hold such companies to account is to renew the provision in defeated private members Bill C-300, which, among other things, called for Export Development Canada and Canadian embassies to stop supporting companies that break human rights and environmental legislation. Canada is a world leader in mining. It must show the world it is also a world leader in accountability when it comes to that industry.

PLEASE SUPPORT THIS WORK FOR JUSTICE AND REMEDY

> Donations are tax-deductible in Canada and the USA

> Full proposal and budget available on request

To support the work of the Mayan Qeqchi Territorial Defense Committee, make check payable to "Rights Action" and mail to:

- UNITED STATES: Box 50887, Washington DC, 20091-0887
- CANADA: (Box 552) 351 Queen St. E, Toronto ON, M5A-1T8

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