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# Newsletter

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## Contents:



## Crossroads on the Tundra: Baker Lake struggles under pressure to allow uranium mining

***By Jamie Kneen, April 7, 2011***

Baker Lake, Nunavut, is the geographic centre of Canada, but it's rarely the centre of attention for most Canadians. And yet what's going on here is nothing less than a test of democracy in Canada's newest territory. A huge complex of uranium mines is being proposed for the tundra west of Baker Lake, in the middle of important caribou habitat.

The community faces a stark choice: allow the mine to proceed in return for jobs, business opportunities, and royalties — or protect the long-term well-being of the wildlife, the ecosystem, and the community. The choice is made more stark by the fact that relatively little has been done to create other economic opportunities for one of the country's poorest communities. It's also made more complicated by the fact that there are other mines being proposed for other metals, and one, the Meadowbank gold mine, is already in operation.

*Traffic in front of the Northern store, Baker Lake – J. Kneen photo.*

It's early spring, and the warming air carries the scent of the sewage truck as it makes its morning rounds. The roads are busy with snowmobiles, ATVs, and vehicles. Thanks to the Meadowbank mine there are a lot of new snowmobiles and trucks and even a Hummer — I'm told there are actually three in town, though there's only a few kilometres of road. The Meadowbank mine provided a lot of work over the past couple of years, though that's tapering off now that the construction phase is over and the mine needs skills and education levels that local Inuit can't offer.

The uranium controversy goes back decades. It was uranium exploration, and its impacts on the live-giving caribou herds, that helped start the whole land claims process for Inuit in what eventually became Nunavut. In Baker Lake, a proposed uranium mine called "Kiggavik" became the centre of controversy in the late 1980s and it was withdrawn from the environmental assessment process in 1990 after the community voted 90 per cent against uranium mining.

In the evening, elders and community members gathered in the Qamanituaq Recreation Centre recall this history. Many of them still feel the same way. But since Areva, the French gov-

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ernment's nuclear power arm, bought the Kiggavik property and set up an office here to anchor a massive public relations effort, more people have come to see the project as inevitable, its offer of jobs and prosperity as more compelling, and the regulatory system as competent and capable of protecting the land, water, and wildlife.

People have gathered to participate in a public forum convened by the Government of Nunavut (GN) as part of a review of the Territory's uranium policy. The policy review was announced in response to pressure from Nunavut's only non-governmental environmental organization, Nunavummiut Makitagunarningit (Makita for short) for a public inquiry into the issue. Instead, there will be three of these public forums, and people can call or send in their thoughts directly as well. The GN has set up a web site for this purpose and has commissioned a background paper from industry consultants Golder Associates to help inform people's thinking. Unfortunately, and perhaps not unexpectedly, the background document is less than forceful -- and less than honest -- in presenting the dangers of ionizing radiation and the environmental and socio-economic impacts of uranium mining.

*Economic development pre- and post-land claim: French government nuclear giant Areva's Baker Lake office is next to the Jessie Oonark centre, opened in 1992 as a successor to the 1960s arts and craft centres set up to encourage Inuit to use artwork as a source of income. – J. Kneen photo.*

The hall is quite full; about 150 people have come out to listen to brief presentations from a panel of experts — all pro-uranium except for the two Makita reps — and ask questions or make comments. The interventions cover everything from the effect of the Meadowbank mine road on the caribou to mining royalties to job training. People talk about how the elders who were most attached to the land and the traditional way of life and had been the staunchest opponents of the Kiggavik proposal 21 years ago are dead now, and how people need jobs more than ever. Others talk about how crucial the lands and waters are to their well-being; the places themselves are important, where their family members are buried, but so are the animals and fish that people need for food and skins for clothing. "People are worth more than things, more than money," as one woman put it. "Why are you not investing in other development?"

Some people clearly have strong positions for or against, while others are much more undecided. The one thing there seems to be consensus on is that they have not had access to independent information: all the information they have gotten has been through the mining companies, and they would like to be better informed. At the same time, the voice of the younger people doesn't seem to be heard, even though much of the support for uranium mining is couched in concern for their future. Most of the people at the forum are middle-aged or older. It's humbling to be in the same room as so many people who with such a depth of experience, but at the same time, as one of the few youth who spoke said, "You need to go to the youth if you want to hear from them."

A lot of the discussion focuses on the Kiggavik proposal, now comprising a handful of open-pit and underground mines, a mill, waste rock disposal sites, as well as power, road, and port facilities. The project is currently in the early stages of an environmental review by the Nunavut Impact Review Board or NIRB. Without any documents available in Inuktitut it is impossible for the elders and hunters who have the most to say about the project's impact to participate in more than a peripheral way. Last week when the NIRB held a workshop in Baker Lake, 25 of the 26 people participating at the table were Qallunat, or non-Inuit. The Inuit sat on the side, listening to the Inuktitut interpretation. One participant commented that it was just like the old days, as if the Nunavut land claim and the new territory had never happened.

