

Rights Action

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APRIL 2017 SPECIAL FUND-RAISING APPEAL

Mining repression and impunity in Guatemala: Killers go free, Victims are accused

On April 6, 2017, Mynor Padilla (Hudbay Minerals' ex head of security and colonel in the Guatemalan army) was acquitted of all mining-related murder and aggravated assault charges, and released.

Moreover, the Judge ordered criminal investigations for obstruction of justice, perjury and other crimes, against more than 10 people involved in the criminal trial, including: Angelica Choc, widow of the murdered Adolfo Ich; Angelica's children and sister; other victims of Hudbay security guard violence; witnesses; and the prosecuting lawyers from the Attorney General's office.

Yes, you read this correctly.

While freeing the guilty, the court has turned the victims of mining repression into the accused. Impunity for mining repression is maintained and further strengthened in Guatemala.

(continued)



German Chub is helped into courtroom, April 6, 2017, where he was soon to learn that Mynor Padilla, who shot and left him paralyzed, was to be acquitted and let free.
Photo: Sandra Cuffe

MATCHING DONOR: Until May 1, an anonymous supporter will match (up to \$30,000) tax-deductible donations to Rights Action in Canada and U.S. To donate, see below.

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Angelica Choc and six of the eleven Lote 8 women, plaintiffs in the Hudbay Minerals lawsuits in Canada.

In the light of the importance of this struggle of the Mayan Q'eqchi' [kek-chi] people for justice in Canada and Guatemala against Hudbay Minerals for the mining-related violence they suffered in 2007–2009, *Rights Action* publishes this special fund-raising appeal summarizing both the civil lawsuits in Canada and the criminal trial in Guatemala.

More violence?

There is a real risk of further repression against the Q'eqchi' victims-witnesses-plaintiffs who are seeking justice Canada and Guatemala: Angelica Choc; German Chub (shot and left paralyzed by Mynor Padilla); the Lote 8 women (rape victims during an illegal forced eviction); and their family members.

Appeal?

In all likelihood, this legally absurd but profoundly demoralizing court decision will be appealed by the Attorney General's office. The criminal trial in Guatemala has just gotten more complicated and riskier even as the precedent setting civil lawsuits continue in Canada against Hudbay Minerals and CGN (the Guatemalan Niquel Company, its former subsidiary).

Urgent question to answer

It is urgent to clarify to what degree Hudbay is funding the defense of Mynor Padilla in Guatemala and to what degree they might be directing the legal strategy with an eye to influencing the civil lawsuits in Canada?

This is far from over

This is far from over. More is needed. More funds, more human rights accompaniment in Guatemala, more investigative reporting, and more education and activism in Canada and Guatemala.

This is how hard it is to hold powerful global corporations accountable for repression, human rights violations and environmental degradation in other countries.

Thank-you for your trust, commitment and support. Please share this newsletter. Send me your questions and comments.

Grahame Russell
grahame@rightsaction.org

Hudbay lawsuits in Canada: Timeline & summary of key issues

Please read articles from the New York Times and Toronto Star:

- **Guatemalan Women's Claims Put Focus on Canadian Firms' Conduct Abroad**, April 2, 2016, http://www.nytimes.com/2016/04/03/world/americas/guatemalan-womens-claims-put-focus-on-canadian-firms-conduct-abroad.html?_r=2
- **Mayan Families' Quest For Justice Against Canadian Mining Company Hudbay**, June 20, 2016, <https://www.thestar.com/news/world/2016/06/20/the-mayans-vs-the-mine.html>
- **How A Guatemalan Murder Trial Could Forever Change Canadian Overseas Mining**, June 20, 2016, <https://www.thestar.com/news/world/2016/06/20/how-a-guatemalan-murder-trial-could-forever-change-canadian-overseas-mining.html>

