

# INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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## **Agua Caliente v. Guatemala - Maya Q'eqchi' Rights to Land**

**Washington D.C., March 11-15, 2013**

### **Summary**

For over 40 years, the Maya Q'eqchi' Agua Caliente Community has worked to secure recognition of their land rights in the face of threats to their human rights, including forced evictions from their traditional lands to make way for nickel exploitation. In 2006, the Guatemalan government issued a mining permit to the Guatemalan mining company CGN (Compañía Guatemalteca de Níquel), at the time a subsidiary of the Canadian company HudBay Minerals Inc. In complete defiance of national and international laws, the government of Guatemala never consulted with Agua Caliente – nor any of the 16 Maya Q'eqchi' communities located within the area allotted for nickel extraction – when the mining permit was granted.

The Indian Law Resource Center (Center) is the international legal representative of the Maya Q'eqchi' Agua Caliente Community (Community) and works with Defensoría Q'eqchi', an indigenous human rights organization based in El Estor, Guatemala. On February 8, 2011, we won a major victory when a precedent setting decision by the Constitutional Court recognized the Community's collective property rights to its lands. This meant that the mining permits and activities and forced evictions were in violation of the Community's land rights. The State has, in essence, ignored this historic ruling by not enforcing it.

### **Background**

For the last seven years, the Center has worked alongside 16 Maya Q'eqchi' communities in El Estor, Guatemala. These communities are threatened by the reactivation of a nickel mine, which has been dormant for decades but now plans to expand mining into the communities' traditional lands. The State granted the mining permit to CGN in 2006 without proper environmental review processes or consultation with the Q'eqchi' people, and in complete disregard of their 40-year effort to formalize their land titles within a land titling procedure created by the State.

Agua Caliente is the community with the largest nickel deposits on its lands. Because of the rich natural resources in its territory, the Community has faced efforts by local government and mine security forces to evict them from their lands. These evictions, often violent, threaten the safety of the Community members, leaders, and local legal counsel. The Maya Q'eqchi' people's cultural and spiritual beliefs are deeply rooted to the land they have traditionally possessed; their lands are critical to their physical and cultural survival. The communities have long been concerned about the impacts of mining on the environment, as they rely on the natural resources of the land and the nearby Lake Izabal, the largest lake in Guatemala, for food and to support their livelihoods.

The Center, as the international legal representative, has worked with Agua Caliente to challenge government actions in domestic courts. In February 2011, the Constitutional Court awarded Agua Caliente a precedent setting victory by ruling in their favor and ordering the government to take all corrective actions necessary to legally title Agua Caliente's lands. Despite the ruling, the State did not act on its obligations. In August 2011, the Center filed a petition with the Inter-American Commission on Human Rights (Commission) to call upon Guatemala to revoke the mining permits and to adopt legislative and administrative measures that recognize indigenous peoples' collective ownership over their land and resources, and their rights of self-determination and self-government.

In September 2011, HudBay Minerals of Canada sold the "Fenix" mining project to the Solway Investment Group. Since then, violence against Agua Caliente has escalated. The acquisition happened regardless of the Constitutional Court's ruling in favor of Agua Caliente.

### **Today**

While the petition awaits the Commission's review, the situation in Agua Caliente – and in many other indigenous communities in Guatemala – is becoming increasingly violent. Human rights advocates, indigenous leaders, and entire indigenous communities are often victimized for defending their human rights. Rodrigo Tot, President of the Agua Caliente community, and local counsel Carlos Pop are on the frontlines of the legal effort to secure protection of the Community's rights and bring a halt to plans for nickel mining in Maya Q'eqchi' territory.

Because the legal actions stemming from the Agua Caliente case are the first of its kind in Guatemala, indigenous people working closely on the case have put their safety at great risk. The lives of attorney Carlos Pop, President Rodrigo Tot, and their families are under serious threat. In early October 2012, Edin Tot, Rodrigo's eldest son, was murdered and

his second son was shot and seriously injured during what appears to be a staged robbery. The murder and the repeated threats against community representatives led the Commission, in late October 2012, to grant the Center's request for precautionary measures protecting Agua Caliente's leaders.

The Center understands that raising the profile of indigenous leaders at the international level is one of the most effective ways to protect their human rights and security. The Center believes the Agua Caliente case can set a legal precedent and help both Guatemala's indigenous majority and indigenous peoples in other countries secure legal recognition and title to their lands and protect their environment. Together with indigenous leaders, human rights advocates, and the international community, the Center will continue to defend the collective land and resource rights, their rights of self-determination, and the self-government rights of the Maya Q'eqchi'. Guatemala must preserve governance and the rule of law and not compromise the State's domestic and international responsibilities.