

Rights Action
January 12, 2015
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Extracting Justice: Can Canadian Mining Companies Be Held Accountable For Alleged Human Rights Abuses In Guatemala?

By May Warren, <http://www.ucobserver.org/features/2015/01/guatemala/>

From the sleek glass towers of Toronto's financial district, it's a cab trip, at least one flight, a seven-hour drive from Guatemala City, another drive up a dirt road in a pickup truck, and finally a four-hour hike to reach the remote community of Lote Ocho in eastern Guatemala.

The tiny village couldn't be farther from the corporate boardrooms of Canadian companies, and yet these two worlds will soon collide, with a precedent-setting lawsuit that could leave Canadian corporations more accountable for their actions abroad.

Canadian mining company Hudbay Minerals faces three separate lawsuits from Indigenous Guatemalans, who allege that the private security staff at a subsidiary's nickel mining project committed three violent offences: a gang rape in 2007 in Lote Ocho; the murder of an outspoken mining critic in 2009 near the town of El Estor; and a shooting that left a man paralyzed, on the same day and at the same place near El Estor.

In all three cases, Hudbay is accused of negligence. Hudbay denies all the accusations, and none of the allegations have been proven in court.

The Hudbay lawsuits were filed in 2010 and 2011, and the co-counsel on the case, Cory Wanless of Klippensteins law firm, says a trial date is still two to five years away. But Wanless believes the lawsuits have already set a precedent that will have implications for all Canadian companies. "It's the first case where the plaintiffs have been able to sue a Canadian mining company in Canada for human rights abuse abroad," he says during a phone interview from his office in Toronto. Further, a court ruling on the cases in July 2013 made it possible to sue a Canadian parent company for the actions of its subsidiaries.

Klippensteins law firm is bringing the case to Canada because the Guatemalan justice system is "dysfunctional," with high levels of violence and low levels of accountability. "To me, it makes perfect sense that a Canadian company is responsible in Canada according to Canadian laws, regardless of where the impacts of those actions are felt," says Wanless. (Hudbay initially opposed the case being heard in Canada but dropped its opposition just before an Ontario court was set to rule on the issue.)

Wanless calls the case a "chink in the armour" of Canadian mining companies, who now have to "look over their shoulder" in places such as Guatemala.

A Rape Victim Speaks

Rosa Elbira Coc Ich gestures as she tells the story of her alleged gang rape. Bright green plants dot the dusty red earth around her, and low mountains rise out of a hazy horizon. She wears a printed skirt and blue top, a deep part down the centre of her long, dark hair. Speaking near the community of Lote Ocho in her native Mayan Q'eqchi' language, she describes to the camera what allegedly happened to her.

- The video is posted on Klippensteins' website (www.chocversushudbay.com) and here: <https://www.youtube.com/watch?v=dSGuDk4cnz4>.

“I thought only one of them would rape me but it was all nine men,” she says. “They left me completely battered, like a crushed orange.”

The lawsuit alleges that in January 2007, Coc Ich, Margarita Caal Caal and nine other women were gang raped by private mine security staff employed by a subsidiary of Hudbay, along with Guatemalan police and military forces, as they were being evicted from their land for the Skye Resources' Fenix mining project. The lawsuit also alleges that Skye Resources eventually merged with Hudbay and the two companies are one and the same.



(Guatemalan activist Adolfo Ich Chaman (centre) was allegedly killed by private security in 2009 at a mine once owned by Toronto-based Hudbay Minerals. Photo by James Rodriguez)

A second lawsuit alleges that private security forces employed by a subsidiary of Hudbay hacked and shot to death Adolfo Ich Chamán, a Mayan leader and critic of Canadian mining companies, in September 2009 near the town of El Estor, Guatemala.

The final lawsuit alleges that on the same day Ich Chamán was killed, private security personnel shot German Chub, leaving him paraplegic and without the use of his left lung.

Company Denials

Robert Harrison of Fasken Martineau, the law firm representing Hudbay, says the allegations in all three cases are false. Hudbay wasn't even part of operations in 2007 at the time of the alleged gang rape, he says. "After 2008, [Hudbay] became involved in the mining business and amalgamated with certain companies so that it legally inherited this claim."

He says Ich Chamán's death and Chub's shooting were out of self defence during what he calls a "violent uprising" at a hospital owned by Hudbay's subsidiary. "The mob had weapons, Molotov cocktails, firearms, and it was in that context that at least one person was killed and another person injured."

Harrison also disputes that the cases are setting any legal precedent in Canada. "Hudbay did not pursue its motion to have the case tried in Guatemala. So in terms of a precedent, there never was a court ruling that the case had to proceed in Ontario." He insists the case is not about whether a Canadian company should be liable for the "so-called human rights abuses" of its foreign subsidiaries, but is "much narrower" than that.