Lawsuits filed — 2010

The Hudbay lawsuits were initiated in Toronto, Canada, in 2010-2011 and have already set legal precedents in Canada, making it possible for the first time to hold corporations accountable in Canada for repression, harms and violations committed abroad. Represented by Klippensteins Barristers and Solicitors, the cases are being fought by 13 inspiring Mayan Q'eqchi' individuals:

- Angelica Choc, widow of Adolfo Ich, a father of five, community leader and teacher who was hacked with machetes and shot and killed by Hudbay security personnel, September 27, 2009
- German Chub, a young father who was shot and left paralyzed by Hudbay security personnel, September 27, 2009
- Margarita Caal Caal, Rosa Elbira Ich Coc and 9 other women from the village of Lote 8, who were raped by Hudbay (then Skye Resources) security personnel, police and military during the illegal, forced eviction and destruction of their village, in January 2007.

Precedent setting decision — July 2013

After three years of legal battle over Hudbay's pre-trial motions to dismiss the lawsuits outright, an Ontario court ruled in July 2013 that (for the first time in Canadian legal history) these lawsuits can go to trial in Canada.

This was a significant legal leap forward. It is a long overdue victory for human rights and work to begin to hold global corporations legally accountable. The Hudbay lawsuits have paved the way for similar lawsuits to be brought in Canada against Canadian companies that commit human rights abuses abroad:

- Nevsun case, regarding forced labour and slavery at a mine in Eritrea
- Tahoe Resources case, regarding shootings by mine security personnel in Guatemala
- Loblaw's/Joe Fresh case, regarding the Rana Plaza garment factory collapse in Bangladesh, resulting in over 1000 deaths.

What corporate law firms are saying

A lawyer with the Canadian firm Gowling WLG warns the mining industry that if the Hudbay litigation is successful "then we've got major new law and it's explosive." (<http://business.financialpost.com/legal-post/canadian-mining-companies-face-lawsuits-over-foreign-activities>) Other law firms note that "Hudbay serves as a significant warning for Canadian corporations operating in foreign countries that they could potentially face civil liability in Canada for wrongs committed in foreign countries," (<https://www.bennettjones.com/Publications/>

DONATIONS: Laptops, Digital Cameras, iPhones

If folks have used laptops, iPhones and/or digital cameras, that are of decent quality, that you would like to donate to Rights Action, that we would then give to our partner groups, let us know by email (info@rightsaction.org) and we can take it from there.

Updates/A_Warning_for_Canadian_Corporations_with_Foreign_Subsidiaries/) and “Choc v. Hudbay may usher in potential expanded exposure to risks and liabilities for Canadian corporations doing business abroad, not only in the natural resources sector but also in various other sectors, including banking, manufacturing, retailing and telecommunications.” (<https://www.osler.com/en/resources/cross-border/2013/ontario-court-gives-green-light-to-international-h>)

Evidence disclosure

Since 2013, the lawsuits have dragged through a slow process of disclosure. Both sides are required to disclose all documents relating to any aspect of the lawsuit. Because of Hudbay foot-dragging and obstructions, Klippensteins lawyers were obliged to go to court again in 2015 to obtain a court order forcing Hudbay to disclose extensive internal and normally confidential company documents and communications. At this point, Hudbay has handed over some of their internal documents.

Examinations for discovery

Once the discovery process is complete, all thirteen plaintiffs will travel to Toronto (possibly in 2017) to be questioned by Hudbay lawyers. Similarly, Klippensteins will subject Hudbay executives to questioning.

Klippensteins may be forced to again go to court to obtain a court order if Hudbay fails to provide all the documents to which the plaintiffs are entitled, or if Hudbay executives refuse to answer valid questions during examinations for discovery.

Trial date?

After the disclosure and discovery phases are completed, hopefully in 2017, Klippensteins and the plaintiffs then prepare for the actual trial which will take place in front of a jury, and will be lengthy. The trial itself is likely two or more years away.

Mynor Padilla trial in Guatemala: Timeline & summary of key issues

As stated above, Judge Ana Leticia Pena acquitted Padilla of all charges and ordered criminal investigations (for obstruction of justice, perjury and other crimes) against over 10 victims, witnesses and prosecuting lawyers.

