

Freeing the killer, Criminalizing the victims! Decision rendered in trial against Hudbay Minerals head of security in Guatemala: 3 appeals pending

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(Day #5, [#CDNMiningImpunity](#) research trip to Guatemala for book “Mining Impunity in the Aftermath of Guatemala’s Genocide: The Violence of Contemporary Predatory Mineral Exploitation”, co-edited by Catherine Nolin and Grahame Russell)

On May 19, 2017, Judge Ana Leticia Pena released (over a month late) her full decision, acquitting Mynor Padilla, Hudbay Minerals/CGN ex head of security, of charges related to the murder of Mayan Q’eqchi’ community and environmental defender Adolfo Ich, the shooting-paralyzing of German Chub, and the shooting wounding of 6 other men from Las Nubes.



(Mynor Padilla, ex Lieutenant Colonel in Guatemalan army, ex head of security for Skye Resources and Hudbay Minerals.)

Furthermore, Judge Pena ordered criminal investigations into the two State prosecutors and over 10 victims and witnesses, including Angelica Choc and her children.

Even in the context of Guatemala's well-documented judicial corruption, this is an outrageous decision. It will be appealed by the Guatemalan Attorney General's office, CICIG (the International Commission Against Impunity in Guatemala) and the lawyers for Angelica Choc. Once these 3 appeals are filed, within 10 working days, the appeals court will likely (though not automatically) announce dates for public hearings.

Stay tuned. Human rights accompaniment support and funds needed for Angelica Choc and the other Q'eqchi' participants in this amazing, risky trial.

Below:

- Statement by Klippensteins Barristers & Solicitors (lawyers in the precedent setting Hubday Minerals/CGN lawsuits in Canada)
- Rights Action summary of the Padilla criminal trail: "Timeline and some key issues"

Alleged Killer in Canadian Mining Company Lawsuit Acquitted in Guatemala

Klippensteins Barristers & Solicitors press advisory

April 6, 2017 – Toronto, CANADA/Puerto Barrios, GUATEMALA

A Guatemalan court today acquitted Mynor Padilla of murdering Guatemalan community leader and indigenous activist Adolfo Ich in 2009, when Padilla was the head of security for a large mine in Guatemala then owned by Canadian company Hubday Minerals. Padilla was also acquitted of the point blank shooting of another community member German Chub, now paralyzed for life.

The killing and shooting are key parts of ongoing lawsuits proceeding in Canadian courts against Hubday Minerals, brought by Ich's wife Angelica Choc, German Chub and others. The lawsuits in Canada have received worldwide attention as a precedent for holding multinational mining companies liable in their "home" country for abuses at mines they operate abroad.

"Unfortunately, this acquittal in Guatemala is what we always expected and predicted," said Murray Klippenstein, one of the lawyers for Ich's widow. "The Guatemalan legal system is corrupt and seeking justice there is, sadly, hopeless, especially against large international corporate interests like Hubday. It is common for judges to be bribed, witnesses threatened, and powerful interests protected. That's precisely why Angelica's and German's best hope for justice against Hubday has always been in Canadian courts."

In addition to the acquittal, the Guatemalan judge went much farther into unexpected territory by asking for the extreme step that criminal charges be brought against most of those involved in the prosecution of Mynor Padilla, including not only against the victims of the violence, but also various witnesses for the prosecution, and even a prosecutor, for alleged "crimes" such as false testimony, obstruction of justice, forgery of public documents, and document tampering. The court said it would release lengthy reasons for its decision on April 18, 2017.

Mr. Klippenstein commented that “This apparent initiation of criminal charges against the victims and the prosecution is alarming and borders on the truly bizarre. We are awaiting the actual written decision and will comment further then, but for now, it seems to us that this turns justice on its head by attempting to convert victims into criminals, and justifies and amplifies the serious consensus international concerns about the dysfunctionality of the Guatemalan justice system. It is also very sad that a Canadian mining company is part of this mess.”

