

## Will justice be possible in Canada or Guatemala for Hudbay Minerals mining repression?

By Grahame Russell, May 22, 2020

<https://mailchi.mp/rightsaction/will-justice-be-possible-in-canada-or-guatemala-for-hudbay-minerals-mining-repression>

In a Financial Post interview, January 23, 2020, Hudbay Minerals president and CEO Peter Kukielski said Hudbay would settle the landmark Hudbay Minerals lawsuits: “We obviously want to get that behind us.” (<https://business.financialpost.com/commodities/mining/hudbay-minerals-seeks-to-extract-value-from-its-own-camp-before-joining-ma-frenzy>) Kukielski was interviewed by the Financial Post right after the Ontario Superior Court ruled against Hudbay in an Amendments motion hearing, confirming that Hudbay can be held legally accountable for the rapes committed by company security personnel, and the Guatemalan police and soldiers.

### Appeal filed

Within weeks of Kukielski stating that Hudbay would settle, Hudbay’s team of lawyers at Faskens filed a motion to appeal the decision.

The same Financial Post article reported that Hudbay had spent millions of dollars litigating the cases and that one of its lawyers – Robert Harrison, of Faskens - billed at \$925 an hour in 2015. So, a few million more ...

So it goes. More delays for Hudbay. More billable hour for its team of lawyers.

So it goes for the plaintiffs. They have lived in increased impoverishment and vulnerability since the Hudbay/Skye Resources evictions and violence in 2007-2009, and are suffering further now as Covid19 ravages the lives of people living in pre-existing conditions of impoverishment, racism and other vulnerabilities.

Yet, as Angelica Choc (one of the plaintiffs) said in a recent message to Hudbay’s 2020 AGM:

*“Hudbay can continue to play with our poverty and suffering but we will continue to fight on this long road in search for justice and dignified reparation for all the harm they caused in 2007 and 2009.”* (View: <https://youtu.be/avQcpLkTotY>)

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### Back to the beginning

Every now and then there is a human rights/ territory/ environmental defense struggle that breaks through the thick walls of global corporate corruption and impunity. The Hudbay

Minerals lawsuits in Canada, and the Mynor Padilla criminal trial in Guatemala, are two such inter-connected struggles.

The issues at hand - mining-linked repression; collusion between corrupt and repressive governments, mining companies, police and military; impunity and corruption - are similar to many cases of corporate wrong-doing and criminality around the world that never make it into the courts of the home countries of the corporate criminals and wrong-doers, that politicians and the media in the home countries pay little or no attention to.

The Hubday lawsuits begin to get to the heart of how the unjust global economic order often works. Extraordinarily, thirteen exploited and impoverished, violently evicted, raped and shot at Indigenous people from a remote corner of a distant country (Guatemala) have brought their mining company accountability struggle to the home country (Canada) and city (Toronto) of a powerful global company. They have brought their justice struggle to the corridors of wealth and power in the global mining industry.

[Read: "The Hubday Minerals lawsuits: Clashing world views at the legal crossroads: the Avatar movie overlaps with a John Grisham novel", <https://rightsaction.org/articles/hudbay-minerals-lawsuits-clashing-world-views-at-the-legal-crossroads-2013-article>]



Rosa Elivira Coc and Angelica Choc, November 2012, in Toronto for examinations for discovery (depositions) during Hubday's pre-trial motions to dismiss the lawsuits before trial. Photo: Grahame Russell

### **The partnership**

There are a number of reasons why these particular struggles continue to painstakingly overcoming legal, jurisdictional and political obstacles (including on-going repression); and why these struggles will overcome the Covid19 delays and any other obstacles that benefit Hubday and the accused Mynor Padilla in Guatemala.

They proceed in the context of years of activism that has led to increased awareness in Canada about the violence and harms, impunity and corruption with which global corporations and investors often operate, and the increased awareness about the fact that there is almost no way to hold them legally or politically accountable in the countries where the harms and crimes are occurring, nor in Canada, a country that touts itself a democracy upholding the values of human rights, good governance, transparency, the rule of law and right to justice!

