

Hudbay Minerals head of security pleads guilty to killing and assaults near Guatemala mine

<https://mailchi.mp/rightsaction/hudbay-minerals-head-of-security-pleads-guilty-to-killing-and-assaults-near-guatemala-mine>

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OF MINE AND MURDER

*Hudbay contractor pleads guilty to a criminal case
near Fenix mine in Guatemala*



Image: Financial Post, Jan.7, 2021

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- for your donations to Rights Action that are helping fund all costs related to the health and survival, the minimal well-being, and the participation of the Mayan Q'eqchi' victims of mining violence and destruction in the Mynor Padilla criminal trial in Guatemala and Hudbay Minerals lawsuits in Canada.
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Below

- Articles from: Toronto Star, Financial Post, The Guardian, BBC news
- Statement by Canadian lawyers in Hudbay Minerals lawsuits

More information

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Archives - Hudbay Minerals (INCO, Skye Resources, Solway Investment Group)

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

Ex-security chief for subsidiary of Hudbay Minerals pleads guilty to killing, paralyzing Indigenous Guatemalans

By Max Binks-Collier January 07, 2021

<https://bwww.thestar.com/business/2021/01/07/ex-security-chief-for-subsiary-of-hudbay-minerals-pleads-guilty-to-killing-paralyzing-indigenous-guatemalans.html>

On Wednesday, the former head of security for a subsidiary of the Toronto-based mining company Hudbay Minerals officially pled guilty in a Guatemalan court to killing a local Indigenous community leader and paralyzing another Indigenous man. This could have important ramifications for two lawsuits against Hudbay underway in Ontario that centre on the Sept. 27, 2009, killing and maiming of the Indigenous men.

Mynor Padilla, the former security chief of CGN, a Guatemalan nickel-mining company that was owned by Hudbay between 2008 and 2011, pled guilty to the crimes on Dec. 17, 2020, as part of an agreement struck between Padilla and his victims, among them Angelica Choc, the widow of slain community leader Adolfo Ich, and German Chub, who was paralyzed. On Wednesday, the court accepted and ratified the guilty pleas.

The court's decision could be game-changing for two lawsuits that Choc and Chub launched against Hudbay in Ontario in 2010. They allege that Hudbay was negligent in how it managed the private security of its subsidiary, CGN, which has a compound located near several Indigenous communities in rural Guatemala.

In documents filed in court, Padilla is alleged to have shot Ich in the head at close range after Ich was dragged through the fence of CGN's compound by security guards and had his arm nearly severed by a machete blow. Padilla is also alleged to have shot Chub at close range, paralyzing him from the mid-chest down and permanently collapsing his left lung, as Chub watched a community soccer game near CGN. Neither man posed a threat to CGN security.

The court's decision is significant because one of Hudbay's main legal defences is that Padilla did not shoot either man. In fact, Hudbay has stated in court that Choc and Chub have "concocted" stories falsely accusing Padilla of the violence he has now pled guilty to having committed.

Wednesday's ruling "pulls the rug out from under Hudbay's key defence," said Cory Wanless, one of the lawyers representing Choc and Chub in their lawsuits against Hudbay.

"Mr. Padilla's criminal proceedings are coming to a conclusion based on a plea agreement, which accounts for many different factors," Hudbay said in an email. "We will review the court's written decision once it is released. Any agreements made in the Guatemalan court do not affect our view of the facts or Hudbay's liability in relation to civil matters currently before the Ontario court." CGN did not respond to requests for comment. Padilla could not be reached for comment.

The guilty pleas do not automatically invalidate Hudbay's argument that Padilla did not kill Ich and paralyze Chub, but Ontario courts will consider them "highly relevant and highly persuasive" pieces of evidence that "will become a key part" of the lawsuits if they go to trial, said Murray Klippenstein, another lawyer for Choc and Chub.

