

GUATEMALAN VICTIMS OF MINING REPRESSION COMING TO CANADA TO SEEK JUSTICE IN COURT

By Grahame Russell, info@rightsaction.org

From November 23-30, five Mayan Qeqchi [Kek-Chi] people, plaintiffs in three civil lawsuits against HudBay Minerals, are traveling to Toronto, Canada, to be questioned under oath by Hudbay Mineral's lawyers about their affidavits.

This will be the first time, as far as I know, that individuals harmed by Canadian mining projects in other countries will have traveled to Canada to provide evidence for use in Canadian courts. The questioning, under oath, will take place out of court and may be used in court.

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for justice and remedy,
community development and the environment
(See Below)



(On October 25, 2012, Grahame Russell met in the La Union home of Angelica Choc with the plaintiffs, and some family members, to discuss the logistics of their trip to Toronto in late November. L-R: German Chub, Grahame, the husbands of Rosa Elbira and Margarita Caal, Rosa, Margarita, Angelica Choc, Raul Caal.)



(After the meeting, a meal was shared with the plaintiffs and their family members that had been prepared next door.)

From 2008-2011, the Canadian company Hudbay Minerals tried unsuccessfully to operate a nickel mine that has been controversial in Guatemala since the 1970s when then Canadian mining giant INCO (International Nickel Company) operated the mine for two years, colluding with the US-backed Guatemalan military regime in acts of repression – including killings and disappearances – against the same Qeqchi population.

Though Hudbay sold its mining interests in 2011, at an estimated loss of \$200 million, Qeqchi people continue to seek justice and remedy for the human rights violations they suffered under the ownership and control of Hudbay. Company armed security guards committed severe violations near the mining project, including the gang rape of eleven Qeqchi women from one community (Lote 8), the targeted killing of community leader Adolfo Ich and the shooting and paralyzing of German Chub.

These particular acts of repression are now the subject of three related lawsuits filed by the Klippensteins law firm in Ontario Superior Court against Hudbay. Coming to Toronto are the plaintiffs: Angelica Choc, wife of Adolfo Ich; two rape victims from Lote 8; and German Chub. They will be accompanied by Angelica's sister Maria Cuc Choc.

The gang rapes occurred in 2007, when Canadian company Skye Resources owned and controlled the mining project. Skye has since merged with Hudbay to form one company.

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COUNTERING THE ‘SPIN’ Cross-examining Hudbay Minerals “facts” about its operations in Guatemala

Recently, Hudbay posted on its website “facts” about its operations in Guatemala (<http://www.hudbayminerals.com/English/Responsibility/CSR-Issues/The-facts-Hudbays-former-operations-in-Guatemala/default.aspx>).

This “fact page” shows a complete lack of respect for the Qeqchi victims of acts of repression and distorts the truth of what happened in Guatemala under Hudbay’s ownership and control. Hudbay is responding to serious harms and suffering as if they were a public relations problem, instead of as violations that have had devastating impacts on the lives of others.

HUSBAY SAYS: THE SURVIVORS OF RAPE ARE LYING ABOUT BEING RAPED

In the civil law suit, Rosa Elbira, Margarita Caal Caal, and 9 other Qeqchi women say that on January 17, 2007 they were gang-raped by mine company security personnel and Guatemalan police and soldiers during an illegal, forced eviction of their community - Lote 8 (100 homes were burned to the ground; their live stock was stolen or scattered; all personal property and crops were destroyed or stolen). The eviction was carried out at the behest of Skye Resources, the Canadian mining company that has since merged with Hudbay.

Hudbay states that “Hudbay does not believe the allegation that sexual assaults occurred during these evictions is credible”.

In a sworn court document, Rosa Elbira has stated:

“I was assaulted and raped by approximately nine men, including mine company security personnel, during the forced removal of my community from our ancestral lands. . . . I was in my house when nine men barged in They smashed everything that they found in my house, all of my bowls and my cooking utensils. Then the men threw me on the ground and ripped off my clothes. They covered my mouth and held me down. I thought only one of them would rape me, but instead all nine of them raped me, one after the other, on the floor of my home. They were very rough and violent and it hurt a lot. They hurt me very badly. When they left, I was in deep pain. There was blood all over my skirt. I could not get up.”

