

A Precedent-Setting Court Decision In Canada Concerning Mining Companies Operating Globally: A Big Step Towards Justice And Remedies For Mayan Qeqchi Victims Of Repression In Guatemala Linked To Hudbay Minerals

By Grahame Russell, August 11, 2013

On July 22, 2013, Judge Carole Brown of the Ontario Superior Court ruled (in Choc versus Hudbay, <http://www.chocversushudbay.com/>) that Canada is the appropriate jurisdiction for Mayan Qeqchi [Kek-Chi] plaintiffs from Guatemala to sue Hudbay Minerals for serious harms that occurred near Hudbay's nickel operation in El Estor, Guatemala, and, secondly, that Hudbay can be held legally accountable for the actions or omissions of its Guatemalan subsidiary company CGN (Guatemalan Nickel Company).



(In the Klippensteins offices, November 2012, Murray Klippenstein and Cory Wanless stand in prayer with plaintiffs Margarita Caal, Angelica Choc, Rosa Elbira, German Chub, before a week-long session of cross-examinations by Hudbay's lawyers. Photo @ Grahame Russell)

The three civil suits against Hudbay dealt with in this ruling are for: the January 17, 2007 gang-rape of 11 women; the September 27, 2009 killing of community leader Adolfo Ich; the September 27, 2009 shooting-paralyzing of villager German Chub.

'Day In Court'

After three years of legal wrangling with Hudbay that had filed pre-trial motions to dismiss the lawsuits, Judge Brown made the right decision and now the impoverished and very courageous people from El Estor can have their day in court.

This is a great legal victory for the victim-plaintiffs. In terms of Canadian law and fundamental notions of fairness, this precedent setting decision is long, long, long overdue.

Canadians owe thanks to the Klippensteins law firm representing the plaintiffs on a 'pro bono' basis. Hudbay is spending apparently huge amounts of money paying the well-connected Toronto law firm of Faskens Martineau to fight these cases. (Thus far, it seems that Faskens is the big winner in these cases, and should thank Klippensteins and the plaintiffs as well!)

Canadians owe even more thanks to the plaintiffs, the victims of the harms and violations who have the dignity and courage to seek justice and remedy in Canadian courts, despite their endemic poverty, despite the language, cultural and geographical barriers and complications, and despite increased risk of repression to themselves for taking this courageous stand.

We at Rights Action are honored to support the Qeqchi people since 2004 in their community development and environmental defense projects and in their struggles for justice and remedy. We are thankful to collaborate with Klippensteins to help ensure that the plaintiffs can have their day in court.

Long Over Due

Thanks are owed to the plaintiffs and lawyers for they are making changes to corporate accountability and liability laws that Canadians should have achieved generations ago.

Canada should have reforms to its criminal code, such that if and when Canadian companies or investors commit crimes, by commission or omission, in other countries, they can be tried criminally in Canadian courts. Canada should have civil legislation such that if and when our companies or investors commit harms, directly or indirectly, in other countries, they can be sued in Canadian courts.

These are bare minimum criminal and civil law liability standards that all Canadians would expect and demand were we the victim of crimes or harms. But we have not made these changes. There continues to be huge opposition to these reforms from powerful political and economic interests in Canada – including the mining and investment industries.

A hypocritical, double standard remains firmly in place.

(This fundamental lack of criminal and civil liability laws is not exclusive to Canada. There is a glaring lack of criminal and civil laws in the United States and most European countries that should be used to hold our companies and investors accountable if and when they cause or contribute to - and indeed profit from - harms and crimes. The lack of laws in these countries is noteworthy as a majority of global companies and investors still come from North American and Europe.)

Thus, it has been left to a small law firm to take on these 'david versus goliath' cases basically on a pro bono basis, to fight for and win the simple right for victims to sue for justice and remedy.

No Justice, No Remedy

And now, three years later, a long overdue legal precedent has been set ... and that is all. The victims have "won" the right to have their day in court. No justice has been done; no remedy has been provided for the devastating losses that the victims have suffered. This process might now go on for another 5 – 10 years. Hudbay might choose to drag a trial on and on. Faskens Martineau would have no problems, I presume, getting paid to work on this case as long as Hudbay wants.

Repression, Threats And Impunity

While this legal challenge may seem daunting in Canada, and it is, it is even more daunting given the context of corruption, impunity and repression that characterize Guatemala. People who seek justice for human rights violations, whether caused by Guatemalan or international actors, suffer increased risk of repression and even death.

All of the plaintiffs, from the women of the community of Lote 8, to Angelica Choc (wife of slain Adolfo Ich), to German Chub, have received threats and coercive pressures to drop the cases in Canada. These threats and manipulations originate from the CGN offices in Guatemala.

Manipulating The Poverty Of The Poor

Recently, there have been intensified efforts to divide the community of Lote 8, to drive wedges between the 11 women-victim-plaintiffs themselves, between them and their husbands, and between community members. Large amounts of money are being “offered”, land titles to their (own) land are being “offered”, ... if only they drop the cases in Canada. Dangling these amounts of money in front of very poor people (no matter how manipulated and disingenuous the “offers” are) is almost always divisive and harmful.