More specifically, these cases proceed due, firstly, to the courage and strength of the thirteen Q'eqchi' plaintiffs, victims and survivors of mining repression who are now protagonists in these struggles for justice.

Secondly, these cases proceed due to the legal acuity and deep commitment of their lawyers in Canada and Guatemala. And they proceed due to a trusting partnership between the plaintiffs and Rights Action that began in 2004 and has continued as the civil lawsuits were filed in Canada in 2010, and the criminal trial began in Guatemala in 2015. Rights Action maintains close working and support relations with the plaintiffs and their Canadian and Guatemalan lawyers.

### **The plaintiffs in Canada**

In Canada, there are three over-lapping cases:

- Caal v. Hudbay: Margarita Caal Caal, Rosa Elvira and 9 other Mayan Q'eqchi' women are plaintiffs from the remote community of Lote 8 who were gang-raped in January 2007 by company security guards, police and soldiers during an illegal, violent eviction that resulted, also, in the complete destruction of their community;
- Choc v. Hudbay: Angelica Choc is the plaintiff, widow of community leader Adolfo Ich, singled out and killed by company security guards on September 27, 2009;
- Chub v. Hudbay: German Chub is the plaintiff, shot and left paralyzed by the company security guards the same day Adolfo Ich was killed.





In Toronto, November 2017, lawyer Murray Klippenstein speaks with Angelica Choc, Carmela Caal and two other Lote 8 women during a break in examinations for discovery (depositions).



German Chub and Angelica Choc, with lawyer Cory Wanless and Grahame Russell (Rights Action), in Toronto, July 2018, for examinations for discovery (depositions) by Hudbay's lawyers.



In Guatemala, Angelica and nine of the women from Lote 8.

### **The accusers in Guatemala**

In Guatemala, two of the plaintiffs (Angelica Choc, German Chub) are pursuing justice in a criminal trial against Mynor Padilla, a former lieutenant-colonel in the Guatemalan army and

former head of security for Skye/Hudbay/CGN at the time of the mining repression they suffered.

I recommend watching “Defensora” (<https://youtu.be/G-1qQoUEeO8>), an award-winning film made in 2013 by Rachel Schmidt that movingly provides some of the back story about the Q’eqchi’ peoples’ struggles to reclaim their ancestral lands and to seek justice in Canadian and Guatemalan courts for this mining related repression.

### **A bit of history: Canadian mining in the Q’eqchi’ region**

Going back to the 1960s, the Q’eqchi’ people of El Estor have suffered repeated waves of repression linked to mainly Canadian mining companies. It began with INCO (International Mining Company) in the 1960s, 70s and early 80s; continued in 2004 with Skye Resources and then Hudbay in 2008 (when Hudbay bought Skye); and continues since 2011 with the Solway Investment Group, when Hudbay sold its mining interests to the Switzerland-based company.

No justice was ever done in Guatemala or Canada for INCO’s mining repression carried out together with Guatemalan military regimes, including killings, shootings and violent evictions. Some of this INCO-linked repression was documented in the United Nations’ 12 volume “Memory of Silence” truth commission report published February 1999.

Panzos massacre: Further to the INCO-linked repression documented in the United Nations’ report, there are direct links between INCO’s mining operation and the infamous “Panzos massacre” of hundreds of Q’eqchi’ villagers on May 29, 1978, committed by the U.S.-backed Guatemalan regime. These links have never been properly investigated or reported on in Canada.

[Read: “Canadian Companies Mining With The Genocidal Generals In Guatemala”, <https://rightsaction.org/articles/canadian-companies-mining-with-the-genocidal-generals-in-guatemala>]

### **Courageous criminal trial**

While the criminal trial in Guatemala is not a legal precedent in the same way as the lawsuits in Canada, it is more risky and courageous. Mynor Padilla, Hudbay/Skye/CGN’s former head of security, was a lieutenant-colonel in the Guatemalan army. He joined the U.S.-backed military regime in 1981 during some of the worst years of State-sponsored disappearances, torture and rape, assassinations, massacres and genocide.

In Guatemala, it is no small thing for impoverished, discriminated Mayan people to seek justice against an army officer represented by a team of well-connected Guatemalan defense lawyers who are, in all likelihood, paid by Hudbay from Canada.