In these two short videos, Rosa Elbira talks about what happened:

- At <http://www.6kidsproductions.com/>, watch a 5-minute trailer for “Defensora” that documents the Qeqchi people's struggle to seek justice and remedy for the murder, shootings and rapes committed by nickel mining companies in Guatemala.
- Watch a 5 minute interview with Rosa Elbira sitting in the remains of her home that was burned to the ground after she was raped: <http://www.youtube.com/watch?v=dSGuDk4cnz4>

In its “facts” sheet, Hudbay bases its “belief” that the plaintiffs / victims of rape are lying because: (a) the survivors of the gang rapes did not make complaints to the police after being raped; and (b) a police report concerning the forced eviction did not mention that the rapes occurred.

Firstly, this ignores the well documented historic and on-going reality of impunity in Guatemala. Secondly, given that Guatemalan police (as well as soldiers) also participated in the rapes, it is not surprising that the traumatized survivors – who fled into the forests after the rapes and destruction of their village - did not go to police to make a formal complaint.

Furthermore, it is for obvious reasons that the police did not mention the rapes in their own report about what happened in Lote 8 that day.

According to the US Department of State, in its 2011 report on Human Rights Practices in Guatemala:

“[r]ape and other sexual offences remained serious problems [in Guatemala] . . .
. Victims [of sexual assault] frequently did not report crimes due to lack of confidence in the justice system and fear of reprisals.”

This US government report also states that there were “credible reports” that police had committed rape and that “[p]olice impunity for criminal activity remained a serious problem”. (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dclid=186518#wrapper>)

HUBBAY SAYS:

ON SEPTEMBER 27, 2009, “SECURITY AND OTHER PERSONNEL [AT HUBBAY’S MINE] SHOWED EXTRAORDINARY RESTRAINT AND ACTED ONLY IN SELF DEFENCE”; AND, THEIR “MEASURED RESPONSE ... HELPED TO PREVENT A FURTHER ESCALATION OF VIOLENCE THUS LIMITING THE NUMBER OF INJURIES ON BOTH SIDES OF THE CONFRONTATION.”

On September 27, 2009, there were a series of community protests in response to fears of further illegal evictions of Qeqchi communities in the El Estor region at the behest of Hudbay Minerals. Mine company security personnel reacted to the protests in a violent manner, including the shooting of 9 community members - the youngest victim was 15.

On the same day, Adolfo Ich - community leader, teacher and father of four - was hacked with machetes and shot in the head by the chief of mine security, Mynor Padilla. Padilla, charged in Guatemala with murder for the slaying of Adolfo, remained a fugitive from justice for almost three years. He was arrested in Guatemala on September 25, 2012.

Adolfo Ich’s son Jose was with his father on September 27, and describes what happened in a sworn court document:

“[A] few security personnel, including Mr. Padilla, came through a break in the fence and approached my father. . . . The security personnel forced my father to go with them, and led him back through the break in the fence. . . . They were pushing him with their shotguns.

“On the other side of the fence the situation became much tenser. Approximately 10 or 15 security personnel surrounded my father, and continued to lead him away. . . . My father began to resist. He didn’t want to go with the security personnel, so they started to hit him with their guns. My father raised his arm to defend himself, and one of the security personnel struck my father in the arm with a machete. The machete blow almost cut my father’s right arm off. Mr. Padilla then shot my father in the head, and he fell to the ground I could see that he was dead.”

On the same day, German Chub, a young local man and father of one, was watching a soccer game near the fence that separates La Union from mining company buildings, when security

personnel arrived. German was shot by Mynor Padilla in another unprovoked attack. Mynor Padilla is also facing attempted murder charges for the shooting of German.

German describes what happened to him in a sworn court document:

“Suddenly, I heard gunshots, and I saw men in [mine company] uniforms about 50 metres away shooting their guns. I saw Mynor Padilla walk in my direction. As I was turning, Mr. Padilla shot me. I heard a single gun shot and felt the bullet hit my left side When I regained consciousness, I was lying face down on the ground, coughing up blood. . . . I thought I was going to die.

