

Rights Action – March 28, 2011
HudBay Minerals Impunity Watch

MAYAN WOMEN VICTIMS OF GANG RAPES ANNOUNCE LAWSUIT AGAINST CANADIAN MINING COMPANY HUSBAY MINERALS

BELOW: a press release from Klippensteins law firm in Toronto.

The filing of this suit against HudBay Minerals follows upon the suit, filed in December 2010, against HudBay for the killing of Adolfo Ich.

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PRESS RELEASE – Monday, March 28, 2011

MAYAN WOMEN VICTIMS OF GANG RAPES ANNOUNCE LAWSUIT AGAINST CANADIAN MINING COMPANY HUSBAY MINERALS

(For immediate release: March 28, 2011
Toronto, Canada and Guatemala City, Guatemala)

Rosa Elbira Coc Ich, and ten other indigenous Mayan Q'eqchi' women, announced today 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, police and military during the forceful expulsion of Mayan Q'eqchi' families from their farms and homes in the community of "Lote Ocho". These armed 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 \$11 million in general damages and \$44 million in 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'qechi' 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.

* * *

(Non-official description of legal case)

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARGARITA CAAL CAAL, ROSA ELBIRA COC ICH,
OLIVIA ASIG XOL, AMALÍA CAC TIUL,
LUCIA CAAL CHÚN, LUISA CAAL CHÚN,
CARMELINA CAAL ICAL, IRMA YOLANDA CHOC CAC,
ELVIRA CHOC CHUB, ELENA CHOC QUIB and
IRMA YOLANDA CHOC QUIB

(Plaintiffs)

And

HUDBAY MINERALS INC. and
HMI NICKEL INC.

(Defendants)

SUMMARY DESCRIPTION OF THE LEGAL CLAIM

The Plaintiffs Rosa Elbira Coc Ich, Margarita Caal Caal, and nine other Mayan Q'eqchi' women are suing HudBay Minerals Inc. and HMI Nickel Inc. in the companies' home jurisdiction of Ontario for negligence and carelessness causing physical and psychological harm.

The claim asserts that on January 17, 2007, the Plaintiffs were gang-raped by uniformed mining company security personnel, police and military during the forceful expulsion of Mayan Q'eqchi' families from their farms and homes in the remote community of Lote Ocho. These armed evictions were sought by HMI Nickel in relation to its Fenix mining project, located on the north shores of Lake Izabal, which it operates through its Guatemalan subsidiary Compañía Guatemalteca de Níquel (CGN). The communities believe these evictions were illegal.

HudBay Minerals and HMI Nickel are both headquartered in Toronto, Canada. HMI Nickel is currently a wholly-owned and controlled subsidiary of HudBay Minerals. At the time of the attacks, HMI Nickel was called Skye Resources and existed as an independent Canadian mining company. Skye owned and operated the Fenix mining project located near El Estor, Guatemala through its subsidiary CGN.

The lawsuit alleges that the harm suffered by the Plaintiffs was caused by the legal negligence and carelessness of HMI Nickel in its operation of the Fenix project, and therefore HMI Nickel is legally responsible for this harm.

For example, the Plaintiffs allege that HMI Nickel was negligent and careless in directing, controlling, and supervising the mining security personnel who committed the rapes. The Plaintiffs further allege that HMI Nickel was negligent and careless in seeking, requesting and authorizing the forced evictions of Lote Ocho without taking reasonable steps to protect the community from the use of violence during this eviction.

Skye Resources changed its name to HMI Nickel in 2008. This corporation will be referred to as "HMI/Skye" in this document.

The Plaintiffs also are suing HudBay Minerals. The lawsuit alleges that HudBay Minerals currently completely controls and dominates its subsidiary HMI Nickel, and therefore HudBay Minerals should be made legally responsible for the legal wrongs committed by HMI Nickel.

Each Plaintiff claims \$1 million in compensatory damages for their pain and suffering, and \$4 million in punitive damages owing to the extreme and heinous nature of the attacks against them. The total claimed by the lawsuit for all Plaintiffs is \$55 million.

KEY FACTS ALLEGED IN THE LAWSUIT

There are currently several Mayan Q'eqchi' farming communities located on land that HudBay Minerals and HMI/Skye claim makes up part of the Fenix mining project. The Mayan Q'eqchi' communities disagree with HudBay Minerals and HMI/Skye regarding who has legal and moral right to this land.

HudBay and its subsidiaries claim that they have valid legal right to the contested land. Mayan Q'eqchi' communities counter that they are the rightful owners of the land their ancestors farmed and lived on for generations, and that any apparent rights that were granted to mining companies during the Guatemalan civil war are illegitimate.

