

Guatemalan Appeal Court Overturns Acquittal of Mynor Padilla, Alleged Killer in Canadian Mining Company (Hudbay Minerals) Lawsuit

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(Angelica Choc, German Chub and their lawyers Lic. Patricia Quinto and Lic. Martha Garcia)

In a correct but surprising decision (given Guatemala's entrenched corruption), an Appeal court overturned the April 2017 acquittal (and release from jail) of Mynor Padilla – former head of security for Hudbay Minerals; former Lieutenant Coronel in the Guatemalan army – on charges of mining related murder, aggravated assault and assault.

- Below: Press advisory, Klippensteins Barristers & Solicitors

All respect to Angelica Choc, German Chub, their witnesses and their lawyers Patricia Quinto and Martha Garcia – the criminal trial was not only deeply flawed, but very risky. After a 2 year trial characterized by procedural and substantive irregularities, and by racism, the lower court judge rendered her stunningly poor decision in April 2017, that now – properly and thankfully – the Appeal court has overturned. (Background: Rights Action report, April 2017, “Mining repression and impunity in Guatemala: Killers go free, Victims are accused”, <http://mailchi.mp/rightsaction/mining-repression-and-impunity-in-guatemalaskillers-go-free-victims-are-accused-rights-action-fundraising-newsletter>)

September 15, 2017 Press advisory
Klippensteins Barristers & Solicitors

Guatemalan Appeal Court Overturns Acquittal of Alleged Killer in Canadian Mining Company Lawsuit

(Toronto, CANADA/Puerto Barrios, GUATEMALA)

On September 14, 2017, a Guatemalan appeal court overturned all aspects of the April 6, 2017 judgment acquitting Mynor Padilla of charges of murder and aggravated assault at a mine owned by Canadian company Hudbay Minerals Inc. in 2009, and ordered that the matter be tried again by a new judge.

Padilla will now face a second prosecution for the murder of Guatemalan community leader and indigenous activist Adolfo Ich in 2009, when Padilla was the head of security for mine in Guatemala then owned by Canadian company Hudbay Minerals. Padilla will also be retried regarding 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 Hudbay Minerals and its former Guatemalan subsidiary Compañía Guatemalteca de Níquel (CGN), 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.

Angelica Choc is relieved and heartened by this recent development in Guatemala, which goes a long way to validate the grave concerns she and her lawyers had regarding the many major problems with the original trial. The now-overturned "not guilty" verdict came despite damning eyewitness testimony of the murder of Ich, and ballistic and forensic evidence linking both Mynor Padilla and other mine company security personnel under his control to the shooting.

The original trial also 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.

Angelica Choc and others continue to pursue Hudbay Minerals and its former subsidiary CGN in their Canadian lawsuit. A Canadian court issued a landmark decision in 2013 allowing the case to proceed against Hudbay and CGN in Ontario. Hudbay and CGN have been required to turn over to Angelica's lawyers thousands of internal corporate documents, which her lawyers are now reviewing.

The struggles of Guatemala's legal system

Guatemala's criminal justice system remains 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

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.

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 the original 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 a 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 CGN. 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.

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>

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.

More information can be found at www.chocversushudbay.com

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Special Funding appeal: \$20,000. (All donations welcome)

Since 2010, Rights Action has been funding and closely working with the Mayan Q'eqchi' victims of mining repression, as they work for justice in Guatemala and Canadian courts. As we wait now to see if Mynor Padilla's lawyers will challenge the Appeal Court ruling, the precedent setting "Hudbay Minerals/CGN" lawsuits are advancing in Canada.

Over the course of three weeks in November 2017, thirteen Mayan Q'eqchi' plaintiffs are coming to Toronto, Canada, from their remote, impoverished region of rural Guatemala to be cross-examined by Hudbay Minerals' lawyers. 11 of the plaintiffs are Q'eqchi' speakers who speak no Spanish, let alone English. Most have never travelled to the capital city of Guatemala; none have left the country.

Rights Action is coordinating all aspects of the travel, room and board, clothing, passports and visas for them. Please make a tax-charitable donation and help us raise \$20,000 to cover these short-term costs. Please share this information with your networks of family members and friends. These truly are precedent-setting cases in Canadian legal and mining policy history.

Tax-Deductible Donations (Canada & U.S.)

To support the work and struggle of the Mayan Q'eqchi' people in defense of their communities, human rights and environment, and for justice in Guatemala and Canada, make check payable to "Rights Action" and mail to:

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