

Rights Action  
August 21, 2015

## **Hudbay Minerals/CGN on trial in Guatemala: Snapshots from the trial**

- How to support the Mayan Q'eqchi' victims of Hudbay/CGN mining harms, violations and crimes: See Below

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### **Mynor Padilla, Hudbay Mineral's Former Head of Security, Intimidating Victims In The Court-room**

Snapshots from the trial, by Rebecca Tatham, August 20, 2015

Assigning a weak character to Guatemala's judicial system is by no means a novel claim. It has been well documented that historically and on-going today, this system has been riddled with corruption, manipulation, racism and impunity.

Reading about these systemic ills is one thing, but witnessing some of them in the courtroom is a whole other experience. Here, I share some observations as an international observer in the trial of Mynor Padilla, former head of security of HudBay Minerals/CGN (Guatemala Nickel Company), who is accused of the serious injury of several campesinos, the shooting-paralysing of German Chub Choc, and the killing of Adolfo Ich Chaman on September 27, 2009.

On Tuesday, August 4th and Wednesday August 5th, 2015, I arrived at the courthouse in Puerto Barrios, a port city on the Caribbean coast of Guatemala, with Angelica Choc, the widow of Adolfo Ich, with her legal support team of Patricia Quinto, Isabel Solis and Martha Garcia, with two community members from Angelica's community in El Estor, and with my friend Tatyana Benkert.

#### **Mynor Padilla and Family Intimidation Tactics**

Upon arriving at the courthouse, we proceeded directly to the assigned courtroom named "Sala A". "Sala A" is the largest of three courtrooms and located on the second level of the courthouse. When we entered the courtroom at approximately 1:15 pm (the trial was set to begin at 1:30pm), all the above mentioned persons were present in addition to two ACOGUATE observers.

A few minutes later, the accused Mynor Padilla entered the courtroom accompanied by who I perceived to be his family - a group of 8-10 people. Because of my familiarity with this case, I had seen pictures of Mynor Padilla, so his large physical stature did not catch me off guard.

What did come as a shock however, was the arrogant and pretentious way that he acted in the courtroom. Although still handcuffed (but with no security guards present), the accused roamed the courtroom freely, joking around and laughing with his family.

At one point, he walked over and stood within a few feet from Angelica who was seated against the far wall patiently waiting for the trial to start. Given the gravity and sensitivity of the accused crimes, I was appalled by his behaviour in the courtroom. Not only did he appear to be the least bit remorseful, or worried about the trial, but he went out of his way to intimidate those present.

I soon realized this intimidation tactic extended beyond the accused and included his family. This was evidenced in two clear examples.

The first occurred soon after the accused and his family entered the courtroom. The seating arrangement in the large courtroom is divided in such a way to provide space for those supporting the defense and the prosecution. Because we had arrived prior to the accused and his family, we occupied the seats located on the far side of the courtroom. When the family of the accused entered, rather than seating themselves on the near side which was completely empty, they integrated themselves in the few remaining chairs left amongst our group. They continued to laugh and joke around amongst themselves while the rest of us remained silent. I felt incredibly uncomfortable and this was no doubt their goal.

At approximately 1:35 pm, a man walked into the court room and advised all present that there was a change in courtroom. No reason was given for this change. Before we could even stand up from our chairs, Mynor Padilla and his family were out the door and heading to the newly assigned courtroom. When we reached the door of the courtroom, just a few feet from the original, I was shocked to see that it was a fraction of the size of the previous room. Moreover, Patricia Quinto, one of Angelica's lawyers, was in a heated conversation with a couple members of the Padilla family who had occupied the little standing space available for observers and were physically – and verbally - refusing our entry into the courtroom.

Stuck at the entrance to the courtroom, and listening to this exchange, I decided to try my luck and ask the family to allow our entry as we also had rights as international observers to be present at this trial. My request was not acknowledged by the family. The exchange continued for a few minutes longer before Patricia Quinto stood up, grabbed my arm and physically pulled me (and one ACOGUATE observer) into the back of the courtroom, displacing a couple of the Padilla family members. The family was furious that we had entered the courtroom. They continued to complain amongst themselves before finally quieting down when the judge entered the courtroom.

