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Mines Alerte

Newsletter

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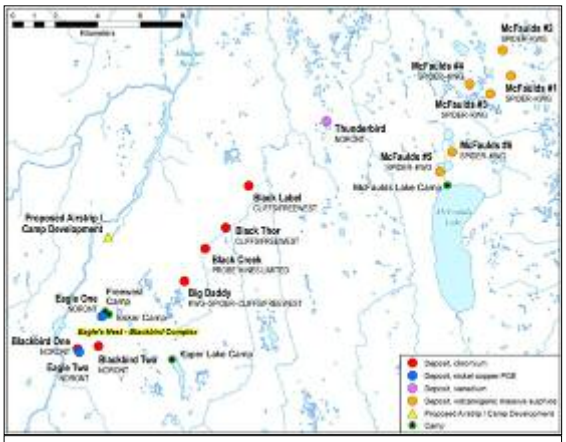
Contents:

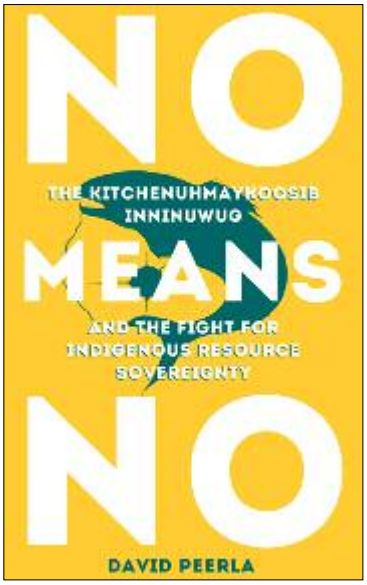
Ontario First Nations Put a Damper on Ring of Fire Development

In Ontario, planning is slowly advancing for what outgoing Premier Dalton McGuinty referred to as 'the most significant mining development in Canada in a century' and what provincial Conservative Leader Tim Hudak referred to as Ontario's "oil sands". Dubbed the "Ring of Fire" by junior exploration companies, the discovery of extensive chromite deposits along with nickel and copper near McFaulds Lake and the Attawapiskat River have raised the possibility of a large and relatively long-lived development (in mining terms) in a remote area on the fringe of the Hudson Bay Lowlands. The area is currently only accessible by air, while winter roads service the surrounding First Nation communities for a few months every winter. In order for the projects to be viable, a massive infrastructure project is being contemplated. The plans of one of the proponents, Cliffs Natural Resources, include a processing facility near Sudbury that would turn chromite into ferrochrome, which is in turn used to make stainless steel.



Map of Exploration and Development projects in the McFaulds Lake area (MNDM)

There are a number of exceptional circumstances surrounding the Ring of



In 2006, a remote Ontario First Nation, Kitchenuhmaykoosib Inninuwug (KI), said 'no' to a mining company, was sued for $10 billion, had its leaders found in contempt of court and jailed – but eventually prevailed when, three years later, the Ontario government paid the company $5 million to go away. This 7-page e-book by KI's political advisor and former MiningWatch board member David Peerla tells how it all happened.

Download it on our web site, or from Kobo Books, Google Books, or Amazon (for Kindle).

Wawatay News has also reviewed *No Means No*.

MiningWatch Canada, Suite 508, 250 City Centre Ave., Ottawa, Ontario K1R 6K7 Canada
tel. (613) 569-3439 — fax: (613) 569-5138 — e-mail: info@miningwatch.ca — url: www.miningwatch.ca

Fire developments:

- The potential for multiple projects to be developed – and cumulative effects;
- Effects on the rights and interests of multiple First Nations;
- The region's remoteness and the need for extensive newinfrastructure;
- Environmental sensitivities including a landscape with more water than solid ground and important habitat for "threatened" caribou;
- Mining and processing chromite, which has the potential to be highly toxic, for the first time in Canada.
- Massive energy demand from proposed ferrochrome facility, equivalent to a city of 350,000.