This is an astoundingly corrupted, racist decision — sadly unsurprising in the context of Guatemala’s dysfunctional and corrupted legal system. Padilla has the support of the Guatemalan economic elites and their global mining partners, and he was an officer in the Guatemalan military. Guatemala’s economic and military elites are not used to facing justice.

All respect to Angelica Choc, German Chub and their lawyers and supporters for their courage to see this trial through. It is no small thing — in the context of Guatemala’s racism and exploitation, government and private sector repression, corruption and impunity — for impoverished, discriminated Mayan villagers to denounce mining repression and human rights violations they suffered and demand justice in Guatemala’s notoriously weak and corrupted legal system.

Skye Resources / Hudbay Minerals

CGN (Guatemalan Nickel Company) was owned by Skye Resources (2004–2008) and Hudbay Minerals (2008–2011). Hudbay bought Skye in 2008, including all of its assets (CGN) and liabilities. In 2011, Hudbay sold CGN to the Solway Group, a Cyprus-based company.



Deadly mining repression — September 27, 2009

On this day, Hudbay/CGN security guards, under the command of Mynor Padilla, illegally entered the Q'eqchi' community of La Union, municipality of El Estor. They shot bullets at and over the heads of community members. At one point, Padilla looked to his side, saw German Chub standing there, and shot him with his handgun. The bullet left German paralyzed from the chest down; he lost also the use of one lung.

Soon after, Padilla and his guards illegally detained Adolfo Ich, a father of five, respected community leader and teacher. They machete hacked his body, shot and killed him. Padilla and the guards dragged Adolfo through a fence onto Hudbay/CGN property, where he was later found dead.

Fugitive from justice, on the Hudbay/CGN payroll

Though there was a capture order issued against Padilla after September 27, 2009, he continued his work, openly, as head of security for Hudbay/CGN for at least a year. It is not known how long he remained on the Hudbay/CGN pay-roll, or if they have an on-going financial commitment to him today.

Lawsuits filed in Canada — 2010-2011

In Canada, Angelica Choc, German Chub and 11 women from Lote 8 filed lawsuits in Canadian courts against Hudbay and CGN for the death of Adolfo, shooting of German and gang-rape of the women in 2007 by Skye/CGN security guards during an illegal, forced eviction of their community.

Padilla captured — September 2012

Under increased national and international activist attention, Padilla is finally captured and held with no bail as he had been a fugitive from justice for three years.

Intimidations, threats and attacks

Since 2013, Rights Action and, separately, Klippensteins have written letters, a number of times, to Hudbay, CGN and government officials in Canada and Guatemala, denouncing threats and attacks that Angelica, German, the 11 women and their family members have received from people working for, or linked to the mining company, and/or linked to the family of Padilla. The most violent attack was September 17, 2016 and the most recent threats on March 7-8, 2017 (see below).

These threats and attacks are obviously illegal. In the context of Guatemala's historic and on-going repression and impunity, they are always a message.

"Concocted stories"

Moreover, when intimidating Angelica, German and/or the 11 women, the people doing so (mining company employees or linked to Padilla's family) make statements, similar to those made by Padilla's lawyers in Guatemala and by Hudbay Minerals in Canada, that German, the 11 women and Angelica have "concocted" their stories of mining repression so as to win financially rewarding settlements in the lawsuits in Canada.

Trial begins — April 2015

Three and a half years after Padilla was finally detained, the criminal trial began in a Puerto Barrios courtroom presided over by Judge Ana Leticia Pena Ayala.

Who pays for Padilla's lawyers, sets their legal strategy?

It is suspected that Hudbay is paying for Padilla's team of well-connected defense lawyers. When asked by the Toronto Star to confirm this, Hudbay waffled their answer: "We are not going to say
(continued)

Watch these films!

