

The Hudbay Minerals lawsuits: Clashing world views at the legal crossroads – ‘Avatar’ movie overlaps with a John Grisham novel

By Grahame Russell, January 3, 2013

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Recently, I had a front row seat to the colliding of world visions and harsh realities in the heart and center of Canada’s financial district in downtown Toronto. It was an intense and moving week.

From November 23-30, five Mayan Qeqchi [Kek’Chi] people came to Toronto to pursue justice and remedy for violations and harms they suffered due to the nickel mining interests of Canadian mining company Hudbay Minerals. They were here to respond to questions during examinations for discovery by lawyers from Hudbay Minerals’ law firm Fasken (<https://www.fasken.com/>).



(Before meeting with their lawyers on Saturday November 24, prior to the week of examinations, the Qeqchi plaintiffs take time for a Mayan and Christian prayer. L-R: Margarita Caal, Angelica Choc, Murray Klippenstein, Cory Wanless, Rosa Elbira, German Chub. Taking time to stop and gather strength in prayer and spiritual reflection was a constant part of the week. All photos: Grahame Russell)

Thirteen plaintiffs

- Lawsuit #1 - [Angelica Choc](#), wife of [Adolfo Ich](#), a community leader, teacher and father who was the victim of a targeted killing in September 2009 carried out by private security guards –headed by Mynor Padilla- hired by Hudbay and its Guatemalan subsidiary CGN (Guatemalan Nickel Company).
- Lawsuit #2 - [Rosa Elbira and Margarita Caal](#), representing eleven women from the remote village of [Lote 8](#) who were gang-raped by company security guards, soldiers and police, during an illegal, violent eviction of their community in January 2007, that included the whole-scale burning and destruction of 100 small homes.

- Lawsuit # 3 - German Chub, a young man and father who was shot by Mynor Padilla and company security guards and left paralyzed on the same say as the killing of Adolfo Ich.

Accompanying them was Maria Cuc Choc, sister of Angelica Choc and their brother Ramiro Choc, a political prisoner jailed unjustly in Guatemala on trumped up charges since 2008.

“Avatar” crossed with a John Grisham novel

Since 2004, I have been involved (with Rights Action) in funding and supporting community development, environmental protection, human rights and justice projects of mining harmed Qeqchi communities in eastern Guatemala.

I had the honor of accompanying and supporting them in Canada from the moment they got off the plane in Toronto.



(Monday morning, November 26, in their room at the Quaker House, German, Rosa, Margarita, Angelica and Maria pray for strength and guidance, particularly for German, who – at 10am – was the first to spend the day being examined by Hudbay lawyers.)

In certain ways, these are typical civil lawsuits: Plaintiffs X sue defendant Y for acting negligently and causing harms to X. But in most ways, these are anything but typical cases. They represent, perhaps, the intersection of the “Avatar” blockbuster movie with a John Grisham novel.

Avatar

Like many resource extraction conflicts around the world, both historically and on-going today, this story of Canadian nickel companies trying to operate a mine in the Qeqchi territories of eastern Guatemala (starting with INCO in the 1960s and 70s, continuing with Skye Resources and Hudbay after 2004) is like the documentary version of the Avatar movie.

In Avatar, a powerful mining company brings a battalion of heavily armed men to a remote, far off place, uses extreme violence to forcibly remove the local indigenous people from their ancestral and sacred homelands, so as to get at a mineral that –once mined and processed- will sell for gargantuan profits, somewhere far away.

In general terms, this is the story of nickel companies in Guatemala. Indeed, it is the story of many resource extraction struggles around the world, today and going back centuries.



(The CBC's The National interviews Margarita, Angelica, Rosa, German and Maria.

The National aired two reports:

Seeking Justice: <http://www.youtube.com/watch?v=0fkT3vLA6gg>

A Long Road: <http://www.youtube.com/watch?v=k0O2sJtLqiw>)

John Grisham novel

Then, Avatar crosses with a John Grisham novel. In many Grisham novels, powerless victims of corporate abuses and crimes are represented by low paid or pro bono lawyers, with few economic resources, to try and hold a ga-zillion dollar corporation accountable, said corporation being represented by well-paid lawyers from a politically well-connected law firm.