Given these and other complexities, MiningWatch has been advocating a regional strategic review of development in the area through a joint federal-provincial review panel. Our call echoed the demands of affected First Nations, other non-governmental orgamizations, and even civil servants in the federal government. We were, however, told by a representative of Cliffs Chromite that they were looking for a one-off review through what the federal environmental assessment process used to call a comprehensive study. Apparently their consultants told them this was the best way to harmonize the federal and provincial reviews. It's also faster, avoids the scrutiny of public hearings, and based on past reviews even less likely to turn down a project than a review panel.

Detail of map from Cliffs' Project Description

So far the reasonable demand for a regional review panel has been ignored. Cliffs and a small junior company, Noront, are undergoing separate federal environmental assessments, and each has volunteered to do a separate but harmonized assessment under the provincial environmental assessment process. (Ontario is the only jurisdiction in Canada where a major mine development is not automatically subject to the provincial/territorial environmental assessment process. Volunteering for a review gives a company the opportunity to avoid public consultation on more detailed permitting processes after the EA is approved.)

Matawa First Nations, a tribal council representing many of the affected First Nations, launched a request for a judicial review over the decision to not do a joint review panel. A hearing on the merits of the case is being delayed by procedural objections from Canada and Cliffs, who have moved to strike some of the expert evidence. The proceedings will begin again in January 2013. In the meantime, the Chiefs continue to call for political action to ensure that there is a rigorous review of the project, with meaningful First Nations consultation.

While a joint process would have allowed for a single environmental assessment with consultations on the terms of reference, then on the environmental impact statement (EIS), and finally hearings by a panel, those involved in the process are now having to juggle making submissions to two distinct but supposedly harmonized processes. The federal guidelines and provincial terms of reference were presented for public review earlier this year with the federal guidelines now finalised.

In May, the Ontario government shocked many observers by making a joint announcement with Cliffs about the province's plan to support infrastructure development for the Ring of Fire. First Nations were alerted about the announcement shortly beforehand but were not consulted about the content of the announcement. This seemed to put Ontario on the side of one of the proponents (Cliffs) and its preferred access route. Noront has proposed another route, which, though longer, makes greater use of existing infrastructure and has greater potential to provide access to fly-in and winter-road-accessible communities. The press conference gave the impression that Cliffs was in the driver's seat on the road to the Ring of Fire, with Ontario just a passenger along for the ride. The province's endorsement and commitment to subsidize the infrastructure for the project ahead of an environmental assessment or any other publicly-disclosed analysis was deeply troubling. MiningWatch was well positioned to respond and we were quoted extensively in an article in the Toronto Star.

Over the summer, Neskantaga First Nation has been particularly vocal about their concerns with how developments are unfolding. In response to the joint Ontario-Cliffs announcement in May, Chief Peter Moonias emphatically stated that a mining road would cross over the Attawapiskat River only over his dead body. Since then the First Nation has also documented an important archaeological site at the approximate location of the crossing. Neskantaga also made their concerns known in a case before the Ontario Mining and Lands Commissioner between Cliffs and another company, KWG.

The smaller junior company, KWG, had pre-emptively (and in our view inappropriately) staked the land where Cliffs wants to build a road – a long glacial deposit that snakes along in a north-south direction and is pretty much the only solid ground in the area. KWG staked the claims in the hopes of building a railway. Neskantaga argued before the Commissioner that decisions over access and rights to their traditional territory shouldn't be left to a hearing between two mining companies. The Commissioner's response was sympathetic, acknowledging a lack of consultation with Neskantaga over the road corridor, but also indicating that she had no mandate to ensure meaningful consultation, but only to address the immediate issue between the two companies.

One of the other commitments the Ontario government made back in May was to develop a regional monitoring program. While not a replacement for a pre-development regional

planning process, a regional monitoring program, if well designed and well implemented, and with adequate regulatory and political teeth, would be a crucial element of responsible development in the region. To date there are no details about how the monitoring program would operate, but the government has been conducting research on other initiatives across Canada. It is not clear if the resulting report will be made public. Were it to be made public, it would be a first. To date Ontario has offered no substantive research or policy documents. The Ministry of Northern Development and Mines has some very basic information and commitments posted on its Ring of Fire web site.