There have already been a lot of objections to the way the NIRB review is being carried out. Not only is the material not being made available in Inuktitut, but only a small portion of the funding requested by intervenors was actually allocated by the federal government, and sufficient time has not been allowed for intervenors to do their work. The cumulative impacts of past and future activity in the area will not be fully addressed, as the scope of the review is limited to projects that have already been identified. This is especially problematic since the Kiggavik project's infrastructure would create a base

*Hunter, guide, grandmother, and Baker Lake Concerned Citizens Committee chair Joan Scottie. J. Kneen photo.*

for perhaps dozens of other mines in the area, effectively opening the entire lower Thelon River basin to development. Perhaps even more importantly, the NIRB has refused to evaluate the ability and capacity of the various regulatory and monitoring agencies to deal with a project of this magnitude and complexity when it is clear that all of them, whether territorial or federal, are facing severe challenges.

Both the NIRB review of the proposed project and the GN policy review hinge in large part on the attitude of Nunavut Tunngavik Incorporated, or NTI. NTI represents the Inuit of Nunavut and actually owns much of the Kiggavik deposits and many others, through the regional Inuit associations. Until NTI created a policy to allow uranium mining (with some fine-sounding conditions attached), no uranium exploration or mining would have been allowed under the terms of the regional land use plan. The regional land use plan was amended in 2007 in a secretive and heavily criticised process to allow uranium mining to proceed. Confronted by the contradictions of allowing the Kiggavik project to go ahead, and possibly dozens of other such projects in the same area, NTI is now reviewing its own policy. The NTI board of directors has not yet announced what form this will take.

The Inuit gathered in the recreation centre aren't really concerned with the interaction of these three simultaneous processes. They would like to get better answers than they can get in one evening, especially when there are no public health or wildlife specialists on the panel, and the radiation and environmental specialists are industry consultants. A local (pro-uranium) politician says, "I just want the relevant facts for the people."

A recurrent complaint is that for all the meetings and presentations and workshops and open houses they attend, people have no idea if anyone is actually listening to them. Policies and projects are developed somewhere else, and there is no obvious reflection of people's ideas and criticisms. Perhaps through the efforts of Makita and some conscientious Inuit and Territorial leaders this can change. Perhaps the people of Nunavut, Inuit and Qallunat alike, will be allowed to look at the unvarnished reality of uranium mining and the global nuclear machine.

*Note: This piece was originally published by rabble.ca. MiningWatch was invited to participate in the Government of Nunavut forums by Nunavummiut Makitagunarningit.*

## Courting justice: Victims of mining abuses sue in Canada

Over the past couple of years, Private Member's Bill C-300 had MiningWatch focused on efforts to bring about legislative change through the Canadian parliament in order to hold our extractive industry to greater account for its operations abroad. But while our attention has been on Parliament Hill, Canadian courts have become another important front in the battle against corporate impunity.

Until recently, few have ever tried to sue Canadian corporations in Canadian courts for environmental disasters and human rights violations occurring abroad. Two previous lawsuits were thrown out of Quebec courts over jurisdiction, in which the court decided that the cases would be better heard in the country where abuses took place.[1]

*Paramilitary attacks by Ascendant Copper "contractors" on the community of Junín, Ecuador, December 2, 2006. – Liz Weydt photo.*

This was the case for a 1997 class action lawsuit filed against Cambior for a tailings dam break at the Omai mine in Guyana, which dumped a cyanide-laced cocktail of mine waste into the Essequibo River. When the suit was then filed in Guyana, it was dismissed and the plaintiffs ordered to pay the company's legal costs. Similarly, a lawsuit filed in Quebec against two Quebec-registered companies, Green Mount International and Green Park International, for settlement infrastructure built on occupied lands in the West Bank and marketed to Israelis, was dismissed in 2009 with the argument that Quebec was not the appropriate forum.

Such precedents have motivated many, including retiring Supreme Court Justice Ian Binnie, to urge Canada to draw up new legislation that would provide a forum for foreign citizens and companies to have allegations of serious harms heard here. While such legislative change remains elusive, however, four more cases have been brought before Canadian courts. They are both a source of hope and further frustration in the search for access to justice for communities affected by Canadian mining companies operating around the world.

Toronto-based Klippenstein's law firm is perhaps best known for its representation of the estate and family of Dudley George, who was killed by police at Ipperwash, and more recently for a $45 million class-action lawsuit against the Toronto Police Services Board and the Attorney-General of Canada on behalf of those held by police during the G20 summit last summer. This public interest law firm has also filed three cases on behalf of plaintiffs in Ecuador and Guatemala for abuses at the hands of private security guards hired by Canadian-financed mining companies.

In the first case filed in March 2009, three Ecuadorian villagers sued Copper Mesa Mining Corporation, two company

directors, and the Toronto Stock Exchange for damages following an armed assault in which private security guards, mostly ex-military, tried to violently force their way past men, women and children blocking the way to the company's mineral concessions with a single chain link fence. The plaintiffs alleged that the corporate directors had been given specific information about the attack and had sufficient warning about the risk of further violence so that they should have taken decisive steps to avoid it.[2]

Suing Copper Mesa directly was not possible for jurisdiction reasons. Copper Mesa, like many corporations, split its corporate structure over several legal jurisdictions – the company was incorporated in British Columbia, headquartered in Colorado, had directors all over North America, raised its money in Ontario, had a holding company in Barbados (presumably for tax avoidance), and had its mineral exploration operations in Ecuador. This corporate structure made it very difficult to hold the company responsible in any one of these jurisdictions.

