

## **Canadian Mining Firm Financed Violence in Ecuador: Lawsuit**

**TMX Group denies claim. Win could affect thousands of other projects by Canadian companies.**

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By Jennifer Moore

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"Financing being raised in Canada is travelling across borders to do harm," said lawyer Murray Klippenstein by phone from his office in Toronto. "We want to find out if our legal system can respond to this."

Klippenstein is perhaps best known for his representation of the estate and family of native activist Dudley George, who was shot and killed by police in Ipperwash Provincial Park in Ontario in 1995. This lawsuit revealed deep political involvement from the premier's office and resulted in a landmark public inquiry.

In another ambitious and possibly precedent-setting case, Klippenstein is representing three villagers from the valley of Intag in northwestern Ecuador who are suing Copper Mesa Mining Corporation (TSX:CUX) and the Toronto Stock Exchange. They allege that company directors and the TMX Group have not done enough to reduce the risk of harm being faced by farmers and community leaders in Intag who have faced violent threats and attacks for opposition to a large open-pit copper mine in their pristine cloud forests.

Still, they hope to go further. "What is happening in Intag is illustrative of a wider problem," a summary of the legal claim states, "the corporate and financial unaccountability of the Canadian mining industry." So while the case uses established legal principles, the plaintiffs hope it will lead to long-awaited legal reforms to help better control thousands of Canadian financed projects abroad.

Klippenstein, who said he "has learned to go miles on very little," acknowledges the "staggering financial mismatch" and says that companies have hundreds of millions of dollars to gain, so it won't surprise him if they spend tens of millions on the case. He also anticipates years of counterattacks, including motions and appeals on technicalities.

But he emphasized that the basics of the case are straightforward. "There's a simple fundamental legal point that you shouldn't harm somebody and that you shouldn't use your money to hire someone who you know is likely to do harm."

### **Conflict escalates**

Marcia Ramírez is secretary of the Intag Community Development Committee. She lives near the end of the road in an isolated village in one of the most biodiverse places on earth. Her community of Chalguyaco Alto sits at the crossroads of two biodiversity hotspots, the Tumbes-Chocó-Magdalena and the Tropical Andes.

"It isn't fair," she told The Tyee, "that a foreign company can come here and contract people who attack us for defending our rights, for wanting to live in a healthy environment, for defending our land and our water." She added, "We'd like the stock exchange to listen to us and to understand that we've been very hurt by one of their companies."

Now 25 years old, the fight against large scale copper mining has marked daily life for the diplomatic and dedicated leader since she was about 12.

Broad-based opposition to large scale copper mining arose when a Japanese company was initially carrying out mineral exploration a short distance away. When the company released its Environmental Impact Assessment report for the proposed mine, the news that four communities would be displaced, as well as massive deforestation, local desertification, river contamination and harm to endangered species sparked vociferous opposition that persists.

Since Copper Mesa, who has a strategic alliance with the giant Rio Tinto, took over the project in 2004, new issues have emerged with apparent attempts to break the opposition. Now land trafficking, threats of violence, as well as relatively high-paying job offers have been driving a wedge between neighbours and families in these rural communities.

"But," commented Ramírez, "what most hurt is when they came... with armed men and sprayed us with gas."

In early December 2006, over 50 heavily armed security guards, mostly ex-soldiers, were hired to reach company concessions and set up camp. Local residents had been tipped off and gathered along the narrow dirt road that the company-hired trucks would have to pass. When they arrived, Ramírez and others tried to urge the armed men to turn around. But instead, the security agents sprayed tear gas into their faces from only a metre away and fired their weapons into the air, injuring one man, also a plaintiff in the case.

When the residents didn't back down, the guards finally retreated.

The incident was caught on film by a European student researching the controversy and is retold as part of the recent film *Under Rich Earth* by director Malcolm Rogge that debuted at the Toronto International Film Festival in September. It has also been denounced in a complaint to the Inter-American Human Rights Commission.

### **Prior warning**

Canadian authorities were warned that such an incident could arise.