The trial had not even started and the tensions were off the chart. I could not believe what I had already witnessed and it was so clear that intimidation was the order of the day for the Padilla family.

### **Mynor Padilla Has A Sympathetic Judge**

The trial was finally about to begin. However, before the judge even had a chance to greet the courtroom, Mynor Padilla's hand was in the air requesting permission to speak. This would be one of many occasions in the following two days that the accused would put in personal requests to the judge. In this instance, he was requesting that his handcuffs be removed immediately.

Other requests included: not to put any ice in his water; he not be handcuffed behind his back as it hurt his wrists; that he be allowed to spend the night in custody in Puerto Barrios rather than being transferred to Zacapa - this trip, he claimed, was very tiring for both he and his family.

Besides the obvious ridiculousness of these requests (as if he were the victim in this case), I was most taken back by the judges sympathetic posture towards the accused and her lack of concern for the true victim, Angelica.

For example, in granting that the accused handcuffs be removed the judge did not for one instance consider Angelica, who, given the space restraints of this room was seated within arm's reach (half a foot) of her husband's murderer. Again, I am no legal expert but I view this as a blatant violation of the plaintiff's rights, particularly those concerning her wellbeing and comfort in the court setting.

### **Double Standard Treatment**

Another questionable call made by the judge concerned the prosecution's request that one of Angelica's lawyers be substituted for the following hearing. After listening to this request put forth by the prosecution, the judge became visibly frustrated, citing various articles in the penal code as to why this was a problem. I am not familiar with Guatemalan penal code, but considering that the defense had substituted one of their lawyers that same day, I was confused as to why the judge was causing so many problems for the prosecution.

These instances of partiality by the judge were "semi-addressed" by Angelica's lawyer Patricia Quinto at this point in time. I use the term "semi-addressed" because the judge shut down any potential dialogue on this matter before it even started.

While the judge was successful in silencing the lawyers she was unsuccessful in doing to same with Angelica.

### **Angelica Speaks**

Without hesitation, Angelica spoke up, and vocalized not only the discomfort she felt as a direct result of the intimidation of Mynor Padilla and his family, but also the blatant racism and bias backing the judge's decisions that day. As expected, Angelica's denouncement was not well-received by the judge who quite literally, had a complete meltdown in front of all those present.

In a long-winded response to Angelica's concerns, the judge strongly denied her claims of intimidation and bias and vehemently insisted that she was a fair and impartial judge. Moreover, in a state of pure frustration, she stated at least couple times that she actually has no interest in this case and that she would be happy to be rotated out. She said that for the distance she needs to travel (she was transferred to Guatemala City after the trial commenced in April) she would prefer not to be involved with this trial.

I understand that she was taken back that Angelica would talk so clearly and forthrightly about racism and legal bias, but I was completely shocked that she openly admitted that she had zero interest in this case. She even defended herself and her work to two international observers from ACOGUATE outside of the main courtroom, in the main hallway of the courthouse.

If this judge was impartial as she claimed to be, why was it necessary for her to further justify herself to international observers outside of the courtroom? This was an extremely odd situation.

Although there was significantly less tension in the courtroom the following day, I could not help but think that it was only a matter of time before the true colours of the judicial system would show themselves again. I will be able to re-evaluate this once again the 17/18th of August when I return to Puerto Barrios to observe the next set of trials.

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To support the Mayan Q'eqchi' victims/plaintiffs as they struggle to end the impunity of Hudbay and CGN and achieve justice in the criminal trial in Guatemala and the precedent setting civil lawsuits in Canada, make check payable to "Rights Action" and mail to:

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#### ***"Defensora"***

Screen this award winning film by Rachel Schmidt that documents the lives and vision of the Mayan Qeqchi people and their efforts to seek justice in Canadian courts against Hudbay Minerals and CGN.

- Trailer/Information: [www.defensorathefilm.com](http://www.defensorathefilm.com)

#### **More Information**

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