One of these commitments is to "work with those First Nation communities most proximate to Ring of Fire development to negotiate a specific share, equivalent to a portion of the province's resource revenues associated with new mines in the Ring of Fire region." While this commitment goes some distance to addressing the demands of First Nations to share the economic benefits of developments on their traditional territories, the statement raises two concerns. Firstly, compensation to affected communities should be based on potential or actual impacts, and some communities distant from the area but downstream may be affected. Also, one wonders how transparent the Province will be about the revenues they stand to get from new mines in the Ring of Fire. With a 10-year remote mine tax holiday and then a meagre 5% remote mine royalty on profits, with the ability to hold-over all manner of exploration and development expenses indefinitely, it may well be decades before these operations start paying Mining Tax or corporate taxes.

As of the date of this publication, the latest news from the Ring of Fire is that Cliffs has indicated it may push back its targeted production date by a year . Despite all the rhetoric from our governments (especially the federal government) about the need to streamline review processes, this is an excellent example of how many delays in project development have little to do with review processes themselves and everything to do with a proponent's ability to plan and finance a project in ever-changing circumstances.

We are becoming increasingly concerned that Ontario is letting the companies, Cliffs in particular, set the agenda for development in the Ring of Fire. Given the expectation of significant public subsidies, Ontario should step up and start providing better information to the public and get serious about relating to the First Nations in a respectful nation-to-nation manner. Looking ahead, MiningWatch will continue to play a role advocating for more thorough review process and filling information gaps. Our fact sheets on chromite have been very well circulated and well received. The Ontario Ministry of the Environment even requested a copy of the full literature review – which is now posted on our web site. We are also working with other NGOs and First Nations to increase accountability and shift the province into a more proactive role that puts public interest at the core of government decision-making.

Parti Québécois Scuttles Plans to Re-open Asbestos Mines

At last a government has shown real leadership and commitment to health justice by ending support for asbestos mining in Quebec.

Shortly after being elected, the new Parti Québécois government led by Pauline Marois cancelled the $58-million loan to restart operations at the Jeffrey Mine in Asbestos that was promised by the previous Liberal government. Without this massive government handout the mine has been unable to finance the expansion needed to re-open.

The shift in Quebec's policy also sunk the hopes of some that the Lac d'Amiante du Canada Mine in Thetford would reopen. The policy shift also rippled across to Ottawa where the feds misleadingly stated that Quebec had banned asbestos mining, and the federal government therefore had to concede to ending its opposition to chrysotile asbestos being listed as a hazardous substance under the Rotterdam Convention.

After years of persistence, health and social justice activists can claim an important victory. In the last few years there has been a growing awareness about the implications of exporting asbestos to developing countries. Reports like Kathleen Ruff's Exporting Harm, and media coverage – from CBC's *The National* to the Jon Stewart Show – pointed out the striking contradictions of promoting exports abroad when use here in Canada is extremely limited. With doctors speaking out in Quebec, space finally opened to break from the long-standing attachment to the mines, which have a storied history in the Quebec labour movement. Adding to the pressure was strong international condemnation including rebukes from the Australian government and asbestos victims' groups around the world.

MiningWatch has worked with the Ban Asbestos Canada Coalition and encouraged the Coalition Quebec Meilleure Mine to include ending asbestos mining and exports as part of the coalition's platform. We congratulate all the groups and individuals who have worked on this issue. While opposing asbestos mining, MiningWatch has always called for a just transition and mine remediation strategy for the communities where the mines are located; unfortunately, these have not been forthcoming. As the mines have been closed or on partial operation for a number of years, and the communities have already diversified their economic base, the immediate economic impact on the region may not be as severe as asbestos promoters claim. How and when the massive pits and tailings piles will be dealt with is another question.

Changes Coming to National Mine Effluent Regulations

Despite sweeping changes to key parts of the Fisheries Act in last spring's omnibus budget bill, Section 36, which deals with the release of "deleterious" substances, remained intact. That means the Metal Mining Effluent Regulations (MMER) which fall under Section 36 have also remained as they were – at least for now. Changes are likely coming, as the budget included "$1 million over two years to expand Metal Mining Effluent Regulations to non-metal diamond and coal mines." In its response to a petition MiningWatch filed with the Commissioner of Environment and Sustainable Development, Environment Canada also indicated its intention to complete a multi-stakeholder consultation process on the ten-year review

of the MMER. We have been told that the internal review process is underway, but so far have had no indication when and how the multi-stakeholder consultation will be 'rolled out'.