On March 8th, 2005, three months before Copper Mesa (then Ascendant Copper) was listed on the TSX, County Mayor Auki Tituaña wrote to the Finance and Audit Committee of the Toronto Stock Exchange: "We consider it to be appropriate and fair that before accepting open "trade" of Ascendant Copper Corporation's stocks in the Stock Market, you evaluate in depth the "new" company's merits..." Included in his list of 14 concerns were lack of prior community consultation, lack of legally required municipal approval, violation of a municipal ordinance that declares the area an "Ecological County," as well as attempts to foster divisions as a "means to achieve company profits against the citizen's will and at a cost of the loss of unique biodiversity in our territory."

Then in May, Carlos Zorrilla, executive director of the Ecological Defense and Conservation of Intag (DECOIN), travelled to Ottawa to present a complaint to the Department of Foreign Affairs claiming that Copper Mesa had violated the Organization for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises. Mining Watch and Friends of the Earth Canada

supported the claim.

"I'm here," he says in a press release, "because Canadians need to understand the real risk of violence that is emerging as a result of this company's activities." He added, "The Canadian government must take action to curb the excesses of Canadian mining companies operating and exploring overseas."

The complaint was withdrawn after eight months when it was apparent that the appropriate authorities would not apply the relevant procedures. The legal summary notes that "the TSX stock market listing of Copper Mesa has allowed the company to obtain over \$25 million in capital funds -- some of which paid for the armed attackers" in December 2006.

Carolyn Quick, director of corporate communications for the TMX Group, told The Tyee her firm considers the case to be "entirely without merit" and that they will "vigorously defend this position." She would give no further comment about the letter from Mayor Tituaña nor the complaint made to DFAIT. No one from Copper Mesa was available to speak with The Tyee.

### **Globalization of legal accountability**

Another challenge in holding companies to account in Canada, where the bulk of the world's mining companies are based, are complicated corporate structures that criss-cross continents.

"By dispersing their actions across borders and saying that 'Well, we didn't do that in Canada or Ecuador, that decision was made in the U.S.,' they can evade accountability. The courts can respond and say 'Take this case somewhere else,'" says Klippenstein.

Copper Mesa whose headquarters in Colorado, "has connections to some nine different legal jurisdictions, making it difficult to identify which jurisdiction is the proper one in which to hold the corporation accountable," says the legal summary of the case.

The former website of Copper Mesa (then Ascendant Copper) acknowledged that its corporate structure makes suing directors difficult: "All of the directors of Ascendant and substantially all of their assets and those of Ascendant are located outside of Canada. It may not be possible for purchasers of securities being qualified for distribution under this prospectus to effect service of process within Canada upon directors who reside outside of Canada..."

It is for this reason that the lawsuit focuses on decisions allegedly made in Ontario.

### **'Establish clear legal norms in Canada'**

However, one possible advantage for rural residents of Intag preparing for a lengthy legal battle on tricky Canadian territory is that they are not alone in their concern.

Their broader goals for legal regulations of Canadian mining companies echo what the Standing Committee on Foreign Affairs and International Trade (SCFAIT) and the United Nations Committee on the Elimination of Racial Discrimination and other civil society groups have already been saying.

While Carlos Zorrilla was in Ottawa in 2005, the SCFAIT was writing its 14th report, which recommended that the government "Establish clear legal norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human

rights violations associated with the activities of Canadian mining companies."

The government responded saying that it "will continue to examine the best practices of other states attempting to address the accountability of businesses for activities conducted abroad." But it has yet to implement mandatory rules.

Still Klippenstein is hopeful in the face of tough odds. "One has to trust in the promise of a certain amount of fairness and independence that the justice system can provide. It has been shown that powerful people can be brought to kneel this way before."

It took eight years of legal proceedings before a public inquiry was called in the Dudley George case. They never even made it to court, but a long list of recommendations was implemented. Ramírez is also optimistic that they have a chance at justice through Canadian courts as part of their fight to leave Intag's cloud forests intact.

She points out the variety of sustainable development projects that they have been working on as alternatives to large scale mining, including community owned watersheds, a mixed mini-hydroelectric company, as well as agricultural and tourism initiatives. She urges Canadians to see the benefits: "We want future generations to have what we have."