Hudbay will now have to rely heavily on the other pillar of its legal defence, which is that it was not negligent in its management of CGN's private security, Klippenstein and Wanless said. The two lawyers will argue against that defence by drawing on hundreds of the more than 20,000 internal corporate documents disclosed by Hudbay through the discovery process. The documents paint "a very detailed picture of the facts surrounding" the shootings of Ich and Chub, Klippenstein said.

"Based on what we know, it is going to be very difficult for Hudbay to argue that they don't bear responsibility for what happened at their mine," Wanless said. "The higher-ups at Hudbay were well aware of what happened on the ground in Guatemala."

Padilla was sentenced by the Guatemalan court to a total of two years and eight months for his crimes against Ich and Chub. The court has commuted his sentence to fines that are to be paid

to the court. Padilla also previously paid Chub and Choc in out-of-court settlements. On Wednesday, the court also accepted his guilty pleas for assaulting two other Indigenous villagers on the same day. The terms of his sentence were agreed upon by Padilla and his victims before the court accepted them.

Padilla previously spent about 4.5 years in prison awaiting an earlier trial for these crimes that ended in an acquittal, but that acquittal was overturned on appeal amidst allegations of corruption against the judge who presided over it.

Reactions to the plea deal were mixed. Klippenstein and Wanless considered it to be a relatively positive outcome in light of the dysfunctionality of Guatemala's justice system and the impunity rampant within the country. But Ramon Cadena, a Guatemalan human rights lawyer and regional director for the International Commission of Jurists, said that the sentence was just a slap on the wrist. "It is a reflection of the impunity in Guatemala," he said.

"It's not very fair, but for me, however, it is a big achievement," said Angelica Choc. She choked up. "It hurts me too much ... remembering my husband." But now, with the guilty plea coming more than a decade after her husband's death, "I feel very at peace."

Former security chief at Hudbay mine pleads guilty in Guatemala Development significant because Hudbay has spent nearly a decade battling civil litigation in Canada related to case

By Gabriel Friedman, Jan 07, 2021

<https://financialpost.com/commodities/mining/former-security-chief-at-hudbay-mine-pleads-guilty-in-guatemala>

The former chief of security for a nickel mine once owned by a Canadian mining company in Guatemala has pleaded guilty to criminal charges in that country in connection with an alleged homicide and serious assault on Indigenous activists that stretch back over a decade.

On Wednesday, a judge in Guatemala accepted criminal pleas from Mynor Ronaldo Padilla Gonzalez, including admissions, translated from Spanish, to 'homicide in an emotional state' and 'culpable violence,' according to lawyers in Canada who represent plaintiffs in a civil case here related to the same incidents, who were monitoring the case through an associate in the Guatemalan court. Both pleas related to clashes at the Fenix nickel mine, in eastern Guatemala, once owned by Hudbay Minerals Inc.

The development is significant because Hudbay has spent nearly a decade battling civil litigation in Canada related to the same violent episodes, and had denied that Padilla was connected to the violence. Now, that line of defence conflicts with Padilla's own admissions.

"This pulls the rug out from Hudbay's main denial right now," said Murray Klippenstein, of Klippensteins law firm in Toronto, who represents the plaintiffs suing Hudbay in Canada.

To be sure, his criminal plea in a Guatemalan court has no direct impact on Hudbay's civil liability in Canada, except that it may force the mining company to reconsider its defence, and could potentially ramp up pressure to settle the case. It is one of three landmark cases filed in Canada that seek to hold mining companies accountable for overseas human rights abuses through a legal claim of corporate negligence, but the other two cases have both settled.

Hudbay released a statement acknowledging Padilla had pleaded guilty in his criminal proceedings in Guatemala. "We will review the court's decision once it is released. Any agreements made in the Guatemalan court do not affect our view of the facts or Hudbay's liability in relation to civil matters currently before the Ontario court," the company said.

The Hudbay stock fell 0.6 per cent to \$9.47 on the Toronto Stock Exchange.