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## **Timeline & highlights: Hudbay Minerals lawsuits**

**Lawsuits filed – 2010, 2011**

The lawsuits were initiated in Toronto in 2010 and early 2011. Hudbay's then-owned subsidiary CGN is included in the lawsuits not only as the former subsidiary of Hudbay, but also – in the Choc v. Hudbay case – as a co-defendant. Notably, a foreign company might be held directly liable, itself, in a Canadian court for human rights violations in a foreign country.

### **Landmark decision – July 22, 2013**

After three years of pre-trial motions brought by Hudbay to dismiss the lawsuits before trial, the Superior Court of Ontario Justice Carole Brown ruled that the lawsuits can go to trial in Canada. This represented a historical leap forward in Canadian corporate accountability; a long overdue victory for work and struggle to begin to hold global corporations accountable for human rights violations, environmental destruction, etc., that they cause and profit from.

### **Corporate and media reactions**

The New York Times says the Hudbay cases have “sent shivers through the vast Canadian mining, oil and gas industry.”<sup>[1]</sup> The Toronto Star notes that the lawsuits “have potentially explosive consequences. If Hudbay is found liable, the case could establish corporate behaviour guidelines for Canadian mining subsidiaries overseas, which have a long history of human rights and environmental complaints.”<sup>[2]</sup> CBC's news program “The National” says the cases are sending “shockwaves through the glass and steel corridors of corporate Canada.”<sup>[3]</sup>

### **Liability and accountability not just for mining industry**

A lawyer with the corporate law 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.”<sup>[4]</sup> Other elite Canadian resource company law firms note that “Hudbay serves as a warning for Canadian corporations operating in foreign countries that they could potentially face civil liability in Canada for wrongs committed in foreign countries,”<sup>[5]</sup> and that “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.”<sup>[6]</sup>

### **Opening the flood-gates – A trickle coming through**

Furthermore, the Hudbay lawsuits helped pave the way for similar lawsuits against Canadian companies that committed human rights abuses abroad:

- Nevsun Resources case, regarding forced labour and slavery at a mine in Eritrea;
- Tahoe Resources case, regarding shootings-maimings at a mine in Guatemala. (The Tahoe lawsuit, filed in 2014, was settled in 2019);

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<sup>1</sup>[New York Times](#), “Outcry Echoes Up to Canada”, April 3, 2016.

<sup>2</sup>[The Toronto Star](#), “Mayan families' quest for justice against Canadian mining company HudBay”, June 20, 2016.

<sup>3</sup>[CBC News, The National](#), “Guatemalan Villagers counter Hudbay's denials”, May 27, 2015.

<sup>4</sup>[Financial Post](#), “Canadian mining companies face lawsuits over foreign activities”, Dec. 10, 2014.

<sup>5</sup>[Bennet Jones](#), “A Warning for Canadian Corporations with Foreign Subsidiaries”, July 30, 2013.

<sup>6</sup>[Osler](#), “Ontario Court Gives Green Light to International Human Rights Tort Claims in Choc v. Hudbay Minerals Inc.”, July 26, 2013.

- Loblaws/Joe Fresh case, regarding the Rana Plaza garment factory collapse in Bangladesh resulting in over 1000 deaths.

### **Disclosure - 2014-2017**

Once the Ontario court ruled in 2013 that the lawsuits can go to trial in Canada, both sides were required to disclose all information relating to any aspect of the lawsuits.

### **All the legal delays money can buy?**

As Hudbay was not properly complying with disclosure requirements, lawyers Wanless and Klippenstein were obliged to go to court in 2015 – another ‘mini-trial’ within the lawsuits, like Hudbay’s pre-trial motions to dismiss - to obtain a court order forcing Hudbay to properly disclose extensive normally confidential corporate (Hudbay/Skye/CGN) information.

In late 2016, Wanless and Klippenstein received some 19,000 documents (emails, texts, correspondence, policy statements, reports, photos, etc.) and spent months reviewing them.