The inclusion of coal and diamond mining in the MMER would, in the government's words, provide greater "certainty" for industry – but would it provide greater environmental protection? Not likely with the way the regulations work now. This is because the MMER narrows the force of the Fisheries Act, a very broad protection for fish-bearing waters, to only ten parameters. So long as mine effluent is within the prescribed limits for nine water quality parameters, and it is not acutely toxic to rainbow trout (passing this test requires having at least half of the fish exposed to effluent survive for 96 hours) it is compliant. This reduces the regulatory burden but, as two national assessments of the environmental monitoring downstream of mines have shown, does not ensure the protection of fish. Being included in the MMER will also give coal and diamond mines access to Schedule 2 of the MMER – the list that re-classifies natural fish-bearing water bodies as "Tailings Impoundment Areas", i.e. the loophole that allows lakes, streams, and wetlands to be turned into mine waste dumps.

In order to better understand the impacts of specific mines on downstream aquatic ecosystems, MiningWatch has used the access to information process to acquire environmental effects monitoring reports from eleven mines across Canada. Over the winter we will be reviewing these reports and incorporating our findings into a response to the upcoming consultation. Through our networks with environmental and water conservation groups we will build a collective response to the ten-year review that insists that the MMER be strengthened, with more parameters included and allowable limits reduced to levels more likely to protect downstream ecosystems.

Canada's Development Aid Dollars at Odds with Communities

Two queries submitted to the Canadian government with support from MiningWatch in recent months have turned up further evidence that Canadian aid spending is at odds with communities' interests.

On April 12, 2012, the Interprovincial Association for the Defence of Environmental Rights, a coordinating committee that brings together communities from three provinces in northern Peru affected by Barrick Gold's Lagunas Norte project wrote to then-Minister of International Development Bev Oda. They expressed their dismay at CIDA funding of a pilot project at the site between Barrick Gold and World Vision.

The communities' concerns arise from a history of unfulfilled agreements, "where not only have sustainable development processes not been fostered in the areas of health, education, livestock husbandry and agriculture, but neither have processes of social inclusion and human development been stimulated. Communities have been divided, and parallel organizations to those that already existed have been formed, through which existing organizations have been denied representation in projects that [Barrick's local subsidiary] planned."

"Multiple times we have provided technical studies that demonstrate that their activities are contaminating our water sources. But they do not want to recognize these studies, for which reason we believe that they will most likely continue their contaminating practices," the committee added. "We feel cheated by these and other so-called social responsibility activities because this has not helped to reduce poverty nor to address exclusionary processes," and they therefore asked CIDA to abstain from supporting this type of project and rather "monitor the activities of this company in our country, and coordinate with the state such that the rights of those affected by its activities would be respected."

More than five months later, now-Minister of International Development Julian Fantino replied to the letter, entirely ignoring these issues and stating: "more, not less, of these projects are needed if developing countries are to successfully transition to highly productive economies that enable free enterprise and empower free people to participate in global value chains and shape a more prosperous world."

In June, 2012, MiningWatch also contributed input into an Order Paper Question that was put forward by opposition Member of Parliament Hélène Laverdière in the interest of finding out which Canadian government agency has been funding technical support on problematic amendments to Honduras' mining code since the spring of 2012. The results were received in September and revealed that CIDA is sponsoring Canadian assistance through the Institute of Public Administration of Canada (IPAC) in Toronto.

IPAC is a non-governmental organization with prior experience in Honduras. In 2010, it recruited a Canadian lawyer from a firm that works closely with the mining sector to participate in the Honduras Truth and Reconciliation Commission. The Commission was established following the military-backed coup that ousted former President Mel Zelaya. Canadian participation in this commission was criticized for its connection with the Canadian mining industry, and civil society organisations set up a parallel commission out of lack of faith that the official one would consider the severity of human rights violations in the wake of the coup.

