

New York Times article about Hudbay Minerals lawsuits



Comment by Grahame Russell Adolfo Ich and Berta Caceres Did Not Die, They Multiplied

Five days after Berta Caceres was assassinated in Honduras, I travelled from Honduras to El Estor, Guatemala, where I met up with Cory Wanless (of the Klippensteins law firm) for 3 days of meetings with the 13 plaintiffs in the Hudbay Minerals lawsuits. We overlapped with the visit of the New York Times reporter and photographer (see below).



The plaintiffs asked about Berta Caceres, knowing Rights Action had supported her organization, COPINH, for many years and that I had just been at her burial-commemoration. Here, Angelica Choc (widow of the assassinated Mayan Q'eqchi' community defender Adolfo Ich), German Chub (mining related shooting victim, in the wheelchair) and eight of the Lote 8 women (victims of mining related gang-rapes) watch a 4 minute video presentation by Berta Caceres when she received the 2015 Goldman Environmental Prize. I commented to Angelica that Adolfo Ich is Berta Caceres, and their lives, vision, work and struggle are multiplying. She agreed.

Guatemalan Women's Claims Put Focus on Canadian Firms' Conduct Abroad

By Suzanne Daley, April 2, 2016

http://www.nytimes.com/2016/04/03/world/americas/guatemalan-womens-claims-put-focus-on-canadian-firms-conduct-abroad.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news&_r=0



Angelica Choc, right, sued a Canadian company in the 2009 killing of her husband, a local leader, and Rosa Elbira Coc Ich, left, says she was evicted and gang-raped in 2007. (Credit Adriana Zehbrauskas for The New York Times)

LOTE OCHO, Guatemala — Her husband was away in the fields, she said, when the truckloads of soldiers, police officers and mining security officials arrived. A half-dozen armed men swarmed into her one-room house, blocking her exit and helping themselves to the meal she had made for her children.

For a long time, the woman, Margarita Caal Caal, did not talk about what happened next that afternoon. None of the women in this tiny village high in the hills of eastern [Guatemala](#) did, not even to each other. But that day, Mrs. Caal said, the men who had come to evict her from land they said belonged to a Canadian mining company also took turns raping her. After that, they dragged her from her home and set it ablaze.

“The fear is not over,” she said recently, staring down at her hands while her daughter served coffee to visitors. “I still fear, all the time.”

Mrs. Caal has taken her case to the courts, but not in [Guatemala](#), where Mayan villagers like her, illiterate and living in isolated areas, have had little legal success. She has filed in [Canada](#), where her negligence suit, *Caal v. Hudbay Mineral Inc.*, has sent shivers through the vast Canadian mining, oil and gas industry. More than 50 percent of the world’s publicly listed exploration and mining companies had headquarters in [Canada](#) in 2013, according to

government statistics. Those 1,500 companies had an interest in some 8,000 properties in more than 100 countries around the world.

For decades, overseas subsidiaries have acted as a shield for extractive companies even while human rights advocates say they have chronicled a long history of misbehavior, including environmental damage, the violent submission of protesters and the forced evictions of indigenous people.



Rosa Elbira Coc Ich in Lote Ocho, Guatemala, where she used to live and where, she said, she was among several women gang-raped in 2007. (Adriana Zehbrauskas for The New York Times)

But Mrs. Caal's negligence claim and those of 10 other women from this village who say they were gang-raped that day in 2007, as well as two other negligence claims against Hudbay, have already passed several significant legal hurdles — suggesting that companies based in Canada could face new scrutiny about their overseas operations in the future. In June, a ruling ordered Hudbay to turn over what Mrs. Caal's lawyers expect will be thousands of pages of internal documents. Hudbay, which was not the owner of the mine at the time of the evictions, denies any wrongdoing.

Canadian law does not provide for huge American-style payoffs, even if the court rules in the plaintiff's favor. But the Hudbay case is being watched carefully because it appears to offer a new legal pathway for those who say they have suffered at the hands of Canadian subsidiaries. A ruling in this case, experts say, could also help establish powerful guidelines for what constitutes acceptable corporate behavior.

"Up until now, we just have not had judicial decisions that help us consider these sorts of relationships," said Sara Seck, an expert on corporate social responsibility at the Faculty of Law, Western University, in London, Ontario. "For once, the court is going to look at what really happened here, and that is important."



The Fenix nickel mine in El Estor, a town near Lote Ocho. (Adriana Zehbrauskas for The New York Times)

The behavior of multinational companies working in poor countries has come under increasing fire in recent years. Social expectations have changed, experts say, with many citizens of rich countries demanding that corporations be more responsible in the countries where they operate.

In Canada, efforts to define a code of good behavior for extractive corporations are longstanding, if so far unsuccessful. Many mining companies are based there because Canada offers a concentration of expertise in mining finance and law, and the government offers incentives including tax breaks.

A bill that would have created an ombudsman to investigate complaints and deny access to government loans — and even consular services — to companies accused of behaving poorly failed by a narrow margin in 2010 after facing fierce opposition from the extractive industry. John McKay, a member of Parliament from the Liberal Party who sponsored that bill, said he expected Canada's new government to try again soon.