For this reason, the Copper Mesa lawsuit pursued a legal principle that had not yet been tried in an international context – instead of suing the company directly, the Plaintiffs attempted to hold responsible key actors in Ontario whose actions and decisions enabled and caused the harm in Ecuador. The Toronto Stock Exchange (TSX), for instance, had been warned about the risk of violence prior to providing Copper Mesa with access to millions of dollars through a public share offering, yet the TSX provided the company with access to that money anyway, some of which was spent on the security personnel who assaulted the plaintiffs. Similarly, the directors of Copper Mesa were shown photographic evidence of their security personnel assaulting community members and yet failed to take appropriate steps to stop it from happening again.

The courts ultimately rejected this approach, ruling that neither the TSX nor the directors of Copper Mesa had a legal duty to consider possible harms to the plaintiffs when conducting their business. On March 11th, 2011, the Ontario Court of Appeal affirmed a lower court decision which had dismissed the claim.

Lawyer Murray Klippenstein said at the time, "You would think at the very least when directors of a Canadian corporation have been warned and given evidence that 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… 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."

*The late Adolfo Ich Chamán (centre) was President of the Community Development Council (COCODE) of La Unión, schoolteacher, and brother-in-law of the jailed peasant leader Ramiro Choc. – James Rodríguez photo.*

On the upside, during the short life of the lawsuit, Copper Mesa was delisted from the Toronto Stock Exchange and lost its holdings in Ecuador.

Despite the loss in court, Klippenstein doesn't consider the case a failure. As we sit down in his Toronto boardroom to chat he draws two points on the white board and extends a straight arrow between them. He jokes with irony that he had thought the route to justice would be simple. He erases it and redraws a winding arrow that bends and turns back on itself on the way to its goal.

Reflecting on the Ecuadorian case he remarks that the court did take the case very seriously. He refers to the Court of Appeal's statement in which it said: "the 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." The final ruling, however, he believes "seems a little out of step, both legally and morally," given that in both Canadian and British legal systems "it's come to be accepted by the courts that a person or commercial company has a duty to be somewhat careful to not harm the people around them." In other words, while jurisdiction was not raised as an issue, he believes that "the real world judges were very aware of the thousands of kilometres between the directors and where the events took place, and they may not yet figured out how to deal with that. But this logic doesn't fit with a globalized world where the decisions being made in boardrooms in Toronto have significant impacts on the lives of people living halfway across the globe."

The Ecuadorians have decided not to appeal the case any further, which would have required leave from the Canadian Supreme Court, but Klippenstein is optimistic that through further lawsuits individuals harmed by Canadian mining companies can wedge open space in the justice system to address the wrongs done do them abroad. "We certainly think," he says, "with more knowledge of other situations and more cases before the courts there may be room for development."

Klippenstein's is currently representing Guatemalan clients in lawsuits against HudBay Minerals in response to violence in connection with the company's Fénix nickel mine project in eastern Guatemala. In the first case, HudBay and its subsidiaries are accused of negligence for the brutal murder of Adolfo Ich Chamán, a community leader and outspoken critic against the company's operations, who was allegedly shot at close range and killed by the company's head security guard in September 2009. The second case alleges that the company and one of its subsidiaries should be held negligent for the alleged gang rape of 11 indigenous Q'eqchi Mayan women during a forcible eviction from their community in January 2007.[3]

In order to demonstrate the a legal "duty of care" to the Guatemalan plaintiffs on the part of HudBay Minerals, both statements of claim carefully detail the overlaps between the company's Toronto offices and the operations in Guatemala to establish the connection between the company in Canada and events taking place in Guatemala. They further attempt to demonstrate that the company had forewarning of potential vio-

lence, in particular relying on evidence that human rights observers gathered and made public. Furthermore, they cite the company's stated commitment to corporate social responsibility, albeit voluntary, that was made publicly and in direct relationship to its Guatemalan operations at the time that events were taking place as a consideration of the company's duty to others that it itself has acknowledged.

They anticipate that these new cases will also spotlight legal jurisdictional issues, providing an opportunity to explore the relationship between parent and subsidiary companies. While independence between parent corporations and subsidiaries is often assumed, "in an international world, that's ludicrous," says Klippenstein. The first motions in these lawsuits could be heard by late 2011.

Concurrently, and as discussed in our last newsletter, a lawsuit against Anvil Mining Limited in relation to a massacre in the Democratic Republic of the Congo has been admitted to the Quebec Supreme Court. In contrast with the cases being brought in Ontario, this lawsuit pertains to events previously brought to trial in the Congo.

The Canadian Association Against Impunity (CAAI), which includes Congolese survivors and organizations such as the Canadian Centre for International Justice and UK-based Global Witness, filed a class-action lawsuit in the Quebec Supreme Court against Anvil on November 8th 2010. CAAI alleges that the Toronto- and Australia-listed public company provided material support to a military attack in 2004 against a group of rebels in the town of Kilwa, an important port for Anvil's operations.