The proposed mining code reforms, on which Canada is now advising, have also been highly controversial, as indicated in our last newsletter. Most recently, the Honduran National Coalition of Environmental Networks released a public declaration in October stating that the public input process has been restricted and that key civil society proposals such as a ban on open-pit mining, community consultation prior to granting of mining concessions, and a significant increase in taxes and royalties, have not been accepted. They anticipate that the bill could be passed as early as December, 2012, and are anxious that it could immediately lift the suspension on some 400 mining concessions already granted across the country.

After seeing the recent report tabled in early November by the Canadian Foreign Affairs and International Development Parliamentary Committee on the role of the "private sector" in meeting Canada's international development goals, our concerns about the tying of Canadian aid to mining company interests are heightened. It is apparent that CIDA's role in fostering controversial public-private partnerships and participating in such anti-democratic policy and institutional development in other countries will continue to be ramped up, regardless of what the most affected groups might be saying.

Guatemala's 'Goldcorp Law'

When Goldcorp flew four MPs and a Senator on a company jet to Guatemala at the end of August, it was lobbying both Canadian and Guatemalan legislators. MiningWatch broke the story to the Guatemalan press before the junket touched down in Guatemala City leading to strong national media coverage in the Central American country and later hitting national news in Canada once Goldcorp's lobbyist reported the trip to the lobbyist registry in Ottawa.

During the visit to Guatemala, Goldcorp Chairman Ian Telfer, Vice-President Brent Bergeron, Hill and Knowlton lobbyist (and former Liberal cabinet minister) Don Boudria and the five Canadian parliamentarians visited Goldcorp's controversial Marlin mine, as well as the Guatemalan Legislative Commission on Energy and Mines. The Chair of the Legislative Commission confirmed as much in an interview with Guatemalan newspaper La Hora.

Guatemala's mining code is currently in question. This is the result of a constitutional challenge from indigenous organizations and a packet of proposed reforms from the president's office. The challenge is based on lack of pre-legislative consultation with indigenous organizations prior to passage of the country's current mining code, under the International Labour Organization's Convention 169 on the rights of indigenous peoples. A decision on this case is months overdue. Meanwhile, in the weeks following the junket, the Ministry of Mines and Energy has tabled a new mining bill and a subsidiary of Goldcorp has been granted two new exploration licences.

We don't know precisely what Goldcorp and Canadian parliamentarians discussed with Guatemalan legislators. Worse than this, however, is that neither do Guatemalan indigenous organizations or the Guatemala public at large. The secrecy of this meeting led one Guatemalan national columnist to dub forthcoming reforms 'The Goldcorp Law'.

Unfortunately, this is history repeating itself. In the same way, a representative of Inco in Guatemala is believed to have influenced Guatemala's mining code reforms of 1965 prior to starting work on the conflict-ridden Fénix nickel mine in the west of the country. Also, individuals with close ties to the Guatemalan subsidiary that Goldcorp now owns and that operates the Marlin mine are known to have influenced the 1997 mining code. And now, Goldcorp's stamp will be perceived to be on forthcoming mining reforms, which are taking place without adequate consultation, in violation of indigenous rights – and most likely to aggravate existing conflict.

Corporations Fight Against Access to Domestic Courts for Harm Caused Overseas

People living in countries with weak governance and fragile legal systems have limited access to justice when faced with human rights and environmental abuses by multinational corporations. In 2008, the Special Representative of the Secretary General (SRSG) of the United Nations looking at the issue, John Ruggie, concluded that globalization creates opportunity for multinationals to harm people in other countries (host States) where access to justice is difficult:

> *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. [emphasis added]*

In 2011, Ruggie acknowledged that "legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed" when "claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim."

Canada has proven itself to be a very difficult State for people who feel they have been harmed by a Canadian mining company overseas to get justice through the courts.

The state of Canadian law with respect to corporate social responsibility, and extraterritorial corporate social responsibility in particular, is generally recognized to be insufficient. Few options are available to non-nationals seeking to pursue Canadian corporations in Canada for wrongs committed abroad...The instances of extraterritorial criminal responsibility are narrowly provided for, and are clouded with doubt as to whether they apply to corporate activity.