The “not guilty” verdict comes despite damning eyewitness testimony of the murder, and ballistic and forensic evidence linking both Mynor Padilla and other mine company security personnel under his control to the shooting. The trial featured numerous irregularities and disturbing events, including an order from the judge barring the public and journalists from the court room for alleged “security reasons” for the majority of the trial, the fact that Hudbay funded testimony in support of the accused, and an incident that occurred last September in which the home of Ich’s widow and children was the target of a midnight gunfire attack.

The acquittal of Mynor Padilla has raised fears that the victims and their families may be subject to acts of retaliation and violence for their role in pursuing justice.

The verdict did not change the resolve of Angelica Choc and others to continue pursuing Hudbay Minerals in their Canadian lawsuit. “We never expected justice in Guatemalan courts. We will continue pursuing it in Canadian courts”, she said. A Canadian court issued a landmark decision in 2013 allowing the case to proceed against Hudbay in Ontario.

Guatemala’s dysfunctional criminal justice system

Guatemala’s criminal justice system is one of the weakest and most corrupt in the world. In 2015, Human Rights Watch reported that “rampant corruption within the justice system, combined with intimidation and inefficient procedures, contribute to high levels of impunity.”[1] The Inter-American Commission on Human Rights recently reported that there are “severe problems in administering justice” in Guatemala, and that as a result, over 98.4% of all murders go unpunished.[2] Similarly, the US State Department reported this year that Guatemala’s “judicial system failed to provide fair or timely trials due to inefficiency, corruption, insufficient personnel, and intimidation of judges, prosecutors, and witnesses. Judges, prosecutors, plaintiffs, and witnesses continued to report threats, intimidation, and surveillance.”[3]

Irregularities and threats in Padilla trial

The investigation and trial of Padilla, a former high-ranking officer in the Guatemalan army, was itself beset by procedural irregularities, and threats against various participants.

Though an arrest warrant was issued for Padilla’s arrest shortly after the 2009 shooting, he was not actually arrested for almost three years, during which time he remained on the payroll of

Hudbay's Guatemalan subsidiary. In 2012, he was finally arrested and jailed, but his trial did not begin for another three years. The trial itself has lasted for two years.

During the trial, the judge ordered that the public and journalists be barred from the courtroom for alleged "security reasons", meaning that the majority of the trial took place behind closed doors.

A number of participants were subject to direct and indirect threats during the trial. On September 17, 2016, Angelica Choc's house was shot at in the middle of the night while she slept inside with two young children. 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.

Throughout the trial, other witnesses, complainants and even the prosecution were frequently and threateningly stalked by unidentified men. During the trial itself, Padilla's lawyers specifically requested that criminal charges be brought against various witnesses and the victims themselves for false testimony and conspiracy.

Despite these various threats, the judge did not order security for the victims, their families or any witnesses. Instead, bizarrely, the court did grant Padilla, who was already in police custody, "extra security" in May of last year after his lawyers said he felt harassed on his way to court.

The alleged harassment was recorded on video, and shows Mr. Padilla being escorted to the court in handcuffs by police, and Mr. Padilla approaching various journalists and observers, shaking their hands and smiling.

Padilla's legal defence team itself has been plagued by scandal. In June 2015, Francisco Jose Palomo Tejada, a lawyer known for defending former Guatemalan President Rios Montt in a trial for genocide committed during the Guatemalan civil war, was gunned down in broad daylight, allegedly related to his work with a Guatemalan drug trafficker.

In February 2016, a second Padilla defence lawyer, Frank Manuel Trujillo Aldana, was criminally charged with illicit association, bribery, influence-trafficking, obstruction of justice and collusion in connection with a national corruption scandal which led to the resignation and arrest of the former President and the Vice President of Guatemala.

It appears that Hudbay has bankrolled the entire defence.

Evidence heard by the court

Over the course of two years, the court heard extensive evidence regarding the involvement of Mr. Padilla and mine company security personnel in the murder of Adolfo Ich and the shooting of others. According to the prosecution's closing arguments, this evidence included:

- Physical evidence found at the crime scene proving that Mynor Padilla's gun was fired at the murder site.