As a result of these events, during a 2006 military trial in the DRC, nine Congolese soldiers were indicted for war crimes and three expatriate former Anvil employees for complicity in war crimes. In 2007, however, they were all acquitted.[4] On April 28th, 2011, the Superior Court of Quebec accepted this case, rejecting Anvil's argument that it would best be heard in the Congo or Australia. The judge argued that "if the court were to refuse to accept the application [for a class action]… there would be no other possibility for the victims' civil claim to be heard." The Quebec court must now consider if the case should be certified as a class action suit.[5]

The CAAI welcomed this decision as a glimmer of hope to the victims of the massacre in Congo and their families. It is also a promising first step toward Canadian courts awakening to the state of impunity in which our corporations operate around the world, and the urgent need for a real forum here at home to serve justice for those affected.

***Notes:***

1. The Lawyers Weekly, "Corporate responsibility abroad: Will corporations accused of overseas human rights violations be taken to court in Canada?" Spring 2009 http://www.ramirezversuscoppermesa.com/news-lawyers-weekly-spring-2009.pdf
2. www.ramirezversuscoppermesa.com
3. www.chocversushudbay.com
4. Canadian Centre for International Justice, "Congolese victims file class action against Canadian mining company," Nov. 8, 2010; http://www.ccij.ca/media/news-releases/2010/index.php?WEBYEP_DI=6
5. Global Witness, "Court ruling marks significant step forward in holding Canadian mining company to account," April 28, 2011; http://www.minesandcommunities.org/article.php?a=10874

## *Having the Ruggie pulled out from under us: from "Sanction and Remedy" to Non-Judicial Grievance Mechanisms*

In 2005, U.N. Secretary General Kofi Annan named Prof. John Ruggie as his Special Representative "on the issue of human rights and transnational corporations and other business enterprises." Ruggie set out to map "patterns of alleged human rights abuses by business enterprises; evolving standards of international human rights law and international criminal law; emerging practices by States and companies; commentaries of United Nations treaty bodies on State obligations concerning business-related human rights abuses; the impact of investment agreements and corporate law and securities regulation on both States' and enterprises' human rights policies; and related subjects."[1]

This research led Ruggie to conclude that "escalating charges of corporate-related human rights abuses are the canary in the coal mine, signalling that all is not well."[2] He also found "an exceptionally high percentage of cases of human rights abuses associated with the activities of extractive industries."[3]

In 2008, Ruggie tabled his first report, which laid out a framework based on the duty of States to protect against human rights abuses, the corporate responsibility to respect human rights (which Ruggie defined as "do no harm" and further obligates corporations to "address adverse impacts with which they are involved"), and the need for victims of human rights abuses by corporations to have access to effective remedy.

The conclusions Ruggie came to in the first three years of his mandate lent international credibility and legitimacy to largely existing analyses and findings regarding the potentially harmful impacts of corporations, especially extractive companies, on human rights and on environments. Ruggie is clear, now at the end of his second mandate, that his findings themselves have not in the main proven to be unanticipated or unprecedented. But the legitimacy derived from his U.N. mandate and the apparently robust nature of his methodology — based on extensive global consultations and focused research — have contributed to an unprecedented global attention for, and consensus about, the nature of the problems related to the impacts of corporations on human rights, particularly for vulnerable populations. Additionally, Ruggie has sought to organize existing knowledge and information in such a way that it might lead to greater clarity about the way forward, about how to begin to address these negative impacts. This was the focus of Ruggie's second mandate that ended in March of 2011.

Unfortunately, in moving from naming and framing problems in 2008, to providing guidelines through which to address these problems in 2011, Ruggie has retreated from making strong recommendations that he himself had identified as feasible in key areas.

***Sanction and Remedy***

One of the key problems that Ruggie accurately "named" in his 2008 "Protect, Respect and Remedy" framework report was lack of access to justice, particularly for vulnerable populations and people living in weak governance zones. Ruggie said:

"The root cause of the business and human rights predicament today lies in the governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge."

Ruggie also tipped the veil on a possible solution. Recognizing that vulnerable individuals and communities in so-called weak governance zones do not have access to well-functioning legal systems or effective regulatory systems, and also realizing that it may be a long time, if ever, before there would be access to justice through an international court pertaining to corporations or through an international regulatory regime, Ruggie pointed the finger at the home countries of multinationals as a potential source of access to justice.

In 2008 Ruggie said that while "[e]xperts disagree on whether international law requires home States to help prevent human rights abuses abroad by corporations based within their territory. There is greater consensus that those states are not prohibited from doing so." Ruggie further said that "there is increasing encouragement at the international level, including from treaty bodies, for Home states to take regulatory action to prevent abuses by their companies overseas."

As hopeful as that may sound, three years later one can only speculate that push-back from multinational extractive companies, among others, has caused Ruggie to retreat significantly from the promise shown in his 2008 report. In his *Guiding Principles* Ruggie only asks States to "encourage business enterprises domiciled in their territory and/or jurisdiction to respect human rights throughout their global operations..." (underline added). And Ruggie now says that the "role that States should play to ensure that business enterprises domiciled in their territory and/or jurisdiction do not commit or contribute to human rights abuses abroad is a complex and sensitive issue" (underline added). His recommendation to home States to reduce barriers to their own courts for overseas claimants who "cannot access home state courts regardless of the merits of the claim" is framed as something they "should" do as opposed to something they "must" do as in other recommendations.