"The ultimate allegation is that Hudbay was negligent with regard to the hiring of its security staff. . . . They [the plaintiffs] have to show that Hudbay as a parent actually took control of this particular aspect of the operations in Guatemala," he says.

In an e-mailed statement, Hudbay director of corporate communications Scott Brubacher also contends that all of the allegations are false. "The allegations against Hudbay have often been promoted in public using a deliberately constructed narrative that distorts facts about the alleged events and omits, minimizes or ignores crucial context," he writes. He adds that the company denies being involved in any forced land evictions.

Wanless calls Hudbay's reaction "spin. . . . Their modus operandi seems to be, if it is at all possible to deny something, deny it."

Klippensteins law firm is also arguing that Hudbay and Skye Resources are essentially the same company. "Part of the problem with corporate accountability in general is that corporations organize themselves in a way that both makes it hard to hold them accountable and even makes it hard to understand what's actually going on," says Wanless. "That's not an accident."

Hudbay no longer owns the Fenix mine. It sold the project in 2011.

A Cross Between Avatar And A John Grisham Novel

In James Cameron's 2009 film *Avatar*, three-metre tall, wide-eyed blue beings native to the planet Pandora find their way of life threatened by a human mining colony. The blockbuster may be science fiction, but activist Grahame Russell finds striking similarities with the real-life situation in Guatemala. He calls the conflict a cross between *Avatar* and a John Grisham novel.

"*Avatar*'s the story of a powerful corporation, huge industries behind it, supported and protected by heavily armed men who find themselves in a position where they must move an Indigenous people to get at the resources underground," he says. And John Grisham "often writes about underfunded lawyers taking on individuals, corporations or governments with deep pockets and fighting an uphill, righteous legal battle."

Russell has been working with Central American communities for 25 years as the director of Rights Action, a Canadian-American NGO. He introduced the Guatemalan plaintiffs to Klippensteins law firm and is in continual contact with them. He says they are proud to be participating in the lawsuits but aware that it will be an uphill battle. "There's no silver lining here, and there are no false hopes."

Russell's voice cracks when he recalls the moment the women in Lote Ocho came forward with the story of their alleged rapes. In a home without electricity or running water, he gathered with members of the community. "We were close to wrapping up, and one of the men says, 'Some of the women want to speak with you.' That was an amazing moment. They came forward in front of the men, in front of everyone."

He calls the conflict "a profoundly Canadian issue," since "just about every investment fund in Canada" has shares in Hudbay, including the Canada Pension Plan.

Investor Accountability

KAIROS Canada, the inter-church justice group, launched its Open for Justice campaign in 2013, calling for Canadian mining accountability overseas. Working with the Canadian Network on Corporate Accountability, KAIROS helped to gather 95,000 signatures on a petition asking the federal government to establish an independent extractive-sector ombudsman. A private member's bill to create the position, supported by all opposition parties, was voted down in October.

Though The United Church of Canada continues to support the Open for Justice campaign, it also holds pension fund shares in Goldcorp Inc., a mining company that has been under fire for alleged human rights violations in Guatemala. A lawsuit in B.C. was launched this June by a group of Guatemalan men who accuse Tahoe Resources of violence during a protest at the company's silver mine. Goldcorp owns 40 percent of Tahoe's shares.

Activists such as Kathryn Anderson, who chairs the Mining the Connections working group of the United Church's Maritime Conference, have long called for the fund to get rid of its Goldcorp shares. Anderson has been travelling to Guatemala since the 1980s. She says the Indigenous people who are most affected by mining were also decimated during genocide in the early part of that decade. She calls what people face there "a saga of threat."

“Certainly as a follower of Jesus, I cannot understand that we would want to make our pension fund come from profits from companies that are causing violence to our sisters and brothers in Guatemala,” she says.

Rev. Alan Hall, executive officer for the United Church’s ministry and employment unit, says Goldcorp represents about 0.13 percent of the total holdings of the pension board. He says the board has deliberately chosen a strategy of engagement rather than “walking away and then doing nothing and having no opportunity to affect significant change.” He believes the issue will be better served by focusing attention on securing legislative change to hold Canadian companies accountable under Canadian laws.

A Canadian Resolution?

Russell believes strongly in the power of the Klippensteins lawsuits to do just that. “Have you ever seen a glacier recede? It moves that fast,” he says with a laugh. “They are making law for us in Canada. We don’t have the political will in Canada, and Canadian citizens aren’t putting enough pressure on ourselves to reform our laws.”

He feels all Canadians are complicit in what Canadian mining companies do. “There would be no mining in Guatemala if Canadians corporate officers and North American investors didn’t decide to do it.”

[May Warren is a journalist in Toronto.]

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- Educational Delegation: Form your own group or join one of our educational-solidarity delegation seminars to Guatemala and Honduras to learn more about these issues and struggles
- Daily News: Start viewing, reading regularly: www.democracynow.org / www.upsidedownworld.org / www.dominionpaper.ca / www.rabble.ca /

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