

New Internationalist report on Hudbay Minerals lawsuits: 'OUR WHOLE TRUTH WILL COME OUT'

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'OUR WHOLE TRUTH WILL COME OUT'

3 December 2021, by Roxana Olivera, New Internationalist

<https://newint.org/features/2021/10/07/our-whole-truth-will-come-out-canada>



Some of the plaintiffs in this long quest for justice – Angelica Choc (the widow of Adolfo Ich Chamán), Irma Yolanda Choc Cac and Irma Yolanda Choc Quib. RIGHTS ACTION

Warning: this article describes scenes of rape.

It was a rainy January evening when truckloads of armed soldiers, police officers and mine security guards, all dressed in their respective uniforms, stormed into the village of Lote Ocho high in the hills in eastern Guatemala to evict its inhabitants.

The men broke up into smaller units and separately barged into women's huts, dragging them into the bushes while their children screamed and cried. The women's husbands were out in the fields, working on crops of corn and cardamom, unaware of the events.

Once in the bushes, the armed men, many wearing masks, cut off the women's skirts with machetes, tied them up, blindfolded them, gagged them and beat them. Then, the men took turns to rape the women.

These events, which allegedly took place on 17 January 2007, are detailed in claims made against a Canadian mining company as part of a lawsuit that is currently winding its way through the Canadian courts.

In 2011, Margarita Caal Caal and 10 other Mayan Q'eqchi' women, who all say they were attacked in Lote Ocho, filed a civil lawsuit in the Ontario Superior Court of Justice against Toronto-based Hudbay Minerals, one of Canada's oldest mining companies.

This precedent-setting legal challenge could be historic. 'For the first time in Canadian legal history, victims of a Canadian mining company have forced a Canadian court to accept jurisdiction over such civil lawsuits,' says Grahame Russell, the director of Rights Action, an organization that has worked with Q'eqchi' communities affected by mining in the El Estor region of Guatemala for the past 17 years.

The lawsuit is one of three initiated against Hudbay over harms committed in Guatemala – including the murder of a community leader, Adolfo Ich Chamán, and the shooting of a young subsistence farmer, German Chub, which resulted in his paralysis.

As Russell puts it, the Hudbay lawsuits are but a small step forward in putting an end to the impunity with which many companies are allowed to operate around the world.

The Lote Ocho women claim that, on 8 and 9 January 2007, Guatemalan police and military worked alongside security personnel for the Compañía Guatemalteca de Níquel (CGN, Guatemalan Nickel Company) to carry out the forced expulsion of people from five indigenous communities in the El Estor region, including Lote Ocho.

They reportedly burned dozens of thatched-roof houses to the ground, fired gunshots, and destroyed the villagers' meagre belongings.

A week later, on 17 January, when residents had returned to Lote Ocho to try to re-build their lives, a second violent eviction was allegedly carried out. According to the lawsuit, that's when the gang-rapes occurred.

Rosa Elbira Coc Ich, one of the plaintiffs, remembers laying on the ground, unable to move or stand after she says she was raped by nine men. 'They left me completely battered, like a crushed orange,' she recounted through an English-Q'eqchi' interpreter after a hearing in Toronto.

It is claimed that the evictions were carried out at the request of Vancouver-based Skye Resources, the parent company of CGN, in order to clear the land of the Mayan communities so as to make room for the Fenix nickel mine. Local indigenous Mayan Q'eqchi' inhabitants believe that the land on which this mine now sits is part of their ancestral lands, not the property of the mining company.

HUBBAY'S LOSS OF \$290 MILLION

In 2008, Hudbay Minerals purchased Skye Resources for \$460 million and acquired the Fenix mine, becoming the largest Canadian investor in Guatemala. As a result of that amalgamation, however, Hudbay also acquired Skye's legal liability.

