



## GUATEMALA HUMAN RIGHTS COMMISSION/USA

3321 12th Street NE, Washington, DC 20017 | 202-529-6599 | [www.ghrc-usa.org](http://www.ghrc-usa.org)

### **Observations of Abelino Chub Trial**

**May 1, 2019**

Between April 22 and 26, GHRC staff observed the trial of Abelino Chub Caal, a Maya Q'eqchi land defender in Guatemala. Abelino Chub was arrested on February 4, 2017 after the CXI Corporation and Cobra Investments, banana and palm companies, charged that he had led a group of indigenous farmers to violently occupy the Plan Grande Farm in northeastern Guatemala on August 7, 2016. They accused him of burning trees in the palm farm during the occupation.

At the time of his arrest, Abelino worked with the Guillermo Toriello Foundation accompanying communities in northeastern Guatemalan working to ascertain legal title to ancestral lands as well as rural development community work. He is bilingual Q'eqchi and Spanish teacher who was finishing a degree at the the Mariano Galvez University when he was arrested.

Abelino's trial opened on Earth Day, April 22, 2019 in High Risk Court "A" presided by Judge Yasmin Barrios. He faced charges of aggravated land occupation, arson and criminal conspiracy.

- Pre Trial Proceedings
  - At the indictment, the Public Prosecutor's Office requested that the charges against Abelino be dropped due to lack of evidence, but Judge Anibal Arteaga refused the petition. Judge Arteaga also refused to grant Abelino conditional release pending trial, resulting in his arbitrary detention for more than 26 months.
  - At the request of the Public Prosecutor, Abelino's case was transferred to a High-Risk Court in Guatemala City in 2018 after he was charged with 'criminal conspiracy.' His lawyers, from the Law Firm for Indigenous Peoples, did not object to transfer to a higher court as they feared the lack of objectivity of local judges. In Guatemala City, however, Judge Claudette Dominguez also refused to grant bail to Abelino after several hearings to request his release.

- Prosecution

- The prosecution presented evidence on April 22nd and 23<sup>rd</sup>. They failed to present sufficient evidence to prove a crime had been committed on August 7, 2016, much less to prove that Abelino was guilty of committing that crime.
- The prosecution's case relied on conflicting testimony of two company employees who work picking palm fruit. Both claimed to have recognized Abelino in a crowd, one stated the crowd was 100 meters away, while the other claimed the crowd was just 25 meters away. Neither were able to recognize anyone else in the crowd even though they had each worked on the farm for more than 5 years and they said that the people who were with Abelino lived on the land in question.
- Photographic evidence presented by the prosecution was from October 12, 2016, two months after the alleged incident Abelino is accused of participating in. The photographs did not show Abelino occupying land nor signs of a burned plantation. The pictures seem to show a different farm all together electric lines are visible and the property in question has no electricity.
- It's noteworthy that CXI and Cobra Investments have repeatedly asserted that Abelino led a group of masked individuals carrying firearms yet presented no evidence whatsoever to substantiate that assertion. They provided no evidence that would support "criminal conspiracy" charges.
- Due to lack of evidence, the public prosecutor asked for the arson and conspiracy charges to be dismissed. The private prosecutor asked for the arson charges to be dropped.

- Defense

- The defense provided witnesses who testified Abelino was in a water sanitation workshop with an Irish aid organizations in another part of the country in the days leading up to the alleged occupation. A witness from Abelino's home community, approximately seven hours from Plan Grande, stated he shook hands with Abelino on his way to church the morning of Sunday, August 7, the day and time that the supposed incident took place.
- Expert reports presented relevant information about the historical context, ownership of the land in dispute, current day context, and state collusion in the malicious use of the criminal justice system to paralyze legitimate community organizing.
- With the use of expert witnesses, the defense showed that the indigenous Maya Q'eqchi' community of Plan Grande had lived for at least 175 years on the land in

question, and therefore, it was impossible to say they were involved in “land occupation.”

- Experts showed that companies had, over several years, appropriated large sections of the community for industrial agricultural production by outlining the irregular actions of state functionaries that led to indigenous land to be allocated, bought and sold by private interests.
- Verdict
  - On Friday, April 26, the three judge panel found Abelino Chub Caal not guilty of all charges. In their verdict, they ordered the Public Prosecutor’s Office to investigate the irregularities in the land titles.

