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Article: "The End of Impunity? Indigenous Guatemalans bring Canadian mining company to court"

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The End of Impunity? Indigenous Guatemalans bring Canadian mining company to court

by Arij Riahi, <http://dominion.mediacoop.ca/story/end-impunity/18874>

MONTREAL—For the first time, a Canadian mining company will appear in a Canadian court for actions committed overseas. Hudbay Minerals Inc. will be standing trial for murder, rapes and attacks committed against Indigenous Guatemalans by security personnel working for Hudbay's subsidiary, Compañía Guatemalteca de Níquel (CGN).

The court case is proceeding thanks to a precedent-setting decision from the Ontario Superior Court of Justice, which ruled this past July in favour of the Mayan Q'eqchi' people of Lote Ocho, near El Estor, Guatemala. "It is a massive victory for our clients and for human rights," Cory Wanless, an attorney with the Toronto-based Klippensteins law firm, told The Dominion. "Before this decision, no claim brought by individuals that had been harmed by Canadian mining abroad had ever gotten into Canadian courts at all. They didn't even have the ability to forward their claims."

Wanless represents the Q'eqchi' plaintiffs in a lawsuit accusing the company of negligence in its ground management of the Fenix open-pit nickel mine project. They allege that security personnel—under the control of Hudbay—gang-raped 11 women, shot dead an Indigenous leader and outspoken critic of mining practices and left another man paralyzed from the chest down after sustaining a gunshot wound.

Grahame Russell of Rights Action, a Canadian organization working mainly with Indigenous communities in Central America, has been doing solidarity work with the Q'eqchi' people for almost 10 years and has worked closely on the case. "Two major pre-trial issues were fought over. One was jurisdiction, and one [was] whether Hudbay could be held accountable—directly or via its subsidiary CGN—over what happened in Guatemala," Russell told The Dominion.

"We won on both counts. First, the company accepted that Canada can be the appropriate jurisdiction. Second, the judge decided in our favour, saying that it is appropriate to try to hold Hudbay accountable [for their negligence] in Guatemala."

The Harms and Violations

Russell explained that the conflict is rooted in unresolved tensions around what can be referred to in Canada as “prior land claims.” The events in question occurred between 2007 and 2009 in the context of a land dispute between the Q’eqchi’ people and the mining company. “The specific context of the attack, rape[s] and murder is related to the mining company wanting to get the Q’eqchi’ people off their land so they can get the mineral resources under the ground,” Russell said. “There have been waves of repression in this region related to Canadian mining companies going back to the 1970s and early 1980s. This is an old story that is replaying itself out all over again.”

Rachel Small is an environmental justice activist working with communities impacted by Canadian extractive industry. “The abuses carried out by Canadian mining companies in Central America are part of a long and violent history of colonization, which continues today,” she told *The Dominion*.

Small, who visited the Q’eqchi’ community of Lote Ocho in 2010, said the Hudbay case is a classic example of environmental injustice. “Resources are being extracted for the benefit of Canadians—and primarily Canadian stockholders—at the expense of primarily Indigenous communities in Guatemala. It’s a blatant example of one of the ways that colonization plays out today and the costs are unimaginably huge for the communities who are being exploited.”

Long Overdue Precedent Setting Decision

The Superior Court of Ontario’s decision, written by Judge Carole Brown, concluded that there was enough initial evidence to allow the actions to proceed to trial. Judge Brown emphasized that Hudbay is headquartered in Toronto, is incorporated under Canadian laws and was fully in control of its subsidiary. Hudbay has decided not to appeal the ruling.

The court decision argued that “the pleadings disclose a sufficient basis to suggest that a relationship of proximity between the [Q’eqchi’] plaintiffs and the defendants [Hudbay and CGN] exists, such that it would not be unjust or unfair to impose a duty of care on the defendants.” The decision also listed a number of factors that might, at trial, prove the proximity between Hudbay and its subsidiary.

This problem of proximity is one that has sunk many attempts to hold Canadian companies accountable in Canadian courts for human rights abuses committed in other countries. Most mining companies have a complex corporate structure with a head office in one country, smaller offices in others and operations in the Global South. In courts, they have repeatedly been able to draw a line between the legal responsibility of a parent company that controls management and the subsidiary that controls daily operations on the ground.

In November 2012, a group of Congolese people exhausted all legal options with a final failed attempt to drag Anvil Mining in front Canadian courts for its involvement in a massacre of civilians in the Democratic Republic of Congo. The company admitted to a United Nations Organization Mission in the Democratic Republic of Congo (MONUC) that it had provided transportation, food and lodging to the Congolese soldiers who committed the massacre. Yet the Quebec Court of Appeal ruled that there was no sufficient link between the company’s Quebec office and the events that led to the killings, and that Quebec’s courts therefore had no jurisdiction over the matter. At the time of the events, Anvil’s headquarters were in Australia.

Wanless said that Hudbay’s corporate ties to Canadian law might explain why the case was allowed to go through while the Anvil case never made it to court. “The question in [the case

of] Hubday is different because there was no question that Ontario did have jurisdiction over Hubday. It was an Ontario company through and through."

Harassment and Intimidation

Since the July 22, 2013, decision, Rights Action has reported that some Mayan Q'eqchi' women have received threats pressuring them to withdraw the lawsuits. "This is a new wave of intimidation," said Russell, who speaks with members of the community on a weekly basis. "In the past, it has targeted Angelica Choc—the wife of Adolfo Ich, [the man] who was shot and killed. Now, it is targeting the women, trying to turn some women against the other women."

When asked to comment on the threats, both Small and Wanless said they are an unsettling development, but one that is not surprising. Small highlighted how geographical isolation could add to the community's vulnerability.

"The fastest way to reach Lote Ocho requires an uphill drive in a Jeep or all-terrain vehicle, followed by an over-two-hour trek up the side of a densely forested mountain," she explained. "The limited access to communication with family, friends and allies in other places certainly impacted Lote Ocho's ability to respond to threats and attacks."

No Justice or Remedy Yet

Though the pre-trial decision has been hailed as a victory, the trial to follow could still take years. "[The decision] is absolutely a breakthrough, but this won't all of sudden bring proper and full accountability," said Russell. "It was a step that had to be fought for and won, but there is still a hugely long way to go."

Small said the injustices committed in other countries implicate Canada's whole political and economic system. "Canadian government actively supports the [mining] industry, both financially—such as through pension plan investments—and politically." She listed a host of political players, including Canadian embassies and Canada's Department of Foreign Affairs and International Trade, who negotiate international trade deals and partnerships with mining companies operating in the Global South.

For Small, this means that the problems faced by the Q'eqchi' won't be solved in one courtroom. "We're looking at complex systems...that serve to concentrate power and resources in the hands of a small few, especially at the expense of Indigenous peoples. It's going to be a long struggle to reverse these patterns, and one that needs to play out on more than one continent and in a multitude of settings."

Wanless was cautiously optimistic about the court's decision. "This case is the first of this kind but I think that claims like this are going to be much more common," he said. "It is no longer possible for Canadian courts to deny that this is a Canadian problem that deserves a Canadian solution."

[Arij Riahi is a legally trained writer based in Montreal. Arij tweets as @arijactually.]

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