In 2011, not long after the 11 women filed their lawsuit, Hudbay sold its interest in the Fenix mine, along with all of its Guatemalan assets, for \$170 million – an estimated loss of \$290 million. The buyer was Solway Investment Group, a private Russian company incorporated in Cyprus and currently based in Switzerland. In spite of the sale, Hudbay retained legal liability, and the lawsuit against the company continues to this day.

In their case, the 11 women allege that the security guards who committed the rapes were under the control and direction of Skye, and that the harm suffered by the Guatemalan women was caused by Skye's negligence in failing to both monitor and supervise its security personnel and take reasonable steps to prevent violence. Consequently, Hudbay, as a result of the merger, bears responsibility for the past legal liabilities of its predecessor corporation.

To date, none of the allegations have been tested or proven in court.

HUBBAY DENIALS

Hudbay's side of the story is that no rape took place and that no uniformed CGN security officer was in attendance or took part in the eviction on 17 January 2007. The company also claims that the eviction was conducted lawfully, pursuant to a court order, and peacefully, 'without undue force', while insisting that Hudbay had nothing to do with the Fenix mine at that time.

20,000 CORPORATE DOCUMENTS DISCLOSED

After years of legal fights over documentary disclosure and after a court order to force their release, Hudbay handed over some 20,000 corporate documents including policy statements, emails, texts, photographs and other internal communications.

LARGE PAYMENTS TO POLICE & MILITARY

The disclosures contain details of Skye's role in securing the evictions and reveal Skye's close working relationship with CGN, the police and the military. Among other revelations, they also give details about large payments made by Skye, through middlemen, to the police and the military.

PRESSURING A JUDGE

Internal emails also show the extent of manoeuvring that company executives undertook to secure the eviction order, including putting pressure on the judge in charge.

An email dated 1 December 2006 from William Enrico, Skye's vice-president of operations, to Skye's chief operating officer David Huggins, reads, as entered into evidence: 'We expect to get the Coban eviction order signed today (likely), but we'll need pressure on the Puerto Barrios Judge as someone may have gotten to him. We have this arranged and we'll see...' [EXHIBIT S, emphasis added by the women's lawyers].

A week later, on 8 December 2006, the judge did, in fact, issue the eviction order for Lote Ocho, according to court records.

BLOCKING LEGAL RESOLUTION TO LAND CLAIMS ISSUES

Another email exchange between Sergio Monzón (CGN's general manager), David Huggins, William Enrico and Brooke Macdonald, Skye's vice-president for legal affairs, dated 31 December 2006, discusses a strategy designed to ensure that Mayan Q'eqchi' communities do not get a chance to make legal submissions regarding the land dispute before the evictions are carried out.

HUBBAY SECURITY GUARD PLEADS GUILTY TO KILLING ADOLFO ICH

By the time of the killing of Adolfo Ich and the maiming of German Chub on 27 September 2009, Hudbay already owned the Fenix mine and was then the parent company to CGN. Mynor Padilla, a former high-ranking officer in the Guatemalan army and head of CGN security during both the January 2007 evictions and the September 2009 events, was alleged to have shot both men.

Hudbay has denied any responsibility in those cases as well. The company's main defence has been that Padilla did not shoot anyone, that he was 'not carrying a shotgun' that day. In fact, Hudbay has argued in a court hearing and in court records that Chub, as well as Ich's widow, Angélica Choc, concocted stories to falsely accuse Padilla of those crimes. Padilla, according to the company, 'had an exemplary record as CGN's chief of security'.

Yet in a criminal trial held in Guatemala in January 2021, Padilla pleaded guilty to the killing of Ich and the shooting of Chub.

COMMUNITIES SIDELINED

Shin Imai, professor emeritus at Osgoode Hall Law School and co-founder of the Justice and Corporate Accountability Project, is very familiar with cases of this sort, having researched and documented numerous incidents of violence linked to Canadian mining companies.

According to Imai, 'it's very important that people in Canada, as well as judges in Canada, hear the story and have to grapple with the reality of what it's like to live in a community where a Canadian mining company is determined to ignore community interests.'