Represented by the Klippensteins law firm, who are doing much of the legal work for little or no pay, the Qeqchi victims have stuck a legal foot in the door of the very same political, economic and legal structures that empower and legitimize the expansion of corporate and investor interests across the globe (like Hudbay's interests in Guatemala), while providing little to no real legal or political oversight and accountability.

The Klippensteins lawyers are well trained and experienced, and utterly committed to the principle that victims of crimes and harms ought to get justice and remedy for the harms and losses they have suffered; that wrong-doers – including wealthy, powerful and influential corporations and investors – can and ought to be held accountable when they directly or indirectly cause serious human rights harms.

Confronting vast global inequality

On their clients' behalf, Klippensteins agreed to file these cases and take them as far as they can, knowing full well the enormity of the legal-political challenge.

Unknown

Field Code Changed

Unknown

Field Code Changed



(Morning, Monday November 26, Maria accompanies Cory Wanless and German, as German rolls along Adelaide St, downtown Toronto, heading into some 8 hours of questioning.)

On this planet, our global human community, separated off into hundreds of countries, is characterized by vast inequality of wealth and power, both inside and between nations. Many global corporations and investors (a majority based in Europe and North America) control more wealth than the GNPs (gross national product) of many countries around the world.

These companies scour the earth looking for resources to exploit and profit from. They are heavily invested in by private funds and public pension funds (like the Canada Pension Plan that was invested in Hudbay during the years of these violations in Guatemala). These companies are supported in many ways by their home governments. They often hire their own armed security forces and are usually supported by the armies and police of the countries where they operate.

This is essentially the history of Canadian nickel companies in Guatemala, from INCO in the 1970s and 80s, to Hudbay Minerals/Skye Resources from 2004 forward.

Confronting impunity and immunity

These corporations and investors operate this way, around the planet, with close to complete impunity and immunity from legal or political accountability. In the year 2012, it is still next to impossible to hold global companies and investors accountable in any court in the countries where they operate, like Guatemala; in international human rights reporting bodies (like the United Nations or Organization of American States); or in the courts of their home countries, like Canada.



(On Wednesday, November 28, Rosa, Maria and Angelica accompany Cory Wanless and Margarita, as Margarita is about to begin some 8 hours of cross-examination by Hudbay's lawyers from the Fasken law firm.)

Despite the fact that countries, like Canada, espouse democratic values, adherence to the rule of law and good governance, we intentionally do not have the criminal and civil legislation on the books, let alone the political will, to hold our own companies accountable if/when they commit crimes or human rights violations and health and environmental harms in other countries.

These three lawsuits represent, in this regard, an exception to the rule of impunity and immunity from legal accountability.

There is no way whatsoever (that I know of) to hold our companies criminally accountable in our courts if/when they commit crimes in other countries.

In terms of civil law accountability, there have been recent efforts to pass comprehensive legislation (Bill C-300, Bill C-323, etc.) to start to fill the legal accountability void, ... but this is an uphill struggle and these efforts have met well financed opposition from the mining industry itself, let alone from politicians in the dominant political parties.

Our lack of laws and legal accountability is a hypocritical double standard. And, it is this very impunity and immunity from accountability that enables and empowers companies and investors to continue to act as they do.

A long trip across a further distance

It is in this daunting global context that the Hudbay lawsuits are taking place. Of the five who came north, all are Qeqchi speakers; sisters Maria and Angelica are bi-lingual, speaking fluent

Spanish as well; German speaks quite good Spanish, as a second language; Rosa and Margarita speak only Qeqchi.

Four of them had never traveled internationally before. Rosa, Margarita and German had rarely been to Guatemala City. They all live in poor and materially simple rural communities, with no electricity, running water or access to basic health and educational services.

Lote 8, the village of Rosa and Margarita, is high on the mountain range the runs east-west along the north shore of Lake Izabal. There are no roads into Lote 8, a 2-3 hour hike to and from the main road below on the lowlands.