“There are companies out there doing things that they would never do in their own countries,” he said.

In a [2014 report](#), the Council on Hemispheric Affairs, a policy group in Washington, concluded that Canadian companies, accounting for 50 percent to 70 percent of the mining in Latin America, were often associated with extensive damage to the environment, from erosion and sedimentation to groundwater and river contamination. Of particular note, it said, was that the industry “demonstrated a disregard for registered nature reserves and protected zones.”

At the same time, the report said, local people were being injured, arrested or, in some cases, killed for protesting.



Angelica Choc, at the grave of her husband, Adolfo Ich Chamán, in El Estor. Mr. Ich was killed during a demonstration against mining in 2009. (Adriana Zehbrauskas for The New York Times)

Victims, however, have had little success gaining access to Canadian courts. Their lawyers have often tried to get cases heard on the basis of violations of human rights or international criminal law. But most were told that Canada had no jurisdiction, and that their claims would be more appropriately heard in the country where the events took place, even if that country's courts were notoriously corrupt or otherwise dysfunctional.

The lawyers for the plaintiffs in the Hudbay case, Murray Klippenstein and Cory Wanless, took a novel approach, however, making a simpler claim. They said the Canadian parent company was negligent for failing to put an effective monitoring system in place to understand what its Guatemalan subsidiary was doing. Framing the claim in this way allowed the plaintiffs to draw a clear connection between the negligence and Canada.

In addition to the claims brought by Mrs. Caal and the other women who say they were raped in Lote Ocho, Hudbay, based in Toronto, is facing claims over the death of a prominent local leader, Adolfo Ich Chamán, 50, and the shooting and paralysis of a bystander, German Chub, 28, during demonstrations against mining in the nearby town of El Estor in 2009.



German Chub, 28, was shot during mining protests in 2009, leaving him paralyzed from the waist down. (Adriana Zehbrauskas for The New York Times)

Hudbay lawyers moved to have the case dismissed both because of jurisdictional grounds and because it was “plain and obvious” that the claims would fail. Before the ruling on jurisdiction, they dropped that claim and went forward with the other one. In July 2013, however, the judge ruled it was not obvious that the claims were without merit.

Turning to the courts has not been easy for the plaintiffs, most of whom speak only Q’eqchi’, a Mayan language, have had little or no schooling, and find the prospect of going to Canada terrifying. In addition, they face animosity from a sizable portion of the local population, particularly in El Estor, where there is a giant nickel processing plant.

Hudbay officials dispute most of the plaintiffs’ claims. They say that no mining security officials were present during the Lote Ocho evictions and that no rapes took place. The company’s website also points out that at the time, Hudbay had nothing to do with the mine. It was owned by Compañía Guatemalteca de Níquel, a subsidiary of another Canadian company, Skye Resources Inc., which Hudbay bought in 2008, assuming its liabilities. Hudbay has since sold the mine.



Children played on a truck in Lote Ocho. The community consists of about a dozen flimsy wooden houses, home to about 100 people, most of them children. (Adriana Zehbrauskas for The New York Times)

Hudbay officials also maintain that there was no negligence in 2009 when it did own the mine. Officials say the killing of Mr. Ich, a teacher, and the shooting of Mr. Chub, a farmer, took place as the mine's security guards were defending themselves from armed protesters.

But some recent events appear to lend credence to the plaintiffs' claims. The head of the mine's security during the 2007 evictions and the 2009 shootings, a former army colonel named Mynor Padilla, is now on trial in Guatemala over the shooting of Mr. Ich and Mr. Chub.

Moreover, an army officer and a paramilitary officer were convicted in February of raping and enslaving indigenous women in the 1980s, during Guatemala's long civil war, suggesting, some advocates say, that such behavior has long been entrenched in this country. During the war between the United States-backed government and leftist rebels, the indigenous population in this region was repeatedly attacked for trying to make land claims.

Even now, the local Q'eqchi' population believes much of the land in the area belongs to it, and not to the mining company.

At the time of Mrs. Caal's eviction, there was no mining anywhere near Lote Ocho, but mining officials moved to evict the villagers anyway. The community is made up of about a dozen scattered, flimsy wooden houses, home to about 100 people, most of them children.

There is no electricity here or a school for the children. The village is a bumpy 45-minute ride in a pickup truck uphill from the nearest town. But that costs money, so most of the villagers walk there using a footpath, which takes about two hours.

Mrs. Caal said the armed men who attacked her during the eviction were so brutal with her that she could not get up from the spot where they had left her. But when her husband asked what had happened to her, she told him only that she had fallen, afraid of how he might react.

It is still a subject she turns to reluctantly. "Remembering is reliving," Mrs. Caal said. "It hurts. It hurts as a woman."

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Since 2004, Rights Action has funded and worked with the Mayan Q'eqchi' people of the El Estor region, in defense of their territories, environment and way of life, and – since 2010 - for justice in Canadian and Guatemalan courts for the mining related harms and violations they have suffered. Make check payable to "Rights Action" and mail to:

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Adolfo Ich and Berta Caceres did not die, they multiplied. Thank-you for your multiplying commitment, support and activism.

Please share this information far'n'wide.

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