***"Non-Judicial Grievance Mechanisms"***

Rather than to emphasize home state regulation or the creation of access to justice through home state courts, Ruggie recommends a proliferation of non-judicial grievance mechanisms at the project level, at the national level and at the international level as part of all manner of voluntary codes of conduct.

Non-judicial grievance mechanisms are a typical creature of the voluntary corporate social responsibility (CSR) movement. Their deficiencies mirror problems with voluntary CSR measures more broadly. Voluntary measures are typically unevenly applied, not sufficiently independent, transparent and unbiased, may be used strategically to thwart agency by communities struggling to protect values of importance to them, and cannot compel sanction or remedy.

We have two non-judicial grievance mechanisms in Canada that are relevant to the activities of Canadian extractive companies operating overseas. The National Contact Point for the OECD Guidelines on Multinational Enterprises and the Canadian CSR Counsellor for the extractive sector, created in 2009 under the Government of Canada's new CSR Policy for the extractive sector called "Building the Canadian Advantage."

Neither will investigate complaints; neither will make determinations of fact about whether the guidelines they are meant to uphold were actually breached, neither will provide sanction and both can only provide remedy if the corporation against which a complaint has been made decides to provide some form of remedy.

This latter point is particularly important from a human rights perspective. Both the NCP and the CSR Consellor processes put complainants in the untenable position of having to rely on the very company that stands accused of having caused them harm to decide if it is inclined to provide any form of remedy, and if so, what and how much remedy it may provide. These processes put effective power over remedy in the hands of the alleged violator. From a human rights perspective this is highly problematic. It is disappointing that the U.N. Special Representative on human rights and transnational corporations recommends placing increasing numbers of alleged victims of mining companies in this untenable position.

See MiningWatch's comments on Ruggie's Guiding Principles on our web site. See also our brief on the CSR Counsellor.

***Notes:***

1. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. p.3
2. Protect, Respect and Remedy: a Framework for Business and Human Rights. p.3
3. Ruggie studied 320 random cases of human rights abuses by corporations (between February 2005 and December 2007) and found that of eight sectors studied, the extractive sector dominated at 28% of the total. *Addendum: Corporations and human rights: a survey of the scope and patternsof alleged corporate-related human rights abuse.* pp. 8-9.

## *Outdated Mining Act leads to multiple conflicts over exploration and mine development in Quebec*

Quebec is one of Canada's top three mineral producers and a prime destination for speculative exploration spending. It has a reputation as a relatively easy place to explore and develop a mineral property, due to strong government support, established mining regions such as Val d'Or, and an agreement on resource development with the Cree and Inuit that guides development in

much of the northern part of the province. Despite the ease with which the industry often operates in Quebec, a growing number of conflicts are putting a spotlight on the flaws and inequities in Quebec's outdated Mining Act.

MiningWatch is an active member of the coalition "Québec meilleure mine", which has been an effective advocate for mining reform in la belle province. Insightful analyses combined with an ability to generate considerable media coverage have raised the profile of mining issues and the flawed legislation that contributes to the conflicts described below.

The government of Quebec has been promising to reform its mining act for several years and in 2010 proposed a new bill to make a number of modest changes. This bill was never passed but in May 12 a new bill was tabled that proposes most of the same minor changes. While the name of the bill suggests that the bill's purpose has been radically reoriented towards reconciling mining and sustainable development, the actual changes only temper the priority and privilege given to the mining industry over Aboriginal rights, municipal interests, social impacts and environmental concerns.

The bill proposes increased requirements for communication and consultation regarding mineral staking, exploration and granting of mining leases, but does not recognize the need for consent of Aboriginal peoples or the need for municipal planning to determine the best uses of lands (though exploration within an urbanised area would require the permission of the municipality).

Given these modest changes it is unlikely that the conflicts over access to land and the difficulty in achieving consent and meaningful participation of Aboriginal communities are likely to diminish in the months or years ahead unless a more progressive and radical overhaul of the Mining Act is pursued.

## *Quebec Mining Conflicts from East to West, North to South*

The Algonquin Nation's traditional territory straddles the Quebec-Ontario border extending along Quebec's western border up the Gatineau and Ottawa River watersheds. The Algonquins have never signed a treaty and are not party to the James Bay and Northern Quebec Agreement, so there are no established protocols for consultation or participation in the review of mineral exploration or development projects in their territory.