It took this group over 2 days of travel to get to Toronto. Before dawn on Thursday, November 22, Rosa and Margarita hiked down mountain paths to the main gravel road. Then, a 45 minute drive to the town of El Estor. There, Maria, Angelica and German joined them in the van, and they drove 7 hours to Guatemala City. The next morning, up at 3, they drove 5 hours to the San Salvador airport, to catch a 5 hour direct flight to Toronto.

At 10pm, Friday, November 23rd, they emerged with their suitcases, into the cold of a late November Toronto. Their home region of El Estor lies at sea level, one hour from the Caribbean Sea, and is one of the hottest regions of Guatemala. The cold of Toronto will take some getting used to. On day 1, the cold particularly affected German, due to the bullet still lodged in his back, too close to his already damaged spinal column for removal without further risk of harm and deepening paralysis.



(In the Quaker House room, Angelica, Margarita, Rosa, Maria and German take turns making skype calls to family and friends in El Estor, Guatemala.)

From the Toronto airport, they walked –German rolling in his wheelchair- into one of the centers of global power and wealth, to do legal battle with a wealthy and influential company, represented by a powerful and influential law firm, to demand justice and remedy in Canadian courts.

That is a very long trip, and even greater distance to cross. And this story is far from over. The Qeqchi people of eastern Guatemala have been suffering harms and violations by Canadian companies, dating back to when INCO partnered with the US-backed military regimes of the 1970s and 1980s, and carried out similar illegal and violence forced evictions, shooting and killings.

The 1999 United Nations Truth Commission concluded that INCO – via its Guatemalan subsidiary EXMIBAL – colluded with the Guatemalan military in at least 5 documented cases of serious human rights violations – including killings and disappearances.

No justice was ever done for what INCO did, neither in Guatemala nor in Canada. The victims of INCO mining repression were never remedied for their loss and suffering. In 1981, INCO closed the mining operation, but hung onto its (ill-gotten) mining concession.

By 2004, former directors of INCO had incorporated a new company – Skye Resources -, and in 2004, Skye (with investment support from INCO) started again to try and mine for nickel in the El Estor region; soon after that, repression began all over again.

For more background, please view: 10-minute film “El Estor Evictions”, by Steven Schnoor: <http://rightsaction.org/video/elestor/index.htm>.

The legal cases

These lawsuits –filed in 2010 and 2011 – will go on for years. The Qeqchi plaintiffs, their lawyers at Klippensteins and Rights Action are very aware of the lopsided, up-hill nature of the legal struggle they are involved in. As a ‘legal tactic’, Hudbay could easily try to financially overwhelm the plaintiffs, using legal motions and petitions, appeals and counter-appeals, etc., spending seemingly endless amounts of Hudbay’s money to do so.

Hudbay is already arguing that -1- the cases should be brought in the jurisdiction of Guatemala, not Canada; and that -2- Hudbay should not be held to account for what its subsidiary – CGN (Guatemalan Nickel Company) – did in Guatemala.

Jurisdiction: Moving the cases to Guatemala would virtually guarantee complete impunity for Hudbay and its former subsidiary CGN. Notwithstanding a few cases of serious human rights violations and political repression that are finally moving very slowly through the Guatemalan courts, 20 to 30 years after the crimes (including genocide, massacres, disappearances, gang-rapes) were committed, it is widely recognized that legal and political impunity is the norm in Guatemala.

It is not that Guatemala does not have laws to address illegal forced evictions, killings, shootings, gang rapes, etc. It is that the legal system does not work – due to corruption fear, threats and influences - to hold the powerful sectors accountable, even when the powerful are foreign companies or individuals.

‘Piercing the corporate veil’: Individuals, ultimately responsible for wrong-doing, have long hidden behind the legal artifice of the ‘corporate veil’. I.e. company and investor decision-makers (who are also financial beneficiaries) hide behind the legal status of corporation ‘A’ (ex. Hudbay Minerals, in Canada) that they incorporated or purchased, and operate, arguing that

they cannot be held responsible for the criminal or wrongful activities committed by corporation 'B' (ex. CGN, in Guatemala), that was incorporated or purchased by, and is operated by corporation A, that ultimately is controlled by them, the company directors and major shareholders. Nice!

