

ECUADORIANS LOSE APPEAL IN LAWSUIT AGAINST CANADIAN MINING COMPANY AND TSX

Canadian law continues to fail communities harmed by Canadian mining overseas

MARCH 14, 2011 – On Friday, March 11, 2011, the Court of Appeal for Ontario dismissed an appeal by Ecuadorian *campesinos* who say they were assaulted by security forces hired on behalf of a Canadian mining company in their native Ecuador.

Marcia Ramírez, Polivio Pérez and Israel Pérez had sued Canadian mining company Copper Mesa Mining Corporation and two of its directors as well as the Toronto Stock Exchange, which the Ecuadorians say listed the mining company on its stock exchange after having been warned that money from the listing would lead to violence. Ramírez, Pérez and Pérez had appealed an earlier decision that dismissed their lawsuit.



In the ruling, the Court recognized that “[t]he threats and assaults alleged by the plaintiffs are serious wrongs. Nothing in these reasons should be taken as undermining the plaintiffs’ rights to seek appropriate redress for those wrongs”, but nonetheless ruled against the Ecuadorians.

“I know Marcia, Polivio and Israel will be disappointed that no one will be held accountable for the violent attacks they endured at the hands of the Canadian mining industry,” said Murray Klippenstein, legal counsel for the Ecuadorians. “Armed men linked to Canadian mining company Copper Mesa came into their community and attacked them. The directors of Copper Mesa based in Toronto were shown photographs of this attack. You would think at the very least, that when directors of a Canadian corporation have been warned and given evidence that company personnel are assaulting people, they would have to do something to stop further violence. The Court said that under Canadian law, directors don’t have to do anything whatsoever. When you think about it, this is a disturbing state of affairs. Do Canadians really want to have their legal system on the one hand authorize Canadian mining companies to go abroad to developing countries, and then on the other hand totally absolve the directors in Canada of any responsibility whatsoever for human rights abuses those companies may perpetrate there?”

The judgment also confirmed that the Toronto Stock Exchange is under no legal duty to consider human rights records when deciding whether to list corporations on its stock exchange, even in cases where the TSX has been informed of past violence caused by the corporation.

This ruling paves the way for Canadian mining companies to continue to raise money on the Toronto Stock Exchange without the TSX having any regard at all for potential violence and harm that is likely to be caused by these funds in areas of the world where human rights abuse is common.

The Toronto Stock Exchange is a for-profit corporation that took in \$142.1 million in 2009 through listing fees. The TSX lists more mining corporations than any other stock exchange in the world and routinely lists corporations with mining projects in countries known for severe problems with violence including the Democratic Republic of Congo, Burma, Zimbabwe and Guatemala.

“This judgment raises some questions for the future,” said Mr. Klippenstein, who is also legal counsel for a widow in Guatemala whose husband was murdered by the head of security of a Canadian mining subsidiary because of his outspoken concerns about the activities of the company. “There are a number of other legal cases that are pending in Canadian courts that raise these issues, in slightly different legal settings. One wonders whether Canadian courts in the long run want to adopt rules that have the effect of sticking a Canadian flag on human rights abuses in developing countries.”

“There is a silver lining to this story. Copper Mesa ran out of money. It was delisted from the Toronto Stock Exchange, and it lost its mining concession. In the end, there is no massive open pit copper mine destroying the environment and villages around Junín, which were what Marcia, Polivio and Israel were fighting to protect from the start.”

The plaintiffs are considering a possible appeal.

The full text of the judgment can be found at:

<http://www.ontariocourts.on.ca/decisions/2011/2011ONCA0191.pdf>

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