- MiningWatch has engaged with three Quebec Algonquin nations currently struggling with mineral exploration projects in their territories. Wolf Lake and Eagle Village have been making efforts to constructively engage Matamec Explorations in negotiations. Unfortunately this junior company's response to their enquiries has been dismissive. Matamec is hoping to cash in on the much-hyped rare earth elements boom and have identified a deposit they are hoping to develop, but have deferred all discussion of consultation to the Government of Quebec. Wolf Lake and Eagle Village have engaged MiningWatch to assist with communications and education on the issues associated with mining and processing rare earth elements as the company continues to downplay the environmental risks of the project.
- In 1991 the Algonquins of Barrière Lake signed a progressive agreement for management and revenue sharing in their traditional territory, which overlaps considerably with La Verendrye Wildlife Reserve (though a reserve in name, all manner of industrial and recreational uses are permitted). Unfortunately the Quebec and Federal governments have not honoured this agreement and now a mining company has staked claims in the heart of the hunting and fishing area of several Barrière Lake families. Upon learning about an exploration crew operating on the claims of Cartier Resources, community members successfully insisted the workers leave their territory. In a community meeting with MiningWatch, it was clear that many community members are adamantly opposed to mining in their territory. One woman described the need to deal with an exploration company and the potential impacts of mineral development as being like "another heavy pack put on the backs of the people that we now have to carry."
- Despite having some assurances that their rights will be respected through the James Bay Northern Quebec Agreement, the Cree of Mistissini are calling on Quebec to recognize their call for a moratorium on uranium exploration and mining. While the community has resolutely rejected Strateco Resources' proposed advanced exploration uranium project, the company continues to work in the area and promote its project to investors while understating community opposition to the project. Meanwhile, the government of Quebec has highlighted the project in recent announcements and documents about its ambitious and problematic "Plan Nord".
- On the other side of the province, along the Labrador border, the Innu Takuaikan Uashat Mak Mani-Utenam (ITUM) have been fighting with the Quebec government to respect their rights in the face of a rapid expansion in iron ore projects. After conducting blockades and a media campaign supported by MiningWatch, a negotiated agreement was reached with Labrador Iron Mines in December. However, the Quebec government has not fulfilled its duty to consult and other companies are being even less cooperative. The ITUM has found common cause with many residents in Sept-Iles over their shared opposition to uranium mining on the north shore. Citizens of Sept-Iles developed a very active and creative campaign against a uranium exploration project just outside the town and very close to its drinking water supply. The citizen's group Sept-Iles Sans Uranium (SISUR) celebrated when exploration company Terra Ventures dropped its plans for the project. Controversy continues though, as an apatite mine is now being developed in the area.
- The Baie de Chaleur region of the Gaspé peninsula has been a recent a focal point for opposition to uranium mining. Citizens opposed to exploration on private and public lands obtained an important victory in which the Ministry of Natural Resources actually asked the company to drop its claims and not pursue a planned exploration program. This was a very unusual step for the largely pro-mining Minister to take.
- West of Montreal, Niocan's Oka niobium project ceases to go away, despite a decade of protest by both the Mohawk of Kanesetake, the municipality of Oka and local farmers.

An environmental review by Quebec in 2005 was very critical of the project and its potential impacts on the area's natural water system but the government has never outright rejected the project. Recent signs that Niocan is going to try again to get the project permitted have led to renewed statements of opposition from the Mohawk and Oka residents and farmers.

- In the Eastern Townships the residents of the town of Saint-Camille were surprised to see helicopters with geo-physical surveying equipment hanging beneath them flying over their town last fall. They soon learned that much of the area surrounding the town had been claimed by an exploration company interested in a low-grade gold deposit. Local citizens, including the Mayor and town councillors, did not see an open pit mine as being compatible with their vision of development in the region and developed a campaign to prevent the exploration activity. The citizens made use of a vague and relatively un-tested part of the current mining act that requires exploration companies to achieve an agreement with landowners before undertaking exploration activities on private land (though there are provisions for this to be over-ruled and the property to be expropriated). The citizens of Saint Camille organised a campaign to have a landowners deny access rights to there property with hundreds of property owners sending in letters to the government forbidding access to their land.

## *MiningWatch and Papua New Guinea Partners File Complaint on Porgera Mine*

On March 1, 2011, MiningWatch Canada and our Papua New Guinea partners from Akali Tange Association and the Porgera Landowners Association filed a "Request for Review" with the Canadian National Contact Point for the OECD Guidelines on Multinational Enterprises. The complaint alleges that Canadian mining company Barrick Gold Corporation has violated the OECD Guidelines in its operations at the Porgera Joint Venture (PJV) gold mine in the Porgera valley, a remote region of Enga Province in the highlands of Papua New Guinea (PNG). Barrick has co-owned (95%) and operated the mine since 2006. The other 5% is owned by the PNG government via Mineral Resources Enga (MRE).

The complainant contends that Barrick/PJV has violated sustainable development guidelines, environmental guidelines, and the human rights of the local community in a number ways. Over the past two decades, there have been consistent and widespread allegations of human rights abuses committed by PJV security personnel in and around the mine site, including killings and beatings of local Ipili men and beatings and rapes, including gang rape, of Ipili women. In addition, the living conditions of people within the PJV mine's Special Mine Lease Area are incompatible with human health and safety standards and the OECD Guidelines' provision on sustainable development. Moreover, in 2009 troops from the PNG Defence Force forcefully evicted local landowners near the Porgera gold mine by burning down houses to allegedly restore law and order in the district. There has never been an investigation of these gross violations of human rights but the troops remain housed at the mine site and supplied with food and fuel by the mine. Moreover, the PJV mine yearly disposes of approximately 6.05 million tons of tailings and 12.5 million tons of suspended sediment from erodible waste dumps into the downstream Porgera, Lagaip and Strickland river systems, thereby polluting the river and endangering public health and safety of communities along the shores in violation of Chapter V of the Guidelines. The complainants further allege that Barrick/PJV has violated the OECD Guidelines with regard to good governance, promoting employee awareness of and compliance with company policies, and disclosure of information.

