

SOLWAY INVESTMENT GROUP
EXAMINATION OF ALLEGED HUMAN RIGHTS VIOLATIONS IN GUATEMALA

EXECUTIVE SUMMARY

1. Quinn Emanuel Urquhart & Sullivan, LLP (“**Quinn Emanuel**”) was retained on September, 28, 2023 by Solway Investment Group (“**Solway**”)¹ to conduct an independent review into the allegations in the letter dated 21 August 2023 from Michel Forst, UN Special Rapporteur on environmental defenders under the Aarhus Convention (“**UNSR**”) (the “**UNSR Letter**”) concerning “*the alleged persecution, penalization and harassment of Mr. Carlos Ernesto Choc Chub (“**Mr. Choc**”) in connection with the exercise of his rights under the Aarhus Convention*” (the “**Review**”).²
2. At the outset, two jurisdictional matters bear mentioning as to the Special Rapporteur’s purported competence in relation to the allegations made:
 - (a) *First*, Guatemala is not a State Party to the Convention. There is a separate and similar regional agreement that would ostensibly be more relevant, namely, the Escazú Agreement which covers Central and Latin America. Indeed the Escazú Agreement is more explicit in that Article 9 (*Human rights defenders in environmental matters*) provides, *inter alia*, that its States Parties “*shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.*” However, although Guatemala had initially signed the Escazú Agreement on 27 September 2018, it has not ratified it and has in fact expressly indicated in a

¹ Quinn Emanuel performed our work pursuant to OFAC License No. GLOMAG-2023-1127554-1, issued on 29 September 2023. See [Global Magnitsky Designation and Designations Removals; Issuance of Counter Terrorism General Licenses | Office of Foreign Assets Control \(treasury.gov\)](#).

² On 6 November 2023, the United Nations Special Procedures (“UNSP”) issued a letter to Solway reiterating many of the allegations in the UNSR Letter as well as additional allegations relating to, for example, a July 2019 vehicle accident and May 2022 alleged breach of COVID-19 restrictions by the Guatemalan Subsidiaries in May 2020 (the “UNSP Letter”). While Quinn Emanuel’s Review touched on many components of the UNSP Letter, it was not retained to address the UNSP Letter and thus did not focus on the allegations in the UNSP Letter.

communication to the Secretary-General that it no longer intends to become a party to that agreement.³ There is therefore a lacuna in respect of obligations which bind Guatemala in relation to human rights defenders specifically, but this does not itself provide sufficient justification for the extraterritorial reading of the Convention in the manner assumed by the Special Rapporteur.

- (b) *Secondly* and relatedly, Mr. Choc is a national of Guatemala; he is not a national of any State Party to the Convention. It is therefore not the case that he can exercise rights under the Convention nor would State Parties have corresponding obligations in respect of him in that regard.
3. The Review included (i) the analysis of documents provided by Solway, including documents related to relevant court proceedings, reports on human rights, and training materials; (ii) the review and analysis of media articles regarding Solway’s Guatemalan subsidiaries, Compañía Procesadora de Izabal S.A. (“Pronico”) and Compañía Guatemalteca de Níquel (“CGN”) (collectively, the “**Guatemalan Subsidiaries**”) and Mr. Choc; (iii) interviews (in English, Spanish and Russian) of selected employees and consultants by Quinn Emanuel and a request to Mr Choc to attend an interview with Quinn Emanuel, which request was unanswered as at the date of this Summary; and (iv) an assessment of the relevant legal framework and a review and analysis of the human rights situation in Guatemala, which included reviewing the U.S. Embassy in Guatemala’s Report on Human Rights in Guatemala 2022 (20 March 2023).
4. Quinn Emanuel’s Review was subject to certain limitations, including the passage of a significant amount of time since the events in question, resulting in the lack of availability of certain witnesses, and the inability to conduct on-the-ground research in Guatemala. Quinn Emanuel also was not provided access to the complete legal filings in the 2017 proceedings or any of the filings in the 2022 proceedings in which the Guatemalan Subsidiaries were not involved. Quinn Emanuel was informed that these documents were not in the possession of the Guatemalan Subsidiaries’ legal representative. Nonetheless, Quinn Emanuel does not believe these limitations affect the accuracy of its Review.
5. The UNSR Letter alleges that the Guatemalan Subsidiaries engaged in the persecution, penalization and harassment of Mr. Choc and sets forth the following seven allegations of human rights violations:

³ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean \(un.org\)](#).