- The testimony of eight witnesses that put Mynor Padilla at the scene of Mr. Ich's murder.
- Multiple eyewitness testimony asserting that Mr. Padilla participated in the killing of Mr. Ich.
- Testimony of one of the security managers at the mine stating that Mr. Padilla gave the order to shoot community members.
- Autopsy and other forensic evidence showing that Mr. Ich suffered machete wounds to his head and arms, and then was shot in the head at close range.

Information that the security company hired by the mining company (and whose personnel were accused of the violence) was not authorized to provide any type of security, or to carry firearms – facts which a lawyer for the mining company obscured by falsifying documents.

Based on this evidence, the prosecutor argued during the trial that the killing of Adolfo Ich was not just a murder but rather an assassination.

Meanwhile, the lawsuit against Hudbay in Canada is proceeding. Hudbay has been required to turn over to Angelica's lawyers thousands of internal corporate documents, which her lawyers are now reviewing.

Klippensteins, Barristers & Solicitors

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[1] Human Rights Watch, World Report 2015: Guatemala, <https://www.hrw.org/world-report/2015/country-chapters/guatemala>

[2] Inter-American Commission on Human Rights, Country Report: Guatemala, <http://www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf> at paras. 20 & 369.

[3] US Department of State, Guatemala 2016 Human Rights Report <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265590>

Trial of Mynor Padilla: Timeline and some key issues

By Grahame Russell, Rights Action, April 3, 2017

On April 6, 2017 - seven and a half years after the September 27, 2009 targeted killing of Adolfo Ich and shooting-paralyzing of German Chub; four and a half years after Mynor Padilla (Hudbay's head of security) was finally captured; two years after this courageous criminal trial began - Judge Ana Leticia Pena will make her decision. (See Klippensteins Press Advisory, above)

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, and government and private sector repression, corruption and impunity - for impoverished, discriminated Mayan villagers to publicly tell the truth about mining repression and human rights violations they suffered, and demand justice in Guatemala's notoriously weak and corrupted legal system.

Hope for justice / Prepare for impunity

While a finding of guilt is what should happen, the victim-plaintiffs are under no illusion as to what the Judge might decide. Firstly, Padilla has the support of the Guatemalan economic elites and their global mining partners. Secondly, he was an officer in the Guatemalan military. Guatemala's economic and military elites are not used to facing justice; the country's legal system remains characterized by corruption and impunity for the wealthy, powerful sectors (including mining companies).

Timeline / Some key issues

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, and sold CGN in 2011 to the Solway Group, a Cyprus-based company.

September 27, 2009 – Deadly mining repression

On this day, Hudbay/CGN security guards, under the command of Mynor Padilla, illegally entered the Mayan Q'eqchi' [Kek-Chi] community of La Union, municipality of El Estor, department of Izabal, in eastern Guatemala. They shot live bullets at, and over the heads of gathered community members. At one point, Padilla looked to his side, saw a community member – 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 singled out and illegally detained Adolfo Ich, a father of five, respected community leader and teacher. They machete hacked his body and shot him. Padilla and the guards dragged Adolfo through a fence onto Hudbay/CGN property, where he was later found dead.

Padilla – Fugitive from justice, on 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.

2010-2011 – Hudbay Minerals lawsuits in Canada

In Canada, Angelica Choc (widow of Adolf Ich), German Chub and 11 women from the village of Lote 8 filed lawsuits in Canadian courts (represented by Klippensteins Barristers and Solicitors) against Hudbay and CGN for the death of Adolfo, shooting of German and gang-rape of the women in 2007 by CGN security guards (then owned by Skye) during an illegal, forced eviction of their community.

September 2012 – Padilla captured

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.

Separate legal proceedings / Some overlapping issues

The criminal trial in Guatemala is completely separate from the civil lawsuits in Canada. Some of the issues clearly overlap. There are no legal implications for Hudbay or CGN in the criminal trial in Guatemala. It is a trial against one man, for the killing and shooting.