Imai believes that Hudbay underestimated the strength of the women and of the community at large. 'One of the lessons is that, with all that Skye Resources did, ...

Hudbay, when they bought the mine, they underestimated what was happening,' he says.

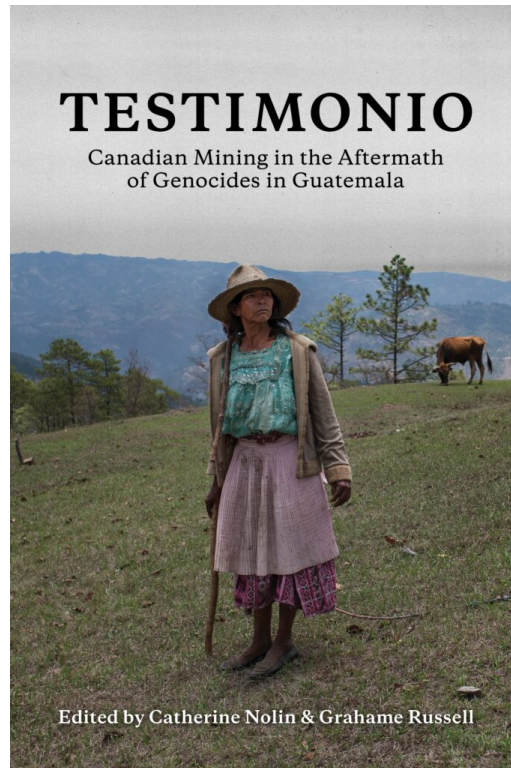
The lawsuit of the women from Lote Ocho has already made history. Since its filing, two other Canadian mining companies have been sued for negligence in Canada for alleged human rights violations committed abroad.

'WE DIDN'T COME TO CANADA TO TELL LIES'

On this long road to justice, one of the Mayan Q'eqchi' women leading the lawsuit has since died. Meanwhile, the surviving 10 patiently wait for their day in court. 'We didn't come to Canada to tell lies,' Margarita Caal Caal told me in Toronto after one of the hearings. 'With God's help, our whole truth will come out. It hurts to remember what happened that day... I lost my baby because of what all those men did to me,' she added, wiping tears from her face. 'All I want now is to tell my truth to the judge.'

The women named in this story have chosen to go public about their legal case and not to remain anonymous.

(Roxana Olivera is a Toronto-based investigative journalist. Her reporting has appeared on the CBC, Huffington Post, The Walrus, El País, Revista Ideele and The United Church Observer. Roxana's work is informed with a passion for the rule of law, human rights and social justice, and it has been published in English, Spanish and German.)



On cover, Diodora Hernández, a Mayan Mam woman who was shot in her eye (bullet exiting through her ear) near Goldcorp's mine, losing sight in one eye and hearing in one ear. Two men attempted to kill her, allegedly because she refused to sell her land to Goldcorp. Photo: James Rodríguez

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Organize TESTIMONIO public presentation. Contact: Grahame Russell (info@rightsaction.org) and Catherine Nolin (Catherine.Nolin@unbc.ca)

More information: www.testimoniothebook.org

General information

About Mayan Q'eqchi justice and territorial defense struggles related to Hudbay's former mining operation in Guatemala, now owned and operated by Solway Investment Group: Grahame Russell, grahame@rightsaction.org

Plaintiffs' lawyers

- Murray Klippenstein, murray.klippenstein@klippensteins.ca
- Cory Wanless, cory@waddellphillips.ca

Hudbay Minerals archives

<https://rightsaction.org/hudbay-minerals-archives>

“EVICTING LOTE OCHO: How a Canadian Mining Company Infiltrated the Guatemalan State”,
The Intercept, September 26, 2020, <https://theintercept.com/2020/09/26/hudbay-skye-canada-mining-guatemala/>

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