The litigation against Hudbay connects back to a series of allegations between 2007 and 2009, against dozens of personnel from the Fenix mine in eastern Guatemala, along with police and military violently expelled members of the remote Indigenous Mayan community of Lote Ocho from their homes, and clashed with mine protestors and the local community.

During an expulsion in 2007, eleven Mayan Q'eqchi' women allege they were gang-raped. Later, in 2009, one community leader Adolpho Ich was assaulted with a machete, then shot and killed, while another community member was shot and paralyzed.

Hudbay purchased the Fenix mine in 2008 for \$451 million, and inherited liability at that time for the actions of the previous owners, although it also faces allegations that its own personnel, including Padilla, were involved in abuses.

Since 2011, 13 Indigenous community members have filed claims in an Ontario court against Hudbay for negligence, alleging the mine owners had planned and coordinated their expulsions and funded the groups that committed the violence against them.

In 2013, a judge ruled the company can be sued in Canada for the events in Guatemala, and the case remains ongoing even though Hudbay sold the Fenix mine in 2011 for \$170 million to Solway Group, a Swiss-based mining and metals company.

Lawyers for the plaintiffs, Murray Klippenstein and Cory Wanless, have already reviewed tens of thousands of documents in the case, and expect to be back in court in Toronto this spring for another hearing on more discovery.

"Based on the evidence we've seen, we can prove a high degree of negligence in how they managed the Fenix mine," said Wanless.

Meanwhile, in Guatemala, Padilla, the former chief of security and a former ranking military officer in Guatemala, was arrested, and detained. In December, he agreed to plead guilty to a

role in the violent clashes. According to interviews with Klippenstein and Wanless, a judge in a court in Puerto Barrios, Guatemala, has now accepted Padilla's pleas related to at least two separate incidents.

First, he agreed to plead guilty to homicide in an emotional state and pay compensation to Angela Choc, whose husband Adolfo Ich was shot and killed during a mine related protest. Per that agreement, Padilla accepted two years in prison, which has already been served. Second, he agreed to plead guilty to culpable injury and pay compensation to German Choc Chub, whose husband was shot and assaulted and remains in a wheelchair. Per that agreement, Padilla also agreed to 10 months in prison, which was also served as pre-trial detention.

In 2017, he was tried in a Guatemalan court and acquitted by a judge, but it was overturned on appeal. Padilla could not be reached for comment.

Previously, Hudbay had denied that Padilla or any mine security forces were involved in the death of Ich. "The defendant is not aware of how Ich came to his unfortunate death," lawyers for Hudbay wrote in 2015, adding "Ich was not grabbed by Padilla ... and executed in cold blood as alleged"

In addition to the suit against Hudbay, other plaintiffs filed lawsuits alleging human rights abuses overseas against two other mining companies, Tahoe Resources Inc. and Nevsun Resources Ltd. — both companies have since been acquired and no longer exist. Those cases have settled on undisclosed terms. In 2019, however, Vancouver-based Pan American Resources Inc., which purchased Tahoe, publicly apologized to the plaintiffs as part of the settlement.

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Head of security at Hudbay Minerals' former Guatemalan mine pleads guilty to killing community leader and shooting bystander

Lawyers statement, January 06, 2021

<http://www.globenewswire.com/news-release/2021/01/06/2154561/0/en/Head-of-security-at-Hudbay-Minerals-former-Guatemalan-mine-pleads-guilty-to-killing-community-leader-and-shooting-bystander.html>

TORONTO and PUERTO BARRIOS, Guatemala, Jan. 06, 2021 (GLOBE NEWSWIRE) -- On January 6, 2021, a Guatemalan court accepted the guilty plea of Mynor Padilla, the former head of security at Hudbay Minerals' Fenix mine. Mr. Padilla admitted he was guilty of "homicide committed in an emotionally violent state." The guilty plea relates to the brutal killing of Indigenous community leader Adolfo Ich Chamán at the Fenix mine in 2009 when the mine was owned by Hudbay.