See the complaint on our web site.

## *Mining Mongolia: Ivanhoe, T-shirts, NGOs, and Wikileaks*

In 2005, Robert Friedland, chairman of the Vancouver-based Ivanhoe Mines Ltd., famously regaled potential investors in Florida with his Mongolian mega-project, the "cash machine we really intend to build," – a massive copper-gold and coal project in the southern Gobi desert called Oyu Tolgoi or Turquoise Hill.

Friedland talked about the size of his claim: "Mongolia is three times the size of France, twice the size of Texas, 2.6 million people, and our lands...are about the same size as Japan...about 135,000 square kilometres, the largest land position in the mining industry."[1]

Friedland talked about his good relations with the government and low anticipated tax rates: "Now Mongolian political leaders have helped us a lot, the president of Mongolia came to Canada. We met with Paul Martin and we've signed a free trade agreement between Canada and Mongolia to avoid double taxation. We have virtually no taxation contemplated on the remittance of dividends and we are in the final stages of a very important long-term agreement with the Mongolian government that will protect our stakeholders on everything we are going to do.... if our tax rate was say 5% or 6%, we only have to be half as good as Grasberg to make as much money for our shareholders."

Friedland talked a lot about how much money would be made:

- Block caving was described as a cash cow – "The amount of money that this block cave can draw off is terrifying...typical operating cost for a block cave would be a dollar or two a tonne. And about 3 or 4 dollars a tonne to mill it say 5 or 6 bucks a tonne, all in. What's amazing is this 3%, 4% copper is 100-dollar rock. So you're in the T-shirt business, you're making T-shirts for 5 bucks and selling them for 100 dollars. That is a robust margin."
- Labour costs would be low – "Now you can see how these trucks are just going to come in here and pull money out of the bank. The mining is automatic. It's just like a rock factory. There's no moving parts, it can be totally automated.

Kids with joysticks can be running these things from the surface. You don't need any people underground, it's all done by gravity drainage."

- The associated coal was another money maker – "These old coals are really the Beluga caviar of coals.... And you can make more money digging that stuff up, and hauling it south, than you can screwing around with sort of a marginal gold mine anywhere in the world.... You can mine this coal for a buck a ton. If it's worth 100 bucks a ton, it's a quarter of an ounce gold equivalent. If it's 50 dollars steam coal, it's still several grams per ton gold equivalent, and you don't have to mill it, you don't have to wash it, you don't have to clean it, you don't have to process it. All you do is do what the Chinese are doing in these pictures. You load it into trucks and they go across the Gobi Desert, see that dust, heading for China. And you trade it for money. This is what mining is supposed to be."

Finally, Friedland talked about the lack of social hassles in the desert – "And the nice thing about the Gobi is, there's no railroad tracks in the way, there are no people in the way, there are no houses in the way...there's no NGOs...You've got lots of room for waste dumps without disrupting the populations..."

If Friedland "underestimated" anything in his typically hyperbolic speech it was likely the social landscape. When Friedland's speech – especially the analogy to making 95% profit on T-shirts – hit Mongolia and was translated it caused enough anger to lead to the burning of his effigy (in a top hat) in a protest in the capital Ulaanbaatar in April of 2006. And the "Toxic Bob" moniker Friedland has carried with him since long before his disastrous Summitville mine in Colorado is now commonly used in Mongolia. By 2008, Ivanhoe had found a partner in Rio Tinto but the agreement Friedland had talked up between Ivanhoe and the Mongolian government had failed to materialize.

Friedland also failed to anticipate approvals by the Mongolian parliament for windfall taxes on gold and copper exports and for the government to take up to 50% stakes in certain mining assets.[2] Amidst global outcry by mining moguls a call went out for political intervention. According to a cable from the U.S. Embassy in Ulaanbataar dated January 11, 2008, recently released by Wikileaks, that intervention was certainly forthcoming.[3] In January 2008, then-trade minister David Emerson flew into Ulaanbaatar. While there he expressed concern that Mongolian President "Enkhbayar's approach to mining was too statist for Canadian tastes, saying that Enkhbayar was behind many of the efforts to re-nationalize Mongolia's natural resources." "The Canadian minister, however, praised Mongolia's prime minister, foreign minister, and minister of the interior, saying they agreed nationalization was not the preferred choice, but that "severe political pressures" and a fear that the country would not benefit from its natural resources were at play.... Mr. Emerson also met with mining companies that "want and need foreign governments to project a united front to the [Government of Mongolia] to cover their political flank," the cable reads. "In short, the mining companies told Canada to join US, British, Japanese, Australian and German efforts to encourage (cajole, harangue, etc.) the [Mongolian government] into staying out of the mining business..." During Emerson's visit, Canada and Mongolia announced they would begin negotiating a Foreign Investment Promotion and Protection Agreement to provide protection for foreign investors. Later in 2008, Canada opened an Embassy in Ulanbaatur.

In October 2009 Ivanhoe signed a long-term investment agreement with the Government of Mongolia, and on March 31, 2010, the Government approved the investment agreement with Ivanhoe and Rio Tinto for the development of Oyu Tolgoi.