HMI Nickel knew that Guatemala was and is an extremely violent country. HMI Nickel knew, or should have known, that violence is regularly used against Mayan Q'eqchi' communities in the forced evictions that regularly occur in all parts of the country. HMI Nickel knew, or should have known, that levels of sexual violence against women are very high in Guatemala, in part as a legacy of the civil war where the rape of Mayan Q'eqchi' women commonly occurred in military operations.

Despite this knowledge, despite HMI/Skye's public relations statements that indicated that they wished to resolve the land conflict through dialogue, and despite there being no pressing need to rush the resolution of the conflict, the lawsuit alleges that HMI/Skye responded immediately and aggressively by seeking forced expulsions in early 2007.

CGN engaged mine security personnel at the Fenix mining project on behalf of and for the benefit of HMI/Skye. These security personnel were directly or indirectly controlled by HMI/Skye from its head-offices in Canada and were engaged under instructions from and subject to continuing approval by HMI/Skye. Mine security personnel were engaged, in part, in response to the outstanding land conflict.

The lawsuit alleges that HMI/Skye made key decisions regarding Fenix security personnel including (1) establishing (or failing to establish) codes of conduct regarding the use of force; (2) determining the rules of engagement in situations involving force; (3) determining procedures for protecting human rights; (4) determining the size and composition of its security forces; (5) determining whether and how security personnel were deployed; and (6) determining the level of participation of its security forces in forced evictions.

On January 8th and 9th 2007, forced evictions were carried out in at least five Mayan communities located on contested land, including the community of Lote Ocho. In the course of these evictions, dozens of houses were burnt to the ground.

After this first round of evictions, HMI/Skye, through its CEO and President, Ian Austin, and other executives and managers, knew that the evictions had not been peaceful. In particular, executives of the company, including Mr. Austin, knew that during some of the evictions, homes had been burnt to the ground.

The lawsuit alleges that HMI/Skye did not take reasonable steps after the evictions of early January to investigate alleged uses of violence during previous evictions. HMI/Skye did not reconsider or modify its strategy of seeking forced evictions of Mayan Q'eqchi' communities in light of these allegations of violence, and took no steps to modify or strengthen any of its policies or standards relating to Fenix security personnel or the protection of human rights.

In the week that followed, the community of Lote Ocho returned to the land and began to rebuild their homes.

ATTACKS AGAINST THE PLAINTIFFS

On January 17, 2007, hundreds of police, military and Fenix security personnel returned to Lote Ocho to conduct a second eviction of the community. This eviction was again sought by HMI/Skye.

The lawsuit alleges that during this eviction, the Plaintiff Rosa Elbira Coc Ich was assaulted by nine men, including police, soldiers and company security personnel wearing uniforms bearing the initials and logo of CGN. At first, a policeman drew a pistol and put it to her head and

asked her where her husband was. When she was unable to tell him, he said that they were going to kill her. Then all nine men, including uniformed members of the Fenix security personnel, held her down, covered her mouth and raped her. Ms. Coc is no longer able to have children, possibly because of injuries sustained from the gang rape.

The other ten women suffered similar attacks and rapes. Some of the women were pregnant at the time of the attack and later lost their babies, possibly as a result of the rapes.

On January 17, 2007, the same day the Plaintiffs were raped during the forced eviction sought by HMI/Skye, HMI/Skye President and CEO Mr. Austin published a public letter regarding the evictions, stating "[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."

The lawsuit alleges that despite public representations from the highest levels in HMI/Skye's management regarding the company's commitment to specific and identifiable security standards, HMI/Skye did not take reasonable or appropriate steps to implement or enforce standards regarding the conduct of security personnel at HMI Nickel's operations in Guatemala.

As a result of HMI/Skye's careless conduct and the resulting assaults and gang-rapes, the Plaintiffs suffered physical and psychological harm for which the Plaintiffs claim damages. In particular, the Plaintiffs claim damages for pain and suffering as well as traumatic, emotional and mental distress.

Date: March 28, 2011

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QUESTIONS & MORE INFORMATION: www.caalversushudbay.com

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* * * * *

(In Guatemala)

Grahame Russell, Rights Action, who is visiting the community of Lote 8.
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Rights Action, a not-for-profit organization with tax charitable status in the US and Canada, has worked for many years in the Maya Q'eqchi' mining-affected communities of the El Estor region, funding and supporting community development, environmental defense and human rights work. (www.rightsaction.org)

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