### **Summary of the proceedings:**

Tribunal: High Risk Court “A” in Guatemala City, Presided over by Yasmin Barrios

Public Prosecution: Judith Esperanza Villagran of the Puerto Barrios Prosecutors’ Office

Private Prosecution: Carlos Manuel Ovalle Leranoz and Sara Reyes, representing CXI Corporation and Cobra Investments

Defense: Jovita Tiul and Juan Castro of the Law Firm for Indigenous Peoples Sergio Belteton of the Committee for Campesino Unity

Abelino Chub Caal’s trial began on April 22, 2019 in High Risk Court “A” in Guatemala City. When the trial opened, Abelino’s lawyers filed a motion challenging the legitimacy of the four land titles in the name of CXI and Cobra companies, and registered in the General Property Registrar. The motion argues that the Plan Grande indigenous community held prior rights to the land, and identified a series of actions which could constitute fraud in the titling process that ultimately benefited CXI and Cobra.

The Court proceeded to hear the first witnesses proposed by the prosecution on Monday, April 22, continuing on April 23. Ten company employees testified. Three, the Chief of Security, an agronomist and an agricultural technician, were not present during the alleged crimes but provided contextual information to support the assertion that security guards and agricultural workers had been sent to work at a plot of African palm oil trees near the town of Plan Grande on August 7, 2016. The agronomist explained that it was a test plot that had been established in 2015. He also stated that it was not normal procedure to undertake this work on a Sunday, but they did this because they believed Plan Grande community members would be in church and not notice the presence of the workers.

Three security guards and four agricultural workers testified that they were working in the palm plot near Plan Grande when a large group of people came and demanded they leave the area. Only two of the seven claimed to have recognized Abelino. They could not recognize anyone else in the crowd, though they had lived at one time in the community. Nine of the witnesses reported the closest the group came to them was 100 meters (365 feet), including one of the two who said he identified Abelino. The second witness who identified Abelino stated the crowd came within 25 meters (82 feet). That witness claimed Abelino was armed with a machete and a rock and he was able to identify him by his voice when he threatened him. The witnesses were asked specifically if the crowd wore ski masks, the witnesses said they did not. None of witnesses said they observed smoke or fire that day, though Abelino was charged with setting the palm plantation on fire. None of the witnesses stated they saw firearms.

On April 22, a criminologist with the Prosecutor's Office in Puerto Barrios stated he had been to Plan Grande, but not on August 7, 2016. He did not remember if there was a road into the area. There is not a road and the hike in is significant, a fact that is hard to forget. He provided no relevant information. Three photographers who work with the Public Prosecutor's offices in Puerto Barrios and Morales testified they had gone to the area in a helicopter, which hovered over the area but did not land. That trip occurred on October 12, 2016, not August 7, 2016 the date that the prosecution claimed Abelino led a masked group to occupy the farm. Other pictures were taken two months after Abelino's arrest 2017. Not only were the photographs taken months after the alleged actions that led to Abelino's prosecution, the photographs were clearly of a different town because they showed electrical lines and the community that was supposedly taken over does not have electricity. The photographers testified that they were able to identify the supposedly occupied land with the help of the legal representative and manager of the company who accompanied them. They testified that they provided the photographers with maps and pointed out the land from the helicopter. None of the photographs or witnesses from the prosecutor's office identified Abelino as present in the area.

On April 23, the defense team began to present evidence after the prosecution rescinded 13 other proposed witnesses, claiming they could not be located. Abelino's colleagues in the Guillermo Toriello Foundation testified, describing Abelino's work as a technician and community outreach worker. Abelino's responsibilities included supporting rural development and was often asked to accompany and translate for indigenous communities when they had meetings with the state regarding the disputed land rights in the area. In particular, he had accompanied the indigenous community of Plan Grande in several "dialog tables" with state institutions, like the Secretariat for Agrarian Affairs, the Land Fund and the National Council for Protected Area. The witnesses from the Guillermo Toriello Foundation and an engineer responsible for natural disaster risk management for the Irish aid organization Trocaire, described Abelino's participation in a water sanitation workshop in Panajachel August 1 to 5, 2016. A witness testified that on the final day

of the workshop, Abelino left for his home in Carcha, Alta Verapaz, over a hundred miles from Plan Grande.