In spite of these developments, NGOs, whose existence Friedland has somehow failed to recognize in 2005, have been increasingly vocal in raising social, environmental as well as political concerns associated with the Oyu Tolgoi project. "The Mongolian Government approved the Oyu Tolgoi Investment Agreement on 31st March 2010 without obtaining the prior consent of Mongolia's parliament (the State Great Hural) and despite the fact that the technical and economic feasibility study submitted by Ivanhoe Mines Mongolia Inc. had been rejected by Mongolia's Mineral Expert Council [the technical council that has the responsibility to approve mining projects]" said Ms. Urantsooj of the Centre for Human Rights and Development, a NGO which has made a study of Mongolia's mining and environmental legislation.[4]

On April 1, 2010, Mongolian NGO Oyu Tolgoi Watch tabled a complaint with OECD National Contact Points (NCP) of the U.K. and Canada on behalf of the Centre for Citizens' Alliance, the Centre for Human Rights and Development, Steppes without Borders, Drastic Change Movement, and National Soyombo Movement.[5] In brief, the complaint alleges the company's Technical and Economic Feasibility Study that was accepted by Mongolia's Technical Council of Minerals Experts in March and implemented in April 2010 does not demonstrate the availability of sufficient water resources to carry out the project. It also raises issues concerning the long-term commitment of Ivanhoe Mines to the region and proposed royalty transfers among owners of the mining licence.[6]

After a lengthy process of requesting further information and documents from both sides the Canadian NCP decided not to take the case to the next stage. In its final statement the NCP determined the "environmental assessments to be complete and of a high quality" and finding the "governance and management of the water and all other resources of the area" to be "the responsibility of the Government of Mongolia." The NCP further argued that "it is not practical or realistic to expect these extensive and complex matters to be resolved by dialogue between NGOs and companies on a case-by-case basis. These matters are more appropriately addressed by the national government using a comprehensive governance mechanism with appropriate laws, regulations and enforcement mechanisms."

This finding is remarkable for at least two reasons. Firstly, the Canadian NCP made a statement of fact about the quality of Ivanhoe's environmental assessment. The Canadian NCP normally takes the position that it will not make determinations of fact regarding the validity of a complaint but rather seeks to offer its "good offices" to bring about dialogue between the parties. The fact that the Canadian NCP determined that dialogue could not be expected to resolve these issues, and that they be best handled by the Mongolian government, is the second remarkable finding. As noted elsewhere in this newsletter, non-

judicial grievance mechanisms such as the NCP are touted by U.N. Special representative John Ruggie as an effective response to weak governance. It is hard to see how non-judicial grievance mechanisms can fill the void left by weak governance if they refuse to accept that role. The question of whether there was a conflict of interest given that the complaint came in to the Canadian NCP at the same time that Ivanhoe was seeking funding from Export Development Canada is pertinent in this case.

Not long after the Canadian NCP prepared its final statement on the Oyu Tolgoi complaint, the International Finance Corporation (IFC) replied to a letter of concern by Oyu Tolgoi Watch.[7] The IFC's letter confirms many of the very concerns regarding the lack of adequate environmental assessment, particularly with respect to water resources and social impacts, that were raised in Oyu Tolgoi Watch's complaint to Canada's National Contact Point. The financial institution insists it is "deeply committed to helping the Oyu Tolgoi project develop in a manner that will maximize its benefits to the people of Mongolia." The question is whether the IFC's stated commitment to achieving benefits for the Mongolian people is more believable than the less politically smooth, but perhaps more honestly rapacious statements of Friedland when he described the Oyu Tolgoi project as a "cash machine" for investors and shareholders.

For more detail on the concerns raised by Oyu Tolgoi Watch see our web site.

***Notes:***

1. Robert Friedland's presentation to BMO Nesbitt Burns Global Resources conference, July 29, 2008. http://news.tootoo.com/Minerals/Iron___Steel/20080729/151205.html
2. *Big Dig: Mongolia is Roiled by Miner's Huge Plans – World-Class Deposits Spur Battle for Spoils: Makeover for 'Toxic Bob.'* Patrick Barta, Wall Street Journal. January 4, 2007.
3. Lee Berthiaume. *Latest leaks touch on Fowler deceit, Americas*. Embassy Magazine. May 11, 2011. p.16.
4. *Mongolian NGOs Appeal to the UN's Special Representative of the Secretary-General on Business and Human Rights to Resolve Oyu Tolgoi Mine Dispute.* April 23, 2010. http://www.miningwatch.ca/en/mongolian-ngos-appeal-un-s-special-representative-secretary-general-business-and-human-rights-resolv
5. *OECD Complaint Filed Against Rio Tinto and Ivanhoe Mines in Mongolia*, July 18, 2010. http://www.miningwatch.ca/en/oecd-complaint-filed-against-rio-tinto-and-ivanhoe-mines-mongolia
6. The complaint is posted at: http://oecdwatch.org/cases/Case_188/?searchterm=Oyu Tolgoi
7. See the International Finance Corporation's letter to Oyu Tolgoi Watch at: http://www.miningwatch.ca/sites/miningwatch.ca/files/IFC_Response_to_OT_Watch_2011-03-10.pdf

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