### **Discovery - 2017-2018**

Upon completion of the disclosure process (though there may have to be another ‘mini-trial’ as it is not clear whether Hudbay has properly disclosed all relevant corporate information), the lawsuits entered the examinations for discovery (depositions) phase wherein Wanless and Klippenstein questioned Hudbay/Skye/CGN company officers on the record, and Hudbay’s team of lawyers questioned the 13 plaintiffs.

### **Emotional, empowering trips north**

Over the course of 3 weeks in November 2017, and one week in July 2018, all 13 plaintiffs took turns traveling from their remote villages in eastern Guatemala, to spend up to a week at a time in Toronto, Canada, being cross-examined by Hudbay’s lawyers in one of the iconic “TD Towers”, at the corner of King St. and Bay St., in downtown Toronto.





View a series of photo-essays prepared by the author while supporting the plaintiffs during their amazing, and sometimes very sad and hard journeys to Canada:

<https://rightsaction.org/articles/resources-hudbay-minerals-lawsuits-articles-films-videos>.

#### **Amendments motion - November 8, 2019**

Then came an amendments motions (another 'mini-trial' within the lawsuit) heard November 8, 2019, before the Ontario Superior Court. Another case of 'all the legal delays money can buy'?

What made this 'mini-trial' necessary was that in 2018, eight years into the lawsuits, Hudbay challenged an important position of the plaintiffs in the *Caal v. Hudbay* case (addressing the gang-rape of the 11 women). Hudbay now claimed that even though Skye Resources-CGN made direct payments to the Guatemalan police and military to help plan and carry out the violent evictions of the Lote 8 village together with Skye/CGN security guards (under the command of Mynor Padilla), Hudbay/Skye should only be held legally accountable for the actions of their security guards.

Hudbay's position took the plaintiffs and their lawyers by surprise. They argued since the beginning that the lawsuits were to hold Hudbay accountable for the gang-rapes of the women that occurred during a mining company ordered violent eviction, whosoever committed them.

Canada's Financial Post reported on the Amendments motion hearing:

*"Several of the plaintiffs in the case, including one present Monday, in documents filed in the case, describe the trauma — being tied, beaten and gang-raped in front of their children — in excruciating detail while under examination by Hudbay's lawyers at Fasken, Tracy Pratt and Robert Harrison. [...] A representative for Hudbay Minerals, who was present in the courtroom, referred questions to the company's lawyers, who declined to comment."*



[Read: “‘They burned everything’: Guatemalan women press Hudbay Minerals on human rights claims in closely watched case”, <https://business.financialpost.com/commodities/indigenous-guatemalan-women-travel-to-toronto-to-press-hudbay-on-human-rights-claims>]

### **Judgement for the plaintiffs – January 21, 2020**

On this day, the Ontario Superior Court found for the plaintiffs on all points argued in the Amendments motion hearing, confirming that Hudbay can be held legally accountable for the rapes committed by company security personnel, Guatemalan police and soldiers.

*“On Wednesday, [Hudbay Minerals] lost its latest motion to block the [Guatemalan] plaintiffs from amending their complaint to add new details about the assaults, allegedly perpetrated by private security forces, military and the police. [...]*

*“Documents from the case suggest Hudbay has likely spent millions of dollars litigating the case [since 2010]. Cost outlines show that one of its lawyers at Fasken, Robert Harrison, billed at an hourly rate that equated to \$925 an hour in 2015, and plaintiff lawyers involved in the case said litigation has involved hundreds of hours at minimum.”*

[Read: “Hudbay Minerals seeks to ‘extract value from its own camp’ before joining M&A frenzy”, Financial Post, January 23, 2020, <https://business.financialpost.com/commodities/mining/hudbay-minerals-seeks-to-extract-value-from-its-own-camp-before-joining-ma-frenzy>]

### **Skeletons in the closet (a.k.a. corporate “dirty laundry”)**

As part of Wanless and Klippenstein’s arguments in the Amendments motion, they filed into the court record a batch of previously confidential Hudbay/Skye/CGN corporate documents. The 19,000 corporate documents provided by Hudbay - as part of the disclosure phase of the lawsuits – have brought to light a range of corporate wrong-doing, if not, arguably in some cases, corporate criminality.