Whether addressing wrongs within our national borders, or around the world, it is long overdue that our courts can and should 'pierce the corporate veil' and hold the real controllers and decision-makers (and, lest we forget, the financial beneficiaries) to account.

All important decisions made in Canada: In addition to the two points above, arguably the main reason that lawsuits should be heard in Canada, is that this is a Canadian company, and all the important decisions – financial, legal, corporate, etc. – were made by Hubday and its wholly owned and controlled subsidiary company CGN. While the harms and repression occurred in Guatemala, while the victims are Guatemalan, the entire decision-making process is controlled by Hubday, a Canadian company incorporated in Toronto, Canada.

Cosmological chasm

It is hard to fully describe the chasm between different world visions and life experiences in which space these lawsuits are playing themselves out.



(As Margarita sits in cross-examination, floors above in this building at the corner of Bay and Adelaide, Toronto, Rosa and Angelica wait in the lobby.)

On one level, these lawsuits are normal and even mundane: filing statements of claim and defense; paying attention to procedural law, deadlines, etc.; filing and contesting motions; negotiating and squabbling about when and where to hold pre-trial hearings; etc. But these are not lawsuits about how one neighbor's tree fell on another's fence, shed and property and caused damage ... even as many of the same procedural, evidentiary and substantive laws and legal principles apply.

These 3 cases, that operate in many ways as one lawsuit, are bringing together a hugely wealthy company and some of the wealthiest investors on the planet (and their deep pockets, powerful

law firm and connections to the Canadian political, economic and media establishments), on the one hand, with some of the poorest people on the planet, from 'far-off' places, speaking wildly different languages – the languages of the first nations of the Americas.

Forced together, through the courage of the plaintiffs, their lawyers and supporters, and the filing of these lawsuits, the two sides sat across from one another in a board room, in a skyscraper in downtown Toronto, to face off in this initial round of pre-trial cross-examinations.

Over the course of four days (German on Monday, Rosa - Tuesday, Margarita - Wednesday, Angelica - Thursday), the Qeqchi and Spanish speaking plaintiffs responded to up to 8 hours of questioning by Hudbay's lawyers. Four days in a row, the other members of the group walked every morning to the door of the room where the hearings took place, to provide strength and moral support to the person going in that day; waited to have lunch with them; and then welcomed them in the evening when their day of questioning was done.

“We won” (Ganamos)

On Wednesday afternoon, Margarita – after 8 hours of questioning – rejoined her Qeqchi friends and community members, raised both arms in the air, and said, with a huge smile of relief, “Ganamos” (we won), as they crowded around her and hugged her. She cried.

Two points. Firstly, nothing has been won. These trials – barring unforeseen circumstances – are barely in the initial stages. In Toronto, these are only pre-trial hearings. What did Margarita mean – “we won”? Two nights later, she responded to that question put to her by the media, saying: ‘We know that Hudbay has said that what we say is not true. I know Hudbay said that we [the women of Lote 8] were not gang-raped. But, we were gang-raped; Adolfo is dead, and buried under the ground; German was shot, and is here with us, in a wheelchair. So today, I answered every one of their questions. I did not cry. I told the truth, I did not lie.’

Secondly, and perhaps more importantly, Margarita said “we” – she did not say “I” won, referring to herself, though she had just been through 8 hours of cross-examination alone.

This “we” versus “I” goes to a larger point about what this struggle is for the Qeqchi people of Guatemala. For all of them, “they” are being harmed by the selfish interests of “outsiders” – Guatemalan and foreign wealthy interests always using violence against them, the original inhabitants of those lands, to get them off their lands so as to produce bananas, coffee, cows (for meat exports), sugar cane, African palm, or to mine for nickel.

The harms, violations and repression always have been and remain a collective harm against a people. Margarita is here, responding individually to Hudbay's questions, but she is involved in a community struggle, both for justice and remedy in these cases, and ultimately for their community well-being, in their homes, on their lands, in their forests, by their water sources.