Abelino testified on April 23. He explained his work in helping coordinate the dialog table with state institutions, for the Plan Grande community. Abelino described meeting with Miguel Angel Arriaza, part of the family that owns CXI, on July 20, 2016 the day of the last dialog session before he was arrested. He reported Arriaza had offered him money and access to credit, and asked him to broker a pay-off to the community, which he refused. Abelino also described receiving a telephone call on August 2, 2016 from Manuel Garcia, a public relations specialist with CXI, in which Garcia stated that he had information indicating that the Plan Grande community planned to occupy the Murcielogo Farm, and asked Abelino to intervene. After Abelino returned home from the workshop on Friday, August 5, he spent the weekend with his family before returning to work in the town of El Estor on Monday morning, a five-hour bus ride from his home.

On April 24, Abelino's brother-in-law testified that he saw Abelino in his home the weekend of August 6 and 7. On Sunday, August 7, the day the supposed crime took place over a hundred miles away, he said he saw Abelino on his way to church and shook his hand. Later that day he saw him fixing things around his home.

Four experts witnesses were called by the defense on April 24. Three of them, Guatemalan, Austrian and US academics, were presented by Abelino's defense to sustain the position that the title held by the CXI and Cobra Corporations is illegal. The original title was illegally granted, those title holders never took possession of the farm, and the title was eventually abandoned. It appears that there was then a break in the succession of transfers when it appeared registered in the name of an individual who then created a series of corporations and transferred, divided into lots and reunified the farm in what appears to have been what is referred to "Land Laundering," an attempt to hide the illegal transfer that first placed the title in control of the current family that claims ownership.

Jorge Diego Vásquez Monterroso, an anthropologist, presented his research report, "History and culture of the Q'eqchi in the Finca el Murciélago, El Estor, Izabal." The report explained the cultural, economic and territorial dynamics of the Q'eqchi 'in the area of the El Murciélago and Plan Grande from the 16th to the 20th century. He found that the Q'eqchi people are considered original inhabitants of the area, noting that the Murcielago farm that exists today is located within the territory of the indigenous community of Plan Grande. During the liberal reform in the late 1800s, Guatemalan heads of state offered territories in the Verapaz region to their supporters, turning local indigenous inhabitants into "mozos" or slaves for the so-called new owners. Indigenous territories were referred to as "vacant lands" even though communities

inhabited them. Farms were created within the communities, and Finca Murcielago was one of those.

Dr. Jennifer Casolo, a geographer from the University of California at Berkeley, presented the findings of her research entitled, “Ancestral Rights, Territorial Dynamics, Dispossession and Defense of the Maya Q’eqchi community of Plan Grande in El Estor, Izabal.” Dr. Casolo questioned the concept of “vacant lands” used to justify the appropriation of indigenous territory, explaining it responds to colonial logic, invisibilizes indigenous communities, and casts the communities who demand recognition of their land rights as violent. The colonialism and violence is particularly evident in the creation of “mozos” - indigenous slaves who were bought and sold with plantations. Often these were people who had already lived on the land for centuries, having formed communities, and having historic ties and constantly producing on the land. Dr. Casolo said that there has been epistemic violence against the Q’eqchi people, indicating that their knowledge, land use practices and systems of organizing have been ignored, though they should be taken seriously due to the challenges that climate change present. She concluded that the Q’eqchi people cannot have illegally occupied the lands in question because they have never ceased to live there and have never ceded their rights to the land.

Dr. Harald Waxenecker, a historian who has extensively studied political, military and business power structures in Guatemala and the Central American region, presented the findings of his report called, “Social power relations and the appropriation of natural resources and of the land in El Estor, Izabal.” He noted that the indigenous community of Plan Grande was deliberately excluded during the process of registering land in the early 1900s. He showed through his research that the land had passed through the hands of different “owners” through a series of documented irregularities and attempts to cover them up, including frequently buying lands, dividing them up and reselling them, often by the same family, as recently as 2016. He concluded that powerful economic actors, with the complicity of the Guatemalan State have been and continue to grant privileges in order to appropriate natural resources and the land, even when they must resort to irregularities and illegalities.