### **Illegitimate payments to Guatemalan military and police**

While only a small portion of the 19,000 corporate documents have been filed into the court record (for the Amendments motion hearing, November 2019), and therefore made public, we now know that Skye/CGN made payments of hundreds of thousands of dollars to the Guatemalan police and military for their role in planning and carrying out the violent evictions of various Q’eqchi’ villages in 2007, including those of January 9 and 17 in the village of Lote 8. These payments were made with no contracts, written agreements or invoices.

### **Terrorizing helicopter over-flights**

We now know that Skye/CGN corporate officers approved the decision to carry out an increasing number of flights in company helicopters, at ever lower levels, over the village of Lote 8 with the intention of scaring them into leaving their homes and lands. Skye/CGN did this because people in their employ told them that the U.S.-backed Guatemalan military regime used these same terrorizing overflight tactics during the years of Guatemala’s U.S.-backed massacres and genocides in the 1980s.

### **“No negotiation” related to unresolved land claims issues**

We now know that leading up to and during the January 2007 evictions of Lote 8 (and other villages), Skye/CGN took a “no negotiation” position with respect to participating in or responding to legitimate land claims processes initiated by Q’eqchi’ villagers related to the ownership of their lands. Skye/CGN took concrete steps to avoid or block any legal proceedings that would support the Q’eqchi’ claims to be the rightful owners of the lands in question. Skye/CGN took steps to avoid or block any efforts by government agencies, the Catholic Church and/or non-government organizations to negotiate a peaceful solution to the underlying lands disputes between the Q’eqchi’ inhabitants of the lands and Skye/CGN.

### **CEO Peter Kukielski says Hudbay will settle lawsuits – January 2020**

In a Financial Post interview after the most recent court decision against Hudbay, CEO and president Kukielski said he had “no doubt” Hudbay would settle with the plaintiffs: “We obviously want to get that behind us.”

[Read: <https://business.financialpost.com/commodities/mining/hudbay-minerals-seeks-to-extract-value-from-its-own-camp-before-joining-ma-frenzy>]

### **Hudbay to appeal Ontario Superior Court decision**

Soon after Kukielski said that, Hudbay did an about face and their lawyers filed papers to appeal the January 21, 2020 ruling of the Ontario Superior Court.

### **Appeal suspended - due to COVID-19**

Originally set for April 23, 2020, Hudbay’s appeal has been suspended indefinitely due to COVID-19.

### **All the justice money can buy? / Justice delayed is no justice?**

At this point, the landmark Hudbay Minerals lawsuits – initiated in 2010, for mining repression in 2007 and 2009 – are on hold. The plaintiffs, whose lives were immeasurably worsened by the mining repression in 2007 and 2009, are now trying to survive COVID-19 that is ravaging the lives of Guatemala’s impoverished, discriminated Mayan majority population. (Not unrelated: Even as the lawsuits against Hudbay are suspended due to COVID-19, Hudbay continues to operate its mine in Peru. It recently came to light that Hudbay tried to cover-up a breakout of COVID-19 at its Peruvian “la Constancia” mining operation.)

Stay tuned.

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### **Timeline & highlights: Mynor Padilla criminal trial**

As stated above, the criminal trial in Guatemala addresses the killing of Adolfo Ich and shooting-paralyzing of German Chub, not the gang-rapes suffered by the women of Lote Ocho. Padilla – Hudbay’s former head of security - is being prosecuted by Guatemala’s Ministerio Public (MP)

(same as Attorney General in the U.S., Crown prosecutors in Canada) and a lawyer representing Angelica Choc who, as an affected party, is a co-prosecutor.

### **'Who pays the piper calls the tune'**

While the criminal trial is separate from the lawsuits in Canada and has no legal implications for Hudbay, it is believed that Hudbay has been and continues to pay for and direct the legal defense of Padilla.

### **Deadly mining repression – September 27, 2009**

On this day, Hudbay/CGN security guards, under the command of Padilla, illegally entered the Q'eqchi' community of La Union, near the mine. They shot tear-gas and bullets over the heads of community members.