The gang-rapes that the eleven women of Lote 8 suffered were both individual and collective harms at the same time. Margarita, who has come from her world in Lote 8 to the heart and center of Canada's financial capital, is proudly and with extraordinary dignity struggling for justice and remedy for herself and her Mayan Qeqchi people.



(On Wednesday evening, November 28, the Guatemalans spoke before a large audience in the OISE auditorium of the University of Toronto. When Rosa and Margarita spoke, Maria translated from Qeqchi to Spanish, and Olimpia Boido from Spanish to English. Each of them received standing ovations from the audience.)

Ending 500 years of impunity

The scenario of the lawsuits is already hard enough to believe, let alone to consider that this is a precedent setting case. This has rarely if ever happened in Canadian courts.

If the global human community had been actually governed by the rule of law and principles of good governance and democratic accountability for, say, the last 500 years, then countless numbers of these cases would have been filed and addressed since the European (English, French, Spanish, Portuguese) invasion of the Americas beginning in 1492. An entire body of law and precedents would have been established and put in place. These types of abuses would no longer occur, and when they did, real justice would be swift.

This obviously never happened – not then, and still not now. We don't live in that world. 500 years have passed since violent, Christian-driven, racist European expansionism across the globe and the birth of the modern (and very unequal) Nation State system, ... and still today the global human community is deeply characterized by the impunity with which powerful states, companies and investors can and do act.

In just about every way thinkable, Canada and our courts are not doing the Qeqchi people of Guatemala the favor of hearing and possibly – just possibly - deciding upon the merits of their claims. It is the Qeqchi people of Guatemala who are doing us the favor of ensuring that our courts and legal system operate the way they should have been operating, going back generations, if not hundreds of years.

In their region of Guatemala alone, INCO never should have been able to operate as it did, in partnership with a brutal US-backed military regime, directly and indirectly causing serious violations and repression, acting with impunity.

It is the economy, stupid

And even with all this, which is a lot, this struggle is about much more than that of ensuring that the Canadian legal system operates as it should, and ensure everyone's right to justice and remedy.

Underlying all this, is that the Qeqchi people of Guatemala – like poor indigenous and non-indigenous communities across the world - are working and struggling to be the owners, controllers and beneficiaries of their own economic development, of their own lives and well-being.



(In the Klippensteins law offices, Angelica, Rosa, Murray, Margarita and Cory stand by a drawing, done by Maria, of a rural community in El Estor, Guatemala. Maria writes: "Those positive things that you do today will change the world tomorrow. If you have a clear and positive mind, come walk along our paths and you will understand the truth.")

'It is about the economy, stupid!' ... it is about the global "development" model. Not only do the Qeqchi people want and deserve justice and remedy for the repression they have suffered, they want and deserve to be the owners and controllers of their own lands, territories, rivers and forests. They don't want large-scale "development" projects (mining, large-scale dams, for-export mono-agricultural production, oil and gas extraction, etc.) imposed on them by foreign owners, companies and investors – often backed up by repressive security forces, soldiers and police.

They want and deserve to be responsible for their own well-being, providing for their families and future generations, in balance and harmony with Mother Earth.

They will be back, if necessary

As each one of them said, when asked many times over the week, they did not come to Canada for happy reasons, on a tourist trip. It was a very long and hard trip, and not something they enjoyed.

They came here to tell the truth about what happened to them, and to demand justice and remedy in Canadian courts. If necessary, they will come back to Canada as many times as it takes to participate in these lawsuits.



(November 30, heading home. Vilma Caceres, one of many folks who helped out during the week in Toronto, helped bring Rosa, Margarita, German, Angelica and Maria to Toronto's Pearson airport.)

Hudbay purchased its mining interests in Guatemala in 2008, and sold them for a loss of an estimated \$290,000,000 in 2011, but not before engaging – like companies before them – in serious human rights violations. Other nickel companies are now operating near by. Some of the same threats loom over the lives and well being of the Qeqchi people of El Estor, and beyond.

Thus, their work and struggle in defense of their land and community well-being goes back generations, and continues on now. These lawsuits are a small, but now hugely important part

of their work and struggle. It long has been a hard struggle for that the Qeqchi people have carried out with truth and dignity. It continues.

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