- (a) In May 2017, Mr. Choc was present as a journalist at a protest regarding environmental conditions at the Fénix Mine in Guatemala,⁴ and in connection with his media coverage of the protest, Mr. Choc received numerous anonymous threats against him. Mining workers employed by CGN brought a criminal complaint against Mr. Choc and others alleging criminal charges, including instigation to commit a crime, threats, illegal detention, and illegal association (“**First Allegation**”);
 - (b) An arrest warrant was issued against Mr. Choc in connection with the complaint (“**Second Allegation**”);
 - (c) Mr. Choc was subject to the arrest warrant for nearly a year-and-a-half until it was lifted and a court order was issued requiring Mr. Choc to report monthly to the Guatemalan Public Prosecutor’s Office until the criminal proceedings were resolved (“**Third Allegation**”);
 - (d) A legal representative of CGN was joined as a co-plaintiff in the criminal proceeding against Mr. Choc and others (“**Fourth Allegation**”);
 - (e) Since April 2020, Mr. Choc has been subjected to various defamation campaigns and his home has been raided by unknown individuals as well as the Guatemalan police and army; he was victim of police violence while reporting on subsequent protests at the mine, and CGN also purportedly subjected him to surveillance (“**Fifth Allegation**”);
 - (f) Further criminal charges were brought against Mr. Choc by Guatemala’s National Civil Police in January 2022, which were subsequently dropped in September 2022 (“**Sixth Allegation**”); and
 - (g) The criminal proceedings initiated by CGN’s employees, and of which CGN is a co-plaintiff, remain pending, with Mr. Choc required by the court to report monthly to the Public Prosecutor’s Office (“**Seventh Allegation**”).
6. Based on its Review, Quinn Emanuel determined that the Guatemalan Subsidiaries, CGN and Pronico, have not engaged in the human rights abuses against Mr. Choc set forth in the UNSR Letter. Specifically, Quinn Emanuel did not find that Guatemalan Subsidiaries were involved in a campaign of harassment or persecution against Mr. Choc or otherwise violated his human rights.

⁴ The protests were in connection with the belief that pollution from the mine had caused a red-tinted algae bloom. According to the Guatemalan Subsidiaries, the alleged pollution of the lake was not caused by the mine but by wastewater discharged from Lake Izabal by the Polochic River and other tributaries.

7. As to the **First** and **Fourth Allegations**, Quinn Emanuel’s Review did not reveal evidence of any threats made or directed by anyone at CGN to or against Mr. Choc. On 11 May 2017, a number of CGN employees together with a legal representative of Solway’s subsidiary, as a co-plaintiff, filed a complaint against a number of individuals in relation to the protests taking place against the Guatemalan Subsidiaries’ operations, including road blockages and detention of company employees. The complaint did not identify Mr. Choc. On 21 July 2017, the Guatemalan judicial authorities summoned Mr. Choc of their own volition to provide witness evidence in relation to his alleged participation in the protests and related charges. Quinn Emanuel did not find that any CGN employee or representative engaged in any improper conduct relating to the filing of the complaint which legitimately pursued alleged violations of the workers’ human rights.
8. Regarding the **Second** and **Third Allegations**, the arrest warrant issued against Mr. Choc and his monthly reporting obligations to the Guatemalan Public Prosecutor’s Office were court-imposed orders by the Guatemalan judge.
9. As to the **Fifth Allegation**, Quinn Emanuel found no evidence of any threatening phone calls by employees of the Guatemalan Subsidiaries to Mr. Choc in connection with his reporting or of any reports or special “dossiers” being produced regarding Mr. Choc.
10. With respect to the **Sixth Allegation**, the criminal proceeding against Mr. Choc in 2022 were brought by Guatemala’s National Civil Police in response to the violent 2021 protests that left multiple protesters and police officers injured. The Guatemalan Subsidiaries were not involved in either bringing the charges or the decision to drop the charges.⁵
11. As to the **Seventh Allegation**, the 2017 proceedings against Mr. Choc were dismissed on 31 January 2024. These proceedings were delayed due to a variety of reasons, including delays caused by the global COVID-19 pandemic as well as related appeals and filings – Quinn Emanuel did not determine that the delays were a result of the Guatemalan Subsidiaries, which has no power to conclude the proceedings. Moreover, any reporting obligations on Mr. Choc were imposed by the court and not by the Guatemalan Subsidiaries which have no power to do so. These reporting obligations have now been lifted.⁶

⁵ As noted above, Quinn Emanuel did not review any court filings related to this proceeding as the Guatemalan Subsidiaries are not participants in the proceeding.

⁶ Quinn Emanuel has reviewed the decision of the Guatemalan Court dated 31 January 2024 to dismiss the proceedings against Mr Choc.

12. Quinn Emanuel understands that in El Estor, and Guatemala more broadly, protests are regular and often violent. Quinn Emanuel's Review, including research on the political and human rights environment in Guatemala, confirmed that protests in Guatemala and El Estor often result in both protestors and police being injured. Quinn Emanuel's Review and media reporting confirmed the use of tear gas and rubber bullets by the police in Guatemala; as such, it is likely that Mr. Choc suffered police violence but there is no evidence to suggest that any Solway entity was involved in or contributed to any incident resulting in injuries to Mr. Choc.
13. Finally, Quinn Emanuel made several attempts through different channels to reach Mr. Choc for an interview in relation to the allegations set forth in the UNSR Letter. To date, Quinn Emanuel has not received a response from Mr. Choc.

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