At one point, Padilla looked to his side, saw German Chub standing there, and shot him. German had been watching the regular Sunday game of soccer at the La Union field. Soon after shooting German, Padilla and his guards grabbed, hacked with machetes and shot Adolfo Ich.

### **Fugitive from justice - on Hudbay/CGN payroll!**

Though a capture order was issued against Padilla, he continued to work openly as head of security for Hudbay/CGN for at least a year after the mining repression of September 27, 2009, according to villagers. It is not known how long Padilla remained on the Hudbay/CGN payroll after the shooting of Adolfo and German (... or if Padilla continues to receive funds today from Hudbay/CGN?).

### **Hudbay sells Guatemalan mining company at huge loss – August 2011**

In August 2011, Hudbay sold CGN and its mining interests to the Solway Investment Group (a Swiss-based company) for US\$281 million less than it paid for it back in 2008. While selling CGN and its interests, Hudbay retained responsibility to respond to the lawsuits filed against it.

### **Padilla captured – September 2012**

Padilla was finally captured in September 2012. As he had been a fugitive from justice, he was held without bail during the trial.

### **Regular intimidations, threats and attacks**

Since 2013, Rights Action and, separately, the plaintiffs' Canadian lawyers, have written letters 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 the family of Padilla. A few cases are summarized below.

### **"Concocted stories"**

When threatening and intimidating Angelica, German and the 11 women, the people doing so make statements similar to those made by Padilla's lawyers in Guatemala, and by Hudbay in

Canada - that German, the 11 women from Lote 8 and Angelica have “concocted stories” of mining repression so as to win financial settlements in the lawsuits in Canada.

### **Trial begins - April 2015**

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

### **Who pays Padilla lawyers? Who sets their legal strategy?**

It is suspected that Hudbay is paying for Padilla’s team of well-connected defense lawyers, though Hudbay refuses to confirm this. When asked by the Toronto Star, Hudbay responded: “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.”

(<https://www.thestar.com/news/world/2016/06/20/how-a-guatemalan-murder-trial-could-forever-change-canadian-overseas-mining.html>)

### **1st Padilla lawyer killed – June 3, 2015**

On this day, one of Padilla’s well-connected lawyers - Francisco Jose Palomo Tejada - was shot 12 times by a hit squad, 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, 1978-1983. Media reports linked Palomo’s assassination to his alleged work with a Guatemalan drug trafficker (Marllory Chacón, “Queen of the south”, convicted and jailed in the U.S. on drug charges) who laundered money for the Mexican Sinaloa drug cartel.

While the assassination of Palomo is unrelated to the Padilla trial, it is an indication of the type of well-connected, presumably high-priced lawyer defending Padilla that someone (Hudbay?) is paying for.

### **Hudbay intervenes directly in Padilla trial - September 1, 2015**

On this day, John Terry – a senior partner at the Torys law firm (<http://www.torys.com/people/terry-john-a>) – arrived in the Puerto Barrios court house and gave “expert testimony” on behalf of Padilla about the Hudbay Minerals lawsuits in Canada. Terry acknowledged that he was paid by Hudbay for “many hours of work” to appear in the trial. Terry’s testimony turned out to be misleading and selective, according to people involved in the legal proceedings in Guatemala and Canada.

### **Motion to remove Judge - January 20, 2016**

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

### **Motion dismissed - January 27, 2016**

Citing a procedural technicality, an appeals court ruled against the motion.



[View: “Mynor Padilla Trial: Racial Discrimination / Caso Mynor Padilla: Discriminacion Racial”, a short film by Lazar Konforti (2016) on the unsuccessful efforts to have Judge Pena Ayala recused from Padilla trial. Angelica Choc addresses the court, as Padilla and his team of lawyers look on. Film includes a song written and performed by Adolfo Ich, Angelica’s husband. [https://www.youtube.com/watch?v=Q\\_nLF-bke1k&feature=youtu.be](https://www.youtube.com/watch?v=Q_nLF-bke1k&feature=youtu.be)]

### **Trial closed to public - February 8, 2016**

Judge Pena Ayala ruled to continue the trial behind closed doors due to “security threats” against herself and the prosecution! You read this correctly.