On-going threats and intimidations

Starting in 2013, Rights Action and, separately, Klippensteins have found it necessary to write letters, a number of times, to Hudbay and CGN, and other government offices, denouncing threats and attacks that Angelica, German, the 11 women and their family members have received, regularly, from people working for, or linked to the CGN company, and/or linked to the family of Padilla. The most threatening attack was September 17, 2016 and the most recent threats on March 7-8, 2017 (see below).

“Concocted stories”

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

Moreover, when intimidating Angelica, German and/or the 11 women, the people doing so – whether CGN employees or people linked to Padilla’s family – repeat arguments also made by Padilla’s lawyers in Guatemala, and by Hudbay/CGN lawyers 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.

April 2015 – Trial begins

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.

Padilla’s revolving door of lawyers

It is widely suspected that Hudbay – from Toronto – is paying for Padilla’s team of well-connected criminal defense lawyers. When asked in 2016 by the Toronto Star to confirm this, Hudbay provided a murky answer: “We are not going to say 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>)

It is not clear as to how much of Padilla’s legal defense strategy and tactics Hudbay and its lawyers might be directing from Toronto.

June 3, 2015 – Padilla lawyer killed by hit squad

On this day, Francisco Jose Palomo Tejada was shot 12 times, midday in downtown Guatemala City. Besides representing Padilla, Palomo was a lawyer for general Rios Montt who was 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, known as the "Queen of the south", now in jail in the U.S.) who laundered money for the Mexican Sinaloa drug cartel.

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

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.

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

Angélica filed a motion that Judge Ana Leticia Peña be removed on grounds of racial discrimination against the Q'eqchi' victims/ witnesses/ accusers. The Padilla trial was suspended while this motion was resolved.

January 27, 2016 – Motion dismissed on a procedural technicality

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.

February 8, 2016 – Trial closed to public

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

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

A second defense lawyer, Frank Manuel Trujillo Aldana, was charged with illicit association, bribery, influence-trafficking, obstruction of justice and collusion, all linked to the "la línea" 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.

September 17, 2016 – Angelica's home shot up at midnight

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 to date that the victims/ witnesses/ accusers have received. 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 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."

December 2016 – Possible Hudbay/CGN collaboration with military "Kaibil" special forces

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.

March 7-8, 2017 – Threats and intimidations to the end

The final days of hearings were very tense. Angélica and German's closing statements to the court were an ordeal in and of themselves - having to relive traumatic experiences. They then had to leave Puerto Barrios under police escort after reporting that suspicious characters had been following them. Angélica and German were accompanied in Puerto Barrios 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 CGN 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.

April 6 – Decision day

Rights Action calls for journalists, human rights observers and activists to be present at the courthouse in Puerto Barrios as a show of respect and support for Angelica, German, their families and supporters, and to report on what happens.

Possible repression

Whatever decision the Judge lays down on April 6, there exists a real possibility of repression against German, Angelica and their families and supporters, after the decision is made public, for their courage in seeing this trial through. As we have done since 2009, Rights Action holds

Hudbay and CGN partially or fully responsible for any repression or crimes that German, Angelica and their families and supporters might suffer.

Justice struggle on-going struggle

Depending on the April 6 outcome, there could well be appeals; this courageous trial may well continue. Moreover, the precedent setting civil lawsuits against Hudbay/ CGN continue slowly but surely in Canada.

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Forthcoming book

“Mining Impunity in the Aftermath of Guatemala’s Genocide: The Violence of Contemporary Predatory Mineral Exploitation” (provisional title)

Catherine Nolin and Grahame Russell are in Guatemala – along with photo-journalist James Rodriguez and journalist Sandra Cuffe - carrying out final interviews for a forthcoming book “Mining Impunity in the Aftermath of Guatemala’s Genocide: The Violence of Contemporary Predatory Mineral Exploitation”, to be published in late 2017, early 2018.

More information

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