“I have suffered devastating and permanent injuries because of the shooting. The bullet badly damaged my spinal cord, so I am now a paraplegic. . . . The bullet also punctured and collapsed my left lung. My left lung no longer works.”

In addition to Adolfo and German, Guatemalan authorities confirmed that seven other community members suffered gun wounds that day. For its part, Hudbay says that five of its security personnel were hurt. Yet of these, only one security member required medical treatment, and that for a hand injury.

HUBBAY SAYS:

THE LAND DISPUTE STEMS FROM “INVADERS” AND “SQUATTERS” WHO ARE ENGAGED IN “ILLEGAL LAND OCCUPATIONS”

Hudbay – like INCO before it – ignores the Qeqchi people’s historical, moral and legal claims to the lands, dismissing them as “illegal invaders” and “squatters”, thus somehow justifying dealing with the communities in an arbitrary, confrontational and violent manner.

The lands in the El Estor region, where Hudbay was hoping to mine for nickel, are the traditional and ancestral land of the Qeqchi people. Hudbay has never acknowledged the deeply troubling origins of its so-called legal rights to the lands.

The first nickel mining companies received “rights” to these lands soon after the US government orchestrated military coup in 1954 that ousted what many consider to be Guatemala’s only real democratic government. Then INCO tried to operate the mine during the ensuing decades of US-backed military regimes waging brutal violence against their own population. During this period, over 250,000 Guatemalans were killed and disappeared, and over 1 million were driven from their homes and communities, the vast majority of them Mayan civilians.

The legal status of the lands remains in question today. In 2006, the International Labour Organization, a branch of the United Nations, held that Guatemala violated international law by failing to engage in consultation with the Qeqchi communities before granting a new mining concession for Hudbay’s mining project.

(ILO report: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=87&chapter=16&query=%28C169%29+%40ref&highlight=&querytype=bool&context=0>)

In 2011, the Constitutional Court of Guatemala held that property rights to part of the land of the mining project legally belonged to the Qeqchi community of Agua Caliente, a community next to Lote 8. This ruling was cynically ignored by the Guatemalan government and Hudbay. The Agua Caliente community is now pursuing its claim before the Inter-American Court of Human Rights.

<http://www.indianlaw.org/content/guatemala-court-makes-landmark-ruling-indigenous-rights-case>)

Who are the real land “invaders”?

**HUBBAY SAYS:
IT TREATS LOCAL COMMUNITIES “FAIRLY AND WITH DIGNITY”**

Beyond being directly linked to severe repression and forced, illegal evictions, Hudbay goes further and attempts to deny the core identity of Mayan communities by questioning their “indigenesness”.

Publicly, and in legal documents, Hudbay has questioned the indigenous identity of the Qeqchi plaintiffs, referring to them as “individuals who self-identify as ‘indigenous’ peoples” - an attempt to deny the core identity of the plaintiffs and their communities.

All of the people in the nickel mining harmed communities of El Estor are indigenous / Mayan Qeqchi. All of the plaintiffs in the 3 cases in Ontario courts are Qeqchi. Their first language is Qeqchi. The 11 women from Lote 8 who were gang-raped speak virtually no Spanish whatsoever. Most Qeqchi people of El Estor, including the plaintiffs, hold traditional beliefs, the women wear traditional clothing, and maintain a deep connection to their historical and ancestral lands.

As Angelica Choc (wife of Adolfo Ich) says: “our Qeqchi communities are part of an ancient people. [W]e retain our own customs, traditions and values from the time before our grandfathers and grandmothers.”

Their status as indigenous peoples is fundamental to the dispute and to their legal claims to land.