Defensora

Trailer: www.defensora-thefilm.com

This award winning film documents the Q'eqchi' people's struggle in Guatemala to reclaim their ancestral lands, and seek justice in Canadian and Guatemalan courts for murder, shootings and rapes committed by Canadian mining companies (particularly Hudbay Minerals / CGN).

Hudbay Mineral's Hoax (Flin Flon Flim Flam)

View: <https://www.youtube.com/watch?v=j7aacPtEI8s>

51 minute film documents operations of Hudbay Minerals in Guatemala, Peru and Canada, and Hudbay's plans to construct Rosemont copper mine in Santa Rita Mountains, Arizona.

Resistance to and critical analysis of Hudbay's proposed "Rosemont" mine in Arizona: <http://www.rosemontminetruth.com/>

Choc vs. Hudbay

(commemorating Adolfo Ich, affirming resistance), 5 minute film by James Rodriguez: <https://vimeo.com/191327705>

anything that might be distorted on the internet or otherwise used to interfere with Mr. Padilla's presumption of innocence or right to a fair trial." (Scott Brubacher, Hudbay corporate communications, <https://www.thestar.com/news/world/2016/06/20/how-a-guatemalan-murder-trial-could-forever-change-canadian-overseas-mining.html>)

A question that needs an urgent response is whether and how much of Padilla's defense strategy and tactics Hudbay is paying for and might be directing?

Padilla lawyer killed by hit squad — June 3, 2015

On this day, Francisco Jose Palomo Tejada was shot 12 times, midday, in Guatemala City. Besides representing Padilla, Palomo was a lawyer for general Rios Montt, found guilty of genocide against the Mayan Ixil people during the worst years of U.S.-backed repression and genocide, 1978-1983. Palomo's assassination was allegedly linked to his work with a Guatemalan drug trafficker (Marllory Chacón, the "Queen of the south", now in jail in the U.S.) who laundered money for the Mexican Sinaloa drug cartel.

Hudbay pays for (misleading) testimony — September 1, 2015

Hudbay hired and paid John Terry — a senior partner at the "Torys" law firm (<http://www.torys.com/people/terry-john-a>) — for "many hours of work" (as Terry said in the Puerto Barrios courtroom, Sept. 1, 2015) to appear in the Padilla trial and testify about the civil lawsuits in Canada. Terry's testimony turned out to be highly misleading and selective.

Motion to remove Judge for discrimination and partiality — January 20, 2016

Angelica's lawyers filed a motion that Judge Ana Leticia Peña be removed on grounds of racial discrimination and partiality against the Q'eqchi' victims/ witnesses/ accusers.

Motion dismissed on procedural technicality — January 27, 2016

Citing a procedural technicality in the filing of the motion to remove, and not on the merits of the charges, an appeals court ruled against Angelica's motion.

Trial closed to public — February 8, 2016

Judge Pena ruled to continue the trial behind closed doors due to alleged "security threats" against herself and the prosecution. Angelica and German, who have indeed received many threats, did not request this measure and do not agree with the Judge's "justification". The trial has continued behind closed doors since that time.

Padilla lawyer charged with crimes linked to organized crime — February 12, 2016

A second defense lawyer, Frank Manuel Trujillo Aldana, was charged with illicit association, bribery, influence-trafficking, obstruction of justice and collusion linked to the "la linea" organized crime network headed by former President Otto Perez Molina and Vice-President Roxana Baldetti that stole \$120,000,000 in public funds. Perez Molina and Baldetti were forced to resign and are now in jail.

Angelica's home shot up — September 17, 2016

Just after midnight, unidentified men opened fire on Angelica's small, cinder block home in El Estor as she slept inside with two young children. This was the most terrifying act of intimidation. Bullet marks were found the next morning on the walls of her house, and 12-gauge shotgun and 22-calibre bullet casings were found nearby.

No one was hurt physically, but again, as part of over three years of threats and intimidations, a clear message was sent. Though initially investigated by the police, there has been no follow-up.