Angelica and German, who actually received threats and attacks, did not request this measure and did not agree with the Judge’s “justification”. The trial continued behind closed doors until the end – no members of the public or media were allowed in.

### **2nd Padilla lawyer jailed - 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 from office in 2015 and are in jail.

While this also is unrelated to the Padilla trial, it is a further indication of the type of well-connected, presumably high-priced lawyer defending Padilla, that someone (Hudbay?) is paying for.

### **“Security detail” for Padilla! – May 2016**

Similar to when Judge Pena Ayala closed the trial to the public, citing security risks to herself, view this short film by Steven Schnoor documenting how Judge Pena Ayala ordered a “security protection detail” for Padilla himself, who was brought to court every day by armed police, and the escorted back to jail after the daily hearing.

<https://www.youtube.com/watch?v=rllt5geTlJc&feature=youtu.be>

### **Angelica Choc’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. Bullet marks were found in the walls of her house, and 12-gauge shotgun and 22-calibre bullet casings lying outside. No one was hurt. As part of years of threats and intimidations, a clear message was again sent.

Though denounced to the police, there was no follow-up.

In response to this most recent attack, Canadian lawyer Murray Klippenstein 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/CGN collaboration with "Kaibil" special forces - December 2016**

During the Padilla trial, a new criminal investigation was initiated based on evidence presented by the defense entered into the court record, indicating that the Guatemalan military's "Kaibil" special forces had worked directly with Hudbay/CGN to plan and carry out a military intelligence and population control operation, before, during and after the day of repression (September 27, 2009) that resulted in the killing of Adolfo Ich, shooting-maiming of German Chub, and wounding of other community members.

This is a potentially explosive case of corporate-government-military collusion, ... if ever enough political and media pressure is brought to bear on ensuring a proper criminal investigation.

Stay tuned.

### **Threats and intimidations - March 7-8, 2017**

Angélica and German, accompanied by lawyers and human rights observers, had to leave the court house under police escort after suspicious men were following them. At their hotel, the group spotted a man observing them. This man spent the night 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 pickup – model used by company security forces - drove around the block where Angelica and German's driver was waiting.

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

### **Acquittal! – April 6, 2017**

On April 6, 2017, Padilla was acquitted of the murder and aggravated assault charges. Judge Pena Ayala ordered Padilla's immediate release from detention. Moreover, she apologized to Padilla on behalf of the justice system for his 4.5 years of detention during the trial.

To top it off, she ordered that criminal investigations for obstruction of justice, perjury and coercion of witnesses be initiated against: Angelica Choc; Angelica's children and sister (witnesses to Adolfo's killing); other victims of Hudbay/CGN security guard violence; expert witnesses called to give testimony; and the prosecuting lawyers from the MP's office.

You read this correctly! While exonerating Padilla, Judge Pena Ayala aimed to turn the victims of Hudbay/CGN's mining repression into criminals.

[View: "Hudbay Minerals on Trial: Impunity Reigns", a short film by Lazar Konforti addressing how Padilla was found "not guilty" by Judge Pena Ayala of killing Adolfo Ich and shooting-paralyzing German Chub. [https://www.youtube.com/watch?v=xch\\_LMzfl7Q&feature=youtu.be](https://www.youtube.com/watch?v=xch_LMzfl7Q&feature=youtu.be)]

### **Padilla's real name**

In June 2017, Luis Solano published an article about the Padilla trial, revealing that Padilla legally changed his name. In 1981, he registered in the army as Jaime Rolando Padilla Gonzalez, and changed his name in 1982 to Mynor Ronaldo Padilla González. (<https://cmiguate.org/mp-y-cicig-accionan-contra-libertad-de-militar-vinculado-a-minera-en-el-estor/>)

No crime in that, but what might Padilla be covering up?

### **Appeals court overrule – September 14, 2017**

In a correct but surprising decision (given Guatemala's entrenched corruption, racism and impunity), an appeal court overturned on all points the ruling of trial court Judge Pena Ayala, and ordered a re-trial that was initially slated to begin in September 2019.

