

Annual Activity Report

May 2021



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We are sending this update to those of you who have volunteered or collaborated with us over the last few years. We are describing some of our on-going activities. I apologize that we are not able to name every student and lawyer who has worked on these files, but we hope you recognize some of your work— there are over a hundred of you.

1. Litigation on Canadian Embassy conduct in Mexico and Guatemala

In *Montejo v. Canada*, JCAP is representing the family and allies of Mariano Abarca, a Mexican community leader. He was murdered seven weeks after the Canadian embassy visited the government of Chiapas to complain about protests against Canadian mining company



Press conference with Jose Luis Abarca (far left) after Federal Court hearing

Blackfire Resources. The case is now awaiting a hearing before the Federal Court of Appeal. Intervening in the case are Amnesty International, the Ryerson Centre for Free Expression, the Canadian Lawyers Association for International Human Rights (CLAIHR) and Allard International Justice and Human Rights Clinic. We are working with MiningWatch Canada and our barristers are Yavar Hameed and Nicholas Pope of Hameed Law, Ottawa. Information on the case with links to key documents are [here](#).

In *Imai v. Canada*, JCAP is working with a group of Canadian NGO's including Above Ground, Amnesty International, MiningWatch Canada, InterPares and the Canadian Network for Corporate Accountability to find out why the Canadian government

secretly pressured the government of Guatemala to ignore a decision of the Inter-American Commission on Human Rights. The decision ordered a Canadian gold mine owned by Goldcorp to be suspended pending further research on the safety of a community drinking water supply. More information in [news reports](#) in Kamloops This Week, [Canadian Lawyer](#) and various outlets in [Latin America](#). We are represented by Luke Hildebrand and Yana Sobisky of Major Sobiski Moffatt of Kenora. We received funding from the Center for Indigenous Conservation and Development Alternatives at McGill to organize community workshops in Guatemala in order to ensure that they remained abreast of developments.

2. Litigation in Peru

One of JCAP's first cases, ten years ago, dealt with the campesino community of Negritos, where Newmont Gold paid \$30,000 for community land, then mortgaged that land for \$85 million. After years of struggling to keep the case alive, we managed to get the matter before the Constitutional Tribunal, where it sat for about five years. This past year, the case suddenly came to life, requiring our dedicated volunteer lawyers in Peru to scramble to file papers and answer Newmont's submissions. The latest in the saga is that in March, 2021, the Tribunal posted a hearing date on its web site with only five days' notice, and no direct notice to our lawyers. Our lawyers and Charis Kamphuis worked furiously to submit further arguments in response to arguments raised by Yanacocha, whose lawyer somehow got notice and appeared at the hearing. In Peru, we are working with Karina Chuquilin, Carlos Quispe and Juan Carlos Ruiz. Summary of the case in Spanish [here](#).



Members of the Negritos campesino community

Associated with this case is a complaint that we drafted for the local NGO GRUFIDES to the Inter-American Commission on Human Rights. The members of GRUFIDES, and especially lawyer Mirtha Velasquez, were vocal in supporting campesino community members in their grievances against mining companies, including Newmont. They were hounded by stalkers, followed and filmed from an office rented across the street from their office, and threatened with violence and sexual assault. We allege that Newmont paid for the individuals who harassed GRUFIDES, and that the state did not take steps to stop the harassment. The matter has been sitting at the Inter-

American Commission for since 2006. Volunteer lawyer Isabel Dávila has been attempting to have the matter moved forward for the last four years with no success. For a documentary on what happened, see Stephanie Boyd's [“The Devil Operation”](#)

Over the years, JCAP has worked with the Instituto de Defensa Legal (IDL) in Lima, and submitted *amicus curiae* briefs on half a dozen cases. The latest is an amicus in a visionary case dealing with the constant oil spills in the Peruvian Amazon territory of the Kukama Indigenous people. IDL is arguing that the river has legal personality. The amicus is being drafted in conjunction with the Environmental Law Clinic at the University of Victoria. Students have begun researching a related case where three Indigenous Kukama were murdered at a protest near a pipeline owned by Petrotal, a shell company incorporated in Canada. We have presented on this case to a business and human rights conference at [Queen's University](#) and the [Pontificia Universidad Católica del Peru](#).

3. Oil Exploration in Kenya

We have been working with the Kerio Valley Community Organization in Kenya for about ten years. The widely dispersed community in the remote Rift Valley has faced oil exploration and land loss to land grabbers. We have been involved in communicating with the then operator of the oil concession, Tullow Oil, to ensure that it provides information to and consults with community members, as well as providing education workshops to community members. When Tullow Oil was unresponsive, we drafted a complaint to the Compliance



Oil and gas training in Kenya

Advisor/Ombudsman of the International Finance Corporation and they have [agreed to facilitate a dialogue](#) with Delonex Oil. See the blog from [Resource Rights Initiative](#). Bernadette Mahehandiran is co-ordinating a team of six volunteer lawyers, including Luke Hildebrand, Kate Gunn and Angela D’Elia Decembrini. Leah Gardner and Sara Ghebremusse are following up on student papers produced in a collaboration with law student clinics in Nairobi on possible community benefits from oil production.