Murray Klippenstein, one of Angelica’s Canadian lawyers, commented:

“The fact that Angelica’s house was shot at just before the Guatemalan criminal court is to decide whether the former head of mine security is criminally responsible for the brutal killing of her husband is no coincidence. It is meant as a signal to all involved, including the judge who must decide whether Mr. Padilla is guilty. I am very concerned that Hudbay’s continued irresponsible defence of both the civil lawsuits in Canada and the criminal prosecution in Guatemala have done nothing to dissuade this kind of attack in Guatemala against our clients, and in fact their failure to own up to what happened in the past and take steps to punish those responsible make it more likely this will happen again, but maybe much worse.”

Hudbay collaboration with military “Kaibil” special forces? — December 2016

During the Padilla trial, a new criminal investigation was initiated into whether the military’s “Kaibil” special forces worked with Hudbay/CGN guards to mount a military intelligence and population control operation, before, during and after the day (September 27, 2009) of repression that resulted in the assassination of Adolfo Ich, shooting-paralyzing of German Chub, and wounding of other community members.

Threats and intimidations — March 7–8, 2017

The final days of hearings were also tense. Angélica and German’s closing statements to the court were an ordeal in and of themselves, reliving traumatic experiences. They had to leave Puerto Barrios under police escort after reporting that suspicious characters had been following them. Angélica and German were accompanied by friends, lawyers and human rights observers. At their hotel, the group spotted a man observing them. This man spent the night at the hotel, in a room adjacent to rooms occupied by members of Angélica and German’s party, and continued to observe them the next morning. Two other men were spotted observing the group in front of the courthouse, while a white Toyota Hilux — model used by the mining company security — drove around the block where Angelica and German’s driver was waiting.

The police were provided with photos of the men and of the car driven by the man in the hotel, with its license plate, etc. The police said they would follow-up. As before, there has been no follow-up to any attacks or acts of intimidation and threats.

Justice struggle on-going struggle

It is almost for certain that there will be appeals against the outrageous decision; all sides are waiting for the sentence to be released on April 18.

When the Q’eqchi’ victims-plaintiffs decided to seek justice in Guatemala and Canada, they were clear that their main hope was that their struggles for justice would help create fundamental changes in both Guatemala and Canada so that other communities would not have to face the harms and violence they suffered. While they have made remarkable legal strides over the past 7 years (particularly in Canada), the Judge’s recent decision in Guatemala and Hudbay’s apparent involvement in both Guatemala and Canada have significantly raised the stakes.

What funds are used for

On a regular basis, Rights Action is sending funds to Guatemala to help pay for the following expenses of the victims/ witnesses/ plaintiffs, and their family members:

- **Communication costs:** phones and internet
- **Transportation**, in region and country, for community education and organization building work, and for participation in the legal proceedings
- **Health care support:** for people suffering mining-related harms, including the now chronic needs of German Chub, the Lote 8 victims of rapes, and others
- **Emergency response work:** when security measures are needed in response to threats or attacks suffered by any of the victims/ witnesses/ plaintiffs, and their family members
- **Annual commemoration activities:** for the September 27, 2009, day of mining repression
- **Continued rebuilding and development of the Lote 8 community** (that was completely burned and destroyed in 2007)
- **International transportation and expenses** for passports and visas, food and clothing
- **Family support costs** for plaintiffs/ witnesses/ victims for when they travel for justice struggles in Canada and Guatemala

Funds are also needed for Rights Action expenses

- **Travel costs to Guatemala** to carry out a range of work with the victims/ plaintiffs/ witnesses and their family members
- **Educational outreach and activism** in Canada and US

Klippensteins Barristers and Solicitors

To help support the considerable legal costs of the Klippensteins law firm, make cheque to "Klippensteins in Trust, HudBay lawsuits" and send to: Klippensteins Barristers & Solicitors, Suite 300, 160 John Street, Toronto ON, M5V 2E5, Canada

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