The first mining-related case that tested Canadian courts was a suit brought in 1997 on behalf of citizens of Guyana against Cambior before the Superior Court of Quebec. The case alleged damages suffered as the result of a failed tailings dam at the Omai mine that led to a massive spill of heavy metal and cyanide-laden waste into a river system affecting some 23,000 people. The Quebec court declined to hear the case, sending it back to the Guyanese court as the more appropriate forum. In Guyana the case languished and was ultimately dismissed in 2006 – with some $50,000 in court costs levied against the villagers. The inability to have the case heard in Canada led to a chill on further cases being brought in Canada for many years.

Eventually, in 2009, a suit was brought before the Ontario Superior Court by three citizens of Ecuador for alleged threats, violence, and human rights abuses by the security forces of mining company Copper Mesa. The case was filed against the Toronto Stock Exchange and the company's two Canadian directors alleging neglect of duty of care. The case was dismissed on the basis that the TSX and Copper Mesa's directors did not have enough of a connection to the claimants to owe them a legal duty of care.

There are three other cases pending at the Ontario Superior Court all involving citizens of Guatemala against mining company HudBay Minerals Inc. The allegations against the company's security forces range from gang rape of 11 women, to murder of a local leader and permanent injury of another local resident. The claimants argue that they must turn to the Canadian courts because there is little chance that they could get justice

in Guatemala. The Ontario Superior Court has not yet ruled on whether it will allow the cases to proceed in Canada.

The Anvil case – the Supreme Court of Canada declines opportunity to rule on Canadian Courts as appropriate forum

In November, 2010, the Canadian Association against Impunity (CAAI), an organization representing survivors and families of victims of a 2004 massacre at Kilwa in the eastern Democratic Republic of Congo (DRC), filed a class action lawsuit against Anvil Mining before Quebec Superior Court. The suit accuses Anvil of "involvement in the atrocities through having provided logistical support to the Congolese army. The army raped, murdered and brutalized the people of the town of Kilwa in the DRC. According to the United Nations, an estimated 100 civilians died as a direct result of the military action, including some who were executed and thrown in mass graves. Anvil Mining has admitted to providing the army with trucks, food, lodging and other logistical support but claims it was requisitioned by the authorities and denies any wrongdoing."

The plaintiffs argued that the alleged victims could not possibly get access to justice in the DRC and therefore the case should be heard in Canada. CAAI explained, "In the only previous examination of the massacre, in a much-criticized military trial in the DRC, three of Anvil Mining's employees, including one Canadian citizen, were indicted and then acquitted. Anvil Mining's Congolese subsidiary (Anvil Mining Congo) was also "cleared" despite never having been indicted." In April 2011, Justice Benoit Emery of the Quebec Superior Court ruled that the case could proceed to the class certification stage. But Anvil Mining appealed the ruling and the Quebec Court of Appeal, "despite stating sympathy for the obstacles faced by the victims in seeking justice, overturned the earlier Court's decision on jurisdiction," according to CAAI.

The plaintiffs requested leave to appeal to the Supreme Court of Canada but on November 1, 2012 the Supreme Court of Canada denied the plaintiffs the right to appeal. A member of CAAI noted that: "This case highlights the extreme difficulty victims of gross human rights violations face when trying to receive justice. It has been eight years since the Kilwa massacre and the victims and their families have met another roadblock in their search for accountability for the crimes they were subjected to. Despite this setback, we will continue to work with the families affected to fight for justice in this case." See our web site for the full statement.