**HUBBAY SAYS:
IT “TAKES ITS ROLE AS A CORPORATE CITIZEN SERIOUSLY AND RESPECTS AND PROTECTS HUMAN RIGHTS WHEREVER HUBBAY OPERATES.”**

Until 2011, Hudbay did not have any human rights policy whatsoever. To this day, Hudbay’s human rights policy

http://www.hudbayminerals.com/Theme/HudBay/files/doc_downloads/Human%20Rights%20Policy%20HudBay.pdf) is superficial. It is less than two pages and includes vague and evasive statements like “While the issue of human rights is most often dealt with by, and is primarily the responsibility of, the nations of the world, Hudbay understands that the issue of human rights can also be impacted by the way businesses conduct themselves”.

Furthermore, Hudbay’s policy is non-enforceable and non-binding!

HUBBAY DOES NOT ACKNOWLEDGE THE EXTREME RISKS OF BEING A COURT WITNESS IN GUATEMALA

Hudbay draws attention to the fact that some of the witnesses in the Guatemalan criminal investigation into the killing of Adolfo Ich, the attempted killing of German Chub and the wounding of others, who originally testified under oath, have since retracted their statements. Yet, again, Hudbay does not mention that Guatemala is one of the most dangerous countries in the world in which to be a court witness.

As noted by the US State Department of <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186518#wrapper>),

witnesses are routinely intimidated, targeted with threats and assaults, and sometimes killed. Guatemala's authorities have been powerless to grant witnesses even basic protection. In many cases, it is the Guatemalan authorities that are the violators. The danger of being a witness is a prime reason that 99.75% of violent crime goes unpunished in Guatemala (<http://www.hrw.org/world-report-2011/guatemala>) and that murder convictions for cases of political repression and human rights violations are extremely rare.

Hudbay's failure to acknowledge Guatemala's deeply entrenched impunity, including the extreme risks faced by court witnesses, is very misleading. Indeed, the danger faced by witnesses in Guatemala is one key reason why the 3 civil cases should proceed in Canada, where risks faced by the witnesses are substantially reduced.

**HUBBAY SAYS:
IT'S FORMER SUBSIDIARY, CGN, HAS BEEN "COOPERATING [WITH GUATEMALAN
AUTHORITIES] TO ENSURE THAT ALL THE FACTS ARE UNCOVERED AND JUSTICE IS
SERVED."**

It is not clear how Hudbay's former subsidiary, CGN, or Hudbay itself has "cooperated" with Guatemalan authorities in any way whatsoever. In December 2009, Guatemalan authorities issued a warrant for the arrest of Hudbay/CGN's chief of security, Mynor Padilla, for the crimes of murder and attempted murder of Adolfo Ich and German Chub. Despite the outstanding arrest warrant, Hudbay confirmed that its subsidiary CGN continued to employ and pay Mr. Padilla for at least a year after the slaying while Mr. Padilla was a fugitive from justice.

Mr. Padilla was finally arrested almost three years after the slaying, in September 2012. It appears that neither Hudbay nor its subsidiary took any steps whatsoever to ensure the arrest of Mr. Padilla.

JUSTICE AND REMEDY VERSUS IMPUNITY

While justice in Guatemala is effectively impossible for these, or just about any other human rights violations or political crime, the wheels of justice, thankfully, spin forward in Canada.

Hudbay can tell its shareholders, board of directors and investors any stories or "facts" it wants, in its own publications and website, but it is getting harder and harder to spin these stories to the general public. An increasing number of North Americans are learning about these and other very serious human rights violations and environmental and health harms caused by Hudbay and many other companies, in Guatemala and around the world.

Hudbay Minerals deserves to be held fully accountable in Canadian courts for the deadly violations and harms that it caused, both directly and indirectly.

The courageous Qeqchi people need and deserve full support, including funding, to enable them to pursue justice and remedy for all they have suffered and lost.

(Grahame Russell is a non-practicing Canadian lawyer, author, adjunct professor at the University of Northern British Columbia and, since 1995, co-director of Rights Action.)

**INFORMATION ABOUT THE QEQCHI PEOPLE'S STRUGGLE
FOR JUSTICE AND REMEDY, LAND AND THE ENVIRONMENT,**
Grahame Russell, 860-352-2448, info@rightsaction.org, www.rightsaction.org

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