A fourth expert witness, Ramon Cadena, Regional Director of the Geneva based International Commission of Journalists, concluded that Abelino Chub was targeted for wrongful prosecution as a means to stop his legitimate defense of the human rights of Q’eqchi communities in the Polochic valley. He testified that this kind of judicial abuse is a pattern in the region and that Judge Arteaga, who indicted Abelino and ordered his pretrial detention, has displayed a pattern of this abuse. In this case, Judge Arteaga ruled that Abelino must be sent to pre-trial detention specifically because he is a community leader and as a result, Abelino spent more than 26 months in a high security detention center in Guatemala City, hundreds of kilometers away from his home and family. Cadena’s report focused on the malicious use of the criminal prosecution

and public institutions to stop human rights defenders from doing their legitimate work. He attested that Abelino had been targeted specifically due to his role in trying to address the agrarian conflict through dialogue and peaceful channels, by way of community participation and democracy.

In her conclusions, Public Prosecutor Judith Esperanza Villargan requested the dismissal of the charges of criminal conspiracy and arson due to lack of evidence to sustain the charges. The Prosecutors asked the court to find Abelino guilty of land occupation and sentence him to three years in prison.

Carlos Manuel Ovalle Leranoz, a lawyer representing Inversiones Cobra and CXI, participated in the proceedings as private accusation. He concluded that the company had a good relationship with the community of Plan Grande before Abelino Chub started accompanying them. He asserted the company has stepped in where the state has failed to support the community of Plan Grande and had bought water filters. He asked the court to dismiss the arson charges but asserted that Abelino is guilty of criminal conspiracy and land occupation.

### **Related Proceedings**

It is unclear if the Public Prosecutor or the CXI and Inversiones Cobra corporations will appeal the rulings. Similarly it is as yet unclear whether Abelino Chub will present abuse of authority or similar charges.

There is a related, ongoing legal process surrounding land rights in Plan Grande, the community Abelino had assisted in the dialog table that disputes land rights with CXI and Inversiones Cobra. Defense lawyers presented a constitutionality challenge, or amparo, on August 27, 2018 to revoke the land titles emitted by the General Property Registrar for four parcels of land to private companies. The amparo argued that the original title created in 1920 was illegal from its inception as it violated the prior rights of the Plan Grande community. It requests the annulment of all derivative titles. The first circuit court ruled in favor of Plan Grande. The decision was appealed by the State but the final outcome of the constitutional challenge is pending before the Constitutional Court. The amparo argues the following.

- 1) Archeological records indicate that the indigenous Maya Q'eqchi community of Plan Grande may have existed for hundreds of years. Guatemalan government records first mention it in 1831, when the municipality of El Estor was created. Census records show it has been continuously populated ever since.

- 2) In 1906, military officer Jose Victor Mejia de Leon was given a large extension of Plan Grande's land. The original deed was clearly illegal as national law barred the creation of a land title over land already possessed by others. Mejia de Leon's own surveys describe farming on the land. Neither Mejia de Leon, nor any of his descendants ever took possession of the land that had been titled.
- 3) In the 1970s, the violence from the State-sponsored war against the civilian population impacted indigenous communities in the region. Indigenous farmers were kidnapped and disappeared by the military; others were victims of massacres and extrajudicial murders. In this context of terror, a man named Rafael Penado, who had good relations with the military, took interest in Plan Grande's forests, and eventually claimed he owned the land, forcing community members to pay him rent. Research shows Pineda never held title to the land.
- 4) In 1988, a man named Osmondo Rodriguez appeared saying he had purchased the land from Rafael Penado. Osmondo Rodriguez was the brother of an the infamously cruel military commissioner, Edgar Rene Rodriguez. Military commissioners were civilians appointed by the military, and charged with controlling communities during the years of the most extreme repression of civilian, mostly indigenous, communities. In this way, Plan Grande was forced to labor for Osmondo Rodriguez.
- 5) In 1996, Miguel Arriaza told the community he had purchased the land from Rodriguez. A succession of corporate identities associated with Arriaza and members of his family then created a series of new lots, dividing and conjoining plots of land, and engaging in frequent title transfers between the corporations. This process appears to have been a practice known as "land laundering", an attempt to create confusion and hide the break in the title history. It appears that recent title transfers may have been fraudulently inscribed in the abandoned, illegal title created by Mejia de Leon.