These threats and pressures are not only illegal – obstruction of justice; tampering with witnesses and plaintiffs, etc. - but they present very real risks of violence to the people involved. As they are occurring in Guatemala, nothing will be done about them.

Why This Precedent Setting Success Happening Now?

Though hard to respond precisely to this question, I see some over-lapping factors.

Over the past 10 years or so, there is growing awareness in Canada about the systemic nature of harms and crimes being caused directly and indirectly by Canadian mining companies operating around the world. Years of work and activism of grassroots groups, NGOs and journalists related to mining problems around the world, have contributed to this long-overdue shift in Canadian awareness.

Directly linked to this, there is growing awareness of the extreme difficulties of holding Canadian companies accountable when they cause crimes or harms in other countries. This immunity from legal accountability flies in the face of basic ‘Canadian values’ of democratic transparency and accountability, fairness, the rule of law and equality before the law.

More specifically, these cases are precedent-setting due to the commitment and legal skills of the Klippensteins lawyers who are winning the legal arguments against Hudbay’s law firm and in-house lawyers. If Hudbay did not know it three years ago, they know now that they are confronting top legal minds and strategists in the Klippensteins law firm.

Moreover, Hudbay is now aware of the courage and strength of the victim-plaintiffs. This last point was made evident when – from November 23-30, 2012 - each plaintiff, one by one, answered up to 8 hours of cross-examination questions and probing by a team of Hudbay lawyers in a downtown Toronto boardroom. I try to capture some of this week of the cross-examinations in: “Clashing World Views At The Crossroads: ‘Avatar’ Overlaps With A ‘John Grisham’ Novel In The Mayan Qeqchi Plaintiffs Versus Hudbay Minerals Lawsuits” (<http://rightsaction.org/action-content/clashing-world-views-crossroads>).

Furthermore, the role that Rights Action is playing, in this north-south struggle for truth, justice and remedy, cannot be understated. When crimes and harms are global by definition, it will necessarily take a global, north-south alliance of committed people and organizations to publicly expose and denounce the crimes and harms, and then struggle for justice and remedy.

There are a growing number of Canadian NGOs and solidarity groups partnering with mining harmed communities around the world, building such alliances.

The role of Rights Action is multiple: fund and otherwise support the Qeqchi communities in their community development and environmental defense work, in their struggles for justice and remedy, and in providing emergency funds to the victims and family members of victims of health harms and repression; maintain communication and strengthen ties between the plaintiffs and lawyers, across geography and economic barriers, across language and cultural barriers; and, continue to report on the breadth and complexity of this struggle (including on-going repression) that is both common and unique at the same time.

What To Do?

People across Canada should take heart in this struggle in general and in this legal decision. This success is the product of years of struggle and work of many people and organizations involved in this and other similar struggles. This Hudbay related struggle is no more and no less important than many other struggles for truth, justice and remedy related to Canadian companies operating and committing harms and violations in many countries, including in Canada. The one difference is that this struggle has made small, important headway in Canadian courts.

Congratulations are in order ... and now the work and struggle continue, both in this case and in all the other cases. And, as Canadians do their best to support this and every mining-related struggle, we must also participate in on-going efforts to demand reforms to our Criminal Code and the passing of civil legislation that ensures that Canadian companies and investors can be tried criminally and civilly in Canadian courts when they commit crimes and/or harms in other countries.

For More Information About The Cases: www.chocversushudbay.com

Klippensteins Barristers & Solicitors

Murray Klippenstein, (416) 598-0288 or (416) 937-8634

Cory Wanless, (416) 598-0288 or (647) 886-1914

Make Tax-Deductible Donations for This Work For Justice And Remedy

Rights Action is honored to support and work with the nickel-mining harmed communities of eastern Guatemala since 2004, including their efforts to seek justice and remedy in Canadian courts in these cases against Hudbay Minerals. Thank-you to all who have donated funds and otherwise supported their struggle for justice and remedy. To support the work of the El Estor Human Rights 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

CREDIT-CARD DONATIONS can be made (in Canada and U.S.): <http://www.rightsaction.org/tax-deductible-donations>

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- Full proposal and budget available on request

Background:

- (5 minute trailer) DEFENSORA, www.defensorathefilm.com. "Defensora" documents the Mayan Qeqchi people's struggle, in eastern Guatemala, to reclaim their ancestral lands, to promote community development and environmental well-being, and to seek justice and remedy for the murder, shootings and rapes committed against them by Canadian mining companies in Guatemala.
- (10 minute film) EL ESTOR EVICTIONS, January 2007, <http://rightsaction.org/video/elestor/index.htm>. El Estor Evictions is about Canadian nickel mining company (Skye Resources/ HudBay Minerals) related illegal, forced evictions of indigenous Mayan Qeqchi communities in eastern Guatemala.

More Information:

Grahame Russell

info@rightsaction.org