### **Criminal investigation into Judge Pena Ayala – September 2018**

In yet another serious twist, the Supreme Court of Justice agreed to lift the legal immunity of Judge Pena Ayala. She will be investigated by the MP to determine if she acted criminally in rendering her April 2017 ruling, acquitting Padilla. "Questions linger about why the Judge acted as she did, and if acts of collusion occurred, which were by all counts illegal." (Luis Solano)

[Read: Article by Luis Solano/ Update by Grahame Russell: <https://mailchi.mp/rightsaction/criminal-investigation-into-judge-who-acquitted-mynor-padilla>]

This criminal investigation into the Judge is separate from Padilla's re-trial but the results may have implications not only for the Judge herself, but also Padilla's re-trial and the lawsuits in Canada. Two years later, little has been done in the MP's criminal investigation into the actions of Judge Pena Ayala in the Padilla trial. Stay tuned!

### **Did Hudbay/Skye ever have a valid mining license?**

In September 2018, lawyers for the Q'eqchi' communities were again before Guatemala's Supreme Court of Justice arguing that the mining companies – dating back to when the license was allegedly granted to Skye in 2005, through Hudbay in 2008, through Solway in 2011 - violated the Q'eqchi' people's rights to previous, free and informed consent, and that the license is invalid. (<https://mailchi.mp/rightsaction/did-hudbay-minerals-skye-resources-ever-have-a-valid-mining-license-in-guatemala-in-the-first-place>)

While this legal action - filed in 2018 – is making its way through Guatemala’s legal system, a finding in favour of the Q’eqchi’ people will have retroactive and current day implications for Highbay and the Solway Investment Group.

### **Nephew of Angelica Choc killed – March 31, 2018**

On this day, Héctor Manuel Choc Cuc - nephew of Angelica Choc - was beaten to death in an attack that family members suspect was supposed to be an attempt on the life of Hector’s cousin, José Ich. Jose – son of Angelica Choc and the deceased Adolfo Ich – is a witness in both the Highbay lawsuits and the Padilla criminal trial.

While this latest crime was denounced to the authorities, no real investigation has been initiated.

[Read: “Nephew of Maya land and rights activist beaten to death in Guatemala”, by Heather Gies, 27 April 2018, <https://news.mongabay.com/2018/04/nephew-of-maya-land-and-rights-activist-beaten-to-death-in-guatemala/#>]

### **Re-trial – July 2020**

Due to the dysfunctionality of the Guatemalan legal system, due to multiple motions filed by Padilla’s lawyers challenging the appeal court’s September 2017 decision to overturn acquittal of Padilla, and most recently due to COVID-19, the re-trial of Mynor Padilla is now slated to begin in July 2020. Stay tuned.

### **Padilla – Back in jail?**

If the re-trial proceeds, it is likely – due to the nature of the charges and to the fact that Padilla avoided initial detention for three years (2009-2012) – that Padilla will be sent back to jail at least for the duration of the trial.

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## **Justice?**

When these victims of Highbay/Skye’s mining repression decided to seek justice in Guatemala and Canada, their main aspiration was that their struggles for justice would help create fundamental political and legal changes in Guatemala and Canada so that other communities would not have to suffer the same harms and violence, corruption and impunity.

Even as the plaintiffs have made stunning advances over the past 10 years in Guatemala and Canada, no justice has yet been achieved. Either or both trials could take years more to resolve and there remains the risk of further repression against them, as the brutal killing of Hector Choc clearly demonstrates.

Yet, with clear heart, mind and determination, the plaintiffs and their lawyers (supported by Rights Action and others) go forward, exposing, challenging and trying to break through the



walls of corporate denial, corruption and impunity that Hudbay/Skye benefitted and profited from.

Stay tuned.

(Grahame Russell is a non-practicing Canadian lawyer, adjunct professor at University of Northern British Columbia and, since 1995, director of Rights Action. For more information about the Q'eqchi' struggles of justice: [grahame@rightsaction.org](mailto:grahame@rightsaction.org), [www.rightsaction.org](http://www.rightsaction.org).)

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## Tax deductible donations, U.S. and Canada

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