Seeking a legal fix to the problem of access to justice in Canada

NDP Member of Parliament Peter Julian has tabled a private member's bill, C-323, that seeks to provide a civil cause of action in Canada for non-Canadian citizens who allege that they have been harmed by a Canadian company. Bill C-323 is modelled on the United States' Alien Tort Claims Act (ATCA) that allows foreigners to sue in US district courts for acts committed outside of the US in violation of the law of nations or a treaty of the United States such as genocide, war crimes, extrajudicial killings, slavery, torture, prolonged arbitrary detention, or crimes against humanity. Since 1980 ATCA has been used to sue corporations resulting in two judgements against corporations and about a dozen out-of-court settlements. Cases include: *Sarei v. Rio Tinto; Kpadeh v. Emmanuel; Presbyterian Church of Sudan v. Talisman Energy, Inc.; Sinaltrainal v. Coca-Cola Company; Bowoto v. Chevron Corp.; Wang Xiaoning v. Yahoo!;* and *Doe v. Unocal*. Bill C-323, which went through First Reading in the House of Commons on October 5, 2011, broadens the cause of action to include abuses of basic human rights, environmental rights, and labour rights.

Access to justice against corporations now threatened in USA

The Alien Tort Claims Act, which dates back to 1789, has only been used against corporations since 1980. Now, however, its scope is being questioned, regarding whether corporations – in addition to 'natural people' – can be held liable. In 2010, the Second Circuit Court of Appeals in the US held in *Kiobel v. Royal Dutch Petroleum Co.* that "insofar as plaintiffs bring claims under the ATS against corporations, plaintiffs fail to allege violations of the law of nations, and plaintiffs' claims fall outside the limited jurisdiction provided by the [ATCA]." Subsequently, however, three other Circuit Court of Appeals in the US have all ruled that corporate liability is possible under the statute. On October 17, 2011, the U.S. Supreme Court announced that it would hear an appeal in Kiobel. The case pits Nigerian plaintiffs against the Anglo-Dutch corporation Shell for extrajudicial killing, torture, crimes against humanity, arbitrary arrest and prolonged detention.

Oral arguments in the case were heard in February, 2012. In March of 2012, the Supreme Court broadened the issue under review to include the question of whether foreign corporations should ever be allowed to be sued in US courts, and re-argument occurred on October 1, 2021. A decision is expected in early 2013.

Westray + 20 – Corporate Criminal Negligence in Canada

On May 9, 1992, twenty-six men died when the Westray coal mine exploded in Stellarton, Nova Scotia. The tragedy led to a public inquiry that focused on the failure of Westray senior officers to prevent a predictable disaster, and a Nova Scotia Supreme Court judge called on the Federal government to overhaul the Criminal Code. In 2004, Bill C-45, the "Westray Bill" was passed. The bill "imposed a duty on those who direct how people work to protect them from bodily harm. This imposed a positive duty on senior officers to ensure that work is designed, planned, and supervised to be carried out safely."

In spite of the Bill's passage in 2004 and the subsequent amendments to the criminal code, and in spite of the fact that many Canadians have died at work since then, no case law is yet on the books that directly addresses the amendments. A conference was recently held in Ottawa to examine this issue on the 20th anniversary year of the Westray disaster. One of the reasons identified for the low level of application of the Westray amendments to workplace incidents is that these are commonly initially characterized as "accidents" and not investigated first by police as potential criminal cases. Labour inspectors do not have the authority to conduct a criminal investigation, and while they can call in the police they do not seem to do so.

See www.canadianlabour.ca for more information.

Ghanaian Farmers Run Out of Patience with Kinross/Chirano Gold Mines

On October 12, 2012, members of Concerned Citizens of Sefwi and affected farmers in the area of Chirano Gold Mines in Ghana held a news conference in Accra to warn that they would reoccupy their lands that the mining company had taken over if they were not paid overdue compensation – with accrued interest. The farmers say the company has not paid full compensation since 2004, despite repeated legal actions and a regulation passed by the Ghanaian Parliament earlier this year requiring it to pay.

The delay has been very hard for the farmers, according to spokesman Mr. Prince Eric Amoako-Atta. "The leadership of the affected farmers has come under immense pressure as a result of the long delay in getting the compensation paid," he said at the October 12 press conference.

Kuapa Kokoo Co-op cocoa farmer Aminatu Kasim on her farm in Bayerebon 3, Western Region, Ghana. Photo credit: Panos/Aubrey Wade.