Mynor Padilla, a former lieutenant-colonel in the Guatemalan army, also pleaded guilty to the charge of “culpable injury” for the shooting of Germán Chub Choc, the same day. Germán Chub Choc is now paralyzed.

These criminal acts of violence against Indigenous Guatemalans are key parts of ongoing precedent-setting lawsuits in Canadian courts against Hudbay Minerals and its former Guatemalan subsidiary Compañía Guatemalteca de Níquel (CGN), brought by Ich’s widow Angelica Choc, Germán Chub Choc and others. The Canadian lawsuits have received worldwide attention as precedents for holding multinational mining companies liable in their “home” country for abuses at mines they operate abroad.

“Today is a momentous day. This has been an incredibly long road to partial justice for Angelica Choc and Germán Chub,” said the plaintiffs’ Canadian lawyer Murray Klippenstein. “In a country where, according to Human Rights Watch, over 99% of violent crime goes unpunished,¹ today’s guilty plea by the former head of security for Hudbay’s mine is nothing short of remarkable.”

“Hudbay has spent more than a decade and a small fortune in legal fees denying that their security personnel had anything to do with the brutal killing of Adolfo and the paralyzing of Germán. This was one of their key defences,” said Mr. Klippenstein’s co-counsel, Cory Wanless. “With this admission of guilt by the former head of security at Hudbay’s mine, it will be difficult for Hudbay to continue to argue that it does not bear responsibility for the killing and shootings.”

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Guatemala mine's ex-security chief convicted of Indigenous leader's murder Mynor Padilla pleaded guilty over death of Adolfo Ich in 2009 Mining firms accused of litany of abuses in Central America

By Sandra Cuffe, 07 Jan 2021, The Guardian

<https://www.theguardian.com/global-development/2021/jan/07/guatemala-nickel-mine-death-adolfo-ich>

A judge in [Guatemala](#) has accepted a guilty plea by the former head of security at Central America’s largest nickel mine who was on trial for killing an Indigenous leader, in a rare conviction over human rights violations allegedly linked to Canadian-owned mining companies in the region.

Mynor Padilla was found guilty on Wednesday of homicide for the 2009 fatal shooting of Adolfo Ich, a Maya Q’eqchi’ teacher and community leader who opposed the Fenix mine outside the town of El Estor.

“We have spent a long time seeking justice,” Angélica Choc, Ich’s widow, told the Guardian outside the courthouse, in Puerto Barrios, a port city 185 miles east of Guatemala City, following the ruling. “It is not going to bring my husband back, but I feel satisfied.”

Transnational mining corporations, most of them Canadian, their personnel, and state security forces have been accused by human rights groups of a litany of abuses in Central America, including the killings of mine opponents.

Prosecutions are rare, and criminal convictions of mining company personnel are almost unheard of in the region. Patricia Quinto, who represented Choc, a joint plaintiff in the trial, said that the verdict set an important precedent in the country. “The judge noted mining companies have generated conflicts,” said Quinto.

At the time of the killing, the Fenix mining project was owned by Toronto-based Hudbay Minerals, which faced opposition from local Indigenous communities to plans to reopen the mine. The company faces [ongoing civil lawsuits in Canada](#) related to violence against Indigenous residents, including Ich’s killing.

“We will review the court’s written decision once it is released. Any agreements made in the Guatemalan court do not affect our view of the facts or Hudbay’s liability in relation to civil matters currently before the Ontario court,” a Hudbay Minerals spokesperson told the Guardian in a statement.

The nickel mine had previously operated under other Canadian ownership during the country’s 1960–96 civil war between the military and leftist guerrillas. An estimated 200,000 people were killed during the war, most of them Indigenous Maya civilians killed by the military.

Corporate land and mining rights acquired under military rule sparked decades of conflict and opposition from local Indigenous communities. The Fenix mine is located on the country’s largest lake, in a predominantly Maya Q’eqchi’ region in eastern Guatemala.

The mine has been linked to violence for decades, including extrajudicial killings and enforced disappearances during the civil war, according to a United Nations back truth commission.