4. Impact of lack of Indigenous consent and human rights abuses on share prices of mining companies

Over the years, we have drafted or advised on a dozen complaints to various securities regulators about the failure of mining companies to disclose social conflict or lack of Indigenous consent. In September 2020, Shin Imai and volunteer lawyer Sarah-Grace Ross analyzed the impact of six of the complaints in [“Empirical Data on How Investors Are Harmed When Mining Companies Do Not Disclose Human Rights Conflicts and Lack of Indigenous Consent.”](#) A follow-up article with co-author Sara Colgrove which summarizes recent research on the impact of social conflict was published in The Conversation and picked up by the Financial Post. See [“Investors increasingly shunning mining companies that violate human rights.”](#) Shin and Sara were also interviewed on [ELMNT radio’s Indigenous](#) program, Moment of Truth.

5. Commentary on the Canadian Ombudsperson for Responsible Investment (CORE)

The Canadian Network on Corporate Accountability has led a campaign to establish a mechanism in Canada to investigate and report on allegations of human rights abuse by Canadian mining companies operating abroad. The Liberal government in 2018 made a hopeful announcement and committed to establishing an office with powers to investigate and call witnesses. Unfortunately, a strong push back from the mining industry over 15 months made the government withdraw all the powers of investigation and at one point even allowed mining companies to lay complaints against members of communities who were protesting against the mining companies. Charis Kamphuis wrote an [opinion piece](#) in The Conversation that got picked up across Canada. [Research](#) by JCAP law student Charlotte Connolly showed that the two largest industry players had over 500 contacts with the federal government over this issue with over 100 specifically on “international issues” (ie Ombudsperson). Shin commented on the viability of an ombudsperson with no power to compel evidence with reports in the [Catholic Register](#) and in the [Canadian Institute for Mining Magazine](#).

Leah Gardner and Charis Kamphuis wrote a book chapter arguing for the importance of an investigatory office with powers to investigate in [“Effectiveness Framework for Home-State Non-Judicial Grievance Mechanisms”](#) (April

2019). Charis wrote another chapter analyzing the strategies of the mining justice movement to advocate in favor of the Ombudsperson in [Building the Case for a Home-State Grievance Mechanism: Law Reform Strategies in the Canadian Resource Justice Movement \(2019\)](#).

6. Other commentary on Peru, Guatemala, Industry-Indigenous agreements and Indigenous law in Canada

Charis Kamphuis published a [book chapter](#) that analyzed agreements between industry and Indigenous communities in Latin America. Charis then collaborated Peruvian lawyer Carlos Quispé to publish an updated version of the [article](#) in a law review from the Universidad de los Andes in Bogota and they participated in a colloquium on the topic. [See minute 54](#) (in Spanish).

“[T]he legal and social contexts that typically inform the formation of Indigenous-industry agreements in Latin America are marked by enormous power disparities and stark epistemological differences.”

Charis Kamphuis

Charis has also been researching the extent of private contracts between mining companies and the police in Peru. As part of this research, she has provided a [summary of an important case](#) from the Constitutional Tribunal in Peru to the Business and Human Rights Resource Centre.

In the February 2020, law student Charlotte Connolly went to Guatemala as part of a delegation investigating Canadian mining projects in the country and [wrote of her experience](#).

Lawyer Isabel Dávila summarized John Borrows’ *Braiding Legal Orders* in Spanish for a journal in Ecuador that was then reproduced as a [blog post](#) for the Due Process of Law Foundation (DPLF). She also provided a [summary in Spanish](#) of the Nevsun decision for publication by DPLF.

7. Collaboration among law schools, including Osgoode, Thompson Rivers, Allard and UVic’s Environmental Law Clinic



Kukama leader Mariluz Canaquiri (right) with Canadian filmmaker Stephanie Boyd at TRU (Kamloops, BC)

For a number of years Shin Imai at Osgoode and Charis Kamphuis at Thompson Rivers University (TRU) have taught for-credit seminars where students researched specific cases relating to JCAP projects. Last year, Sara Ghebremusse at the Allard Law School, provided an opportunity for some of her students in her seminar, “Legal Institutions and Resource Extraction in the Global South”. This past year, students from Sara’s seminar have worked on a Canadian mining company operating in Namibia (Recon Africa), a study of human rights impact assessments and a study of conflicts in the Peruvian Amazon involving the Kukama Indigenous people.

For the summer of 2021, we are very fortunate to have four law students who received funding from their law schools to work with JCAP. Thanks to Osgoode’s Nathan Centre on Transnational Human

Rights for funding Mariela Guitierrez; Osgoode's Victor Environmental Law Award for funding Carolyn Grandy; Ottawa's International Social Justice Fellowship for funding Robin Kelly; and Dalhousie's Penelope Tham Business Business Law and Policy Internship for funding Charlotte Connolly. Over the years, TRU's Office of Research & Graduate Studies has frequently awarded research scholarships to TRU law students for summer work on many of the JCAP projects described in this newsletter.

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8. Hundreds of articles in JCAP's resource library

For the past few years, we have been collecting hard-to-find reports and analyses from NGO's on issues relating to mining, business and human rights, Indigenous peoples' right to consent and human rights defenders. The English articles can be found [here](#) and the articles in Spanish [here](#). These will be great resources for students and researchers looking for actual case studies as well as those looking for idea on policy and legal reforms.