Cocoa pods on the tree

MiningWatch staff person Jamie Kneen and Board member Jean Symes attended the National Coalition on Mining assembly in Prestea, Ghana, in October 2011, and met with Amoako-Atta and some of the Sefwi farmers, who shared their long, difficult story.

The Chirano mine is located approximately 100 kilometres southwest of Kumasi, Ghana's second largest city, in southwestern Ghana.

Chirano – now owned by Kinross Gold after it bought out its original owner, Canadian junior mining company Red Back Mining, in 2010 – obtained its lease in April, 2004, and started gold production in October, 2005. According to the group, between 2004 and 2006, the company had paid compensation to some farmers based on a rate of 2.5 Ghanaian cedis per mature cocoa tree (about $1.33 Canadian at current exchange rates) – telling them that it was being generous, since the Government of Ghana's approved compensation rate was only 2.3 cedis ($1.22) per tree. In fact, the official compensation rate, approved by the Land Valuation Board in 2003, is 5.22 cedis per tree (about $2.78 – still not much for a crop that takes about five years just to start producing).

Prince Eric Amoako-Atta - J. Kneen photo

The Concerned Citizens of Sefwi note that the mine has been very profitable, producing 261,846 ounces of gold in 2011 for an operating profit of more than $200 million, while continuing to ignore the farmers' demands. The farmers had gone to court in 2006 and settled out of court, but the company did not fulfil its commitments under that agreement, so the farmers went back to court in 2007. The case was still in court in 2009 when the then-Minister of Lands and Natural Resources, Alhaji Collins Dauda, intervened – as per his legal prerogative – and persuaded the farmers to set aside their court proceedings and again engage in negotiations to settle out of court.

As part of the negotiations, the Land Valuation Division (LVD) produced a report outlining recommended compensation for the affected farmers at the Minister's request. On May 16, 2012, the Minister, directed the LVD to take necessary action to

ensure payment of the recommended compensation to the affected farmers. The LVD reportedly did inform Chirano that it should pay all remaining compensation owed, but there have been no reports of any movement on the company's part.

Kinross, in its 2011 Corporate Responsibility Report, maintains that the lower payments were legitimate:

> *[F]rom 2003 to 2005, Chirano Gold Mining Company provided fair monetary compensation to farmers operating in areas that would be needed for construction…Compensation payments were higher than standard crop evaluation methods, and were accepted by the affected farmers. Since that time, a group of farmers has challenged the level of compensation received. In early 2012, the Land Valuation Board presented its findings to the farmers and to the mine. The Chirano mine is committed to working with the parties involved to better understand the basis of the Board's calculation and, in the interests of resolving the issue, will be providing a formal response to the Land Valuation Board's recommendation.*

While still refusing to pay the farmers, the company did manage to donate two motor-tricycles as prizes for the Sefwi Wiawso municipal Farmer's Day celebration on November 1, 2012. According to local media, Ken Norris, General Manager of Chirano Gold Mines Limited, said the donation was "to demonstrate the company's corporate social responsibility."

Chriano Gold Mines general manager Ken Norris hands over keys to a motor-tricycle to an unnamed Sefwi farmer in this photo from the Ghana Business and Financial Times

The farmers have requested that the government take stronger measures, such as withdrawing the company's licence, and the Minister of Lands & Natural Resources, Mike Hammah, responded to the October 12 ultimatum by issuing one of his own: the Lands Valuation Board was to resolve the situation within two weeks. We have not been able to confirm from the farmers or local media that anything has been done.

❑ **YES! I want to help provide mining-affected communities with the support they need — and make the mining industry accountable.**

Please direct my contribution to:

❑ **MiningWatch Canada** to press governments to make crucial changes to law and policy. I know I will not receive a charitable donation receipt.

❑ **The Canary Research Institute for Mining, Environment, and Health** to support research and education – and receive a charitable donation receipt. Charitable Registration Number 87103 9400 RR001

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Send completed form and cheque (if applicable) to the address below – and *thank you!*

MiningWatch Canada
250 City Centre Avenue, Suite 508, Ottawa, ON K1R 6K7
tel: (613) 569-3439 • fax: (613) 569-5138 • e-mail: info@miningwatch.ca