

# Supreme Court allows Eritrean refugees to sue Canadian mining company over use of slave labour

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Canada's Supreme Court has ruled that a lawsuit can proceed against Vancouver-based Nevsun Resources Ltd. for its complicity in forced labour, slavery, and torture at its Bisha mine in Eritrea.

The Canadian company co-owns the giant copper, zinc and gold mine in the impoverished East African country in partnership with the state-owned Eritrean National Mining Corporation.

In 2014, Gize Yebeyo Araya, Kesete Tekle Fshazion and Mihretab Yemane Tekle, three Eritreans who worked on the construction of the Bisha mine, launched a lawsuit against Nevsun Resources. The plaintiffs, who fled their country and secured refugee status in Canada, claim that between 2008 and 2012 they performed forced labour for two companies owned by senior Eritrean state officials helping build the Bisha mine.

Part of a group of 1,000 military conscripts ordered to work on the mine, they allege that they had to work for 12 hours a day, 60 hours a week under temperatures sometimes nearing 50 degrees Celsius (122 Fahrenheit).

The conscripts were housed in huts without beds or electricity. Some suffered cruel punishments for disobedience, such as being ordered to roll in the hot sand while being beaten with sticks until losing consciousness.

Since it opened in 2011, the Bisha mine has produced hundreds of millions of dollars worth of gold, copper, and zinc. It is reported to be the most important source of revenue for Eritrea's ruthless authoritarian government, long headed by President Isaias Afwerki.

Nevsun Resources denied the accusations made in the 2014 suit, and argued that since the alleged crimes were committed by the Eritrean government and involved the functioning of its "national service" conscription program, the lawsuit should be thrown out on the basis of the "act of state" doctrine. This legal principle stipulates that a court cannot assess the legality of acts by foreign states. After both the Supreme Court of British Columbia and the B.C. Court

of Appeal ruled against the company, Nevsun appealed the case to the Supreme Court of Canada.

In a 5-4 split decision rendered on February 28, Canada's highest court dismissed Nevsun's arguments. While the court did not adjudicate on the merits of the refugees' claims, it ruled that the B.C. Supreme Court should proceed with hearing the case against Nevsun. A majority of the judges rejected the "act of state" doctrine argument, ruling that it is not part of Canadian jurisprudence. The Supreme Court said its decision was also based on the fact that "customary norms" of international law, including prohibitions against slavery, forced labour, and inhumane treatment could be applied to the case.

Following the Supreme Court's decision, Nevsun, which was acquired by Chinese company Zijin Mining Group Co. Ltd. for \$1.4 billion in 2018, again denied the accusations and said it would defend itself in court. Revealing its main concern, the company complained that the decision was bad for Canadian mining corporations' business interests. In its brief to the Supreme Court, it wrote, "permitting claims like this one may discourage foreign investment in developing economies."

In submissions to the Supreme Court, the Mining Association of Canada similarly argued that if the case against Nevsun Resources were allowed to proceed it would create so much uncertainty for Canada's mining companies they would be forced to abandon operations in developing countries.

Located in the Horn of Africa, Eritrea is one of the world's poorest countries. 80 per cent of the population survives on subsistence agriculture. Eritreans have suffered through a bitter years-long war with neighbouring Ethiopia and conflicts instigated by US imperialism. Compulsory military service in the country was established in the 1990s with an official 18-month limit, but in reality the period of service is indefinite. This dire situation has led hundreds of thousands of Eritreans, out of a population of about 6 million, to flee

the country.

United Nations investigations, including a major 2015 report by the UN's Office of the High Commission for Human Rights (OHCHR), found that during military service, Eritrean conscripts were victims of sexual abuse, mistreatment and forced labour. What the current B.C. case seeks to demonstrate is that forced labour not only benefits the state and state officials, but also Western companies and with their complicity.

The Nevsun case lifts the veil, if only slightly, on the criminal activities of Canadian mining companies abroad. The country is one of the biggest players in the global mining industry, with some 700 Canadian-based companies operating in more than one hundred countries worldwide. The total assets value of Canadian mining firms amounted in 2017 to more than \$260 billion. This included foreign direct investments of \$82.7 billion.

Canadian mining firms are also leading human rights violators. Organizations such as Amnesty International, Mining Watch Canada, and the United Nations have produced reports documenting gross human rights abuses and environmental damage perpetrated by some of the largest Canadian mining corporations, including Barrick Gold and Teck Resources Ltd. While innumerable crimes have been concealed over the years, Canadian firms have been found guilty, or are accused, of hiring local police forces, private security personnel, and even paramilitary groups to intimidate, attack, and kill workers, local residents, and environmental and indigenous activists opposed to their brutal work regimens, theft of resources, and environmental destruction.

Like transnationals headquartered in the United States, Europe or Australia, Canadian businesses have amassed vast fortunes through the rapacious exploitation of workers and the subjugation of entire communities in underdeveloped countries, mainly in Latin America and Africa.

These enterprises, led by some of the wealthiest and most ruthless Canadian businessmen, have enjoyed the full support of successive Conservative and Liberal governments. If 75 percent of the world's private mining companies are headquartered in Canada and Toronto is the global hub for mining finance, it is because they benefit from highly favourable trade agreements and fiscal measures, including lucrative tax breaks.

Behind their phoney "progressive" posturing, Justin Trudeau's Liberals, like the previous Conservative government of Stephen Harper, are serving the interests of the mining giants and have vigorously opposed any effective regulatory oversight of their overseas activities. Trudeau has signed a series of foreign investment promotion and protection agreements (FIPAs), which consist essentially of

lucrative deals between multinationals and local elites in resource-rich but economically poor countries at the expense of the population. FIPAs are also designed to empower companies to sue governments that attempt to nationalize natural resources and for compensation for "damages" (financial losses) caused by community or worker opposition. Just last month, Trudeau visited Addis Ababa, the capital of Ethiopia, to attend a summit of African leaders and continue talks on a FIPA with Ethiopia, one of the continent's fastest-growing economies.

The economic subjugation of poorer countries by Western powers is bound up with increasing military aggression. Determined to deepen its partnership with Washington so as to advance Canadian imperialism's predatory interests around the globe, the Trudeau government has pledged to increase military spending by more than 70 percent by 2026.

Trudeau has also further integrated Canadian militaries into the military-strategic offensives of its US and European allies around the world. These operations, including NATO's 2011 air war on oil-rich Libya and the deployment of Canadian forces to Mali, a country which is home to hundreds of millions of dollars in Canadian mining investments, play a critical role in bolstering corporate Canada in the struggle for resources, markets and profits.

The methods Canadian transnationals employ in Africa, Latin America and elsewhere to suppress opposition and discipline workers, such as the hiring of police and far-right forces, are increasingly being employed within Canada itself.

Acting at the behest of Federated Cooperatives Ltd., Saskatchewan Premier Scott Moe ordered the Regina police last month to violently break up picket lines organized by oil-refinery workers who have been locked out for more than four months. In support of its scabbing operation, FCL has also mobilized "United We Roll," a far-right, anti-immigrant group formed by owner-operator truckers.



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