[The mine reopened amid violent clashes](#) with local protestors in 2014, and it is now owned by the Solway Group, a Russian conglomerate. In 2019, Guatemala’s constitutional court [upheld a petition to suspend operations at the mine](#) pending consultation with affected Indigenous communities.

“There are many brothers and sisters in this struggle,” said German Chub, who was shot and paralysed by mine security personnel on September 27, 2009, the same day Ich was killed.

A former army lieutenant colonel, Padilla was also found guilty on three counts of culpable injury for his role in Chub's shooting and assaults on two other Indigenous men from a nearby village.

Padilla spent four and a half years in prison prior to an initial 2017 acquittal, overturned in appeals. He pleaded guilty in December 2020 following a sentencing and reparations agreement between the prosecution and defense. He will not face further jail time.

Padilla and his defense lawyers declined comment following the ruling Wednesday. The full sentence will be formally issued on 13 January.

"For me it is a relief and at the same time it brings sadness," Chub told the Guardian. "It took us so long to be heard."

Mynor Padilla: Killer of anti-mining activist pleads guilty

By Vanessa Buschschluter, BBC, January 07, 2021

<https://www.bbc.co.uk/news/world-latin-america-55573682>

The ex-security chief at a mine in Guatemala, Mynor Padilla, has pleaded guilty to killing an anti-mining activist in 2009. Adolfo Ich was killed at the Fénix mine, which was owned at the time by a subsidiary of Canadian mining giant Hudbay Minerals. He had been campaigning against the mining project and for his community's land rights. Germán Chub, a bystander, was also shot, leaving him paralysed.

The guilty plea comes at a retrial after Padilla was cleared of murder at a previous trial.

What happened in September 2009?

The Fénix nickel project was owned by the Guatemalan Nickel Company (CGN), a subsidiary of Toronto-based Hudbay Minerals. CGN wanted to develop the mine, but the indigenous Maya community objected, arguing that much of the company's land belonged to them. The company said it engaged in talks to negotiate their resettlement but members of the Maya community said they were threatened with forced evictions.

On 27 September 2009, security guards at the mine attacked members of the community with machetes and firearms. Adolfo Ich was killed, Germán Chub was left paralysed, and at least seven more people were injured.

What was Mynor Padilla's role?

Mynor Padilla was the chief of security at the Fénix project and witnesses said he was the key man in the attack on 27 September 2009. Hudbay defended its personnel, alleging that members of the Maya community had turned on each other and that their security staff had acted in self-defence.

Following a three-year murder trial Padilla was acquitted, much to the outrage of the victims' families who launched an appeal.

What's the latest?

The court of appeal overturned the acquittal and ordered a retrial which began in December 2020. After having for years maintained his innocence, Mynor Padilla entered a guilty plea which was accepted by the court on Wednesday. A lawyer for Adolfo Ich's widow in a civil lawsuit against Hudbay Minerals in Canada called it a "momentous day".

Why does it matter?

There are three civil lawsuits under way against Hudbay Minerals in Canada, in connection with the Fénix mine. One of them was filed by Adolfo Ich's widow, Angélica Choc, who alleges that the company failed to take adequate precautions to ensure that human rights abuses would not be perpetrated by Hudbay's security personnel.

In 2013, a court in Ontario allowed the lawsuits to proceed, making it the first time that foreign claimants were allowed to pursue a lawsuit against a Canadian company in Canada for alleged human rights abuses.

Cory Wanless, one of the lawyers for the plaintiffs, said that following Mynor Padilla's guilty plea "it will be difficult for Hudbay to continue to argue that it does not bear responsibility for the killing and shooting".

Hudbay Minerals has released a statement saying it would "review the court's decision once it is released", which is due to happen later this month.

The company, which sold the Félix mine to Swiss-based Solway Group in 2011, also stated that "any agreements made in the Guatemalan court do not affect our view of the facts of Hudbay's liability in relation to civil matters currently before the Ontario court".

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